

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO MCI COMMUNICATIONS SERVICES, INC. A NON-EXCLUSIVE FRANCHISE TO USE THE PUBLIC WAY TO CONSTRUCT AND MAINTAIN PUBLIC COMMUNICATION FACILITIES WITHIN THE CITY OF EUGENE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. As used in this Ordinance, the following words and phrases mean:

City: The City of Eugene, Oregon.

City Manager: The City Manager of the City or his or her designee.

Communications facilities: All conduits and associated structures owned by Grantee for use by Grantee in providing telecommunication services.

Grantee: MCI Communications Services, Inc., its successors and assigns.

Public way: Any street, road, alley, right-of-way, pedestrian or bicycle easement or utility easement for public use that is controlled by City.

Section 2. Subject to the provisions and restrictions of this Ordinance and the Eugene Code, 1971, City grants to Grantee the non-exclusive privilege to use the public way to construct and maintain communication facilities within the corporate limits of the City.

Section 3. It shall be Grantee's responsibility to locate and avoid all utilities located within Grantee's construction area, and Grantee shall be liable for any costs to repair or replace any utilities which may be damaged due to Grantee's construction or location of its communication facilities. Subject to the City Manager's authority to prescribe which public ways will be used and the location within the public way, it shall be lawful for Grantee to make all necessary excavations in any public way for the purpose of constructing and maintaining its communication facilities. Grantee's use of the public way shall comply with the standard specifications of the City, including, but not limited to, the City of Eugene Manual on Traffic Control Devices, Signing, etc. for Construction and Maintenance on Streets and Highways, and the City of Eugene Policies and Procedures: Utility and Right-of-Way Cuts, Construction Within and Use of the Public Way, and all other applicable Federal, State, and local laws, rules, and regulations. Grantee shall do no work affecting the public way without first obtaining the permits required by the City, which may include plan submittal, approval and the payment of fees before work begins. Grantee shall furnish all necessary material and labor to install and maintain its communications facilities at its own expense.

Section 4. Nothing in this Ordinance shall be construed in any way to prevent the City from constructing and maintaining any public improvement in any public way. In its construction and maintenance of public improvements, the City shall endeavor not to obstruct or prevent the use by Grantee of its communication facilities.

Section 5. Whenever any of Grantee's communications facilities shall unnecessarily inconvenience the public or property owners, the City may require the removal or change of location of any such communications facilities at Grantee's expense. In such event, City shall use its best efforts to find for Grantee acceptable alternative public way space within which Grantee may relocate its communications facilities.

Section 6. Should it ever become necessary to temporarily rearrange or temporarily remove Grantee's communications facilities at the request of a private person or business, Grantee shall perform such rearrangement or removal as expeditiously as possible upon receipt of reasonable written notice from the person or business desiring the temporary change of location of the communications facilities. The notice shall:

- (a) Be approved by the City Manager;
- (b) Detail the route of movement;
- (c) Provide that the costs incurred by Grantee in making the temporary change be borne by the person or business giving said notice,
- (d) Provide that the person or business giving the notice shall indemnify and hold harmless the Grantee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary change of the Grantee's communications facilities; and
- (e) If required by Grantee, be accompanied by a cash deposit or a good and sufficient bond to pay any and all of the Grantee's estimated costs as estimated by Grantee.

Section 7. Grantee shall at all times maintain all of its communications facilities in a good state of repair, and shall subscribe to a utility notification and locate service. If Grantee ceases to make use of its communications facilities within the public way for the purposes authorized by this franchise for a continuous period of six months or more, the facilities shall be deemed abandoned. Upon 90 days written notice to Grantee at its address indicated in its acceptance of this Ordinance, City may require Grantee to remove the facilities and restore the public way at Grantee's sole cost and expense. If Grantee fails to remove the facilities and restore the public way within the 90-day period, City may, at its option and in its sole discretion, remove the facilities from the public way and require Grantee to pay for the full cost of removal and restoration of the public way, or City may assume possession and ownership of the facilities. If Grantee removes the facilities from the public way but fails to restore the public way to its prior condition, City may complete the repairs and bill Grantee for the full cost thereof. Grantee must notify City if it sub-leases its facilities to a provider that is not wholly owned by Grantee.

Section 8. Grantee shall defend, indemnify and save harmless the City of and from any and all damages of any kind or character growing out of or arising by reason of the maintenance of the Grantee's communications facilities in the City.

Section 9. In consideration of the privileges and franchise granted, Grantee shall pay annually by February 28 each calendar year an amount equal to \$4.00 per linear foot of public way used. To the extent permitted by the Oregon Public Records Law, City shall protect from public disclosure Grantee's proprietary build-out plans.

Section 10. With each franchise fee payment, Grantee shall furnish a sworn statement setting forth the amount and calculation of the payment. The payment of the franchise fee shall not be credited toward the payment of property taxes or payments in lieu thereof, nor toward any sales or income tax adopted by the City, nor toward any permit fees required by the Eugene Code, 1971. City shall have the right to audit Grantee's records to verify that the franchise fee has been correctly computed and paid by Grantee. Grantee shall reimburse City for the reasonable costs of such audit if the audit discloses that Grantee has paid 95% or less of the fee owing for the period of the audit.

Section 11. Grantee shall not transfer or assign any of its rights, privileges or obligations, or any parts thereof, under this franchise without the prior written approval of City. Such consent shall not be unreasonably withheld or delayed; provided, however, that Grantee shall have the right, without City's consent, to assign or transfer this Agreement, in whole or in part, to any parent, subsidiary or affiliate of Grantee, or to any person, firm or corporation which shall control, be under the control of, or be under common control with Grantee, or to any corporation into which Grantee may be merged or consolidated or which purchases all or substantially all of the assets or stock of Grantee, and Grantee shall provide City prompt written notification of any such assignment or transfer.

Section 12. Grantee shall at all times during the period of this franchise, be subject to all lawful exercise of the police power of City, and shall comply with all applicable federal, state, and local laws, rules, ordinances and regulations.

Section 13. If Grantee fails to comply with or perform any of the requirements imposed on it by this franchise and City gives written notice specifying the nature of Grantee's default and demanding that such default be remedied within thirty (30) days from receipt of such notice, the rights and privileges granted by this franchise may be terminated and annulled by City if Grantee fails to remedy its default within such 30-day period; provided, however, where a default cannot reasonably be cured within thirty (30) days, if Grantee shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for such reasonable period of time as may be necessary to complete such cure.

Section 14. Nothing contained in this franchise shall give Grantee any credit against any non-discriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within City, or against any local improvement assessment imposed on

Grantee, or against any permit fees or inspection fees required by the construction codes or other ordinances of City which are or may hereafter be adopted.

Section 15. This franchise shall be governed by and interpreted in accordance with the laws of the State of Oregon without giving effect to its principles of conflicts of laws. Any suit filed to resolve a controversy relating to this franchise shall be instituted in Lane County Circuit Court or the federal District Court for Oregon, Eugene Division.

Section 16. If any part of this franchise is determined to be invalid, illegal or unenforceable, the remainder of this franchise shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 17. Subject to the provisions of Section 18 of this Ordinance, the privileges and franchise herein granted shall continue and be in force for a period of twenty (20) years from and after the date this Ordinance becomes effective; provided, however, that either City or Grantee may, upon at least thirty (30) days written notice to the other prior to the expiration of each five (5) year period from the effective date of this franchise, open this agreement to negotiate provisions therein. The negotiations and dispute resolution, if any, shall be governed by the principle that, to the extent possible, the terms of this franchise shall be consistent with local, state and federal law in existence at the time of re-negotiation.

Section 18. If at any time during the term of this franchise Grantee receives revenue from the communications facilities constructed and maintained under the terms of this Ordinance from one or more customers within the City of Eugene, the rights and privileges granted herein shall terminate, and Grantee's use of the public way shall be subject to the provisions of Sections 3.400 through 3.430 of the Eugene Code, 1971, with which Grantee shall promptly comply.

Section 19. This Ordinance shall take effect and be in force from and after its passage and approval and acceptance by Grantee. Grantee shall, within thirty (30) days of the passage by the City Council of this Ordinance, file with the City Recorder its written acceptance of a summary of the terms and conditions of this Ordinance.

Passed by the City Council this
___ day of _____, 2014

Approved by the Mayor this
___ day of _____, 2014

City Recorder

Mayor