

ORDINANCE NO. 832

AN ORDINANCE GRANTING TO CENTURYTEL OF EASTERN OREGON, INC. DOING BUSINESS AS CENTURYTEL A FRANCHISE AND NON-EXCLUSIVE PRIVILEGE TO USE PUBLIC RIGHTS OF WAY FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING TELECOMMUNICATIONS FACILITIES WITHIN THE TOWN OF LAKEVIEW; REPEALING ORDINANCE NO. 757 IN ITS ENTIRETY AND DECLARING AN EMERGENCY.

THE COUNCIL OF THE TOWN OF LAKEVIEW ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to allow CenturyTel to construct, install, locate, maintain, operate Telecommunication Facilities and provide to the residents of the Town of Lakeview Telecommunication Services and providing for the rights, terms, conditions and responsibilities thereof.

Section 2. Definitions. For the purpose of this Ordinance, the following definitions are hereby established:

(a) Town. The Town of Lakeview, Oregon, which includes all property presently within the incorporated Town limits and all additional property which may be included within the boundaries of the Town in the future through annexation proceedings.

(b) Town Council. The governing body of the Town.

(c) Town Manager. The administrative manager of the Town of Lakeview or his or her designee.

(d) Town Construction Standards. The construction standards utilized by the Town of Lakeview dated August 16, 2005 as currently in effect or which may be amended from time to time.

(e) Grantee. CenturyTel of Eastern Oregon, Inc., doing business as CenturyTel.

(f) Franchise. The authorization as contained in this Ordinance, or any renewal hereof,

issued by the Town as franchising authority, which authorizes construction, maintenance, repair and operation of Telecommunication Facilities by CenturyTel in the public rights of way located within the Town of Lakeview.

(g) Telecommunication Facilities. All underground, surface and/or aerial facilities necessary to provide telecommunications services into, within and through the Town, including without limitation, wires, cables, ducts, poles, guys, anchors, vaults, pedestals, supports, radios, antennas, fixtures, buildings and related equipment.

(h) Telecommunication Services. Data, voice and/or video communications and services, but does not include services provided by radio common carrier, or the provision of cable television (CATV) service.

(i) Public Rights of Way. All streets, avenues, roads, highways, sidewalks or alleys normally accessible to the public which are owned or controlled by the Town.

(j) Public Utility Commission. The Public Utility Commission of the State of Oregon or other authority succeeding to the regulatory powers of the Public Utility Commission of the State of Oregon.

(k) Revenues. Those amounts of money which Grantee receives from its customers within the Town for the sale of exchange access services by Grantee, as authorized by and in accordance with ORS 221.515 and ORS 401.710, under rates, temporary or permanent, authorized by the Public Utility Commission, adjusted for refunds, the net write off of uncollectible accounts, corrections or other regulatory adjustments.

(l) Utility Service. Any electric, water, sewer, gas, geothermal or telecommunication service, whether belonging to the Town or other third party entity and located within the public rights of way within the Town of Lakeview.

Section 3. Grant of Franchise. Subject to the terms and provisions of this Ordinance, the Town hereby grants to Grantee for the term specified in Section 4 of this Ordinance, the following rights and privileges:

- (a) The right to offer, furnish, sell and distribute Telecommunications Services to the Town and to all persons, businesses and industries located within the Town;
- (b) The non-exclusive right to construct, install, locate, maintain, operate and extend to, within and through the Town, all Telecommunication Facilities reasonably necessary to provide Telecommunication Services to persons, businesses and industries within the Town and in the territory adjacent thereto; and
- (c) In connection therewith, the non-exclusive right to make reasonable use of Public Rights of Way as may be necessary to exercise the rights granted herein.

Section 4. Term of Franchise. The term of this Franchise Agreement shall be for a period of ten (10) years commencing July 1, 2007 and ending on June 30, 2017.

Section 5. Acceptance by CenturyTel. Within thirty (30) days after the passage of this Ordinance by the Town, CenturyTel shall file an unqualified written acceptance hereof with the Town Recorder, otherwise this Ordinance and the rights granted herein shall be null and void and shall be repealed by the Town in all respects.

Section 6. Non-Exclusive Franchise. The right to use and occupy the Public Rights of Way of the Town shall be nonexclusive and the Town reserves the right to use the Public Rights of Way for itself or for any other entity that provides a Utility Service to the Town or its residents. However, any other such use of the Public Rights of Way by the Town or otherwise shall not unreasonably interfere with Grantee's Telecommunication Facilities or the rights herein granted.

Section 7. Town Regulatory Authority. In addition to the provisions herein contained, the Town reserves the right to adopt such additional ordinances and restrictions as may be deemed necessary in the exercise of its police power or for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized under the Constitution or the laws of the State of Oregon or by Town Charter or ordinance.

Section 8. Compensation.

8.1 Franchise Fee. In consideration for the grant of this Franchise, Grantee shall collect and remit to the Town a sum equal to seven (7%) percent of Grantee's Revenues.

8.2 Payment Schedule. The Franchise fee due hereunder shall be paid on all Revenues received by Grantee on or after July 1, 2007 and such payment shall be made in quarterly installments due on or before the last day of the month following the end of each calendar year quarter. The first of such payments shall be due on or before October 31, 2007, and continuing in a like manner payable quarterly. All franchise fee payments shall be made payable and directed to the Town of Lakeview at 525 North First Street, Lakeview, Oregon 97630.

8.3 Inspection of Books of Records. Grantee agrees that the Town, upon reasonable notice to Grantee, may review such of its books and records as is reasonably necessary to insure proper payment of the Franchise fee. Notwithstanding anything to the contrary, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Town agrees to treat any information disclosed by Grantee in the inspection process as confidential and only disclose it to representatives and agents of the Town that have a need to know, or in order to enforce the provisions hereof.

8.4 Exclusiveness of Franchise Fee. Payment of the Franchise fee by Grantee is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar taxes,

assessment or excise upon the privilege of doing business or in connection therewith, but does not exempt Grantee from any lawful taxation upon its real property. Grantee shall not be required to pay any additional fee, compensation or consideration, including the free use or construction of telecommunications facilities and equipment, to the Town for Grantee's use of public streets, alleys, or highways, or all of them, and shall not be required to pay any additional tax or fee on the gross revenues that are the measure of the Franchise fee.

Section 9. Insurance and Indemnification.

9.1 Liability Insurance. During the term of this Franchise, Grantee shall maintain public liability and property damage insurance with a combined single limit of not less than one million dollars (\$1,000,000) for injury to persons and damage to property. Such insurance shall be written on an occurrence basis and shall cover all risks arising directly or indirectly out of Grantee's activities under or pursuant to this Franchise. Grantee shall have the right to self-insure for the public liability and property damage insurance coverage required in this Franchise.

9.2 Indemnification. The Town shall not 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 Grantee of its Telecommunication Facilities. Additionally, Grantee shall fully indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Grantee's use of the Public Rights of Way within the Town, and shall pay the Town's reasonable attorneys' fees and litigation costs for any claim, demand or lien brought thereunder. The Town shall: (a) give prompt written notice to Grantee of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (b) permit Grantee to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to Town. Grantee shall not be subject to liability for, or be required to pay, any

settlement made without its consent. Notwithstanding any provision hereof to the contrary, Grantee shall not be obligated to indemnify, defend or hold the Town 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 Town or any of its officers or employees.

9.3 Scope of Indemnification. The obligation of Grantee to indemnify, hold harmless, and defend the Town as specified in Section 9.2 above shall include the obligation to indemnify and defend the Town's employees, officers, agents and elected officials to the same extent as Grantee is obligated to indemnify and defend the Town pursuant to Section 9.2 above in connection with Grantee's use of the Public Rights of Way within the Town, and such obligation to indemnify shall survive any termination of this Franchise for actions that occurred during the term of this Franchise.

Section 10. Annexation. Upon the annexation of any territory to the Town, the rights granted herein shall extend to the annexed territory to the extent the Town has such authority. All Telecommunication Facilities owned, maintained, or operated by Grantee located within any Public Rights of Way of the annexed territory shall thereafter be subject to all of the terms hereof.

When any territory is approved for annexation to the Town, the provisions of ORS 222.005, as now in effect or which may be amended from time to time, shall apply.

Section 11. Business Operations.

11.1 Conduct of Business. Grantee may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable Grantee to exercise its rights and performance obligations under this Franchise. However, such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Oregon.

11.2 Compliance with Laws. Grantee shall comply with all applicable laws and regulations in the conduct of its business within the Town, including without limitation, all applicable rules and

regulations adopted by the Public Utility Commission.

11.3 Compliance with Tariffs. Grantee shall furnish services to the Town and to all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the Public Utility Commission or Federal Communications Commission, to the extent such services are subject to tariff.

11.4 Applicability of Tariffs. The Town and Grantee acknowledge and agree that provisions of Grantee's tariffs on file and in effect with the Public Utility Commission or Federal Communications Commission are controlling over any inconsistent provision in this Ordinance dealing with the same subject matter.

Section 12. Service Standards.

12.1 Construction Codes. All Telecommunication Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

12.2 Maintenance. All Telecommunication Facilities shall be located so as to cause minimum interference with the Public Rights of Way of the Town and shall be constructed, installed, maintained, cleared of vegetation, inspected and renovated or replaced in accordance with applicable rules, ordinances and regulations of the Town. All inspections of Telecommunication Facilities shall be in compliance with OAR 860-024-0011 or its successor rule and all vegetation removal or trimming shall be in compliance with OAR 860-024-0016 or its successor rule.

If, during the course of work on its Telecommunication Facilities, Grantee causes damage to or alters the Public Rights of Way or public property, Grantee shall, at its own cost and expense and in a manner approved by the Town, replace and restore the damaged area to a condition comparable to that which existed before the work commenced and in compliance with Town Ordinance No. 814.

12.3 Joint Use of Trenches. Subject to compliance with Town Ordinance No. 814, Grantee shall have the right to excavate in the Public Rights of Way. Before installing new underground conduits or replacing existing underground conduits, Grantee shall first notify the Town of such work and shall allow the Town, at its own expense, to share the trench of Grantee to lay its own conduit therein, provided that such action by the Town will not unreasonably interfere with Grantee's Telecommunication Facilities or delay project completion.

12.4 Notification. Before commencing any street improvements or other work within a Public Right of Way that may affect Grantee's Telecommunication Facilities, the Town shall give notice to Grantee.

12.5 No Interference. No structures, buildings or signs shall be erected below Grantee's facilities or in a location that prevents Grantee from accessing or maintaining its facilities.

12.6 Excavation and Construction. All construction, excavation, maintenance and repair by the Grantee shall be done in a timely and expeditious manner, which minimizes inconvenience to the public and individuals. Additionally, all construction, excavation, maintenance, and repair work done by Grantee within Public Rights of Way, except as to the requirement of submitting a cash deposit, performance bond or other security, shall be accomplished in compliance with Sections 5 through 9, and Sections 11, 13 and 14 of Town Ordinance No. 814 and the Town Construction Standards if applicable. The Town may inspect the manner of such work and require remedies as may be necessary to assure compliance with said Ordinances. Additionally, the Town reserves the right to restore the property and remedy damage to Public Rights of Way as caused by Grantee's activities at the expense of Grantee in the event Grantee fails to perform such work within a reasonable time after notice from the Town.

Section 13. Location, Relocation and Removal of Telecommunication Facilities.

13.1 Location of Facilities. For any new construction of Telecommunication Facilities where all existing Utility Services are located underground within a particular Public Right of Way, Grantee, with permission to occupy the same Public Right of Way, must also locate its Telecommunication Facilities underground.

Whenever all new Utility Services are located or relocated underground within a particular Public Right of Way, Grantee shall be required to relocate its Telecommunication Facilities underground concurrently with the other affected utilities to minimize disruption of the Public Right of Way, absent extraordinary circumstances or undue hardship as determined by the Town and consistent with applicable state and federal laws.

13.2 Relocation or Removal of Facilities. Except in the case of an emergency, within one hundred and twenty (120) days following written notice from the Town, Grantee shall, at no expense to the Town, temporarily or permanently remove, relocate, change or alter the position of any Telecommunication Facilities within the Public Rights of Way whenever the Town has determined that such removal, relocation, change or alteration is reasonably necessary for:

- (a) The construction, repair, maintenance or installation of any Town or any other public improvement in or upon any Public Right of Way; or
- (b) The operations of the Town or other governmental entity in or upon the Public Rights of Way require the same; or
- (c) Such removal, relocation, change or alteration is pursuant to a beautification, streetscape or other improvement project undertaken by the Town.

13.3 Removal of Unauthorized Telecommunication Facilities. Within sixty (60) days following written notice from the Town, if Grantee owns, controls or maintains any unauthorized

Telecommunication Facilities within the Public Rights of Way of the Town, Grantee shall at its own expense remove such Telecommunication Facilities from the Public Right of Way. Both parties are required to participate in good faith negotiations on such issues. A Telecommunication Facility shall be deemed to be unauthorized and subject to removal in the following circumstances:

- (a) One year after the expiration or termination of the Franchise as granted herein;
- (b) Upon abandonment of a Telecommunication Facility within the Public Rights of Way of the Town.
- (c) If the Telecommunication Facility was constructed or installed without the appropriate and prior authority of the Town at the time of installation.

Section 14. Renewal of Franchise. At least 120 days prior to the expiration of this Franchise, Grantee and the Town shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use their best faith efforts to renegotiate a replacement Franchise. For a period of one year after the expiration of this Franchise, Grantee shall have the continued right to use the Public Rights of Way of the Town as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise, subject to the continued payment of the Franchise fee specified herein.

Section 15. Transfer of Franchise. Grantee shall not transfer or assign any of its rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the Town shall first give its approval in writing, which approval shall not be unreasonably withheld.

Section 16. Amendment. At any time during the term of this Franchise, the Town, through its Town Council, or Grantee 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 Town and Grantee and formally adopted as an ordinance amendment. If no mutual agreement is reached as to a proposed amendment then this Franchise will continue in an unamended status.

Section 17. Non-Contestability. Neither the Town nor Grantee 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. However, neither Grantee nor the Town shall be precluded from taking any action it deems necessary to resolve differences in interpretation of the Franchise nor shall Grantee be precluded from seeking relief from the Courts in the event Public Utility Commission or Federal Communications Commission orders, rules or regulations, or other applicable law, conflict with or make performance under the Franchise illegal.

Section 18. Jurisdiction and Venue. The Town and Grantee agree that jurisdiction for any dispute between them regarding this Franchise shall lie with the circuit courts of the State of Oregon and that venue for any legal proceeding shall be in the Lake County Circuit Court.

Section 19. Remedies. In the event Grantee or the Town fails to fulfill any of their respective obligations under this Franchise, the Town, or Grantee, whichever the case may be, shall have available to it any and all available legal remedies.

Section 20. Notices. Unless otherwise specified herein, all notices from Grantee to the Town pursuant to or concerning this Franchise shall be delivered to the Town Recorder's Office. Unless otherwise specified herein, all notices from the Town to Grantee pursuant to or concerning this Franchise shall be delivered to the Grantee at the following address: CenturyTel, 8102 Skansie Ave., Gig Harbor, WA 98332, Attn: General Manager, and such other office as Grantee may advise the Town of by written notice.

Section 21. Miscellaneous Provisions.

21.1 Action of Parties. In any action by the Town or Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

21.2 Force Majeure. Grantee shall not be in default hereunder, or in noncompliance with, the provisions of this Franchise, or suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond Grantee's ability to anticipate and control. This provision also covers work delays caused by the unavailability of materials and/or qualified labor to perform the work necessary.

21.3 Attorney Fees. In the event any legal action, proceeding, or suit is filed to enforce or interpret any of the terms and provisions of this Franchise, then the prevailing party in such proceeding, whether on the trial or appellate level, shall be entitled to an award of reasonable attorney fees in addition to costs and disbursements incurred.

21.5 Drawings. Grantee shall provide to the Town a copy of its map showing the location of its Telecommunication Facilities as located within the Town and at no cost to the Town. Additionally, in the case of new construction, such plans shall be submitted to the Town's engineer within sixty (60) days after completion of the construction, in a format mutually acceptable to Grantee and to the Town.

Section 22. 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 23. Emergency. This Ordinance and its purposes being necessary for the preservation of the public peace, health and safety of the citizens of the Town of Lakeview, an emergency is hereby declared to exist and this Ordinance shall take effect immediately upon its adoption by the Town Council.

Section 24. Effective Date. This Ordinance and the Franchise herein granted shall be effective on July 1, 2007.

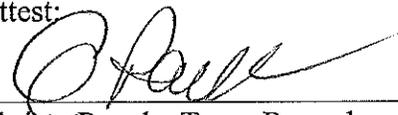
This Ordinance was read by title only and no Council member requested that the Ordinance be read in full and thereafter was adopted by the following vote:

5 In Favor
0 Opposed

Adopted this 22nd day of April, 2008.



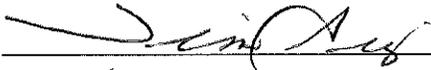
Rick Watson, Mayor

Attest:


Christy Pavola, Town Recorder

The foregoing Ordinance consisting of thirteen (13) pages together with this acceptance page, pertaining to telecommunication services and facilities within the Town of Lakeview, said Ordinance being adopted on April 22, 2008, is approved and accepted by CenturyTel of Eastern Oregon, Inc. in all respects.

CenturyTel of Eastern Oregon, Inc.

By: 

Title: GENERAL MANAGER

Date: 5/3/08

TOWN OF LAKEVIEW

John H. Bogardus, Town Attorney
525 North First Street, Lakeview, Oregon 97630
Telephone (541) 947-3355 Fax (541) 947-4879
E-Mail – bnpc@bogardusandnichols.com

April 8, 2008

Mr. Ray Simms
Town of Lakeview
525 North First Street
Lakeview, Oregon 97630

Hand Delivered

Re: CenturyTel/Town of Lakeview Telecommunications Franchise Agreement

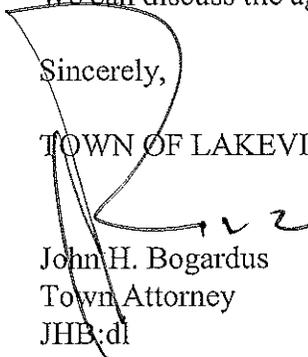
Dear Ray,

Enclosed is a proposed franchise agreement that I have worked out with CenturyTel over the last nine months. In most cases, the areas highlighted in yellow have been the areas of contention. It would be my recommendation to you and the Town Council that the franchise agreement as set forth in ordinance form be adopted by the Council at its April 22, 2008 meeting.

We can discuss the agreement at our next meeting on April 14, 2008.

Sincerely,

TOWN OF LAKEVIEW


John H. Bogardus
Town Attorney
JHB:dl
Enclosure