

ORDINANCE NO. 947

AN ORDINANCE AMENDING STAYTON MUNICIPAL CODE CHAPTER 4.16 BY GRANTING A NON-EXCLUSIVE LIMITED TERM FRANCHISE TO STAYTON COOPERATIVE TELEPHONE COMPANY TO PROVIDE CABLE SERVICES IN THE CITY OF STAYTON

WHEREAS, the City of Stayton ("Grantor") is authorized by state statutes and its charter to grant non-exclusive franchises to persons desiring to occupy rights-of-way within the City; and

WHEREAS, Stayton Cooperative Telephone Company ("Grantee"), owns, maintains, and operates a telecommunications system in rights-of-way in the City and provides telecommunications services under grant of a previous franchise by the City; and

WHEREAS, the Grantee now wishes to utilize its existing telecommunications system to provide cable services, and the provision of such services requires separate authorization from the City in the form of a cable franchise under applicable federal law; and

WHEREAS, the City granted a telecommunications services franchise to Grantee, such franchise being embodied in Chapter 4.16 of the Stayton Municipal Code, and such franchise is still in effect, with an expiration date in 2013; and

WHEREAS, the City Council for the City of Stayton deems it in the public interest to grant a limited term cable franchise to Grantee under the terms and conditions provided in this ordinance, such franchise to expire concurrently with the existing telecommunications franchise and subject to renewal under applicable federal law, so that the citizens of Stayton may benefit from the proposed additional services to be provided by Grantee and the City will be assured of full and reasonable compensation from Grantee for use of the public rights of way in the delivery of these additional services; and

WHEREAS, the City Council hereby reserves all of its rights under federal law and as the entity responsible for management of the public rights of way within the City, to require any and all reasonable, necessary and competitively neutral provisions in any renewal of the Grantee's telecommunications and cable franchises while allowing the temporary provision of services pursuant to this ordinance.

NOW, THEREFORE, THE CITY OF STAYTON ORDAINS AS FOLLOWS:

Section 1. Purpose and Grant of Authority.

- a. Stayton Municipal Code Section 4.16.020A is amended to read as follows:

"The City of Stayton hereby grants to Grantee a nonexclusive franchise to use the Public Rights of Way within the City to provide

telecommunications services as defined in Oregon statute, and to provide Cable Services defined as follows consistent with federal law: the one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.”

- b. This grant of authority shall not be interpreted to prevent the City from imposing lawful additional conditions, including additional compensation conditions, for use of the City rights-of-way should Grantee provide service other than Cable Service or telecommunications service as authorized herein.
- c. The City reserves its rights under federal law and as the entity responsible for management of the public rights of way within the City, to require any and all reasonable, necessary and competitively neutral provisions in a renewal of the Grantee’s telecommunications and cable franchises while allowing the temporary provision of services pursuant to this ordinance.

Section 2. Compensation.

- a. Stayton Municipal Code Section 4.16.050(a), “Franchise Fee” is amended to read as follows:

“(a) As consideration for the use of the City’s Rights of Way, Grantee shall remit to the City seven percent (7%) of its gross revenues earned in the provision of telecommunications services within the boundaries of the City. As used herein, “gross revenues” has the meaning given that term in ORS 221.515(2). As further consideration for the use of the City’s Rights of Way to provide cable services, Grantee shall remit to the City five percent (5%) of its gross revenues earned in the provision of cable services within the boundaries of the City. Each and every term, provision or condition of this Ordinance is subject to the applicable provisions of state law, federal law, the Oregon Public Utility Commission (PUC), the Federal Communications Commission, (FCC) and the rules and regulations enacted pursuant thereto. Grantee’s gross revenues earned in the provision of cable services are defined, without limitation, to include amounts earned for all cable services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Grantee’s facilities (e.g., home shopping networks), installations, leasing, renting or selling of system capacity, or other services using the Grantee’s facilities, and all other revenues derived from the operation of Grantee’s facilities regardless of whether initially recorded to another entity and however characterized, less net uncollectibles from such revenues.”

- b. Stayton Municipal Code, Section 4.16.190(d), “Changes in Law” is amended to read as follows:

“(d) This franchise contemplates a franchise fee payment based on Grantee’s “gross local exchange revenues” as that term is currently defined in Oregon statute, with respect to Grantee’s telecommunications services. In the event of changes in law during the term of this franchise which relate to any of the provisions of this agreement, the parties agree to re-open this agreement and proceed in good faith to negotiate provisions to implement the change in the applicable law.”

Section 3. Acceptance.

The Grantee, on or before approval of this Ordinance by the Grantor, shall execute and file with the Grantor a written acceptance executed by Grantee, in the form attached hereto as Exhibit A. In the event the Grantee fails to execute the acceptance as required herein, then the limited term franchise granted by this Ordinance shall be null and void.

Section 4. Effective Date.

This Ordinance shall be effective from and after 30 days following its adoption by the Council and approval by the Mayor.

ADOPTED BY THE STAYTON CITY COUNCIL this 18 day of June, 2012.

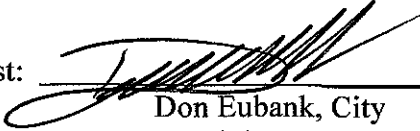
CITY OF STAYTON

Signed 6/18, 2012.

By: 

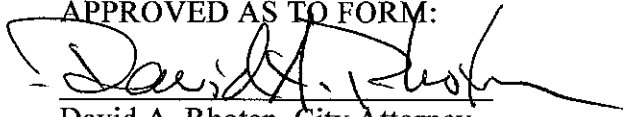
Scott Vigil, Mayor

Signed 6/18, 2012.

Attest: 

Don Eubank, City
Administrator

APPROVED AS TO FORM:



David A. Rhoten, City Attorney

**Exhibit A
Acceptance**

TO: Don Eubank
City Administrator
City of Stayton
362 North Third Avenue
Stayton, OR 97383

This is to advise the City of Stayton, Oregon ("City") that Stayton Cooperative Telephone Company ("Grantee") hereby accepts the terms and provisions of Ordinance No. ____, passed by the Stayton City Council on _____, 2012 (the Franchise) granting a Franchise authorizing the provision of cable services for a limited term. The Grantee agrees to abide by each and every term of the Franchise.

BY _____

TITLE _____

SIGNATURE _____

DATE _____

