Chapter 3.25
TELECOMMUNICATIONS FACILITIES

Sections:

3.25.010 Jurisdiction and Management of the Public Rights of Way.
3.25.020 Regulatory Fees and Compensation Not A Tax.
3.25.025 Definitions.
3.25.030 Registration of Telecommunications Carriers.
3.25.035 Construction Standards.
3.25.040 Location of Telecommunications Facilities.
3.25.045 Telecommunications Franchise.
3.25.050 General Franchise Terms.
3.25.055 General Provisions.

3.25.010. Jurisdiction and Management of the Public Rights of Way.

A. The City has jurisdiction and exercises regulatory management over all public rights of way within the City under authority of the City charter and state law.

B. Public rights of way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.

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

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

E. The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.

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

3.25.020. <u>Regulatory Fees and Compensation Not a Tax</u>.

A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the public rights of way provided for in this Ordinance, 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 carrier, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.

B. The City has determined that any fee provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

C. The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

3.25.025 <u>DEFINITIONS.</u>

For the purpose of this Code the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, 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.

Aboveground Facilities - see "Overhead Facilities."

Affiliated Interest - shall have the same meaning as ORS 759.010.

Cable Act - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, et seq., as now and hereafter amended.

Cable Service – is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

City - means the City of North Plains, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

City Council - means the elected governing body of the City of North Plains, Oregon.

Control or Controlling Interest - means actual working control in whatever manner exercised.

City Property - means and includes all real property owned by the City, other than public rights of way and utility easements as those are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right of way franchising as provided in this Ordinance.

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 right of way, owned or controlled, in whole or in part, by one or more public utilities.

Construction – means any activity in the public rights of way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

Days - means calendar days unless otherwise specified.

Duct - means a single enclosed raceway for conductors or cable.

Emergency – has the meaning provided for in ORS 401.025.

Federal Communications Commission or FCC - means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

Franchise - means an agreement between the City and a grantee which grants a privilege to use public right of way and utility easements within the City for a dedicated purpose and for specific compensation.

Grantee - means the person to which a franchise is granted by the City.

Oregon Public Utilities Commission or OPUC - means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.

Overhead or Aboveground Facilities - means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

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

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.

Public Rights of Way - include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such areas for telecommunications facilities. "Public rights of way" shall also include utility easements as defined below.

State - means the State of Oregon.

Telecommunications - means the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

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

Telecommunications Carrier - means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the City.

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

Telecommunications Service - means two-way switched access and transport of voice communications but does not include: a) services provided by radio common carrier; b) one-way transmission of television signals; c) surveying; d) private telecommunications networks; or e) communications of the customer which take place on the customer side of on-premises equipment.

Telecommunications System - see "Telecommunications Facilities" above.

Telecommunications Utility - has the same meaning as ORS 759.005(1).

Underground Facilities - means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."

Usable Space - means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

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

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 purpose of providing utility or telecommunications services.

3.25.030 REGISTRATION OF TELECOMMUNICATIONS CARRIERS.

A. Purpose. The Purpose of Registration is:

(1) To assure that all telecommunications carriers who have facilities and/or provide services within the City comply with the ordinances, rules and regulations of the City.

(2) To provide the City with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the City, or that own or operate telecommunications facilities within the City.

(3) To assist the City in the enforcement of this Ordinance and the collection of any city franchise fees or charges that may be due the City.

B. Registration Required: Except as provided in Section 3.25.030.D hereof, all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register. The appropriate application and license from: a) the Oregon Public Utility Commission (PUC); or b) the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

(1) 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.

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

(3) A description of the registrant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City.

(4) Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

C. Registration Fee: Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in the amount of $35.00, or as otherwise established by resolution of the City Council.

D. Exceptions to Registration: The following telecommunications carriers are excepted from registration:

(1) Telecommunications carriers that are owned and operated exclusively for its own use by the State or a political subdivision of this State.

(2) A private telecommunications network, provided that such network does not occupy any public rights of way of the City.

3.25.035 <u>CONSTRUCTION STANDARDS</u>.

A. General: No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right of way except as provided in Sections 3.25.035.B through 3.25.035.0 and with all applicable codes, rules, and regulations.

B. 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.

C. Construction Permits: No person shall construct or install any telecommunications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in Section 3.25.035.G of this Code. No permit shall be issued for the construction or installation of telecommunications facilities within a public right of way:

(1) Unless the telecommunications carrier has first filed a registration statement with the City pursuant to Section 3.25.030 of this Code; and if applicable,

(2) Unless the telecommunications carrier has first applied for and received a franchise pursuant to Sections 3.25.045 of this Code.

D. Permit Applications: Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) That the facilities will be constructed in accordance with the franchise agreement.

(3) The location and route of all facilities to be installed aboveground or on existing utility poles.

(4) The location and route of all new facilities on or in the public rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Existing facilities shall be differentiated on the plans from new construction.

(5) The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights of way along the underground route

proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.

(6) The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

E. Applicant's Verification: All 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.

F. Construction Schedule: All 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.

G. Construction Permit Fee: Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount consistent with this Code or as otherwise determined by resolution of the City Council. Such fee shall be designed to defray the costs of city administration of the requirements of this ordinance.

H. Issuance of Permit: If satisfied that the applications, plans and documents submitted comply with all requirements of this Code and the franchise agreement, the City shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

I. Notice of Construction: Except in the case of an emergency, the permittee shall notify the City not less than two (2) working days in advance of any excavation or construction in the public rights of way.

J. Compliance with Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

K. Noncomplying Work: Subject to the notice requirements in Section 3.25.040.D all work which does not comply with the 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.

L. Completion of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by Section 3.25.035.F.

M. 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 permit. These plans shall be submitted to the City Engineer or designee within sixty (60) days after completion of construction, in a format mutually acceptable to the permittee and the City.

N. Restoration of Public Rights of Way and City Property:

(1) When a permittee, or any person acting on its behalf, does any work in or affecting any public rights of way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to good order and condition unless otherwise directed by the City and as determined by the City Engineer or designee.

(2) If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the City.

(3) If the permittee fails to restore rights of way or property to good order and condition, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

(4) A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

O. Performance and Completion Bond: Unless otherwise provided in a franchise agreement, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of constructing permittee's telecommunications facilities within the public rights of way of the City, shall be provided before construction is commenced.

(1) The surety shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction.

(2) The surety shall guarantee, to the satisfaction of the City:

a. Timely completion of construction;

b. Construction in compliance with applicable plans, permits, technical codes and standards;

c. Proper location of the facilities as specified by the City;

d. Restoration of the public rights of way and other property affected by the construction; and

e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

3.25.040 LOCATION OF TELECOMMUNICATIONS FACILITIES

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

(1) Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right of way of the City, a grantee with permission to occupy the same public right of way must also locate its telecommunications facilities underground.

(2) Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right of way of the City, a grantee that currently occupies the same public right of way shall relocate its 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 City and consistent with applicable state and federal law.

B. Interference with the Public Rights of Way: No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All use of public rights of way shall be consistent with City codes, ordinances and regulations.

C. Relocation or Removal of Facilities: Except in the case of an emergency, within ninety (90) days following written notice from the City, a grantee shall, at no expense to Grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights of way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights of way.

(2) The operations of the City or other governmental entity in or upon the public rights of way.

(3) The public interest.

D. Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility, or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities or appurtenances from the public rights of way of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) One year after the expiration or termination of the grantee's telecommunications franchise.

(2) Upon abandonment of a facility within the public rights of 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 during performance of repairs or if the facility is being replaced.

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

(4) 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.

E. Coordination of Construction Activities: All grantees are required to make a good faith effort to cooperate with the City.

(1) By January 1 of each year, grantees shall provide the City with a schedule of their proposed construction activities in, around or that may affect the public rights of way.

(2) 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 rights of way. At that time, City will provide available information on plans for local, state, and/or federal construction projects.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

3.25.045 <u>TELECOMMUNICATIONS FRANCHISE</u>.

A. Telecommunications Franchise: A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights of way of the City.

B. Application: Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the City which includes the following information:

(1) The identity of the applicant.

(2) A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities.

(3) Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights of way in the City, including the location and route requested for applicant's proposed telecommunications facilities.

(4) 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.

(5) 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.

(6) An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

C. Application and Review Fee:

(1) Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.

(2) An application and review fee of $2,000 shall be deposited with the City as part of the application filed pursuant to Section 3.25.045.B above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

D. Determination by the City: The City 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.

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

F. Term of Grant: Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of years.

G. Franchise Territory: Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the City to be served by the franchise grantee, and the public rights of way necessary to serve such areas, and may include the entire city.

H. Franchise Fee: Each franchise granted by the City is subject to the City's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this Code shall prohibit the City and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws.

I. Amendment of Grant: Conditions for amending a franchise:

(1) A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights of way of the City which are not included in a franchise previously granted under this Ordinance.

(2) If ordered by the City to locate or relocate its telecommunications facilities in public rights of way not included in a previously granted franchise, the City shall grant an amendment without further application.

(3) A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this Ordinance.

J. 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 which shall include the following information:

(1) The information required pursuant to Section 3.25.045.B of this Code.

(2) Any information required pursuant to the franchise agreement between the City and the grantee.

K. Renewal Determinations: Within 90 days after receiving a complete application, the City shall issue a written determination granting or denying the renewal application in whole or in part,

applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.

(1) The financial and technical ability of the applicant.

(2) The legal ability of the applicant.

(3) The continuing capacity of the public rights of way to accommodate the applicant's existing and proposed facilities.

(4) The applicant's compliance with the requirements of this Code and the franchise agreement.

(5) Applicable federal, state and local telecommunications laws, rules and policies.

(6) Such other factors as may demonstrate that the continued grant to use the public rights of way will serve the community interest.

L. Obligation to Cure As a Condition of Renewal: No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this Code, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

M. Assignments or Transfers of System or Franchise: Ownership or control of a majority interest in a telecommunications system or 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, and then only on such reasonable conditions as may be prescribed in such consent.

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

(2) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this Code.

(3) Unless otherwise provided in a franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications franchise.

(4) Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the City under this Code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

N. Revocation or Termination of Franchise: A franchise to use or occupy public rights of way of the City may be revoked for the following reasons:

(1) Construction or operation in the City or in the public rights of way of the City without a construction permit.

(2) Construction or operation at an unauthorized location.

(3) Failure to comply with Section 3.25.045.M herein with respect to sale, transfer or assignment of a telecommunications system or franchise.

(4) Misrepresentation by or on behalf of a grantee in any application to the City.

(5) Abandonment of telecommunications facilities in the public rights of way.

(6) Failure to relocate or remove facilities as required in this Code.

(7) Failure to pay taxes, compensation, fees or costs when and as due the City under this Code.

(8) Insolvency or bankruptcy of the grantee.

(9) Violation of material provisions of this Code.

(10) Violation of the material terms of a franchise agreement.

O. Notice and Duty to Cure: 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:

(1) Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

(2) Rebuts the alleged violation or noncompliance; and/or

(3) It would be in the public interest to impose some penalty or sanction less than revocation.

P. Public Hearing: In the event that a grantee fails to provide evidence reasonably satisfactory to the City as to its performance consistent with this Code, the City staff shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Q. Standards for Revocation or Lesser Sanctions: If persuaded that the grantee has violated or failed to comply with material provisions of this Code, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:

(1) The misconduct was egregious.

(2) Substantial harm resulted.

(3) The violation was intentional.

(4) There is a history of prior violations of the same or other requirements.

(5) There is a history of overall compliance.

(6) The violation was voluntarily disclosed, admitted or cured.

R. Other City Costs: All grantees shall, within thirty (30) days after written demand therefor, reimburse the City for all reasonable direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws.

3.25.050 GENERAL FRANCHISE TERMS.

A. Facilities: Upon request, each grantee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public rights of way. Each grantee shall provide updated maps annually.

B. 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 rights of 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 rights of way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

C. 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:

(1) That grantee has complied with all requirements of this Code.

(2) All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection by the City at reasonable times and intervals.

D. Service to the City: If the City contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the City the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the City's permission, the grantee may deduct the applicable charges from fee payments.

Other terms and conditions of such services may be specified in a separate agreement between the City and grantee.

E. Compensation for City Property: If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City.

F. Cable Franchise: Telecommunication carriers providing cable service shall be subject to the separate cable franchise requirements of the City and other applicable authority.

G. Leased Capacity: A grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

H. 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:

(1) Comprehensive general liability insurance with limits not less than

a. Three Million Dollars ($3,000,000) for bodily injury or death to each person;
b. Three Million Dollars ($3,000,000) for property damage resulting from any one accident; and,
c. Three Million Dollars ($3,000,000) for all other types of liability.

(2) 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.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars ($1,000,000).

(4) 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).

(5) 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 90 days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew."

(6) 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 the grantee meets requirements of this Section.

(7) 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.

I. General Indemnification: Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and 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 facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Code or by a franchise agreement made or entered into pursuant to this Code.

J. Performance Surety: Before a franchise granted pursuant to this Code 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 Code, 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. This obligation is in addition to the performance surety required for construction of facilities.

3.25.055 <u>GENERAL PROVISIONS</u>.

A. Governing Law: Any franchise granted under this Code 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.

B. Written Agreement: No franchise shall be granted hereunder unless the agreement is in writing.

C. Nonexclusive Grant: No franchise granted under this Code 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.

D. Severability and Preemption: If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Code 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 decision, the remainder of the Code 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 Code 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 Code, 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, rules 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.

E. Penalties: Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this Code regulating code enforcement.

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

G. Captions: The captions to sections throughout this Code are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Code.

H. Compliance with Laws: Any grantee under this Code 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 any franchise granted under this Code, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

I. Consent: Wherever the consent of either the City or of the grantee is specifically required by this Code or in a franchise granted, such consent will not be unreasonably withheld.

J. Application to Existing Ordinance and Agreements: To the extent that this Code is not in conflict with and can be implemented with existing code and franchise agreements, this Code shall apply to all existing ordinance and franchise agreements for use of the public right of way for telecommunications.

K. Confidentiality: The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

(ORD.258 February 1,1999.)