

ORDINANCE NO. 918

AN ORDINANCE GRANTING A FRANCHISE ("FRANCHISE") TO CENTURYTEL OF OREGON, INC. D/B/A CENTURYLINK ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES ("CENTURYLINK") TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("SYSTEM") IN THE CITY OF SCAPPOOSE, OREGON ("CITY").

The City hereby ordains that it is in the public interest to grant CenturyLink a Franchise to operate the System pursuant to the terms and conditions contained herein.

SECTION 1. Grant of Franchise. The City hereby grants to CenturyLink the right, privilege and authority to install, construct, maintain, operate, upgrade, repair, relocate and remove its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and other public ways in the City ("Public Ways", or in the singular "Public Way"), for the purpose of providing telecommunication services to the City's inhabitants and other customers of CenturyLink located within the City's corporate limits.

SECTION 2. Acceptance by CenturyLink. Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file an unqualified written acceptance thereof with the City; otherwise, the Ordinance and the rights granted herein shall be null and void.

SECTION 3. Term. The initial term of this Franchise is four years (4) years commencing on the date of Acceptance by CenturyLink as set forth above in Section 2 and shall thereafter automatically renew from year-to-year unless either party gives advance written notice to the other party at least 120 days prior to expiration of the initial term or subsequent annual term requesting the parties enter into good faith discussions to reach terms of a new agreement.

SECTION 4. Records Inspection. CenturyLink shall make available to the City at a CenturyLink office, upon reasonable advance written notice of no fewer than sixty (60) days and not more often than once every two (2) years, such relevant information pertinent only to enforcing the terms of this Ordinance in such form and at such times as CenturyLink can reasonably make available. Subject to applicable laws, any information that CenturyLink provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein, any such information provided to the City shall be returned to CenturyLink following review, without duplication, unless CenturyLink grants the City written permission to duplicate the information.

SECTION 5. Non-Exclusive Franchise. The right to use and occupy the Public Ways shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's and other entities' use, however, shall not unreasonably interfere with CenturyLink's Facilities or the rights granted CenturyLink herein.

SECTION 6. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety, and welfare of its citizens consistent with applicable federal and state law. The City agrees to promptly notify CenturyLink of any such changes potentially applicable to this Franchise.

SECTION 7. Indemnification. The City shall not be liable for any property damage or loss or injury to or death of any person that occurs as the result of the construction, operation, or maintenance by CenturyLink of its Facilities. CenturyLink shall indemnify, defend, and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of CenturyLink's use of the Public Ways. The City shall: (a) give prompt written notice to CenturyLink of any such claim, demand, or lien with respect to which the City seeks indemnification hereunder; and (b) permit CenturyLink to assume the defense of such claim, demand, or lien with legal counsel of CenturyLink's selection. CenturyLink shall not be subject to liability for any settlement or compromise made without its prior written consent. Notwithstanding the other provisions contained herein, CenturyLink shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

SECTION 8. Insurance Requirements. CenturyLink will maintain in full force and effect for the Term of the Franchise, at CenturyLink's expense, a comprehensive liability insurance policy written by a company authorized to do business in the State of New Mexico, or will provide self-insurance reasonably satisfactory to the City, protecting it against liability for loss, personal injury and property damage occasioned by the operation of the System, including the Facilities, by CenturyLink. Such insurance will be in an amount not less than \$1,000,000.00. CenturyLink will also maintain Worker's Compensation coverage throughout the term of this Franchise as required by law. Evidence of such insurance is available at www.centurylink.com/moi.

SECTION 9. Annexation. When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail, return receipt requested, postage prepaid, to CenturyLink at the addresses provided in Section 18 hereof: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation.

SECTION 10. Plan, Design, Construction and Installation of CenturyLink's Facilities.

10.1 All Facilities under the authority of this Ordinance shall be used, constructed, and maintained in accordance with applicable law.

10.2 CenturyLink shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. CenturyLink will provide plans for new facilities to be placed in the Public Ways pursuant to a permit issued by the City. CenturyLink will abide by all applicable ordinances and reasonable rules, regulations, and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs or for normal maintenance of its facilities.

10.3 To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with applicable rules, ordinances, and regulations of the City.

10.4 If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or public property at CenturyLink's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration, normal wear and tear excepted.

10.5 CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, CenturyLink shall first obtain a permit from the City in accordance with subsection 10.2 hereof.

10.6 Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of CenturyLink's poles, wires, conduits, conductors, pipes, and appurtenances.

10.7 CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

SECTION 11. Relocation of Facilities.

11.1 Relocation for the City. CenturyLink shall, upon receipt of advance written notice of not fewer than ninety (90) days, protect, support, temporarily disconnect, relocate, or remove any CenturyLink property located in a Public Way when required to do so by the City for reasons of public health, safety, and welfare. However, CenturyLink shall not be required to relocate or adjust its facilities pursuant to this subsection in furtherance of non-essential, developmental, aesthetic, or beautification projects (collectively "Non-Essential Project"), except in accordance with subsection 11.2 below. CenturyLink shall be responsible for any costs associated with these obligations to the same extent as other users of the respective Public Way.

11.2 Relocation for a Third Party. CenturyLink shall, at the request of any person holding a lawful permit issued by the City and/or in support of a Non-Essential Project by City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable and if possible, any CenturyLink property, provided that the cost of such action is borne by the person requesting it and CenturyLink is given reasonable advance written notice and sufficient time to take the appropriate action. In such a situation, CenturyLink may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than forty-five (45) days for a temporary relocation, and no fewer than one hundred twenty (120) days for a permanent relocation.

11.3 Alternatives to Relocation. CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to The City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such an evaluation. The City shall give each alternative proposed by CenturyLink full and fair consideration. In the event the

City ultimately determines that there is no other reasonable alternative, CenturyLink shall relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, CenturyLink shall in all cases have the right to abandon the Facilities.

SECTION 12. Vegetation Management. CenturyLink shall have the authority to trim trees and other growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

SECTION 13. Payment by CenturyLink. In consideration of the rights, privileges, and Franchise hereby granted, CenturyLink, its successors and assigns, shall pay the City from and after the date of the acceptance of this Franchise a privilege tax in an amount equal to seven percent (7%) of the gross revenues derived from exchange access services within the City, as defined in ORS 403.105, less net uncollectibles from such revenues, including any extension of those City limits from time to time. Payment shall be made quarterly on or before sixty (60) days after the end of each calendar quarter. Such payment made by CenturyLink will be accepted by the City from CenturyLink. If the maximum amount of the privilege tax allowed by applicable law increases from seven percent (7%) to a greater percentage, the City and CenturyLink agree to meet and confer in good faith about any amendments to this Franchise that may be necessary to accommodate such increase. Any amendment to this Franchise which modifies the privilege tax shall not exceed the maximum amount allowed under applicable law. The City shall give CenturyLink at least sixty (60) days' prior written notice of any proposed increase.

SECTION 14. Revocation of Franchise for Noncompliance.

14.1 In the event that the City believes that CenturyLink has not materially complied with the terms of the Franchise, the City shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

14.2 CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 14.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

14.3 In the event that CenturyLink does not comply with subsection 14.2, above, unless the parties agree to an extension of the time provided in subsection 14.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide CenturyLink with at least twenty (20) days' prior written notice of, and the opportunity to be heard, at the hearing.

14.4 Subject to applicable federal and state law, in the event The City, after the hearing set forth in subsection 14.3, determines that CenturyLink is noncompliant with this Ordinance, The City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or

C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 14.5.

14.5 Should the City seek to revoke the Franchise after following the procedures set forth above, The City shall give written notice to CenturyLink including a statement of all reasons for such revocation. CenturyLink shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, The City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon CenturyLink, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give CenturyLink an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. CenturyLink may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such an appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.

14.6 Notwithstanding the foregoing provisions in this Section 14, CenturyLink does not waive any of its rights under applicable law.

SECTION 15. No Waiver of Rights. Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

SECTION 16. Transfer of Franchise. CenturyLink's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without prior notice to and prior approval by the City, such approval not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for any rights, title, or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness, or to an entity that acquires substantially all the assets or equity of CenturyLink by sale, merger, consolidation or reorganization, approval by the City shall not be required.

SECTION 17. Amendment. Amendments to the terms and conditions contained herein shall be mutually agreed upon in writing by the City and CenturyLink.

SECTION 18. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received upon actual receipt or refusal of delivery if sent by (a) personal delivery, (b) United States Mail, postage prepaid, certified, return receipt requested, or (c) nationally recognized overnight courier, and addressed to the Parties as set forth below:

The City:

City of Scappoose
33568 East Columbia Avenue
Scappoose, Oregon 97056

To CenturyLink:

CenturyLink
ATTN: ROW/NIS Manager
931 14th Street
Denver, CO 80202

with a copy to:

CenturyLink
ATTN: Legal Department
931 14th Street
Denver, CO 80202

SECTION 19. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having appropriate jurisdiction thereof, or unconstitutional, illegal or invalid by any court having appropriate jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

CONSIDERED and APPROVED this 10th day of May, 2024:

CITY OF SCAPPOOSE, OREGON

By:

Joseph A. Backus
Joseph A. Backus, Mayor

Susan M. Reeves
Attest: Susan M. Reeves, City Recorder

ACCEPTED BY CENTURYLINK:

CENTURYTEL OF OREGON, INC. D/B/A CENTURYLINK BY:

TITLE:

Shawn Heile, MANAGER NETWORK ROW

DATE:

6/3/2024