

A BILL FOR AN ORDINANCE REPEALING) ORDINANCE BILL NO. 2022-02
AND REPLACING ORDINANCE BILL NO.)
1999-11, AN ORDINANCE GRANTING A) ORDINANCE NO. 2978
FRANCHISE TO CENTURYTEL OF OREGON,))
INC D.B.A. CENTURYLINK ON BEHALF OF)
ITSELF AND ITS OPERATING AFFILIATES)
TO OPERATE AND MAINTAIN A)
TELECOMMUNICATIONS SYSTEM IN THE)
CITY OF LEBANON, OREGON.)

WHEREAS, CenturyTel d.b.a. CenturyLink (“CenturyLink”), is a regulated public utility that provides Telecommunication system (the “System”) to the citizens of the City of Lebanon (the “City”) and other surrounding areas; and

WHEREAS, providing telecommunication systems requires the installation, operation and maintenance of telephone poles and other related facilities to be located within the public ways of the City; and

WHEREAS, the City desires to set forth the terms and conditions by which CenturyLink shall use the public ways of the City.

NOW, THEREFORE, be it ordained by the City as follows:

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 Franchise Ordinance by the City, CenturyLink shall file an unqualified written acceptance thereof with the City; otherwise the Franchise and the rights granted herein shall be null and void.

SECTION 3. Term. The initial term of this Franchise is ten (10) 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 (“Term”) 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. Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times and with sufficient notice to CenturyLink, any portion of CenturyLink’s system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of CenturyLink records relevant to compliance with any terms of this Franchise at all reasonable times, but no more than once per year. CenturyLink agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner. The cost of such

audit shall be paid by the City unless there is a discrepancy of at least 5% between the fees paid to the City and the fees that CenturyLink should have paid to the City, in which case the cost of the audit shall be paid by CenturyLink. 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, and CenturyLink shall comply with, such additional ordinances and regulations as the City may deem necessary to adopt 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, damage, or expenses 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 solely 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 Oregon, 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 \$5,000,000 per occurrence and aggregate. 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 authority of this Franchise shall be used, constructed and maintained in accordance with applicable law and shall meet applicable industry safety and performance standards.

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 of 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 with other existing public and private users of 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.

10.6 Nothing in this Franchise 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. If at any time the City requests CenturyLink to relocate any distribution line service connection, or other facility installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, or water mains, such relocation shall be made by CenturyLink at its expense. City will give CenturyLink sufficient time, no less than sixty (60) days' notice of such project that may require CenturyLink to relocate. CenturyLink is not obligated hereunder to relocate any facilities at its expense, which were installed in private easements obtained by CenturyLink, the underlying fee of which was, at some point subsequent to installation, transferred to the City. Following relocation, all property shall be restored to substantially its former condition by CenturyLink at its expense.

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 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 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, provided that it pays the City the cost of removal of the Facilities where such removal is necessary for completion of City's construction.

SECTION 12. Vegetation Management. CenturyLink shall have the authority to, at its own expense, 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 assignees, shall pay the City from and after the date of the acceptance of this Franchise an amount equal to the maximum fee allowed by ORS 221.515 or any successor statute, currently 7% (seven percent) of the monthly recurring revenues received for basic local exchange service within the City for services listed in Appendix A, less net uncollectibles, 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.

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: (A) to respond to the City, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of the default, such default cannot be cured within the thirty (30) day period, diligently initiate reasonable steps satisfactory to the City to remedy such default and notify the City of the steps being taken and the projected date that they will be completed, which shall not exceed an additional thirty (30) days unless otherwise agreed to in writing by the City.

14.3 In the event that CenturyLink fails to respond to the notice described in subsection 14.1 pursuant to the procedures set forth in subsection 14.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 14.1(C) above, then the City shall schedule a public hearing if it intends to continue its investigation into the default. The City will provide CenturyLink at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and will provide CenturyLink the opportunity to be heard.

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 Franchise, 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 Franchise, 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 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 Franchise 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 Franchise 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 Lebanon
ATTN: Finance Director
925 S. Main St
Lebanon, OR 97355

To CenturyLink:
CenturyLink
ATTN: ROW/NIS Manager
100 CenturyLink Drive
Monroe, LA 71203

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. Notwithstanding the foregoing, if a determination that a provision of this Agreement is illegal, invalid, or superseded by other lawful authority has the effect of destroying a party's substantial expectations under this Agreement, the party may terminate this Agreement.


Passed by the Lebanon City Council by a vote of 6 for and 0 against and approved by the Mayor this 9th day of February 2022.

CITY OF LEBANON, OREGON



Paul R. Aziz, Mayor
Jason Bolen, Council President


ATTESTED BY:



Kim Scheafer, MMC, City Recorder

ACCEPTED BY CENTURYLINK:

CenturyTel of Oregon, Inc. d/b/a CenturyLink

BY: 

TITLE: SV MGR
DATE: 04 14 22

Appendix A

Service categories included in revenue for calculation of Franchise fee:

1. Business Local Access—including Flat Rate, Multiparty, and Extended Area Service
2. Business Measured Usage Local Access Service
3. Private Branch Exchange (PBX) Trunk Service
4. Multiline or Complex Business Service (to the extent not covered by 1-3)
5. Flat Usage Local Access Trunks
6. Low Income Telephone Assistance Program Local Access
7. Measured Rate Local Access Trunk Usage
8. Message Rate Local Access Trunk Usage
9. Public Access Line (PAL) Service
10. Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service
11. Residential Measured Usage

A non-exclusive listing of categories of revenue not representing the retail sale of basic local exchange services, and therefore excluded from the calculation of any fee due to the City under this Agreement; provided that nothing in this Agreement shall preclude the City from regulating or charging fees for any of the services listed below pursuant to other lawful authority that may be available to the City:

1. Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks
2. Bad debt write-offs and customer credits
3. Revenue from directory advertising
4. Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including but not limited to support for the hearing impaired
5. Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments
6. Revenues from Internet access
7. Revenues from digital or other electronic content, such as computer software, music and video downloads
8. Revenues from equipment sales, rentals, installation and maintenance
9. Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service

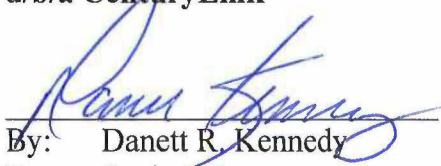
**CITY OF LEBANON, OREGON
ORDINANCE NO. 2978**

AN ORDINANCE RELATING TO MANAGEMENT OF THE PUBLIC RIGHTS-OF-WAY, GRANTING TO CENTURYTEL OF OREGON, INC, D/B/A CENTURYLINK, AN OREGON CORPORATION, A NON-EXCLUSIVE AND REVOCABLE FRANCHISE TO INSTALL, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN, ON, OVER, UPON, ALONG, AND ACROSS PUBLIC RIGHTS-OF-WAY OF THE CITY OF LEBANON, OREGON PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS WITH RESPECT TO SUCH FRANCHISE; PROVIDING FOR SETTING AN EFFECTIVE DATE AND CONDITIONS.

ACCEPTANCE OF FRANCHISE


CenturyTel of Oregon, Inc. d/b/a CenturyLink accepts and agrees to comply with the terms, conditions, and obligations of the above-referenced Franchise, which was adopted by the City Council and approved by the Mayor of the City of Lebanon, Oregon on February 9, 2022.

**CenturyTel of Oregon
d/b/a CenturyLink**


By: Danett R. Kennedy
Its: Senior Manager

STATE OF COLORADO _____)
)
COUNTY OF Broomfield)
)

SIGNED AND SWORN TO BEFORE ME on this the 14 day of ~~February~~ April,
2022 by Danett R. Kennedy.



Notary Public in and for the State of Colorado

MEGAN NAYLOR
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20224008984
MY COMMISSION EXPIRES MAR 4, 2026

2/14/2022



City of Lebanon
ATTN: Matt Apken
Finance Director
925 S. Main Street,
Lebanon, Oregon, 97355.

SUBJECT: City of Lebanon Franchise Agreement

Mr. Apken:

CenturyTel of Oregon d/b/a CENTURYLINK QC ("CenturyLink") has signed the franchise agreement and the acceptance of franchise. The franchise agreement and acceptance of franchise are included with this letter.

Sincerely yours,

Mary Hutton
NIS Real Estate
CenturyLink
Mary.Hutton@Lumen.com
P812851