

ORDINANCE NO. 4972

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE 3.30, AMERICAN TELEPHONE AND TELEGRAPH COMPANY FRANCHISE, TO ALLOW THE GRANTING OF FRANCHISES TO OTHER LONG DISTANCE TELECOMMUNICATIONS COMPANIES MAINTAINING COMMUNICATIONS FACILITIES IN THE CITY OF ALBANY AND DECLARING AN EMERGENCY.

WHEREAS, in 1988, a franchise was granted to American Telephone and Telegraph Company to construct and maintain communications facilities in the city of Albany, and

WHEREAS, MCI Telecommunications Corporation has requested that they be granted the privilege of constructing communications facilities in the city of Albany, and

WHEREAS, it is in the best interest of the City of Albany to provide for the granting of long distance telecommunications franchises to all qualified applicants,

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Albany Municipal Code 3.30, American Telephone and Telegraph Company Franchise, is hereby amended to read as follows:

Chapter 3.30

AMERICAN TELEPHONE AND TELEGRAPH LONG DISTANCE TELECOMMUNICATIONS COMPANY FRANCHISE

Sections:

- 3.30.010 Definitions.
- 3.30.020 Granted.
- 3.30.030 Communication facilities placement - Excavations.
- 3.30.040 Public improvements.
- 3.30.050 Communication facilities removal.
- 3.30.060 Temporary removal, rearrangement - communication facilities.
- 3.30.070 Facilities maintenance.
- 3.30.080 Indemnification clause.
- 3.30.090 Franchise fee.
- 3.30.100 Statement of payment.
- 3.30.110 Term of franchise.

3.30.010 Definitions.

- (1) "City" The City of Albany, Oregon.
- (2) "Communications Facilities" All conduits and associated structures owned by Grantee for use by Grantee in providing telecommunication services.
- (3) "Grantee" ~~American Telephone & Telegraph Company through its Interstate Division, its successors and assigns.~~ Any long distance telecommunication provider maintaining communication facilities in the city of Albany. "Grantee" does not include U.S. West or any other similar telecommunications company which provides primarily local service.
- (4) "Public Way" Any street, road, alley, right-of-way, pedestrian or bicycle easement or utility easement for public use that is controlled by the City.

(5) "City Manager" The City Manager of the City or his or her designee.

3.30.020 Granted. Subject to the provisions and restrictions of this Ordinance and the Albany Municipal Code, the City grants to the Grantee, the nonexclusive privilege to use the public way to construct and maintain long distance telecommunications communication facilities within the corporate limits of the City.

3.30.030 Communication facilities placement - Excavations. Grantee's communication facilities shall remain underground. Subject to the City Manager's authority to prescribe which public ways will be used and the location within the public way, it shall be lawful for the Grantee to make all necessary excavations in any public way for the purpose of constructing and maintaining communication facilities. Grantee's use of the public way shall comply with the standard specifications of the City and all other applicable Federal, State, and local laws and regulations. No work affecting the public way shall be done by the Grantee without first obtaining the permits required by the City, which may include plan submittal, approval and the payment of fees before work begins.

3.30.040 Public improvements. Nothing in this chapter shall be construed in any way to prevent the City from constructing and maintaining any public improvement in any public way. In its construction and maintenance of public improvements, the City shall endeavor not to obstruct or prevent the free use by the Grantee of its communication facilities.

3.30.050 Communication facilities removal. Whenever any of the Grantee's communication facilities shall unnecessarily inconvenience the public or property owners, the City may require the removal or change of location of any such communications facilities.

3.30.060 Temporary Removal, rearrangement of communication facilities. Should it ever become necessary to temporarily rearrange or remove the Grantee's communications facilities at the request of a private person or business, Grantee shall perform such rearrangement or removal as expeditiously as possible upon receipt of reasonable written notice from the person or persons desiring the temporary change of the communications facilities. The notice shall:

- (1) Be approved by the City Manager;
- (2) Detail the route of movement;
- (3) Provide that the costs incurred by the Grantee in making the temporary change be borne by the person or business giving said notice;
- (4) Provide that the person or business giving the notice shall indemnify and hold harmless the Grantee of and from all damages or claims of whatsoever kind and nature caused directly or indirectly from such temporary change of the Grantee's communications facilities; and
- (5) If required by the Grantee, be accompanied by a cash deposit or a good and sufficient bond to pay any and all of the Grantee's estimated costs as estimated by the Grantee.

3.30.070 Facilities maintenance. The Grantee shall at all times maintain all of its communications facilities in a good state of repair.

3.30.080 Indemnification clause. Except when resulting from the City's sole negligence or willful misconduct, the Grantee shall indemnify and save harmless the City of and from any and all damages of any kind or character

growing out of or arising by reason of the maintenance of the Grantee's communications facilities in the City.

3.30.090 Franchise fee. In consideration of the privileges and franchise hereby granted, ~~on the first day of July, 1988, and annually on or before that month and day thereafter,~~ July 1, Grantee shall pay the City \$1.00 per lineal foot of communications facilities located in the public way within the corporate limits of the City during any time within the preceding year. Within thirty (30) days of the termination of this franchise the Grantee shall pay a pro rata fee for the period from the end of the prior payment date to the date of termination in addition to any other sums due the City. Because of Grantee's difficulty in calculating a franchise fee based on Grantee's gross income, the per lineal foot fee is being used in this franchise.

3.30.100 Statement of payment. With each franchise fee payment, the Grantee shall furnish a sworn statement setting forth the amount and calculation of the payment. The payment of the franchise shall not be credited toward the payment of property taxes or payments in lieu thereof, nor any sales or income tax adopted by the City, nor credited toward any permit fees required by the Albany Municipal Code.

3.30.110 Term of franchise. The privileges and franchise herein granted shall continue and be in force for a period of nine (9) years from and after the date written acceptance of the terms of this franchise is received by the City of Albany; ~~this Ordinance becomes effective;~~ provided, however, that either City or Grantee may, upon at least thirty (30) days' written notice to the other prior to the expiration of each three (3) year period from the effective date of this franchise, open this agreement to renegotiate all provisions contained therein including the per lineal foot rate.

In the event that the parties hereto cannot reach agreement concerning the renegotiation of any of the terms of this franchise, the matter shall be submitted to binding arbitration as follows:

(1) Upon written demand of either party, any and all matters concerning this franchise shall be submitted to binding arbitration. Upon a demand for arbitration, made by either party, each of the parties hereto shall, within 30 days, retain, at its own expense, such person as they deem appropriate to serve as their arbiter in the arbitration proceedings. The two arbiters thus selected shall, within thirty (30) days of their appointment, select a third arbiter and the three arbiters shall, thereafter, resolve all matters in dispute.

(2) The costs of the third arbiter shall be borne equally by both of the parties hereto.

(3) The arbiters shall decide all matters in dispute within ninety (90) days of the appointment of the third arbiter.

(4) The arbiters shall make their decision following a hearing wherein both of the parties hereto shall be permitted to submit such evidence and arguments as they deem appropriate to support their respective positions.

(5) The arbiters shall, by majority vote, make such procedural rules and determinations as may be necessary to fairly and expeditiously resolve all matter in dispute.

(6) In deciding the matters in dispute, the arbiters shall be guided by the following principles,

(a) The franchise fee should reflect both the economic burden that the Grantee's franchise places upon the public way and the economic benefit that the Grantee derives from the franchise.

(b) In recognition of the changing and expanding nature of the telecommunications industry and technology, the parties agree that should the nature or extent of the Grantee's business change during the term of this franchise, the franchise should be modified to mitigate, at the Grantee's expense, any additional costs, damages, or difficulties experienced by the City or third parties located therein.

(c) The franchise should be modified, as needed, to keep current with the needs of the Grantee and the City.

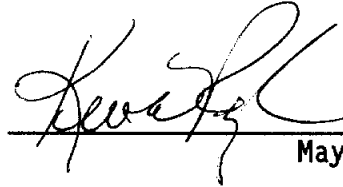
Section 2. This ordinance does not amend or effect any existing franchise agreement.

Section 3. Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Passed by Council: August 14, 1991

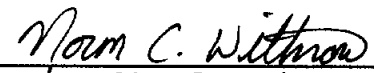
Approved by Mayor: August 15, 1991

Effective Date: August 14, 1991



Mayor

ATTEST:



Deputy City Recorder