

ORDINANCE NO. 16-03

AN ORDINANCE GRANTING TO COASTCOM , INC. , AN OREGON CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON AND UNDER THE RIGHTS OF WAY OF THE CITY OF ASTORIA, CLATSOP COUNTY, OREGON, TELCOMMUNICATIONS FACILITIES FOR SERVICE TO THE CITY OF ASTORIA, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THIS ORDINANCE.

THE CITY OF ASTORIA ORDAINS AS FOLLOWS:

Section 1. Grant of Franchise. The City hereby grants to CoastCom, Inc., an Oregon corporation, hereafter "CoastCom," the privilege to operate Utility Facilities in, under, along, over and across Rights of Way within the City, for the purpose of providing Communications services to the inhabitants of the City and persons and corporations beyond the limits thereof.

Section 2. Definitions.

"Utility facility" or "facilities" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

"Communications services" means any service provided for the transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

"Gross Revenue" means any revenues received from utility operations within the City of Astoria less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer, or revenue from joint pole use.

"Rights of Way" mean the present and future streets, alleys and other public ways.

Section 3. Term. The term of this Franchise shall commence on the date of acceptance by CoastCom, as set forth in Section 4 for ten (10) years or until cancelled as provided herein.

Section 4. Acceptance by CoastCom Networks, Inc. Within sixty (60) days after the passage of this ordinance by the City, CoastCom shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

Section 5. Non-Exclusive Franchise. The right to use and occupy the Rights of Way shall be nonexclusive and the City reserves the right to use the Rights of Way for itself and to grant others the right to use its rights of way.

Section 6. City Regulatory Authority. CoastCom shall comply with the Charter and all ordinances, rules and regulations adopted by the City. The City reserves its right to amend or adopt additional ordinances rules and regulations as may be desirable in the interests of its citizens in the exercise of its authority as an Oregon home rule city.

Section 7. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by CoastCom of its Utility Facilities. CoastCom 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 CoastCom's use of the Rights of Way within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. Notwithstanding any provision hereof to the contrary, CoastCom shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

Section 8. Annexation.

- 8.1 Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by CoastCom located within any Rights of Way of the annexed territory shall thereafter be subject to all of the terms hereof.
- 8.2 When any territory is approved for annexation the City shall, within ten (10) working days after passage of the ordinance approving the annexation, provide a copy of the City's ordinance approving the annexation to CoastCom.

Section 9. Planning, Design, Construction and Installation of Company Facilities. All Utility Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations. Any maintenance, operation, upgrading, and relocation may only be done in compliance with the applicable law and the ordinances of the City of Astoria.

Section 10. Vegetation Management. CoastCom or its contractor may prune all trees and vegetation which overhang the Rights of Way, whether such trees or vegetation originate within or outside the Rights of Way, to prevent the branches or limbs or other part of such trees or vegetation from interfering with CoastCom's Utility Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species

that are fast-growing and problematic. Nothing contained in this Section shall prevent CoastCom, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

Section 11. Insurance. At all times during the term of this Franchise, CoastCom, at its own cost and expense, shall provide the insurance specified in this section.

11.1 Within 30 days of the effective date of this Franchise, CoastCom shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that CoastCom's insurance complies with this section.

11.2 Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, CoastCom shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. CoastCom shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

11.3 During the term of this contract, CoastCom shall maintain in force, at its own expense, the following insurance:

- (1) Workers' compensation insurance for all subject workers; and
- (2) General liability insurance written on an occurrence basis, in amounts not less than the limitations on liability for local public bodies provided in ORS 30.272 and ORS 30.273, which coverage shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to CoastCom's activities pursuant to this Franchise.

Section 12. Compensation.

12.1 In consideration of the rights, privileges, and franchise hereby granted, CoastCom shall pay to the City from and after the effective date of the acceptance of this franchise, seven percent (7.0%) of its gross revenues derived from within the corporate limits of City. Payment shall be made to the City on a quarterly basis on January 1st, April 1st, July 1st and October 1st of each year. All amounts due under this Section 12 shall be subject to review by the City; and CoastCom shall provide any information reasonably requested by City to conduct such review; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies CoastCom of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount to the maximum allowed by state law. The City shall provide CoastCom with prior written notice of such increase following adoption of the change in percentage by the City.

The increase shall be effective sixty (60) days after City has provided such written notice to CoastCom.

- 12.2 Upon thirty (30) days' notice and in the event any law or valid rule or regulation applicable to this Franchise limits or increases amount provided herein as a the Franchise Fee, or as subsequently modified, CoastCom agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher or lower permissible amount, then CoastCom shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.
- 12.3 The franchise fee shall be in addition to the City's annual Utility Permit fee, Astoria Code § 2.700 *et seq.*, to the extent such fee is reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers.
- 12.4 CoastCom shall maintain a current name and telephone number for a contact person to address any questions by the City concerning compensation due the City or provision of services within the City.
- 12.5 CoastCom shall provide an annual report commencing April 1, 2016 and each April 1st thereafter, Licensee shall submit to the City Council an annual written report consisting of the following: (a) Summary of CoastCom's activities during the previous year, including any operational changes or improvements to services within the City; (b) Planned changes for the current year, including any operational changes or improvements to property or structures related to services within the City; (c) CoastCom's Gross Income for the previous year and a projection of Gross Income for the current year.

Section 13. Continuous Service. CoastCom shall maintain and operate an adequate system for Communication Services in the City. CoastCom shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall CoastCom be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of CoastCom through no fault of its own.

Section 14. Renewal. At least 120 days prior to the expiration of this Franchise, CoastCom and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. CoastCom shall have the continued right to use the Rights of Way of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

Section 15. No Waiver. Neither the City nor CoastCom shall be excused from complying with any of the terms and conditions of this Franchise 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.

Section 16. Transfer of Franchise. CoastCom shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing.

Section 17. Amendment. At any time during the term of this Franchise, the City, through its City Council, or CoastCom may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and CoastCom and formally adopted as an ordinance amendment.

Section 18. Non-Contestability – Breach of Contract.

18.1 Neither the City nor CoastCom will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any Court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall CoastCom be precluded from seeking relief from the Courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

18.2 In the event CoastCom or the City fails to fulfill any of their respective obligations under this Franchise, the City, or CoastCom, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

Section 19. Notices.

19.1 Unless otherwise specified herein all notices from CoastCom to the City pursuant to or concerning this Franchise shall be delivered to:

The Astoria City Manager
1095 Duane Street
Astoria, OR 97103

19.2 Unless otherwise specified herein, all notices from the City to CoastCom pursuant to or concerning this Franchise shall be delivered to:

CoastCom, Inc.,
151 E Olive Street
Newport, OR 97365

19.3 Either party may change their notice address by written notice to the other.

Section 20. 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 jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, 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.

Section 21. Non-Discrimination. . It is the policy of the City of Astoria that no person shall be denied the benefits of or be subject to unlawful discrimination in any City program, service, or activity on the grounds of age, disability, race, religion, color, national origin, sex, sexual orientation, gender identity/expression. Contractor, its employees, agents and subcontractors shall comply with this policy.

Section 22. Repeal of Ordinance. Upon the effective date hereof, Ordinance No. 08-03 of the City of Astoria, as extended, is repealed.

Section 23. Effective Date. This ordinance shall take effect thirty (30) days after its enactment by the Council and approval by the Mayor, but shall become null and void unless within thirty (30) days after such effective date CoastCom shall file with the City CoastCom's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

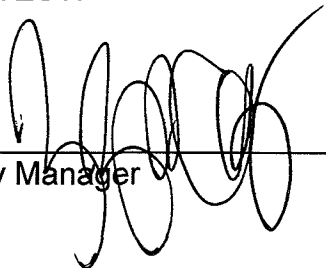
ADOPTED BY THE CITY COUNCIL THIS 21ST DAY OF MARCH, 2016.

APPROVED BY THE MAYOR THIS 21ST DAY OF MARCH, 2016.



Mayor

ATTEST:



City Manager

ROLL CALL ON ADOPTION	YEA	NAY	ABSENT
Councilor Nemlowill	X		
Herzig	X		
Price	X		
Warr	X		
Mayor LaMear	X		