

ORDINANCE NO. 854

AN ORDINANCE GRANTING TO STAYTON COOPERATIVE TELEPHONE COMPANY A NONEXCLUSIVE FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF STAYTON, ESTABLISHING AN EFFECTIVE DATE, AND DECLARING AN EMERGENCY.

WHEREAS, Stayton Cooperative Telephone Company, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee," provides telecommunications services within the City of Stayton ("City");

WHEREAS, the City has, through Ordinance No. 617, as amended by Ordinance No. 684, granted a non-exclusive franchise to Grantee to operate a telephone system within the City and to use and occupy the City's Rights of Way;

WHEREAS, the franchise as amended has been extended pending the completion of a new franchise agreement;

WHEREAS, the Grantee wishes to continue the operation of its telephone system in the City and has requested renewal of its franchise;

WHEREAS, the City Council deems it appropriate that a renewal of said franchise be granted to Grantee, upon the terms and conditions included herein, which reflect the legal and regulatory changes that have impacted the telecommunications industry;

WHEREAS, the Grantee is currently paying to the City a franchise fee of seven percent (7.0%) of gross local exchange access revenues earned in the City, consistent with state law as compensation for the use and occupancy of its Rights of Way;

WHEREAS, the Council has determined that it is in the best interests of its citizens that the Grantee operate in the City and in City Rights of Way under continuous and seamless grant of authority, and an emergency is declared as to the enactment of this Ordinance so that it is in full force and effect immediately from and after its adoption by the Stayton City Council to correspond with the expiration of the Grantee's current franchise, as extended.

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

Section 1. The Municipal Code of the City of Stayton is amended by the addition of the following new Sections, constituting a franchise granted to Stayton Cooperative Telephone Company.

//
//
//

SECTIONS

- 4.16.010 **Definitions**
- 4.16.020 **Grant of Franchise**
- 4.16.030 **Term**
- 4.16.040 **Franchise Area**
- 4.16.050 **Franchise Fee**
- 4.16.060 **Franchise Acceptance**
- 4.16.070 **Franchise Nonexclusive**
- 4.16.080 **Customer Service Standards**
- 4.16.090 **Construction and Facility Maintenance Standards**
- 4.16.100 **Excavation and Restoration**
- 4.16.110 **Relocation of Facilities**
- 4.16.120 **Tree and Vegetation Pruning**
- 4.16.130 **Use of Facilities by City**
- 4.16.140 **Emergency Removal and Alternate Routing of Facilities**
- 4.16.150 **Public Works and Improvements**
- 4.16.160 **Rearrangement of Facilities to Permit Moving of Buildings and Other Objects**
- 4.16.170 **Insurance and Financial Provisions**
- 4.16.180 **City's Right to Revoke Franchise**
- 4.16.190 **General Provisions**

4.16.010 **Definitions**

- (a) **Administrator.** The City Administrator of the City of Stayton, or such Person as may be designated by the City Administrator for the administration of this franchise.
- (b) **Bridge.** Includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine, or other place.
- (c) **City.** The City of Stayton, Oregon, and the area within its boundaries including its boundaries as extended in the future, and all property owned by the City outside City limits.
- (d) **City Council.** The legislative body of the City, or its authorized designee.
- (e) **Easement.** Public right of way, private utility Easement on private or public property, or public utility Easement on public or private property but not including a private utility Easement for a customer's service drop.
- (f) **Facilities.** All property, equipment and fixtures used by Stayton Cooperative Telephone Company in the provision of telecommunications services.
- (g) **Franchise Territory.** The area within the legal boundaries of City, and including areas annexed during the term of franchise.

- (h) **May.** Is permissive.
- (i) **Person.** Includes an individual, corporation, statutory entity (LLC, intergovernmental agency, etc.), firm, partnership, and joint stock company.
- (j) **Public Place.** Includes any City owned or leased park, place, facility, or grounds within the City that is open to the public, but does not include a Street or Bridge.
- (k) **Public Rights of Way.** Includes, but is not limited to Streets, roads, highways, Bridges, alleys, sidewalks, trails, paths, parking strips, public Easement on private property, and all other public ways, including subsurface and air space over these areas.
- (l) **Shall.** Is mandatory.
- (m) **Street.** Includes the surface, the air space above the surface, and the area below the surface of any public Street, alley, avenue, road, boulevard, thoroughfare, or public highway, and other Public Rights of Way, including public utility Easements, but does not include a Bridge or Public Place.

4.16.020 Grant of Franchise

The City of Stayton hereby grants to Grantee a nonexclusive franchise to use the Public Rights of Way within the City solely to provide telecommunications services as defined in Oregon statute.

4.16.030 Term

The term of this franchise shall be ten (10) years, commencing with the effective date of this Ordinance, and subject to its terms and conditions.

4.16.040 Franchise Area

The Grantee is authorized by this franchise to use the Public Rights of Way and public utility Easements throughout the City, as the City limits may exist now or in the future, to the extent of City's authority to allow such use.

4.16.050 Franchise Fee

(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 within the boundaries of the City. As used herein, "gross revenues" has the meaning given that term in ORS 221.515(2). 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.

(b) Franchise fee payments shall be made monthly, on or before ten (10) days after the end of the preceding month, continuing through the term of this franchise.

(c) With each payment of compensation required by this Section, Grantee shall furnish to City a statement, showing the amount of Grantee's revenue earned within the City for the period covered by the payment and including an explanation of the basis upon which the amount of compensation is calculated.

(d) In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to nine percent (9%) per annum or two percent (2%) above the highest prime lending rate published by the Wall Street Journal during the period the payment is overdue, whichever is lesser.

(e) Pursuant to this Franchise, Grantee shall prepare and furnish to the Grantor, upon request, such additional reports with respect to Grantee's revenues earned in the exercise of this Franchise, as may be reasonably necessary and appropriate to ensure compliance with the material provisions of this Franchise, or to permit the performance of any of the lawful rights, functions or duties of the Grantor. Grantee and Grantor agree to the use of Grantee's reporting formats, provided such formats will properly make available the information or reporting data requested by the Grantor. Grantor's approval of reporting formats shall not be unreasonably withheld.

(f) The City shall have the right to conduct, or cause to be conducted, an audit of gross local exchange access revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. The cost of any such audit shall be borne by City, unless the results of any such audit reveal an underpayment of more than five percent (5%) of the franchise fee for the period audited. In the case of such underpayment, the full cost of such audit shall be paid by Grantee. Any difference of payment due either the City or the Grantee following audit shall be payable within thirty (30) days of written notice to the affected party.

(g) If any right is granted by lease, franchise, or other manner, to use and occupy any City Public Place for the installation of telecommunications Facilities by Grantee, the compensation to be paid for such right and use shall be fixed by the City.

4.16.060 Franchise Acceptance

Within thirty (30) days of passage of this Ordinance by the City Council, Grantee shall file with the City Administrator a written statement accepting the terms and conditions of this franchise in substantially the form as is attached hereto as **Exhibit A**. Timely filing of such acceptance shall be a condition of the effectiveness of this franchise.

4.16.070 Franchise Nonexclusive

The franchise hereby granted is not exclusive, and shall not be construed as any limitation on the right of the City to grant rights, privileges, and authority to other Persons or corporations or to itself to make any lawful use of the City's Rights of Way.

4.16.080 Customer Service Standards

(a) City and Grantee mutually recognize that customer service is an important consideration of the City for this franchise grant.

4.16.090 Construction and Facility Maintenance Standards

(a) Grantee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in a good state of repair and shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its Facilities, in a safe and well-maintained manner so as not to present a danger to the public or City.

(b) The location, construction, extension, installation, maintenance, removal, and relocation of the Facilities of Grantee shall conform to:

- i. The requirements of the State and Federal statutes and regulations in force at the time of such work; and
- ii. provisions of the Stayton Municipal Code and the City's standard specifications for construction, as amended from time to time.

(c) Grantee shall file with the City maps that meet City specifications, showing the location of any construction, extension, or relocation of any of its Facilities, and must first obtain City's approval of the location and plans prior to the commencement of the work. Grantee shall be required to obtain a permit from City before commencing the construction, extension, or relocation of any of its Facilities within Public Rights of Way or Public Utility Easements.

4.16.100 Excavation and Restoration

(a) Grantee shall comply with all applicable ordinances, municipal codes, rules or regulations that may pertain to its activities within Easements, Public Places and Public Rights of Way of City.

(b) All structures, lines, and equipment erected by Grantee within the City shall be located so as to cause minimum interference with the proper use of Streets, alleys, and other Public Rights of Way and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Streets, alleys, or other Public Rights of Way or places.

(c) Pursuant to Stayton Municipal Code Section 12.04.092, no newly overlaid Street or newly constructed Street shall be excavated by Grantee for a period of five (5) years from the time of completion of the Street overlay or the Street construction unless specifically authorized by City,

or in cases of an emergency declared by authorized City, state or federal officials. Such authorization shall not be unreasonably withheld.

(d) All installations by Grantee in new residential subdivisions shall be, wherever and whenever practical, placed in conjunction with all other utility installations in compliance with existing regulations.

(e) When any excavation is made by Grantee, Grantee shall, within seven (7) calendar days, upon completion of the work within the excavation, restore the affected portion of the Street, Bridge, Easement area, private property or Public Place to as reasonably good a condition as it was prior to the excavation. The restoration shall be done in compliance with City specifications, requirements, and regulations in effect at the time of such restoration and shall be guaranteed for a period of one year following inspection and acceptance of the restoration by City. If Grantee fails to restore, within seven (7) calendar days, the affected portion of the Street, Bridge, Easement area, private property, or Public Place to as reasonably good a condition as it was prior to the excavation, City may, after providing notice in writing to Grantee and allowing Grantee five (5) calendar days to cure, make the restoration, and the reasonable costs of making the restoration, including the cost of inspection, supervision, and administration shall be paid by Grantee. City may grant an extension to the seven (7) calendar day requirement of this Section.

(f) In cases where a defective repair is made by Grantee, the City may, after providing notice in writing to Grantee and allowing Grantee five (5) calendar days to cure, remove or repair any work done by Grantee that, in the determination of Grantor, is inadequate. The cost thereof, including the cost of inspection, supervision, and administration shall be paid by Grantee.

(g) In cases where the City determines there is a need for a temporary repair for public safety reasons or due to weather conditions, the City may require that any excavation made by Grantee in any Street, Bridge, or Public Place be filled and the surface replaced by City, and that the reasonable cost thereof, including the cost of inspection, supervision, and administration shall be paid by Grantee. The City may require that particular materials match materials already in place in temporary or permanent repairs.

(h) The reasonable costs of excavation and restoration incurred by City pursuant to this Section, including the cost of inspection, supervision, and administration shall be paid by Grantee to City in accordance with the standard billing policy of City in effect at the time the excavation or restoration occurred.

4.16.110 Relocation of Facilities

(a) Grantee shall, at its expense, protect, support, temporarily disconnect, or relocate any of its equipment or Facilities as required to promote the public interest when requested to do so by City by reason of traffic conditions, public safety, Street vacation, freeway and Street construction, change or establishment of Street grade, installation of sanitary or storm sewer lines, water pipes, power lines, signal lines, or tracks, or any other type of structures or public improvements by City

or its agents. Relocation of Facilities required by City shall be completed within a time limit mutually agreed to by City and Grantee.

(b) A written request for facility relocation may be initiated directly by City or by a private developer or contractor installing or modifying public infrastructure under the approval of City; provided Grantee may charge the expense of removal or relocation to the developer or contractor that makes a request, directly or indirectly, if the removal or relocation is caused by an identifiable development of property in the area, or is made for the convenience of a developer or contractor. Grantee shall not be reimbursed for removal or relocation requested by, and for the sole convenience of City.

(c) All Facilities relocated in the Public Rights of Way shall be placed in coordination with City and other affected utilities.

(d) If Grantee fails to comply with any requirement of City pursuant to this Section, City may remove or relocate the Facilities at Grantee's expense.

4.16.120 Tree and Vegetation Pruning

(a) Subject to the provisions of this ordinance, Grantee may prune trees and vegetation when necessary in Easements for the operation of its Facilities, provided such tree and vegetation work is performed at Grantee's expense and in compliance with vegetation pruning standards that may exist now or may be hereafter promulgated by the OPUC.

(b) Grantee shall provide a written notice to the City and property owner and resident at least ten (10) business days prior to any pruning to be done on the property. City recognizes that a ten (10) day notice may not be possible in emergency situations; however, City does encourage Grantee to provide as much advance notice to property owners and residents as is reasonably possible under such emergency circumstances.

4.16.130 Use of Facilities by City

(a) As additional consideration for the franchise and privileges granted to Grantee pursuant to this franchise, City shall have the free right and privilege to install, or affix and maintain Street lights, wires, seasonal decorations and equipment for municipal purposes upon the aerial facilities in the right of way and available for use, excluding underground Facilities, owned and/or maintained by Grantee. For the purpose of this Section, the term "municipal purposes" means all municipal purposes and includes, but is not limited to, the use of such aerial facilities for:

- i. Municipal fire, police, water, wastewater, and storm water utility service wires and equipment.
- ii. Municipal interdepartmental computers and communications.
- iii. Municipal fire alarm and police and traffic signals, signs, and equipment.
- iv. Seasonal decorations and special event banners and attachments authorized by the City.

(b) City shall install, affix, maintain and operate its wires and equipment at its own expense and in accordance with the requirements of State and Federal law, and regulations adopted pursuant thereto, and in accordance with good engineering practice and safety standards. The wires and equipment of City shall be subject to interference by Grantee only when necessary for the maintenance, operation or repair of the Facilities of Grantee. Grantee's actions shall not unduly interfere with City's safe and convenient use of its installations.

(c) City shall install, affix, maintain and operate its wires and equipment in such a manner as not to impose any undue additional expense upon Grantee, or unduly interfere with the safe and convenient use and maintenance by Grantee of its structures and installations.

(d) If there is not sufficient space available thereon for said purposes, Grantee shall to the extent feasible change, alter or re-arrange its structures at City's expense so as to provide proper clearance for such wires or appurtenant Facilities.

(e) If the City attaches its wires and equipment to the Grantee's structures and/or facilities, the City agrees not to provide commercial telecommunication services similar to the services provided by the Grantee using those wires and equipment.

(f) To the extent permitted by Oregon law, City shall indemnify, protect, and hold Grantee, its officers, employees and agents, harmless against and from any and all damages, claims, loss, liability, cost or expense resulting from damage to property or injury or death to any third Person to the extent caused by or arising out of the installation, maintenance, existence, or use of the installations for municipal purposes as described in this Section.

4.16.140 Emergency Removal and Alternate Routing of Facilities

(a) If at any time, in case of fire or disaster in the Franchise Territory, it shall become necessary in the reasonable judgment of City to cut or move any of the wires, equipment or other appurtenances to the system of Grantee, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by Grantee, at its sole expense, provided that such repairs are not necessitated by a negligent act of City, in which case costs for repairs shall be borne by City.

(b) In the event continued use of a Street or Easement is denied to Grantee by City, Grantee shall provide service to affected customers over such alternate routes as shall be determined by Grantee within a reasonable period of time. City shall provide or attempt to provide an alternate route if continued use of a Street or Easement is denied to Grantee.

4.16.150 Public Works and Improvements

(a) City reserves the right to:

- i Construct, install, maintain, and operate any public improvement, work, or facility.
- ii Do any work that City may find desirable on, or over, or under any Street, Bridge or Public Right of Way.

iii. Vacate, alter, or close any Street, Bridge or Public Right of Way.

(b) Whenever City shall excavate or perform any work in any of the present and future Streets, alleys, and Public Rights of Way of City, or shall contract or issue permits to others for such excavation or work, where such excavation or work may disturb Grantee's underground Facilities, the City may, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such underground Facilities from damage and possible inconvenience to the public. In any such case, Grantee, upon receiving such notice, shall furnish maps or drawings to City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.

(c) Whenever City shall vacate any Street or Public Place for the convenience or benefit of any Person or governmental agency or instrumentality other than City, Grantee's rights shall be preserved as to any of its Facilities then existing in such Street or Public Place.

(d) Provided the City complies with statutory utility notification requirements, unless directly and proximately caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the Public Rights of Way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the Public Rights of Way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

4.16.160 Rearrangement of Facilities to Permit Moving of Buildings and Other Objects

(a) Upon reasonable advance notice in writing from any Person desiring to move a building or other object, Grantee shall temporarily raise, lower, or remove its Facilities upon any Street, Bridge, or Public Place within the City, when necessary, to permit the Person to move the building or other object across or along such Street, Bridge or Public Place. The raising, lowering, or removal of the Facilities of Grantee shall be in accordance with all applicable ordinances and regulations of City.

(b) The notice required by this Section shall bear the approval of the Administrator, shall detail the route of movement of the building or other objects, and shall provide the actual expense incurred by Grantee in making the temporary rearrangement of its Facilities, including the cost to Grantee of any interruption of service to its customers caused thereby. It shall further provide that the Person giving said notice will indemnify and save Grantee harmless from any and all damages or claims whatsoever caused directly or indirectly from such temporary rearrangement of Grantee's Facilities.

(c) Grantee, before making the temporary rearrangement of its Facilities, may require the Person desiring the temporary rearrangement to deposit cash or other adequate security reasonably acceptable to Grantee, to secure payment of the costs of rearrangement as estimated by Grantee.

(d) Upon advance notice by City of its own intent to move a building or other object, either in its governmental or proprietary capacity and for the sole benefit of City, the temporary rearrangement of Grantee's Facilities shall be accomplished by Grantee at no cost to City.

4.16.170 Insurance and Financial Provisions

(a) **Insurance.** Grantee shall have in full force and effect the following coverages, and shall file evidence thereof with the City Administrator upon the effective date of this franchise and not less frequently than annually thereafter:

- i. Comprehensive general liability insurance with limits not less than:
 - a. One million dollars for bodily injury or death to each Person;
 - b. One million dollars for property damage resulting from any one accident; and,
 - c. Three million dollars for all other types of liability.
- ii. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars for each Person and a combined limit of three million dollars for each accident.
- iii. Workers' compensation coverage at a minimum consistent with statutory requirements, and employer's liability insurance with limits of not less than one million dollars.
- iv. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.

(b) The liability insurance policies required by this Section shall be maintained by the Grantee throughout the term of this franchise, and such other period of time during which the Grantee is operating without a franchise, or is engaged in the removal of its telecommunications Facilities. Each such insurance policy shall contain an endorsement substantially similar to the following:

“It is hereby understood and agreed that the City of Stayton, its elected officials, officers and employees are additional named insureds with respect to claims arising out of or in connection with the franchise granted by the City to Stayton Cooperative Telephone Company. This policy may not be canceled nor the intention not to renew be stated until Grantee or its insurer shall have endeavored to provide 30 days written notice, by registered mail, of such intent to cancel or not to renew.”

Such endorsement shall be subject to the terms and conditions of the liability insurance policy.

(c) Prior to said cancellation, the Grantee shall obtain and furnish to the City evidence that the Grantee otherwise meets the requirements of this Section.

(d) As an alternative to the insurance requirements contained herein, the Grantee may provide evidence of self-insurance subject to review and acceptance by the City.

(e) **Performance Security.** Before this franchise is effective and as necessary thereafter, the Grantee shall provide a performance bond, in a form acceptable to the City in the amount of \$15,000, as security for the full and complete performance of the franchise herein granted. Such security shall include any costs, expenses, damages or loss the City pays or incurs because of any

failure attributable to the Grantee to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to any performance security required for construction of Facilities.

4.16.180 City's Right to Revoke Franchise

(a) **City's Right to Revoke.** In addition to all other rights which City has pursuant to law or equity, City reserves the right to revoke, terminate, or cancel this franchise, and all rights and privileges pertaining thereto, in the event that:

- i. Grantee repeatedly violates any material provision of this franchise. The following provisions are deemed to be material to the performance of the franchise: emergency removal; excavation and restoration; relocation; franchise fee; insurance; assignment or sale of franchise.
- ii. Grantee practices any fraud upon City.
- iii. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.
- iv. Grantee misrepresents a material fact in the application for or negotiation of, or renegotiation of, or renewal of, the franchise.
- v. Grantee deliberately fails to operate the system without prior approval of City or without just cause.

(b) Revocation Procedures.

- i. City shall provide Grantee with a written notice of the cause of termination and its intention to terminate or revoke the franchise and shall allow Grantee a minimum of ninety (90) days after service of the notice in which to correct the violation. If at the end of this period, Grantee has not corrected the matter which provides grounds for termination, the franchise may, at the option of City, become null and void and Grantee shall thereafter be entitled to none of the privileges or rights herein extended. Grantee shall thereupon cease and desist from any activity within the City limits of City, provided, however, that City may at its option pursue any other and different or additional remedy provided to it by law or in equity.
- ii. Grantee shall be afforded due process and provided with an opportunity to be heard at a public hearing before the City Council prior to the termination of the franchise. The City Council shall hear any Persons interested therein, and shall have the discretion to determine whether or not any failure, refusal, or neglect by Grantee has occurred.
- iii. Any revocation of this franchise shall be by formal action of the City Council, by ordinance.

4.16.190 General Provisions

(a) **Assignment or Sale of Franchise or Facilities.** Grantee shall not transfer or assign any rights under this franchise to another Person or entity, except transfers and assignments by operation of law, unless City shall first give its approval in writing, which approval shall not be unreasonably

withheld or delayed, provided, however, inclusion of this franchise as property subject to the lien of Grantee's mortgage(s) shall not constitute a transfer or assignment. Assignment or transfer is subject at a minimum to the following requirements:

- i. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.
- ii. Any approval by the Franchising Authority of transfer of ownership or control of the telephone system shall be contingent upon the satisfactory curing by the Grantee of any known deficiencies in performance under the Franchise existing at the time of transfer.

(b) **Remedies Not Exclusive: When Requirement Waived.** All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive, and City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition, or obligation imposed upon Grantee by, or pursuant to, this ordinance. A specific waiver of a particular breach of any term, condition, or obligation imposed upon Grantee by, or pursuant to, this ordinance or acceptance of any payment due shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition, or obligation itself.

(c) **General Indemnification.** Grantee shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from, or alleging to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications Facilities, and in providing or offering telecommunications services over the Facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this franchise.

(d) **Changes in Law.** This franchise contemplates a franchise fee payment based on Grantee's "gross local exchange revenues" as that term is currently defined in Oregon statute. 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.

(e) **Foreclosure, Receivership and Abandonment.**

- i. Upon the foreclosure or other judicial sale of the system, Grantee shall notify City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this franchise governing the consent to transfer or change ownership shall apply without regard to how such transfer or change in ownership occurred.

- ii. City shall have the right to cancel or terminate this franchise subject to any applicable provisions of Oregon or Federal law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a debtor-in-possession, receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said period, or unless:
 - a. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults thereunder; and
 - b. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.

(f) **Abandonment of Service.** Grantee shall not abandon, discontinue or cease providing service except as authorized under the Oregon Administrative Rules at Chapter 860, Division 32.

(g) **Compliance with Laws, Rules, and Regulations.** At all times during the term of this franchise, Grantee shall comply with all applicable laws, ordinances, municipal codes, rules, and regulations of the United States of America, the State of Oregon, Marion County, and the City of Stayton including all agencies and subdivisions thereof. Grantee shall be subject to the lawful exercise of the police power of City and to such reasonable regulations as City may from time to time hereafter by resolution or ordinance provide. If at any time during the term of this franchise, City implements a generic "Right of Way Management Ordinance" or similarly titled document which may apply to all of City's utility franchises, Grantee agrees to abide by such ordinance; provided that any specific conflicts between such an ordinance and this franchise ordinance shall be mutually reviewed and resolved by City and Grantee. No provision of this franchise shall be construed as a waiver of local, State, or Federal law, or as a limit of liability.

(h) **Rules of Construction.** This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

- i. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular number, and words in the singular number include the plural number.
- ii. Time is of the essence of this ordinance. Grantee shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of City to enforce prompt compliance with any of its provisions.
- iii. Unless otherwise specified in this ordinance, any action authorized or required to be taken by City may be taken by the City Council or by an official or agent designated by the City Council.
- iv. Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.

(i) **Severability and Constitutionality.** If any Section, subsection, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining positions hereof.

The City Council hereby declares that it would have passed this ordinance and each Section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more Sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any other consideration or obligation required of Grantee by any franchise granted hereafter. If, for any reason, the franchise fee or compensation is invalidated or amended by the act of any court or authorized governmental agency, then a reasonable franchise fee or compensation as allowed by such court or authorized governmental agency shall be the franchise fee or compensation charged by this ordinance.

(j) **Written Notice.** All notices, reports, or demands required to be given in writing under this franchise shall be deemed to be given when a registered or certified mail receipt is returned indicating delivery, or on the next addressed business day if sent by express mail or overnight air courier to the party to which notice is being given as follows:

If to the City: City of Stayton
 362 North Third Avenue
 Stayton, OR 97383
 Attn: City Administrator

If to Grantee: Stayton Cooperative Telephone Company
 502 North Second Avenue
 P.O. Box 477
 Stayton, OR 97383
 Attn: President/CEO

Such addresses may be changed by either party upon written notice to the other party given as provided in this Section.

(k) **Dispute Resolution.** In the event a dispute arises between the parties, it is agreed that they shall engage in mandatory mediation. The parties shall agree on the selection of a Mediator within ten (10) days' advance written notice from either party and, if not, the Circuit Court Presiding Judge for the Oregon county which would have jurisdiction on the issues shall make the selection. The mediation shall occur within twenty (20) days of the selection of the Mediator. The parties shall at all times perform in good faith and shall make every effort to resolve the dispute in mediation.

(l) **Captions.** The paragraph captions and headings in this franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this franchise.

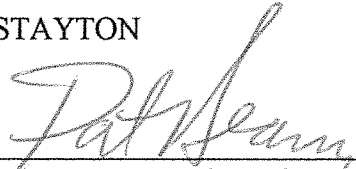
(m) **Calculation of Time.** Where the performance of doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time unless stipulated otherwise in this agreement. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

Section 2. Effective Date, Emergency Declared. It is necessary and desirable that the Grantee has seamless and continuing authority to operate its telephone system in the City's Rights of Way. As such, the Council desires that this Ordinance be effective concurrent with the expiration of Grantee's current franchise. Based on the foregoing, an emergency is hereby declared to exist, and this Ordinance shall be effective from adoption of this Ordinance forward, provided it is accepted by Grantee as provided in Section 4.16.060.

ADOPTED BY THE STAYTON CITY COUNCIL this 20th day of October, 2003.

CITY OF STAYTON


Signed OCTOBER 21, 2003.

By: 
Pat Hearn, Council President

Signed Oct 22, 2003.

ATTEST: 
Chris Childs, City Administrator

APPROVED AS TO FORM:


David A. Rhoten, City Attorney

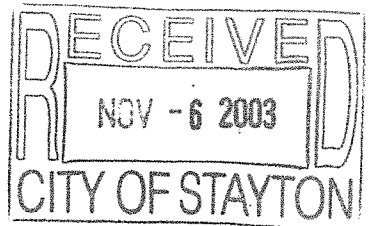


EXHIBIT A: ACCEPTANCE AND PROMISE

City of Stayton
362 North Third Avenue
Stayton, OR 97383
Attn: City Administrator

Letter of Acceptance and Promise

To: City of Stayton

1. Grantee, through its authorized representative below signed does hereby submit this sworn and notarized Letter of Acceptance and Promise.
2. The signatory to this letter had full authority to make the statements and representations in this letter on behalf of the Grantee.
3. The Grantee, by and through the below signed and sworn representative hereby unconditionally accepts and promises to comply with all terms, provisions and conditions of the telecommunications services Franchise granted by the City of Stayton, in accordance with federal, state, and local laws.
4. This Letter of Acceptance and Promise is binding upon the Grantee as of the Effective Date of the Franchise Agreement, October 20th, 2003, and throughout its term.

Stayton Cooperative Telephone Company

By: Don Sumner

Title: PRESIDENT

Date: 11/4/03

State of OREGON

County of MARION

Signed and sworn before me on, November 4, 2003.

Arless Nicklaus
Notary Public – State of Oregon

My commission expires: 5/9/05

