

THE CORPORATION OF THE CITY OF NELSON
Optical Fibre Service Bylaw No. 3270, 2013

Being a bylaw to establish and regulate the provision of dark fibre and co-location facilities and to impose rates, terms and conditions for the supply of the dark fibre and co-location service.

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THE CORPORATION OF THE CITY OF NELSON
Optical Fibre Service Bylaw No. 3270, 2013

WHEREAS the Council of the Corporation of the City of Nelson considers it desirable to provide access to the community to optical dark fibre and col-location facilities owned by the City and to regulate the supply of the service;

NOW THEREFORE in open meeting assembled, the Council of the Corporation of the City of Nelson enacts as follows:

PART 1 – INTERPRETATION

1.1 Definitions

“Applicant”	means the person or legal entity that has applied to the City for service;
“Bill”	means the invoice produced by the City for the supply of the service to the Customer;
“Billing Date”	means the date a Customer’s Bill was prepared by the City and is as indicated on the Bill;
“City”	means the Corporation of the City of Nelson;
“COLO”	means co-location facilities provided by the City to Customers for the purpose of connecting Customer owned and maintained equipment to the Dark Fibre;
“Council”	means the duly elected Council for the City;
“Customer”	means any natural person or other legal entity whose application for the supply of the Service has been approved by the City;
“Dark Fibre”	means fibre optic cable strands within the Network not lit for use;
“Deposit”	means the Administration Surcharge plus the Minimum Connection Fee or the Administrative Surcharge plus 50% of the Actual Costs, whichever is greater;
“Fees and Charges Bylaw”	means the City’s current Fees and Charges Bylaw and all amendments thereto;

“Illegal Activity”	means a violation of federal and/or provincial law, including any City bylaws, whether or not the violation is an offence under the Criminal Code;
“Installation Fee”	is a non-refundable one-time fee charged by the City to the Customer for connection to the Network;
“Lit Fibre”	means fibre optic cable strands within the Network lit for use by the Customer;
“Network”	means the Lit Fibre and Dark Fibre infrastructure owned and operated by the City;
“Service”	means the provision of the Network and COLO and/or access by the Customer to the Network and/or COLO subject to the terms and conditions of this Bylaw; and
“Service Fee”	means the fee for Service charged by the City from time to time;

1.2 Interpretation

Any reference in this bylaw to an appendix, schedule, statute, regulation, bylaw or other legislative or regulatory instrument shall be deemed to mean a reference to that legislative or regulatory instrument in force at the effective date of this bylaw, and as amended, superseded or replaced from time to time.

PART 2 – SERVICE AREA

2.1 This Bylaw applies to all lands within the geographic jurisdiction of the City.

PART 3 – PROVISION OF SERVICE

- 3.1 The City will provide the Service for the Customer’s use in accordance with the terms and conditions of this Bylaw and the approved application. The Service will be restricted to the location as identified in the approved application.
- 3.2 A person or legal entity who desires the Service must hold a bona fide City of Nelson Business License, complete an application on the form provided by the City and submit it, along with applicable fees, to the City.
- 3.3 The City may refuse to provide the Service to any Applicant where access to the Service is unavailable, or where the Applicant has been charged or convicted of Illegal Activity which, in the City’s sole determination, renders the Applicant

ineligible to receive the Service, or where the intended use of the Service by the Applicant is not otherwise appropriate.

- 3.4 The Customer acknowledges that all right, title and interest in the Dark Fibre and COLO remains with the City and the Customer's sole right with respect thereto is to the use of the Dark Fibre and COLO for the duration and upon the terms and conditions set out in this Bylaw and the approved Application.
- 3.5 The Customer may use the Service within its normal business operations, provided that such normal business operations do not include the sale, exchange, lease or other transfer rights in the Service.
- 3.6 Except as approved by the City, the Customer may not sublease any rights in the Service or make the Service available to third parties as Dark Fibre or COLO.
- 3.7 Where the Customer controls access to premises into which the Dark Fibre is to be installed, the Customer will do or cause to be done, at its expense and to the satisfaction of the City, all acts reasonably necessary for the City to obtain such registrations, permits or approvals as required by the City to access the Customer's premises and building fixtures, to install, maintain, repair and relocate the Dark Fibre and appurtenances as required.
- 3.8 Where approved by the City, the City will provide the Customer with equipment rack rental space in a City COLO and access by the Customer to the COLO on a continuous basis.
- 3.9 Use of the COLO by the Customer is restricted to Customer owned and maintained equipment required by the Customer to provide Lit Fibre services using the City Dark Fibre.

PART 4 – PAYMENT

- 4.1 The Customer will pay to the City the Installation Fee as set out in the Fees and Charges Bylaw.
- 4.2 The Customer will pay to the City the Service fees as established from time to time in the City's Fees and Charges Bylaw.
- 4.3 The Customer, in addition to any Service fees, will pay to the City the amount of any sales taxes, other taxes, assessments or levies required by a Taxing Authority on the Service delivered to the Customer by the City.
- 4.4 The Deposit is payable by the Applicant at the time of application for the Service with the any balance remaining due upon completion of installation of the

Service. If the application for Service is refused by the City, the Administrative Surcharge will be refunded to the Applicant.

- 4.5 Except as provided in section 4.3, the Installation Fee is non-refundable.
- 4.6 The Customer will pay the Service fee within 30 days of the Billing Date shown on the City's Bill. Interest of 1.5% per month of any outstanding balance may be charged by the City for any overdue account.
- 4.7 Any balance due that remains unpaid after thirty (30) days from the Billing Date shall be subject to the City's collection procedures.
- 4.8 If the balance due remains unpaid by December 31, the outstanding balance is a debt owing to the City, and among other remedies, may be collected in the same manner as for property taxes in arrears.

PART 5 – TERMINATION OF SERVICE

- 5.1 The City may terminate the Service to any Customer immediately and without notice if:
 - (a) The Customer is in default of payment of two successive Bills;
 - (b) The Customer is in breach of any of the terms and conditions applicable to the Service in this Bylaw or the approved application;
 - (c) The Customer has been charged or convicted of any Illegal Activity;
 - (d) The Customer has tampered with or misused the Service or the City's equipment in any way; or
 - (e) The Customer is or has been using the Service for a purpose which, in the sole determination of the City, is not appropriate.
- 5.2 Upon termination of the Service, the Customer will pay any then outstanding balance as shown on the City's final Bill, together with any costs incurred by the City for disconnection of the service to the Customer.
- 5.3 Upon termination of the Service, the Customer will promptly remove all items, equipment and other materials belonging to the Customer from sites owned, leased or licensed by the City, and in no circumstances later than thirty (30) days following termination. The City may, at the Customer's expense, remove any Customer items, equipment and other materials remaining at City sites 30 days after termination of the Service. Any such Customer items, equipment and other materials removed by the City will be deemed to be abandoned and the City may dispose of such items, equipment and other materials at the cost of the Customer.

PART 6 – LIABILITY LIMITATION

- 6.1 The City is not liable to any Customer, or third party, for any direct, indirect, special, consequential or incidental damages or loss of revenue or profit arising out of or in connection with the use or inability to use the Service, any interruption in the City's supply of the Service, or inability of the City to supply the Service, including any loss or anticipated loss from the Customer or third party's unauthorized use or tampering of or with the Service or the City's equipment utilized for the Service.
- 6.2 The Customer is solely responsible for determining whether the Service is suitable for use for the Customer's purposes, and the City in providing the Service makes no warranty as to suitability for the Customer's purposes.

PART 7 – OFFENCES AND PENALTIES

- 7.1 No person shall prevent or obstruct, or attempt to prevent or obstruct, the entry of an authorized City employee in the performance of his or her duties under this Bylaw, including entry to inspect for compliance with the terms and conditions of this Bylaw.
- 7.2 Any person or entity who violates a provision of this Bylaw, or fails or neglects to do something required under his Bylaw, is liable on conviction to a penalty not exceeding ten thousand (\$10,000) dollars and costs of prosecution. The penalties imposed under this sub-section are in addition to and not a substitute for any other remedy the City may have with respect to a violation of this Bylaw.
- 7.3 Each day a violation of the provisions of this Bylaw occurs or is permitted to exist shall constitute a separate offence.

PART 8 – SEVERABILITY

- 8.1 If any portion of this Bylaw is held invalid by a court of competent jurisdiction, then the invalid portion will be deemed to be severed and the remainder of this Bylaw will be deemed to be valid.

PART 9 – CITATION

9.1 This bylaw may be cited for all purposes as the “Corporation of the City of Nelson Optical Fibre Service Bylaw No. 3270, 2013” and comes into force and effect upon adoption.

READ A FIRST TIME the 7th day of October, 2013
READ A SECOND TIME the 7th day of October, 2013
READ A THIRD TIME the 7th day of October, 2013

FINALLY PASSED AND ADOPTED the 21st, day of October, 2013.

John Dooley _____
Mayor

Frances Long _____
Corporate Officer

CERTIFIED A TRUE AND CORRECT COPY OF THE
“**Corporation of the City of Nelson Optical Fibre
Service Bylaw No. 3270, 2013**”

Frances Long

Manager of Legislative and Administrative Services