

ORDINANCE NO. 1053

AN ORDINANCE GRANTING TO CANBY TELEPHONE ASSOCIATION A NONEXCLUSIVE FRANCHISE FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY, ESTABLISHING AN EFFECTIVE DATE, AND DECLARING AN EMERGENCY

WHEREAS, Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", provides telecommunications services within the City of Canby; and

WHEREAS, the franchise granted to Grantee by Ordinance No. 668, as amended by Ordinance No. 845, and extended by Ordinance No. 1040, expired on June 6, 2000; and

WHEREAS, the Grantee is currently paying a franchise fee 3.7 percent of its gross revenues earned in the City, and state law allows a franchise fee of up to 7.0 percent of its gross revenues earned in the City; and

WHEREAS, the City recently adopted a Master Telecommunications Infrastructure Ordinance, Ordinance No. 1036, codified at Chapter 12.36 of the Canby Municipal Code, which governs the issuance of such franchises and provides general terms and conditions applicable thereto; and

WHEREAS, it is in the best interest of the City and its citizens to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights of way; and

WHEREAS, the Grantee's franchise expired during Public Utility Commission rulemaking with respect to customer service standards applicable to cooperative telecommunications carriers, and it is important that the franchise be granted retroactively to the date of its expiration so that there is no period during which Grantee has been operating without a franchise;

Now, therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Grant of Franchise. The City of Canby ("City") hereby grants to Grantee, a nonexclusive franchise to use the public rights of way within the City to provide telecommunications services, pursuant to Canby Municipal Code ("CMC") Chapter 12.36.

Section 2: Term. The term of this franchise shall be ten (10) years, commencing with the effective date of this Ordinance, and subject to the terms and conditions of this Ordinance.

Section 3: Franchise Area. The Grantee is authorized by this franchise to use public rights of way throughout the City, as the City limits may exist now or in the future.

Section 4: 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 City. The calculation of this fee shall be subject to the rules of the Oregon Public Utility Commission and the applicable provisions of the Oregon Revised Statutes.

(b) Franchise fee payments shall be made quarterly on or before 45 days after the end of the preceding quarter, continuing through the term of this franchise. Payments not received by the 45<sup>th</sup> day of each quarter will be assessed interest at the rate of one and one half percent per month until paid.

(c) The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. Any difference of payment due either the City or Grantee following audit shall be payable within thirty (30) days after written notice to the affected party.

Section 5: Franchise Acceptance, Proof of Insurance. Within thirty (30) days of the passage of this Ordinance by the City Council, the Grantee shall file with the City Administrator (1) a written statement accepting the terms and conditions of this franchise grant, and (2) proof of the insurance required by Section 12.36.080.H of the Canby Municipal Code. Timely filing of such acceptance and proof of insurance shall be a condition of this franchise becoming effective.

Section 6: 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.

Section 7: Customer Service Standards.

(a) Grantee recognizes that customer service is an important consideration of the Grantor in connection with this franchise grant. Grantee agrees to maintain appropriate and detailed records which document the following performance statistics:

1. Number of telephone calls to Grantee's customer service center;
2. Number of visitors to Grantee's customer service center;
3. Number of written service orders;
4. Number of written customer complaints, nature of those complaints, and manner in which such complaints were resolved; and
5. Trouble ticket statistics showing number and nature of trouble with Grantee's services or facilities.

(b) Grantee shall report to the City annually, in writing, concerning each of the above service categories. Grantee shall advise as part of its report what corrective action is to be taken to resolve any complaints submitted by customers or the Grantor. The Grantor may in its discretion require the submission of quarterly written progress reports by Grantee, until such time as the Grantor is satisfied that the performance problems have been adequately addressed by the Grantee. Grantee agrees to fully cooperate with Grantor's requests for information relevant to Grantee's performance under this franchise.

(c) Grantor shall have the right to impose financial penalties consistent with Canby Municipal Code Section 12.36.090. Prior to imposing a financial penalty, the Grantor shall cause a written notice to be provided to Grantee, and shall provide an opportunity for a hearing before the City Council if Grantee so requests in writing. Such hearing shall be scheduled no sooner than 30 days following Grantor's written notice of violation to Grantee. The Grantor shall have the further

right to revoke or terminate this franchise consistent with Canby Municipal Code Section 12.36.070, subject to the procedural requirements of the Code.

Section 8: Changes in Law. This franchise authorizes only the provision of "telecommunications services" as that term is defined in Oregon law. The provision of other services by Grantee requires separate authority from the City. This franchise further contemplates a franchise fee payment based on "gross revenues" of the Grantee as that term is currently defined in Oregon law. In the event of changes in applicable laws during the term of this franchise, such that additional services are deemed to be "telecommunications services" and/or additional revenues are eligible for calculation of franchise fees, this Ordinance will operate to authorize Grantee's use of the City's rights of way for provision of the additional services, provided a corresponding change in the calculation of the franchise fee payable to the City is made.

Section 9: Effective date, emergency declared. Based on the City Council's finding above concerning the expiration of Grantee's franchise, an emergency is hereby declared to exist, and this Ordinance shall be effective from June 7, 2000 forward.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on July 5, 2000, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on July 19, 2000, commencing at the hour of 7:30 p.m. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Chauncey F. Seifried  
Chauncey Seifried  
City Recorder - Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19<sup>th</sup> day of July, 2000, by the following vote:

YEAS 5

NAYS 0

Scott Taylor  
Scott Taylor, Mayor

ATTEST:

Chauncey F. Seifried  
Chauncey Seifried  
City Recorder - Pro Tem