

RESOLUTION # 69-2023

Resolution to Approve Unconditional County Guaranty Of Its Pro Rata Share, Intergovernmental Agreement and Taxable Revenue Bond Financing for Bug Tussel 1, LLC Project

Resolved by the Board of Supervisors of Oneida County, Wisconsin:

Section 1. Recitals

WHEREAS, 1.01 Under Wisconsin Statutes, Section 66.1103, as amended (the "Act"), the Issuer (as hereinafter defined) is authorized and empowered to issue revenue bonds to finance eligible costs of qualified "projects" (as defined in the Act), and to enter into "revenue agreements" (as defined in the Act) with "eligible participants" (as defined in the Act); and,

WHEREAS, 1.02 Bug Tussel 1, LLC, a Wisconsin limited liability company (the "Borrower"), Hilbert Communications, LLC, a Wisconsin limited liability company (the "Company" and the "Guarantor") and/or one or more of its affiliates (including, without limitation, Bug Tussel Wireless, LLC and Cloud 1, LLC), whether existing on the date hereof or to be formed and whether owned directly or indirectly by the Company, desires to finance a project consisting of the acquisition, construction and installation of certain telecommunications infrastructure that includes, among other things (i) acquisition of tower sites by purchase or lease of land and equipping such sites with towers and electronics to provide broadband, high speed cellular, emergency communications and point to point (P2P) data communications; (ii) constructing fiberoptic data transmission facilities (cable and electronics) between towers, key community facilities, businesses and residential aggregation points; (iii) where appropriate, connecting individual premises into the broadband network including the cost of Consumer Premise Equipment (CPE); (iv) payment of capitalized interest; (v) funding of a debt service reserve fund; (vi) payment of such project costs located in the participating counties, which includes project costs in Oneida County to be financed with Series 2023 Bonds in an amount not to exceed \$24,000,000 (twenty four million dollars); and (vii) payment of professional fees (collectively, the "Project"), all of which will be for the purpose of providing wireless internet and telephone communications services to businesses, governmental units and residents of rural communities where such service is currently unavailable or is prohibitively expensive; and,

WHEREAS, 1.03 The Project will be constructed and installed in one or more of the following Wisconsin counties yet to be determined, with each respective county that has agreed to participate in the issuance of the Series 2023 Bonds to be evidenced by such participating county entering into the Joinder Agreement (defined herein) in connection with the issuance of the Series 2023 Bonds (each a "2023 Participating County" and collectively, the "2023 Participating Counties"): (i) Fond du Lac County, (ii) Forest County, (iii) Oneida County, and (iv) Outagamie County; and,

WHEREAS, 1.04 The Act authorizes the Issuer to make loans to an eligible participant, in connection with financing a qualified project; and,

WHEREAS, 1.05 Pursuant to initial resolutions duly adopted by the (i) Fond du Lac County Board on May 16, 2023, (ii) Forest County Board on April 18, 2023, (iii) Oneida County

51 Board on September 27, 2022, and (iv) Outagamie County Board on May 23, 2023, the
52 2023 Participating Counties expressed their intention to enter into an Intergovernmental
53 Agreement (the "Intergovernmental Agreement") originally by and among the Issuer,
54 Calumet County, Jackson County, Marathon County, and Waushara County, each in
55 Wisconsin (the "2021 Participating Counties"), and Green Lake County, Iowa County,
56 Jefferson County, Oconto County, Rock County, Taylor County, and Wood County, each in
57 Wisconsin, which counties joined the Intergovernmental Agreement on August 16, 2022 by
58 joinder (the "2022 Participating Counties"), pursuant to which the Issuer would issue
59 revenue bonds to be issued in one or more issues or series in an aggregate amount not to
60 exceed \$240,000,000 to finance the Project. Notices of adoption of the initial resolutions
61 adopted by the respective 2023 Participating Counties on September 27, 2022, April 18,
62 2023, May 16, 2023, and May 23, 2023 were published as provided in the Act, and no
63 petition requesting a referendum upon the question of issuance of the revenue bonds has
64 been filed in any 2023 Participating County as of the date of this resolution, and the closing
65 of the Series 2023 Bonds shall not occur until the 30-day petition period following publication
66 has expired in all 2023 Participating Counties; and,

67
68 **WHEREAS**, 1.06 The 2023 Participating Counties shall enter into the Intergovernmental
69 Agreement by executing the Counterpart and Joinder to Intergovernmental Agreement (the
70 "Joinder Agreement") to appoint Fond du Lac County as the issuer (the "Issuer") of the
71 Series 2023 Bonds for the purpose of financing the Project on behalf of the Borrower, and
72 as agent on behalf of the 2023 Participating Counties with respect to the Pledge of
73 Membership Agreement, dated as of December 16, 2021, as amended, by and between
74 Hilbert Communications, LLC, a Wisconsin limited liability company, and the Issuer for the
75 benefit of the 2021 Participating Counties, the 2022 Participating Counties, the 2023
76 Participating Counties, and other counties as may be joined to the Intergovernmental
77 Agreement after the date hereof; and,

78
79 **WHEREAS**, 1.07 The Borrower has requested that Oneida County and each 2023
80 Participating County who will directly benefit from the Project provide an unconditional
81 general obligation guaranty, to which the full faith and credit and taxing power of Oneida
82 County are pledged (the "County Guaranty") to enhance the collateral position of the
83 Borrower in an amount equal to Oneida County's or such 2023 Participating County's pro
84 rata share of the principal of and interest on the Series 2023 Bonds in an amount necessary
85 to replenish the debt service reserve fund, which for Oneida County will be in an amount not
86 to exceed \$24,000,000 (twenty four million dollars) (plus interest to accrue thereon annually
87 at a rate not to exceed 8.00%), including any compound interest payable on amounts paid
88 by the Insurer (as defined herein) for the Series 2023 Bonds; and,

89
90 **WHEREAS**, 1.08 The Guarantor will provide a guaranty (the "Hilbert Guaranty") to Oneida
91 County, and each 2023 Participating County, guaranteeing the full and prompt payment to
92 Oneida County, and each 2023 Participating County, of amounts due from the Borrower
93 pursuant to, and the performance of all other obligations, covenants and agreements of the
94 Borrower under the Reimbursement Agreements by and between the Borrower and each of
95 the 2023 Participating Counties, the Intergovernmental Agreement, and the Mortgage or
96 Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture
97 Financing Statement referenced below; and,

98
99 **WHEREAS**, 1.09 The Borrower will have the primary obligation to make all scheduled
100 principal and interest payments when due, and each 2023 Participating County's guaranty
101 will apply only in the event that the Borrower does not pay such debt service as required and

102 a draw is made on the debt service reserve fund for the Series 2023 Bonds (defined below)
103 established under the Indenture; and,
104

105 **WHEREAS**, 1.10 In return for each 2023 Participating County's Guaranty, each 2023
106 Participating County shall receive a guaranty fee as further described in Section 3.02, and
107 the Borrower and the Guarantor will pay any and all costs of each 2023 Participating County
108 and all expenses incurred by each 2023 Participating County related to the Series 2023
109 Bonds; and,
110

111 **WHEREAS**, 1.11 As further security for the County Guaranty, Oneida County and each
112 2023 Participating County shall receive a first fee or leasehold mortgage on all land,
113 buildings, and improvements of the Borrower and a first security interest, subordinate only to
114 the security interest of the State of Wisconsin, the Public Service Commission of Wisconsin,
115 or similar agency, political subdivision, or instrumentality of the state (the "State") to the
116 extent required by the State as a condition of grant funding provided for financed assets, in
117 all fixtures and equipment of the Borrower located in the applicable county in which the
118 Project financed with proceeds of the Series 2023 Bonds is constructed; and,
119

120 **WHEREAS**, 1.12 The Project includes necessary infrastructure for essential services,
121 including emergency response and public safety communications by and for Oneida County
122 and local units of government in Oneida County and is in furtherance of the public purposes
123 set forth in the Act, Wisconsin Statutes, Section 59.54, and promotes the economic
124 development and well-being of Oneida County; and,
125

126 **WHEREAS**, 1.13 Oneida County's obligations under its County Guaranty are expected to
127 be insured by Build America Mutual Assurance Company (the "Insurer") under its Municipal
128 Bond Insurance Policy (the "Policy") containing provisions consistent with the provisions of
129 this resolution and the documents listed in Section 1.14 and approved by the Issuer's
130 counsel, bond counsel and the appropriate officer or officers of Oneida County; and,
131

132 **WHEREAS**, 1.14 Drafts of the following documents have been submitted to this County
133 Board and are ordered filed in the office of the County Clerk:

- 134 (a) a Preliminary Limited Offering Memorandum;
- 135 (b) a Bond Purchase Agreement by and among UBS Financial Services Inc., as underwriter
136 (the "Underwriter"), and the Issuer, with the Letter of Representations from the Borrower and
137 accepted and agreed to by the Issuer;
- 138 (c) a Supplemental Series Indenture No. 2 (Series 2023 Bonds) relating to the issuance of
139 the Series 2023 Bonds and the Indenture of Trust dated as of December 1, 2021
140 (collectively, the "Indenture") by and between the Issuer and U.S. Bank Trust Company,
141 National Association, as trustee and successor to U.S. Bank National Association (the
142 "Trustee");
- 143 (d) a Supplemental Series Loan Agreement No. 2 (Series 2023 Bonds) relating to the
144 issuance of the Series 2023 Bonds and the Loan Agreement dated as of December 1, 2021
145 (collectively, the "Loan Agreement") by and between the Issuer and the Borrower;
- 146 (e) a Series 2023 Promissory Note from the Borrower to the Issuer, and assigned to the
147 Trustee;
- 148 (f) a Reimbursement Agreement from the Borrower to Oneida County;
- 149 (g) a Facilities Access Agreement from the Borrower to Oneida County;
- 150 (h) a form of Mortgage or Leasehold Mortgage, Assignment of Leases and Rents, Security
151 Agreement, and Fixture Financing Statement from the Borrower to Oneida County;
- 152 (i) a Continuing Disclosure Agreement;

- 153 (j) a Guaranty Agreement (Hilbert Guaranty) from the Guarantor to Oneida County;
154 (k) a Borrower's Closing Certificate;
155 (l) the Intergovernmental Agreement and Joinder Agreement to be signed by each 2023
156 Participating County; and
157 (m) the unconditional County Guaranty from Oneida County.
158

159 Section 2 Findings and Determinations.
160

161 **THEREFORE, BE IT RESOLVED**, It is hereby found and determined that:

162 (a) based on representations of the Borrower, the Project constitutes a "project" authorized
163 by the Act;

164 (b) the purpose of the Issuer's financing costs of the Project is and the effect thereof will be
165 to promote the public purposes set forth in the Act;

166 (c) the Project includes necessary infrastructure for essential services by and for Oneida
167 County and local units of government in Oneida County and is in furtherance of the public
168 purposes set forth in the Act, Wisconsin Statutes, Section 59.54, and promotes the
169 economic development and well-being of Oneida County;

170 (d) it is desirable that a series of taxable revenue bonds in the aggregate principal amount
171 not to exceed \$77,100,000 (the "Series 2023 Bonds") be issued by the Issuer upon the
172 terms set forth in the Indenture and Loan Agreement, under the provisions of which the
173 Issuer's interest in the Indenture and Loan Agreement (except for certain rights as provided
174 therein) and the loan repayments will be assigned to the Trustee as security for the payment
175 of principal of and interest on and premium, if any, on all the Series 2023 Bonds outstanding
176 under the Indenture;

177 (e) the loan payments provided for in the Loan Agreement, and the formula set out for
178 revising those payments under the Loan Agreement as required under the Act, are sufficient
179 to produce income and revenue to provide for prompt payment of principal of and interest on
180 and premium, if any, on Series 2023 Bonds issued under the Indenture when due; the
181 amount necessary in each year to pay the principal of and interest on the Series 2023
182 Bonds is the sum of the principal and interest on the Series 2023 Bonds due in such year,
183 whether on a stated payment date, a redemption date, or otherwise; the Loan Agreement
184 provides that the Borrower shall provide for the maintenance of the Project in good repair,
185 keeping it properly insured; and

186 (f) under the provisions of the Act, the Series 2023 Bonds shall be limited obligations of the
187 Issuer and the Series 2023 Bonds do not constitute an indebtedness of the Issuer or the
188 2023 Participating Counties within the meaning of any state constitutional or statutory
189 provision, and do not constitute nor give rise to a charge against the Issuer's or the 2023
190 Participating Counties' general credit or taxing powers or a pecuniary liability of the Issuer or
191 the 2023 Participating Counties; and,
192

193 Section 3 Approvals and Authorizations; Authentication of Transcript.
194

195 **BE IT FURTHER RESOLVED** 3.01 There is hereby approved the issuance by the
196 Issuer of its Taxable Revenue Bonds, Series 2023 (Bug Tussel 1, LLC Project) (Social
197 Bonds) (specifically, the Series 2023 Bonds) in an aggregate principal amount not to exceed
198 \$77,100,000, for the purpose of financing the Project; and,
199

200 **BE IT FURTHER RESOLVED**, 3.02 (a) In furtherance of the public purposes recited
201 above, Oneida County shall provide an unconditional County Guaranty to enhance the
202 collateral position of the Borrower in an amount equal to Oneida County's pro rata share of
203 the principal of and interest on the Series 2023 Bonds in an amount necessary to replenish

204 the debt service reserve fund in an amount not to exceed \$24,000,000 (twenty four million
205 dollars) (plus interest to accrue thereon annually at a rate not to exceed 8.00%, including
206 any compound interest payable on amounts paid by the Insurer for the Series 2023 Bonds).
207 In return for its County Guaranty, Oneida County shall receive either (i) an annual guaranty
208 fee equal to 40 basis points (0.40%) of the outstanding par amount of the Series 2023
209 Bonds covered by its County Guaranty, payable on a semi-annual basis on each May 1 and
210 November 1, or (ii) a discounted upfront guaranty fee as agreed to by the Borrower and
211 Oneida County. Prior to issuance of the Series 2023 Bonds, each 2023 Participating
212 County on behalf of which Series 2023 Bonds are being issued shall have each authorized
213 the execution and delivery of its respective County Guaranty.
214 (b) There is hereby authorized the issuance by Oneida County of general obligation
215 promissory notes pursuant to Wisconsin Statutes, Section 67.12(12) to finance payment of
216 the County Guaranty. The terms and provisions of any such notes shall be established
217 pursuant to a subsequent resolution of this County Board; and,
218

219 **BE IT FURTHER RESOLVED, 3.03** Oneida County hereby authorizes the execution
220 and delivery of the Joinder Agreement to the Intergovernmental Agreement, the County
221 Guaranty and the other documents listed in Section 1.14 above to which Oneida County is a
222 signatory; and,
223

224 **BE IT FURTHER RESOLVED, 3.04** Subject to the conditions set forth herein, the
225 County Board Chairperson and the County Clerk are authorized and directed to execute and
226 deliver the County Guaranty, the Intergovernmental Agreement and the other documents
227 listed in Section 1.14 above to which Oneida County is a signatory. In addition, Oneida
228 County hereby authorizes the execution and delivery of a commitment with the Insurer
229 consistent with the provisions of this resolution and the documents listed in Section 1.14
230 above as well as any other agreements, certificates or documents necessary to obtain the
231 Policy; and,
232

233 **BE IT FURTHER RESOLVED, 3.05** The County Board Chairperson and the County
234 Clerk and other officers of Oneida County are authorized to prepare and furnish to the
235 Trustee and bond counsel certified copies of all proceedings and records of the Oneida
236 County of relating to the Series 2023 Bonds, and such other affidavits and certificates as
237 may be required by the Trustee and bond counsel.
238

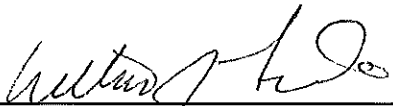
239 **BE IT FURTHER RESOLVED, 3.06** The approval hereby given to the various
240 documents referred to in this Resolution includes the approval of such additional details
241 therein and additional documents or agreements all as may be necessary and appropriate
242 for their completion and such modifications thereto, deletions therefrom and additions
243 thereto as may be approved by the Oneida County counsel and bond counsel. The
244 execution of any document by the appropriate officer or officers of Oneida County herein
245 authorized shall be conclusive evidence of the approval by Oneida County of such
246 document in accordance with the terms hereof.
247
248
249

250 Vote Required: Majority = _____ 2/3 Majority = _____ 3/4 Majority = ✓ _____
251

252 The County Board has the legal authority to adopt: Yes ✓ No _____ as reviewed
253 by the Corporation Counsel, _____, Date:
254 6.15.23

255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279

Offered and passage moved by:


Supervisor

Seconded by Showalter

18 Ayes

0 Nays

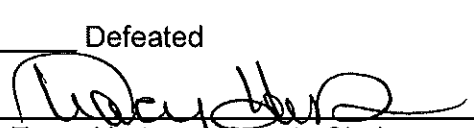
3 Absent

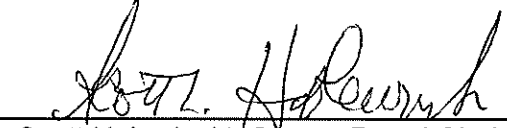
0 Abstain

X Adopted

by the County Board of Supervisors this 20 day June, 2023.

 Defeated


Tracy Hartman, County Clerk


Scott Holewinski, County Board Chair

Resolution - # 69-2023

Supervisors	AYE	NAY	ABS	ABSTAIN
Kelly	-	-	X	
Winkler	X			
Schultz	X			
Cushing	X			
Timmons	-	-	X	
Rio	X			
Showalter	X			
Jensen	X			
Oettinger	-	-	X	
Schreier	X			
Condado	X			
Sorgel	X			
Newman	X			
Roach	X			
Ryden	X			
Harris	X			
Almekinder	X			
Fried	X			
Fisher	X			
Briggs	X			
Holewinski	X			
TOTALS	18		3	
TAGS				

Resolution # 69 – 2023: Offered by Supervisor Fried to Approve Unconditional County Guaranty of Its Pro Rata Share, Intergovernmental Agreement and Taxable Revenue Bond Financing for Bug Tussel 1, LLC Project.

Seconded - Showalter