

CHAPTER 13 PUBLIC FIBER OPTIC NETWORK

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8-13-1: **DEFINITIONS:** Certain terms used in this Chapter shall have the meanings ascribed below:

ACCESS NODE: An enclosure with splice trays on the fiber optic system that provides access for splicing a customer connection to the public distribution system.

BACKBONE ACCESS POINT: An enclosure with splice trays on the backbone ring that provides access for splicing distribution fiber to the fiber backbone.

BUFFER TUBE: A plastic tube containing a bundle of fiber strands within a fiber optic cable.

CITY: The City of Idaho Falls, Idaho.

CUSTOMER: A retail or wholesale user of fiber optic access provided through the Fiber Optic System.

DARK FIBER: A fiber strand without any light flowing through it.

DIRECTOR: The Director of the Idaho Falls Power, or his or her designee.

DISTANCE RATIO: The ratio resulting from the total lineal length of a distribution fiber line measured between the fiber backbone and an initial fiber customer's point of delivery, as the denominator, and the distance between any subsequent customer's point of delivery and the initial connection to the backbone, as the numerator.

DISTRIBUTION FIBER: A fiber that connects the fiber backbone ring to a customer's facility fiber, customer access drop, or other customer owned equipment.

FIBER BACKBONE: A network of dark fiber, generally consisting of 96 or more strands of single mode fiber located within the public right of way, all as more particularly shown on the Fiber Map maintained on file at the offices of Idaho Falls Power.

FIBER MAP: A map depicting the location of the public fiber backbone, including any amendments thereto, as may be determined by the Director of Idaho Falls Power.

FIBER OPTIC CABLE: A cable containing a bundle of fiber strands.

FIBER OPTIC CUSTOMER: A person who applies for or receives fiber optic access from the City.

FIBER OPTIC PATHWAY: A physical pathway within a fiber strand through which pulses of light may be transmitted.

FIBER STRAND: An individual glass fiber, roughly the thickness of a human hair, that is capable of carrying a distinct signal transmitted in the form of pulses of light.

INTERCONNECTION WORK: All activities necessary to establish fiber pathway(s) between two or more locations.

INTERNET SERVICE PROVIDER OR "ISP": A Fiber Optic Customer who provides fiber optic access or internet services to Retail Internet Users for monetary gain or other consideration.

INITIAL DISTRIBUTION FIBER CONSTRUCTION COSTS: The total cost of designing and constructing an extension of distribution fiber between the backbone and an initial customer's point of delivery. Such amount shall be established by the Director following the construction of such distribution line by the City based upon the reasonable and actual costs incurred by the City, whether performed by City crews or by an independent contractor.

LIT FIBER: A fiber strand lit by Idaho Falls Fiber that provides ISP's access to retail customers for the delivery of internet service.

PUBLIC FIBER OPTIC NETWORK 3 INITIAL FIBER CUSTOMER: A customer who constructs a distribution line at his or her sole expense, which line benefits or potentially benefits a subsequent fiber customer who connects to and uses any portion of such line or facilities constructed by such initial customer.

POINT OF DELIVERY: A physical location or point that separates the public fiber optic system from the equipment owned by the customer, typically a patch panel located within the customer's premises.

PUBLIC FIBER OPTIC SYSTEM: A publicly owned transmission medium or network of optical fiber cables owned by the City, along with all associated electronics and equipment, capable of carrying a digital signal or data by means of electric lightwave impulses.

RETAIL INTERNET USER: A consumer or end-user of internet or data transmission services or fiber optic access who does not sell or provide such services to other customers for monetary gain or consideration.

ROUTE-DIVERSE RING: A fiber network design which provides redundant signal pathways along two different routes between two or more locations.

SERVICE LEVEL AGREEMENT (SLA): An agreement between one Customer and the City that states additional terms and conditions by which the City will provide fiber service.

SPLICE: A physical connection between the ends of two fiber strands.

SPLICE POINTS: A point on the fiber backbone where segments of the fiber backbone are interconnected to each other. Drop cables may also connect distribution fiber to the fiber backbone at these locations.

SUBSEQUENT FIBER CUSTOMER: Any fiber customer who connects to or uses any portion of a fiber distribution line constructed at the sole expense of an initial fiber customer.

USAGE RATIO: A ratio used to calculate the portion of the initial distribution fiber construction costs to which an initial customer is entitled to recover from a subsequent fiber customer at the time the subsequent customer connects a drop cable to any portion of a distribution line constructed at the expense of the initial customer. The ratio shall consist of a fraction for which the total distribution line capacity constructed by the initial customer's the denominator, and the subsequent customer's projected usage of such capacity, as the numerator.

UTILITY EASEMENT: A permanent right to use real property for the purpose of constructing, operating and maintaining publicly owned utility services, including but not limited to a fiber optic cable for communications services.

WHOLESALE CUSTOMER: A Fiber Optic Customer who leases one or more fiber optic pairs for the purpose of selling or providing internet or data services to other retail users for monetary gain or consideration. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15; Ord. 3274, 9-26-19)

8-13-2: **PURPOSES:** The purposes of this Chapter are as follows:

(A) To enhance access to and encourage cost effective use of high speed data transmission lines serving publicly-owned facilities.

(B) To enhance the growth and continued economic vitality of the City by providing to the City residents a high speed, modern and efficient means of communicating information and transmitting electronic data.

(C) To manage and regulate competing demands for use of the public right-of-way by minimizing the installation of duplicative communications lines and facilities on, over or under the public right-of-way.

(D) To reduce the cost of maintaining the sidewalk, pavement and public facilities located within the public right-of-way by minimizing the number of pavement cuts and dislocation of other public facilities necessitated by the construction or installation of duplicative communications lines.

(E) To foster competition among communication providers by providing open access to the publicly-owned fiber network.

(F) To reduce the cost of communication services to City residents by eliminating anti-competitive pricing schemes or monopolistic practices which contribute to higher costs for communications services.

(G) To preserve and enhance the ability of private retail communication providers to serve their clientele without undue competition or regulation by a tax-supported entity. (Ord. 2835, 4-22-10; Ord. 3274, 9-26-19)

8-13-3: **OWNERSHIP OF THE FIBER OPTIC NETWORK:** There is hereby established as a division within Idaho Falls Power, the Public Fiber Optic Network System. Management of the public fiber optic network shall be vested solely in Idaho Falls Power, subject to such rules, regulations, and operational guidelines as may be approved by the Council. Notwithstanding the foregoing, to the extent possible all operational costs, charges, expenses, revenues and receipts attributable to or derived from the operation of the public fiber optic network shall be separately accounted for or fairly apportioned between the fiber optic system and the electrical energy generation, distribution & transmission system, in order to establish fair, equitable and non-discriminatory rates for the delivery of fiber optic access, separate and apart from the establishment of electrical. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15)

8-13-4: **MANAGEMENT OF FIBER OPTIC NETWORK ACCESS:** The City shall have exclusive right to sell, lease and deliver fiber optic access on the public fiber network. (Ord. 2835, 4-22-10)

8-13-5: **NO OBLIGATION TO SERVE:** The City shall have no obligation to serve or provide fiber optic access to any customer. The City reserves the right to limit or refuse access to the public fiber network at its sole discretion, provided access shall not be denied or limited on the basis of race, color, religious creed, ancestry, age, national origin, familial status, veterans status, disability, sexual orientation, and/or gender expression/identity. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-6: **APPLICABILITY TO PUBLIC FIBER OPTIC NETWORK CUSTOMERS:**
The provisions of this Chapter shall apply only to the delivery of fiber optic access and related services across the publicly-owned fiber optic network. Nothing herein shall be construed or deemed to regulate the delivery of communications or data services over or across lines, facilities, or equipment owned by a private communications provider, or which may be located in the public right-of-way pursuant to a franchise, lease, or other license or privilege granted by the City. (Ord. 2835, 4-22-10)

8-13-7: **APPLICATION FOR FIBER OPTIC NETWORK ACCESS:**

(A) Fiber optic access shall not be delivered to any customer until the customer or the customer's authorized agent makes an application or until the customer applies pursuant to another approved City process (such as a secured online application process) for delivery of fiber optic access. Such application shall be in such form as may be determined by the Director and the City Attorney. The Director may require appropriate identification of any customer or agent making application for fiber optic access. Customers requesting any fiber optic access which contemplates substantial extensions of the fiber backbone or the construction of significant enhancements or additions to the fiber optic network at public expense, as determined by the Director, may be required to present site plans, improvement plans, feasibility plans, financial statements and financial guarantees contemporaneously with such application and, where the customer is allowed to amortize payments for such extensions, enhancements, or additions, the customer shall allow the City to audit all relevant financial records of such customer. Any customer who willfully gives materially false information in the customer's application or who shall falsely represent the customer's identity shall be guilty of a misdemeanor and fiber optic access to such customer may be subject to summary termination of access.

(B) Requests for dark fiber access: In the event installation of dark distribution fiber is necessary in order to provide the access requested by the customer, the cost of designing and installing such distribution line shall be borne by the customer, subject to the customer's recovery of a portion of such cost from a subsequent customer, in the manner set forth in this Chapter. The Director may require the initial customer to pay the estimated costs of such design and installation to the City prior to and as a condition for the commencement of the installation of such distribution fiber by the City. The design and/or installation of such distribution fiber may be performed by the City or by an independent contractor hired by the City. In the event the installation is performed by an independent contractor, the City shall deliver a copy of the

contractor's bid to the customer prior to its issuance of a notice to proceed to such independent contractor. In the event the actual costs of such construction exceed the initial estimate by the Director, such excess shall be paid to the City within fifteen (15) days after the delivery of an itemized invoice to the customer by the City, reflecting the total amount of the design and construction costs incurred by the City in constructing such distribution fiber extension. In the event such construction costs are less than the estimate, then such difference shall be returned to the initial customer within thirty (30) days after the substantial completion of such distribution fiber extension. In no event will the City undertake the design or construction of a new distribution line, if the customer is delinquent in their payment of the access charges set from time to time by Resolution of the Council or is otherwise in default of the customer's obligations under this Chapter. Upon approval by the Director and where the amount to be amortized does not exceed ten thousand dollars (\$10,000), payment for distribution fiber may also be made in monthly installments not to exceed a total of sixty (60) months. Written agreement approved by the Director and signed by the customer shall be required for amortization. Amortization shall not be allowed if the Retail Internet User for whom the distribution fiber is being constructed or installed has paid the wholesale customer for such distribution fiber or has agreed to pay for such distribution fiber in full. Amortization shall not be allowed until the wholesale customer has demonstrated a satisfactory payment history of not less than one (1) year with the public fiber system unless approved by the Director. If the Retail Internet User for whom such distribution fiber has been provided thereafter discontinues the customer's service agreement with the customer with whom the City has executed an amortization agreement, such Retail Internet User shall not be allowed to again use such distribution fiber unless the new service provider for such Retail Internet User agrees to assume and pay the entire balance then owed on the account of such distribution fiber. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15; Ord. 3075, 7-14-16; Ord. 3274, 9-26-19)

8-13-8: TRANSFER OF ACCESS RIGHTS PROHIBITED: All rights to fiber access and any rights or privileges arising under the provisions of this Chapter shall not be transferred to any person or entity without the prior express written approval of the Director. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-9: RATES AND SCHEDULES: Fiber optic access supplied by the City shall be billed in accordance with the schedule of rates set forth in this Chapter and as set from time to time by Resolution of this Council. The schedule of rates is designed to provide monthly rates for access supplied to the customer. Selection of appropriate rates shall be based on the customer's choice of available services, subject to the approval of the Director. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-10: LIMITATIONS UPON DELIVERY OF FIBER ACCESS:

(A) Access shall be delivered only to premises or facilities which are in conformity with the provisions of this Chapter, the International Building and/or Fire Codes, the Zoning Ordinance and all other ordinances of the City.

(B) Access will be supplied under a given rate schedule only to such points of delivery as are adjacent to the public fiber optic system of the City and provided that the public

fiber optic system has the technological capability to meet the customer's service needs under the rate schedule applicable thereto. The City shall not be obligated to construct extensions or install additional fiber access facilities necessary to meet a fiber customer's needs except as explicitly authorized by the Director.

(C) Retail customers must be connected to Idaho Falls Power's electrical system in order to connect and remain connected to the Fiber Network.

(D) No backbone fiber pair shall be leased for a period of less than one year. (Ord. 2835, 4-22-10; Ord. 3274, 9-26-19)

8-13-11: (RESERVED):

8-13-12: LIMITATIONS UPON NUMBER OF FIBER STRANDS: Consistent with the stated purpose of this Chapter to promote competition among communication service providers in Idaho Falls, no customer may lease or use more than six fiber pairs, twelve strands, at any given time, except as expressly provided for in a written agreement authorized by the Council. (Ord. 2835, 4-22-10; Ord. 3274, 9-26-19)

8-13-13: ACCESS AND RIGHTS OF WAY: City fiber optic service shall be provided only where the customer, without cost to the City, provides the City access and a right of way for the City's lines and apparatus serving the customer, over, across, and upon the property owned or controlled by the customer. The customer shall permit City access to the property and shall provide access to the City's lines and apparatus, including ingress and egress, at all reasonable hours and at any time during an emergency or a City construction project. Access and right of way provided by the customer or property owner pursuant to this subsection shall not require specific prior notification from the City to the customer or property owner of need for ingress or egress. By acceptance of or application for City fiber optic services, the customer shall be deemed to waive any claim for damages by the City in conducting City's customary and routine repair, maintenance, construction, and other operations within such right of way. Failure to provide access and right of way pursuant to this subsection may result in the disconnection of City electric and/or dark or lit fiber optic service to the customer until access is accomplished by the City. City lines and apparatus includes City electrical and fiber equipment, power poles, transformers, underground conductors, wires, meters, pedestals, communications boxes, fiber optic splice cables, optical network terminations (ONTs). Access to City lines and apparatus shall not be impeded or prevented by the presence or construction of any permanent or semi-permanent barriers or structures such as a fence, shed, enclosure, tree, shrub, planting, rock, monument, or the like. (Ord. 2835, 4-22-10; Ord. 3274, 9-26-19)

8-13-14: BILLINGS: Billings for fiber optic access shall be rendered based upon the terms and conditions of the customer's fiber agreement(s) or, if there is no agreement that governs the billing conditions the customer will be billed following the standard City utility billing policies, practices, and rates as set from time to time by Resolution of the Council. Billings shall be deemed paid upon receipt at the office of the City Treasurer. Bills may be rounded to the nearest even dollar. (Ord. 2835, 4-22-10; Ord. 3274, 9-26-19)

8-13-15: VOLUNTARY TERMINATION OF FIBER OPTIC ACCESS:

(A) In the event that any customer desires to discontinue receiving dark fiber optic access from the City, the customer shall give advance notice in writing to the Director of such desire. Customers will be responsible for all fiber optic access made available to the customer's premises until the date set forth in the customer's notice and for any construction or distribution costs provided or incurred by the City in order to make access available to such customer. In the event any customer fails to give written notice in the manner set forth above, the customer shall be responsible for any and all bills or monthly service charges incurred until such notice is given, or until another customer makes application to receive fiber optic access at the same point of delivery, regardless of whether or not the original customer actually utilized the fiber optic access for their own purposes. Customers who wish to discontinue lit fiber optic service are required to comply with applicable City fiber optic service policies.

(B) In the event any Wholesale Customer terminates service prior to the expiration of one (1) year from the date service was first commenced, then the entire unpaid balance for the service charges remaining for such one (1) year period, shall become immediately due and payable upon delivery of the customer's notice of termination. (Ord. No. 2736, 2-14-08; Ord. 2835, 4-22-10; Ord. 3075, 7-14-16; Ord. 3274, 9-26-19)

8-13-16: LIABILITY FOR INTERRUPTIONS OF ACCESS: The City shall not be liable for any loss, injury or damage of any kind, including but not limited to consequential, special and punitive damages, resulting from the interruption, reduction, loss or restoration of fiber optic access from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, strike, labor slow-down, act of God or the public enemy or failure or inadequacy of distribution fiber, backbone fiber or appurtenant facilities. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of fiber optic access to any customer shall not be construed as or deemed to be the delivery of goods under the Idaho Uniform Commercial Code. By acceptance of fiber optic access, the customer agrees to, and shall be deemed to, waive any and all claims for damage or loss to the customer's lines, facilities, or communications equipment caused by any act or omission of the City, however, nothing herein shall be deemed or construed as a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of the City, or its agents, unless otherwise specified in a separate service level agreement. (SLA). (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15 Ord. 3274, 9-26-19)

8-13-17: SHUT-DOWN FOR REPAIRS: For the purpose of making necessary repairs, upgrades or changes to its backbone or distribution facilities, or to avoid damage to property or to persons, the City may without prior notice to the customer suspend fiber optic access for such periods as may be reasonably necessary to make such repairs, upgrades or changes and the City shall not be liable for damage of any kind, direct or indirect, as a result of such discontinuance of fiber optic access, unless otherwise specified in a separate service level agreement. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3274, 9-26-19)

8-13-18: TEMPORARY SUSPENSION OF DEMAND BY CUSTOMER: Whenever a customer suspends operation due to strikes, action of any governmental authority, act of God or

the public enemy or other force majeure, the customer shall continue to be obligated to pay the monthly fiber optic access charge provided in the rate schedules set forth in this Chapter and for any distribution costs established in his or her Fiber Optic Access Application, irrespective of such temporary suspension. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3274, 9-26-19)

8-13-19: **INTERFERENCE WITH ACCESS:** The City may refuse to supply fiber optic access where there is a possibility that the delivery of access may seriously impair or disrupt access to any other customers, or which may disrupt the operation of the public fiber optic backbone. The City may also disconnect fiber access if the customer's connection is seriously impairing access to any other customers. The City may also, without prior notice, suspend or disconnect access to any customer using the public network for the purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or malicious purpose which has the effect of or is intended to impair or impede the operation of the public fiber optic system, the internet, or any public or private computer or computer network connected thereto or for the purpose of obtaining illegal or unauthorized access to other computers or networks connected to the public fiber optic system. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3274, 9-26-19)

8-13-20: **PROTECTION OF CUSTOMER'S EQUIPMENT:** The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring, other than the City's apparatus, on the customer side of the point of delivery. The customer shall install and maintain suitable protective devices and equipment to protect life and property from harm or injury and the City assumes no duty to warn or otherwise assist the customer in the selection or use of such protective devices. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3274, 9-26-19)

8-13-21: **BACKBONE EXTENSIONS:** Extensions of the fiber backbone ring may be made at the sole discretion of the City. Access to the backbone ring will be provided through the construction of distribution system facilities as described in this Chapter. The City reserves the right to upgrade, overbuild and rebuild the network in any fashion which may result in new backbone or distribution and service drop boundaries. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3075, 7-14-16; Ord. 3274, 9-26-19)

8-13-22: **DISTRIBUTION SYSTEM EXTENSION:** An extension of the distribution system is any continuation of, or branch from, the nearest available existing distribution fiber or new branch from the nearest available Backbone Access Point. The City may make extensions of the distribution system at customer expense as provided for in the schedule of rates set forth in this Chapter and as set from time to time by Resolution of this Council. All distribution construction work shall be undertaken solely by the City and at the expense of the customer. An estimate of construction costs will be provided for customer review and approval prior to beginning any construction activity and the City may require the customer to pay such estimate in full prior to the commencement of such system extension. In the event that actual costs exceed the estimate, the customer shall pay such excess before fiber optic access is provided. Customers may elect to pay for the construction costs of such extension in full at the time of connection to the publicly owned fiber system or may, with the approval of the Director, amortize such costs over a period not to exceed sixty (60) months, where the amount to be amortized does not exceed up to ten thousand dollars (\$10,000). Notwithstanding the customer's participation in the construction

costs of any extension of the distribution system, ownership and control of such extensions shall remain solely with the City. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3075, 7-14-16; Ord. 3274, 9-26-19)

8-13-23: DARK DISTRIBUTION DESIGN: All new connections between the backbone fiber and the end use location shall be designed by authorized City personnel. Distribution will begin at the most appropriate Backbone Access Point or Access Node as determined by the Director and shall run to a patch panel installed at the desired customer location. Distribution spurs, connecting the backbone to the Access Nodes, will be constructed of single mode fiber cable conforming to City standards. Routing will follow the public right-of-way and be placed on publicly owned poles to the maximum extent possible. Service drops will terminate at a patch panel in the end user's premises. The patch panel shall be supplied by the City and the cost thereof shall be included in the customer distribution costs payable in accordance with this Chapter. All customers shall allow authorized personnel of the City access to the customer's patch panel at all reasonable times and any customer who refuses to allow such access shall be subject to termination of fiber access in the manner set forth in this Chapter. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-24: FEES FOR SERVICE:

Fees associated with dark and lit fiber optic access provided by the City shall be set from time to time by Resolution of the Council. (Ord. 2835, 4-22-10; Ord. 2964, 8-14-14; Ord. 3075, 7-14-16; Ord. 3274, 9-26-19)

8-13-25: TAMPERING WITH FIBER OPTIC NETWORK PROHIBITED: No person shall connect to, adjust, tamper with or make any alteration or addition to the Fiber Optic System, without having first obtained express permission from the Director. Any person who willfully or maliciously causes damage to, interference with or obstruction to the efficient operation of the Fiber Optic System shall be guilty of a misdemeanor. Any person who causes such damage shall in addition to any criminal fines or penalties, be liable to the City for any reasonable damages which may be proximately caused by such damage or interference. Such amounts may be included upon the customer's regular monthly billing statement for utility service and upon the customer's failure or refusal to pay such charges, fiber optic access or any other public utility service provided by the City, may be terminated in accordance with the procedures set forth in this Chapter. (Ord 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3274, 9-26-19)

8-13-26: THEFT OF FIBER OPTIC ACCESS: It shall be unlawful for any person to make any connection to or install or construct any facility or equipment with the specific intent of obtaining fiber optic access from or making use of the Fiber Optic System, without paying for such access or without paying the fees and charges set forth in this Chapter. (Ord 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3274, 9-26-19)