

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE CHAPTER 3.20, SECTIONS 3.20.010, 3.20.060, 3.20.080, AND 3.20.110; AND DECLARING AN EMERGENCY.

WHEREAS, Electric Lightwave Inc. has requested a franchise agreement from the City of Albany to provide telecommunication services with the City,

NOW, THEREFORE THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN that the Albany Municipal Code Chapter 3.20 sections 3.20.010, 3.20.060, 3.20.080, and 3.20.110 are amended to read as follows:

SECTION 1:

Chapter 3.20

**PACIFIC NORTHWEST BELL AND ELECTRIC LIGHTWAVE, INC.
TELEPHONE FRANCHISE**

3.20.010 **Granted.**

There is hereby granted by the City of Albany, hereinafter referred to as "City", to Pacific Northwest Bell Telephone Company and Electric Lightwave, Inc., their successors and assigns, hereinafter each referred to as "Grantee", the right and privilege to do a general communication business within the City and to place, erect, lay, maintain, and operate in, upon, over, and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City, poles, wires and other appliances and conductors for all telephone, telegraph and other communication purposes. Such wires, and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. Notwithstanding the foregoing, the City Manager or his/her designee shall have the authority to prescribe which public ways will be used and the location of communications facilities within the public way as may be reasonably necessary to minimize public inconvenience.

3.20.060 **Payment.**

~~In consideration of the rights, privileges, and franchise hereby granted, said Grantee shall pay to the City, from and after the effective date of the franchise and until June 30, 1990, quarterly, three percent per annum of its gross local service revenues as presently defined in the Uniform System of Accounts adopted by the Federal Communication Commission for Class A Companies, received from services located within the corporate limits of the City less net uncollectibles and revenue paid directly by the United States of America or any of its agencies. Effective July 1, 1990, and until the franchise's expiration, said Grantee shall pay to the City, monthly, seven percent of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City, less net collectibles. This franchise fee shall be deposited in the U.S. mail, postage prepaid, addressed to the Chief Financial Officer Finance Director of the City and postmarked on or before the last business day of the month following the month for which the payment is due. If a payment is not mailed by the date set forth above, the payment shall be deemed delinquent and shall accrue interest at the rate of ~~12~~ nine (9) percent per annum from the date of the applicable reporting period. The franchise payments made by the Grantee will be accepted by the City from the Grantee, also in payment of any separate fees that are imposed by the City on Grantee for street openings, construction, or inspection or maintenance of fixtures or facilities. However, Grantee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this chapter.~~

3.20.080 Reporting of funds.

With each franchise fee payment, the Grantee shall furnish a sworn statement from the Chief Financial Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the gross revenues subject to tax received by the Grantee from its operations within the City, and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Grantee in calculating the franchise fee.

The City Manager of the City, may require the Grantee to provide any additional information reasonably necessary for administration of the franchise fee. The Grantee shall keep available and open to inspection by the City Manager of the City, during regular office hours, all accounts, books, and other records reasonably necessary for ascertaining the franchise liability.

In the event that an audit of the franchise fee payment 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 ~~12~~ nine (9) percent per annum from the date the original payment was due. No interest shall be due with respect to annexation by the City for which notice was not provided to Grantee pursuant to the provision of ORS 222.005.

3.20.110 Continuation - Termination.

The rights, privileges and franchise herein granted shall continue and be in force ~~for the period until June 30, 2000, of 10 years from and after the effective date of the ordinance codified herein;~~ except that it is understood and agreed that either party may at any time terminate or renegotiate this agreement upon six months' notice in writing.

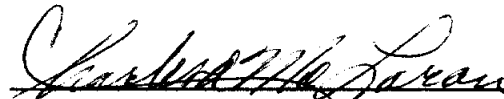
SECTION 2:

Inasmuch as this ordinance is necessary for the immediate preservation of peace, health, and safety of the City of Albany, Oregon, an emergency is hereby declared to exist; this ordinance will be in full force and effect immediately upon passage by the Council and approval by the Mayor.

Passed by Council: January 28, 1998

Approved by the Mayor: January 28, 1998

Effective Date: January 28, 1998



Mayor

ATTEST:



City Recorder