

CITY OF BAY CITY

ORDINANCE NO. 651

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO UNITED TELEPHONE COMPANY OF THE NORTHWEST, DBA CENTURYLINK, HEREINAFTER REFERRED TO AS "GRANTEE," ITS SUCCESSORS AND ASSIGNS, THE RIGHT OF PRIVILEGE TO PROVIDE NONCABLE TELECOMMUNICATIONS SERVICES WITHIN THE CITY AND TO UTILIZE THE PUBLIC RIGHT OF WAYS AND REPEALING ORDINANCE NO. 620.

THE CITY COUNCIL OF THE CITY OF BAY CITY, OREGON ORDAINS AS FOLLOWS:

Section 1. Repeal. Bay City Ordinance No. 620 is hereby repealed in its entirety. Furthermore, all resolutions and ordinances regarding the telephone franchise within the City of Bay City are hereby repealed.

Section 2. Franchise Granted. Subject to the terms and conditions provided in this Ordinance and further subject to the applicable rules, regulations and ordinances of the City of Bay City, and specifically including Ordinance #650, the City of Bay City hereby grants to the United Telephone Company of the Northwest, dba CenturyLink, its successors and assigns, hereinafter "Grantee," a nonexclusive franchise for the right and privilege to occupy City rights-of-way and appropriate utility easements to provide and maintain a telecommunication system within the City and to place, erect, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares and public highways, all hereinafter referred to as "streets" within the City, poles, wires and other appliances and conductors for telephone purposes. Following the effective date of this Ordinance, such wires and other appliances and conductors shall be laid underground, or at Grantee's option and subject to City approval, may be strung upon poles or other fixtures above ground, or to be placed above ground.

Section 3. Franchise Non-Exclusive. This Franchise and the grant of authority conferred herein are not exclusive. The City reserves the right to grant rights to others to use the Franchise Area during the Franchise Term. The City may also do any work the City finds desirable on, over or under any street, alley, utility easement or other right-of-way. The Grantee shall respect the rights and property of the City and other authorized users of easements and rights-of-way. This Agreement does not confer on the Grantee any right, title or interest in any public right-of-way beyond that expressly conferred herein or confer any right or privilege to use or occupy any other property of the City or any other entity.

Section 4. Disputes between Grantees/Users. Except as otherwise required by applicable law, disputes between Grantee and parties other than the City of Bay City over the use of the easements and rights-of-way shall be submitted to the City for resolution. Decisions rendered by the City shall be final and binding, as to the City's involvement and authority.

Section 5. Performance by Grantee. During the term of this Franchise, the Grantee agrees to comply with all terms and conditions of this Franchise, together with all terms and conditions of Bay City Ordinance #650, the provisions of which are incorporated herein as though fully set forth.

Section 6. Term. This franchise shall expire five years from the date of Council approval of this ordinance. However, either party may ask for a review of the rates or any terms contained herein in any even numbered year. Unless, any change is agreed to by both parties the privileges and franchise herein granted shall be continuous for the entire term unless there is earlier termination in accordance with this Ordinance.

Section 7. Franchise Fees. As compensation for the benefits and privileges under its franchise and in consideration of permission to use the right-of-way of the City, the Grantee shall pay a franchise fee to the City during the term of this Franchise at 4 percent per annum beginning March 14, 2011, of its gross revenues derived from Grantee's provision of exchange access services as defined by Oregon law, services to all retail customers and to wholesale customers, including other telecommunications carriers, derived within the Franchise area, less net uncollectibles. Payment of this franchise fee shall be made on a quarterly basis on or before April 30, July 31, October 31 and January 31 for the calendar quarter immediately preceding. If a payment is not mailed by that date, the payment shall be deemed delinquent and shall accrue interest at the rate of 18 percent per annum from the closing date of the applicable reporting period.

Section 8. Information Required. With each franchise fee payment, Grantee shall furnish a short statement from its chief financial officer or his/her designee, setting forth the amount and calculation of payment of the franchise fee. The statement shall detail the gross revenues subject to tax under Section 7 of this ordinance which have been received by Grantee from its operations within the City and shall specify the nature and amount of all exclusions and deductions from such revenue applied by Grantee in calculating the franchise fee. In addition, Grantee shall provide all information for its Bay City operations to the State of Oregon, as is required by state rule or regulation. The City may require additional information pertaining to the franchise payments at any time. In the event that an audit of the franchise fee payments results in a determination that an additional payment is due to the City, such additional payment shall be subject to interest at the rate of 18 percent per annum from the date the original payment was due.

Section 9. Fee Re-evaluation. In the event state law changes to allow an increase in the amount which can be collected without passing this cost onto its citizens, the City Council may increase the franchise fee in any even numbered year. If the Bay City Council determines that the franchise fee is to be changed, it shall provide Grantee 90 days prior written notice of any change. The effective date of any change of the franchise fee shall be specified by ordinance of the Bay City Council.

Section 10. Taxes. Nothing contained in this Agreement shall be construed to exempt the Grantee from any license, occupation or excise tax or assessment that is or may be lawfully imposed on all entities in the same business as the Grantee.

Section 11. Insurance Requirements. Grantee shall submit to the City evidence of insurance coverage as is fully set out in Ordinance #650, Section 47 prior to the City granting the franchise.

Section 12. Remedies. If Grantee fails to comply with any material provision of this Ordinance or with Ordinance #650, or if grounds exist for revocation of the franchise under Ordinance #650, Grantee will forfeit all rights and privileges granted by this Ordinance. This forfeiture and revocation will not occur until Sections 36 and 37 of Ordinance #650 are complied with by the City. Revocation shall not occur if the violation or default by Grantee occurs due to an act of God, fire, flood, storm or other element of casualty, theft, war, disaster, strike, lock-out, boycott, war or other causes beyond the control of Grantee.

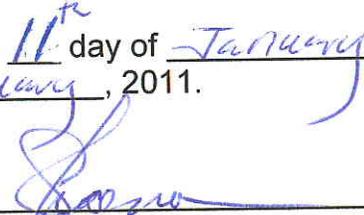
All remedies under this Ordinance are cumulative and not exclusive and the recovery or enforcement by one available remedy is not a bar to recovery or enforcement by any other remedy. The City reserves the right to avail itself to any and all remedies available at law or in equity.

Section 13. Successors. This franchise agreement shall be binding on all Grantee's successors and assigns. Any transfer of this agreement shall be subject to the successor or assign signing a new acceptance of the franchise ordinance and filing said written acceptance with the City within 30 days of the transfer and the City authorizing said transfer.

Section 14. Severability. In any clause, sentence or any other portion of the Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. If any material portion of the Agreement becomes illegal, null or void so that the intent of the Agreement is frustrated, the parties agree to negotiate replacement provisions to fulfill the intent of the Agreement consistent with applicable law.

Section 15. State and Federal Law/Jurisdiction. If any provision of this ordinance is in conflict with any current or subsequently adopted state or federal law, then this ordinance shall be interpreted to be revised to the extent necessary to comply with the applicable state or federal law. The laws of the State of Oregon govern this Agreement and its interpretation, performance and enforcement. Venue is in Tillamook County, State of Oregon. In the event there are significant changes in state or federal law which would require revision of this ordinance in order for the City or for CenturyLink to be in compliance with the law, this ordinance may be changed at any time for such purpose.

PASSED and ADOPTED by the City Council this 11th day of January, 2011
and APPROVED by the Mayor this 12th day of January, 2011.



Shaena E. Peterson, Mayor

Attest:



Linda Downey, City Recorder

First Reading: January 11, 2011
Second Reading: January 11, 2011
Adoption: January 11, 2011
Ayes: 6
Nays: 0
Abstentions: 0

ACCEPTANCE

This franchise ordinance is accepted by United Telephone Company of the Northwest, dba CenturyLink, this 23rd day of February, 2011.

UNITED TELEPHONE COMPANY
dba CenturyLink

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of the
Northwest



By: Wayne C. Mathisen
An authorized Representative