

ORDINANCE NO. 1354

AN ORDINANCE GRANTING A FRANCHISE TO QWEST COMMUNICATIONS DBA: CENTURYLINK QC ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF TILLAMOOK, OREGON

The City hereby ordains that it is in the public interest to grant Qwest Communications, DBA: CenturyLink QC ("CENTURYLINK"), a franchise to operate a telecommunications system ("THE SYSTEM") in the City of Tillamook, Oregon ("THE CITY"), 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 TEN (10) years commencing on the date of Acceptance by CenturyLink as set forth above in Section 2 and shall thereafter renew only with the written consent of each party.

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 a year 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 Oregon Public Records 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.

SECTION 6. City Regulatory Authority. The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary 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.

CenturyLink agrees to comply with any current or new ordinances, rules, and regulations of the City. Specifically, CenturyLink agrees to comply with the provisions of Tillamook City Code Chapter 91.

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 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, and pay any nondiscriminatory permitting fees required by City ordinances, resolutions, or regulations, 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 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 as stated in Chapter 91 referring to The City Street Design Standards and in abidance to Chapter 93 referring to the City Tree Ordinance.

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 or Removal of Facilities.

11.1 CenturyLink shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any Facilities within the Public Rights-of-Way when lawfully requested to do so in writing by the City.

11.2 Nothing in this Section 11 shall be deemed to preclude CenturyLink from requesting advance reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements..

11.3 The City shall provide at least one hundred twenty (120) Days' written notice of the time by which CenturyLink must remove, relocate, change, alter or underground its Facilities. The City may grant extensions upon CenturyLink's request. If CenturyLink fails to remove, relocate, alter, or underground any Facility as requested by the City and by the date established by the City, CenturyLink shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays. Upon such failure, the City may cause the Facility to be removed, relocated, altered, or undergrounded at CenturyLink's sole expense and shall use qualified personnel or contractors consistent with applicable State and Federal safety laws and regulations. Upon receipt of a detailed invoice from the City, CenturyLink shall reimburse the City for the costs the City incurred within thirty (30) Days. Notwithstanding the foregoing, CenturyLink shall in all cases have the right to abandon the Facilities with the City's written authorization.

11.4 Within one hundred twenty (120) Days following written notice from the City or at a later date agreed upon by the parties, CenturyLink or other Person who owns, controls, or maintains any unauthorized system, Facility, or related appurtenances within the Public Rights-of-Way shall, at its own expense, remove such system, Facilities and/or appurtenances from the City Public Rights-of-Way. A system, Facility, or appurtenance is subject to removal under this Section in the following circumstances:

- A. One (1) year after the expiration or termination of CenturyLink's Franchise Agreement, unless the City has provided written authorization for abandonment in place.
- B. Upon abandonment of a Facility within the Public Rights-of-Way. A Facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) Days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the Facility is being replaced. The City shall contact CenturyLink before concluding that a Facility is abandoned. A Facility may be abandoned in place and not removed if the City authorizes such abandonment and non-removal in writing and there is no apparent risk to the public safety, health, or welfare.
- C. If the Facility was Constructed or installed without the appropriate prior authority at the time of Construction or installation.
- D. If the Facility was Constructed or installed at a location not authorized by CenturyLink's Franchise or other legally sufficient permit.

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 an amount equal to SEVEN percent (7%) 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 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 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. 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 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. 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 Tillamook
2211 Third Street, Suite A
Tillamook, OR 97141

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.

CONSIDERED and APPROVED this _____ day of _____, 2019.

The City of Tillamook, Oregon

By: _____,
Mayor

Attest: _____, City Recorder

ACCEPTED BY CENTURYLINK:

Qwest Communications d/b/a CenturyLink QC

BY: _____

TITLE: _____

DATE: _____

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. Flat Usage Local Access Trunks
4. Low Income Telephone Assistance Program Local Access
5. Measured Rate Local Access Trunk Usage
6. Message Rate Local Access Trunk Usage
7. Public Access Line (PAL) Service
8. Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service
9. 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:

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
10. Revenues from private line services not for switched local access service