



ORDINANCE 2021-01

AN ORDINANCE GOVERNING FRANCHISES AND REQUIRING REGISTRATION FOR TELECOMMUNICATION PROVIDERS; AND DECLARING AN EMERGENCY.

THE CITY OF MONROE ORDAINS AS FOLLOWS:

Section 1. Definitions.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations, shall have the meanings given herein. Terms not defined in this Section shall be given the meaning set forth in the Communications Policy Act of 1984, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

Definitions for this Ordinance are as follows:

- A. "Cable Service" means the one-way transmission to subscribers of video programming, or other video, audio or data service using the same means of transmission as used to transmit video programming; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- B. "City Property" means and includes all real property owned by the City, other than the public way and utility easements as those defined herein.
- C. "Conduit" means any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholes, bolts or other facilities used for any telegraph, telephone cable television, electrical or communications conductors or cable facilities.
- D. "Construction" means any activity in the public way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.
- E. "Control" means actual working control in whatever manner exercised.
- F. "Duct" means a single enclosed raceway for conductors or cable.
- G. "Emergency" has the meaning provided in ORS 401.025

H. "Franchise" means an agreement between the City and a grantee which grants a privilege to use the public way and utility easements within the City for a dedicated purpose, for specific compensation and for a specified period of time.

I. "Grantee" means the person to whom or the entity to which a franchise is granted by the City.

J. "Gross" Revenue means all revenue earned by a grantee from operations within the City, including but not limited to service to customers located within the City and other telecommunications providers or other persons who use the grantee's facilities within the City to provide service to customers.

K. "Permittee" means a person to whom, or entity to which, the City has granted a permit to construct or install a telecommunications facility or facilities in the public way.

L. "Person" means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

M. "Private Telecommunications Network" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

N. "Public Way" includes, but is not limited to, any street, road, bridge, alley, sidewalk, trail, path and utility easement, including the subsurface under and air space over these areas. This definition applies only to the extent of the City's right or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public way" does not include City-owned buildings, parks or other property.

O. "Telecommunications Act" means the Communication Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. sec. 151 et. seq.) and as hereafter amended.

P. "Telecommunication Carrier" means a telecommunication utility or a cooperative corporation formed under ORS Chapter 62 that provides telecommunications service as defined in ORS 759.005.

Q. "Telecommunications Provider" means (1) any person that provides telecommunications services to any person or premises within the City; (2) any person that directly or indirectly owns, leases, operates, manages, or otherwise controls telecommunications facilities within the City; (3) any person that is directly or indirectly owned or controlled by any person described in this definition. For purposes of this definition, "owns" or "controls" means that one person or entity owns more than 25% of the stock or assets or has more than 25% common partners, directors or owners with another entity. In addition, any person that leases, purchases or otherwise receives telecommunications service or use of a telecommunications facility for less

than a reasonable price, so as to create a reasonable inference that the two parties did not deal at arm's length, shall be deemed to be owned or controlled by the second party.

R. "Telecommunications Facilities" means the plant and equipment, other than customer premises equipment, used by a telecommunications provider to provide telecommunications services.

S. "Telecommunications Service" means the transmission, for money or other consideration, of telecommunications in electromagnetic, electronic or optical form. It includes, but is not limited to, telephony, data transport, internet service, video and cable television. It does not include: a) one-way broadcast of radio or television signals; b) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996; c) surveying; d) private telecommunications networks that do not use the public way; or e) communications of the customer which take place on the customer side of on-premise equipment.

T. "Telecommunications System" see "Telecommunications Facilities" above.

U. "Telecommunications Utility" has the same meaning as given in ORS 759.005(1).

V. "Utility Easement" means any easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

W. "Utility Facilities" means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right of way of the City and used or to be used for the purposes of providing utility or telecommunication services.

Section 2. Purpose.

The purpose and intent of this Ordinance is to:

A. Respond to increased use of the public way by telecommunications providers and to technological advances in the telecommunications industry;

B. Comply with the 1996 Telecommunications Act as it applies to local governments, telecommunications providers and the services those providers offer;

C. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to businesses, institutions and residents of the City on a competitively neutral basis;

D. Permit and manage reasonable access to the public way of the City for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of the public way held in trust by the City.

E. Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public way are fully compensated by the persons seeking such access and causing such costs;

F. Recognize the public way as a valuable City asset and secure fair and reasonable compensation to the City and its residents for permitting private use of the public way and for physical damage and aesthetic harm to the public way from construction and installation of facilities in the public way;

G. Assure that all telecommunications providers providing facilities and/or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City.

H. Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development; and

I. Assure telecommunications providers that investing in infrastructure in the City is a secure and wise investment, while reserving to the City the ability to respond to new developments in the industry at the time of franchise renewal and by amending its ordinances.

Section 3. Jurisdiction and Management of the Public Way.

A. The City has jurisdiction and exercises regulatory management over the public way whether the City has a fee, easement or other legal interest in the public way and whether the legal interest was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

B. No person may occupy or encroach on a public way or other City property without the permission of the City. The City grants permission to use public way by franchises and permits.

C. The City retains the right and privilege to cut or move any telecommunications facilities located within the public way as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

Section 4. Regulatory Fees and Compensation Not a Tax.

A. The fees provided for in this Ordinance and any compensation charged and paid for use of the public way provided for in this Ordinance are not a tax and are separate from, and in addition to, any and all federal, state, local and City charges as may be levied, imposed or due from a telecommunications provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

Section 5. Overview of Registration and Franchise Requirements.

A. This Ordinance requires all telecommunications providers to register with the City and requires all telecommunications providers who use the public way to obtain a franchise from the City.

B. A telecommunications provider that holds a current, valid franchise from the City may continue to provide the services authorized by its franchise for the duration of the current term of the franchise.

C. Nothing in this Ordinance is intended to override state or federal law, and any provision that would conflict with state or federal law if applied to a particular registrant or grantee shall be unenforceable to the extent of the conflict and only to that extent.

Section 6. Registration Required.

Except as provided in Section 9, all telecommunications providers shall register within thirty (30) days from the effective date of this Ordinance or prior to providing any service to customers within the City. The purpose of registration is to provide the City with accurate and current information concerning the telecommunications providers who offer to provide telecommunications facilities within the City. Applicants shall provide the following information:

A. The appropriate license from the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC).

B. The identity and legal status of the registrant, including the name, address and telephone number of the duly authorized officer, agent or employee responsible for the accuracy of the registration information.

C. The name, address and telephone number for the duly authorized officer, agent or employee to be contacted in case of an emergency.

D. A description of the general types and the locations of telecommunications facilities that the registrant currently owns or leases within the City, a description of the general types and the locations of telecommunications facilities that the registrant intends to construct within the City within two years of the date of registration or filing required by Section 6, and a description of types of the telecommunications service or services (local telephone, long distance telephone; cable service; other telecommunications service; and whether service is to be provided to end users or to other telecommunications providers) that the registrant intends to offer or provide to individuals, firms, businesses or institutions within the City.

Section 7. Registration Fee.

Each application for registration as a telecommunications provider shall be accompanied by a non-refundable registration fee in the amount of \$100. This fee may be waived by the City Administrator on a case-by-case basis.

Section 8. Duration of Registration.

Registration as a telecommunications provider need not be renewed, but the registrant must notify the City Administrator of any change to the information required by Subsections (B), (C)

and (E) of Section 6 and must file annually with the City Administrator an updated version of the information required by Section 6.

Section 9. Exceptions to Registration.

The following telecommunications providers are exempt from registration.

- A. Telecommunications providers that are owned and operated exclusively for its own use by the United States, the State or a political subdivision of the State.

- B. A private telecommunications network, if that network does not occupy any public way of the City.

Section 10. Telecommunications Franchise.

Any telecommunications provider who desires to occupy any public right of way of the City shall first obtain a franchise as provided in this Ordinance. For purposes of this Section, "occupy the public way" means to own, lease, rent or possess the right to make physical changes to a telecommunications facility in the public way, but does not include the use of a telecommunications facility in the public way if such use is limited to providing telecommunications service to customers without any ownership, leasehold or other possessory interest in, or the right to make any physical changes to, the telecommunications facility. Only one franchise is required for a single telecommunications facility that occupies the public way; if an owner leases its facility to another telecommunications provider and the owner has obtained a franchise, the lessee need not also obtain a franchise.

Section 11. Application.

Any person who desires a telecommunications franchise must register as a telecommunications provider and shall file with the City Administrator an application which includes the following information:

- A. The identity of the applicant.

- B. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.

- C. Engineering plans, specifications and a network map of the facilities located within the public rights of way in the City, including the location and route requested for applicant's proposed telecommunications facilities. The City may require the information to be provided in electronic form readable by City computers or may specify another format.

- D. The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.

- E. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.

F. An accurate map showing the location of any existing telecommunications facilities, if any, in the City that applicant intends to use or lease.

Section 12. Application and Review Fee.

An application and review fee of \$500 shall be paid to the City as part of the application filed pursuant to the above Section 11. This fee may be waived by the City Administrator on a case-by-case basis.

Section 13. Determination by the City.

The City Administrator shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. A denial may be appealed to the City Council which may elect to hear the appeal or may elect to appoint a Hearings Officer to hear the appeal and make a report to the City Council, which shall have the final authority.

Section 14. Rights Granted.

No franchise granted pursuant to this Ordinance shall convey any right, title or interest in the public way, but shall be deemed a grant to use and occupy the public way for the limited purposes and term and upon the conditions stated in the franchise agreement.

Section 15. Term of Grant.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of ten years.

Section 16. Franchise Territory.

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be the entire City to be served by the grantee and the public way necessary to serve such area.

Section 17. Franchise Fee.

Each grantee shall pay to the City, on an annual basis and on terms to be determined by the City Council, a franchise fee as follows:

A. A telecommunications carrier shall pay five percent (5%) of its gross revenue derived from exchange access services, as defined in ORS 401.710 or a successor statute, less net collectibles from such revenue.

Section 18. Amendment of Franchise.

Conditions for amending a franchise are as follows:

A. If the City orders the telecommunications provider to locate or relocate its telecommunications facilities in a public way not included in a previously granted franchise, the City shall grant an amendment without further application or additional fee.

B. A new application and amended franchise shall be required of any telecommunications provider that desires to provide a different type of service (e.g., cable, telephony) which was not included in a franchise previously granted by the City. A new application and amended franchise will not be required if a telecommunications provider adds new or enhanced services of the same type authorized by its existing franchise- e.g., a cable service provider offers digital music service as well as video, or a telephonic service provider adds features like call waiting, call forwarding or caller i.d.

Section 19. Renewal Applications.

A grantee that desires to renew its franchise under this Ordinance shall, not less than 180 days before expiration of the current agreement, file an application with the City for renewal of its franchise and shall pay the application and review fee established in Section 12 to cover the cost of the City's review of the application. The application shall include the following information:

A. The information required pursuant to Section 11 of this Ordinance.

B. Any information required pursuant to the franchise agreement between the City and the grantee.

Section 20. Renewal of Franchise.

A. Within ninety (90) days after receiving a complete application for a franchise renewal, the City shall issue a written decision granting or denying the renewal application in whole or in part. If the application is denied, the decision shall state the reasons for denial.

B. The purpose of Subsections (C) and (D) of this Section is to assure telecommunications providers that the City will not arbitrarily refuse to renew a franchise, while reserving to the City the power to adjust the terms and conditions of a franchise in a reasonable manner in response to changes in the law, industry and market.

C. A grantee shall be entitled to a renewal of its franchise for an additional 10-year term, subject to and contingent upon the following conditions:

1. In the City's judgment, the public way has sufficient capacity to accommodate the grantee's existing and proposed facilities;
2. The grantee continues to meet the legal requirements for providing service in the City;
3. The grantee has complied with all the requirements of this Ordinance and its franchise;

4. Applicable federal, state and local laws, rules and policies allow the grantee to continue its operations in the City;

5. The grantee agrees to comply with such additional requirements as may be imposed under Subsection (D) of this Section

D. At the time of renewal of a franchise, City may require grantee to:

1. Pay additional compensation, or pay compensation calculated in a different manner, for the rights granted by the franchise. Any additional or new compensation requirement shall be consistent with the requirements imposed on other similarly situated telecommunications providers at the time of renewal.

2. Comply with any amendments to this Ordinance or other applicable provisions of this Code that the City has adopted since the franchise was granted or was last renewed, whichever is later.

3. Agree to amendments to the franchise based on changes to state or federal law.

E. After the term of the original franchise and any renewals provided for in this Section have expired, a grantee must apply for a new franchise under the same terms and conditions as apply to new franchise applications at the time.

Section 21. Obligation to Cure as a Condition of Renewal.

No franchise shall be renewed until any and all ongoing violations or defaults in the grantee's performance of the franchise, or of the requirements of this Ordinance, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

Section 22. Assignments or Transfers of System or Franchise.

Ownership or control of a majority interest in a telecommunications franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed. The City may attach reasonable conditions to its consent, such as, but not limited to:

A. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all the provisions of the franchise.

B. The approval shall be effective only when the assignee or transferee has demonstrated that it has the legal, technical, financial and other qualifications required by law to own, hold and operate the telecommunications system pursuant to this Ordinance.

Section 23. Revocation or Termination of Franchise.

A franchise to use or occupy public way of the City may be revoked for any of the following reasons:

- A. Construction or operation in the City or in the public way of the City without a construction permit.
- B. Construction or operation at an unauthorized location.
- C. Failure to comply with Section 22 herein with respect to sale, transfer or assignment of a telecommunications system or franchise.
- D. Misrepresentation by or on behalf of a grantee in any application to the City.
- E. Abandonment of aerial telecommunications facilities in the public way.
- F. Failure to relocate or remove facilities as required in this Ordinance.
- G. Failure to pay taxes, compensation, fees or costs when and as due the City under this Ordinance.
- H. Insolvency or bankruptcy of the grantee.
- I. Violation of a material provision of this Ordinance.
- J. Violation of a material term of a franchise agreement.

Section 24. Notice.

In the event that the City believes that grounds exist for revocation of a franchise, the City shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding thirty (30) days, to furnish evidence that:

- A. Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
- B. The allegation of a violation or noncompliance is incorrect;
- C. It would be in the public interest to impose some penalty or sanction less than revocation.

Section 25. Hearing.

In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 24, the City Administrator shall refer the apparent violation or noncompliance to the City Council. The City Council shall provide the grantee with notice and a

reasonable opportunity to be heard concerning the matter. The hearing may be before the City Council, or at its discretion, the Council may appoint a hearings official to receive evidence and arguments and to prepare a report to the Council.

Section 26. Standards for Revocation or Lesser Sanctions.

If persuaded that the grantee has violated or failed to comply with material provisions of this Ordinance or a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstance, extent and gravity of the violation as reflected by one or more of the following factors:

- A. The misconduct was egregious.
- B. Substantial harm resulted.
- C. The violation was intentional.
- D. There is a history of prior violations of the same or other requirements.
- E. There is a history of overall compliance.
- F. The violation was voluntarily disclosed, admitted or cured.
- G. Any other factor or circumstance that, in the City Council's judgment, is relevant to the severity of the violations.

Section 27. General Construction and Location of Facilities in the Public Way.

No person shall commence or continue with the construction, installation or operation of telecommunication facilities in a public way except as provided in Sections 28 through 37, and in compliance with the applicable rules of the City.

Section 28. Construction Codes.

Telecommunications 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.

Section 29. Construction Permits.

No person shall construct or install any telecommunications facilities in a public way without first notifying the City and obtaining any required permits. No permit shall be issued for the construction or installation of telecommunications facilities in a public way unless:

- A. The telecommunications provider has first filed a registration statement with the City pursuant to Sections 5 through 8 of this Ordinance and, if applicable,

B. The telecommunications provider has first applied for and received a franchise pursuant to Sections 10 through 20 of this Ordinance.

Section 30. Applicant's Verification.

All construction permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

Section 31. Construction Schedule.

All construction permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the City Administrator. The permittee shall promptly complete all construction activities so as to minimize disruption of the public way and other public and private property. All construction work within the public way, including restoration, must be completed within 90 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City Administrator.

Section 32. Coordination of Construction Activities.

All grantees are required to make a good faith effort to cooperate with the City, including, but not limited to the following:

A. If requested by the City, each grantee shall meet with the City annually or as determined by the City, to schedule and coordinate construction in the public way. At that time, the City will provide available information on plans for local, state and/or federal construction projects; and

B. All construction locations, activities and schedules shall be coordinated as ordered by the City Administrator or designee, to minimize public inconvenience, disruption or damage.

Section 33. Non-complying Work.

Within sixty (60) days following written notice from the City to remove the facilities, which notice shall not be issued until the permittee has had a reasonable opportunity, not to exceed sixty (60) days, to correct non-complying conditions, all work which does not comply with the construction permit, the approved or corrected plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee.

Section 34. As-Built Drawings.

If requested by the City, the permittee shall furnish the City with two (2) complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the construction permit. These plans shall be submitted to the City Administrator or designee within sixty (60) days after completion of construction, in a format acceptable to the City.

Section 35. Location of Facilities.

All facilities located within the public way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

A. Wherever existing electric utilities, cable facilities and telecommunication facilities are located underground within a public way of the City, a grantee with permission to occupy the same public ground must also locate its telecommunications facilities underground.

B. Wherever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public way of the City, a grantee that currently occupies the same public way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public way, absent extraordinary circumstance or undue hardship as determined by the City Administrator and consistent with the applicable state and federal law.

C. The City Administrator may require permittees to coordinate construction schedules and to co-locate facilities in the public way where the coordination or co-location requirements do not unreasonably interfere with any of the permittee's operations. The City Administrator may require a co-locating permittee to provide reasonable compensation to another permittee whose facilities it shares if necessary or appropriate to prevent unjust enrichment of the co-locating permittee.

Section 36. Relocation or Removal of Facilities.

Within sixty (60) days following written notice from the City or such shorter time as the City may prescribe because of an emergency, a grantee shall, at no expense to the City, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any City or other public improvements in the public way.

B. The operations of the City or other governmental entity in the public way.

C. The public interest.

Section 37. Removal of Unauthorized Facilities.

Within sixty (60) days following written notice from the City, any grantee, telecommunications provider, or other person that owns, controls, or maintains any unauthorized telecommunications system, facility, or related appurtenances within the public way of the City shall, at its own expense, remove such facilities or appurtenances from the public way of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

A. One year after the expiration or termination of the grantee's telecommunications franchise.

B. Upon abandonment of a facility within the public way of the City. 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 for repairs, upgrading or replacement or is in addition to or expansion of a facility in use, which addition or expansion has been installed to provide excess capacity to serve future needs.

C. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.

D. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

Section 38. General Franchise Provisions – Facilities.

Upon request, each grantee shall provide the City with an accurate map or maps certifying the location of all of the grantee's telecommunications facilities within the public way.

Section 39. Damage to Grantee's Facilities.

Unless directly and proximately caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

Section 40. Duty to Provide Information.

Within ten (10) business days of a written request from the City, each grantee shall furnish the City with information sufficient to demonstrate that grantee has complied with all requirements of this Ordinance. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public way shall be made available for inspection by the City at reasonable times and intervals.

Section 41. Cable Franchise.

Telecommunication providers providing cable service shall be subject to the cable franchise requirements in any separate cable franchise ordinances.

Section 42. Leased Capacity.

A grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to another telecommunications provider for resale or service to end-user customers; provided that the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

Section 43. Grantee Insurance.

Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

A. (1) Comprehensive general liability insurance with limits not less than three million dollars (\$3,000,000) for bodily injury or death to each person; (2) Three million dollars (\$3,000,000) for property damage resulting from any one accident; and (3) Three million dollars (\$3,000,000) for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000) for each person and three million dollars (\$3,000,000) for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000).

E. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City of Monroe, by registered mail, of a written notice addressed to the City Administrator of such intent to cancel or not renew"

F. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City evidence that grantee meets requirements of this Section.

G. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

Section 44. General Indemnification.

To the extent permitted by law, each grantee shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses or expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers,

employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a franchise agreement made or entered into pursuant to this Ordinance.

Section 45. Performance Surety.

Before a franchise granted pursuant to this Ordinance is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City.

Section 46. Consent.

Wherever the consent of either the City or of the grantee is specifically required by this Ordinance, or in a franchise granted, such consent shall not be unreasonably withheld.

Section 47. Confidentiality.

The City agrees to use its best efforts to preserve the confidentiality of trade secrets or other information that reasonably may be deemed confidential, as requested by a grantee, to the extent permitted by the Oregon Public Records Law and to the extent consistent with other provisions of this Ordinance.

Section 48. Governing Law; Venue.

Any franchise granted under this Ordinance is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City. Any action or suit pertaining to rights and obligations arising from this Ordinance or any franchise or permit granted pursuant to this Ordinance shall be filed in the Circuit Court of Benton County, Oregon.

Section 49. Written Agreement.

No franchise shall be granted hereunder unless the agreement is in writing.

Section 50. Nonexclusive Grant.

No franchise granted under this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of telecommunications services or any other purposes.

Section 51. Severability and Preemption.

If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decisions, the remainder of the Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of

the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted to the extent and/or the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding without the requirement of further action on the part of the City, and any amendments hereto.

Section 52. Other Remedies.

Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity for enforcement of this Ordinance.

Section 53. Compliance with Laws.

Any grantee under this Ordinance shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term of any franchise granted under this Ordinance, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

Section 54. Application to Existing Ordinances and Agreements.

To the extent that this Ordinance is not in conflict with and can be implemented with existing ordinances and franchise agreements, this Ordinance shall apply to all existing ordinances and franchise agreements for use of the public right of way for telecommunications.

Section 55. Emergency Clause.

Whereas passage of this Ordinance is deemed to be necessary for the preservation of the public health, safety and welfare of the citizens of the City of Monroe, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect upon its passage by the City Council and approval of the Mayor.