

ORDINANCE NO. 1915

AN ORDINANCE GRANTING TO PORTLAND GENERAL DISTRIBUTION, LLC, dba  
PORTLAND GENERAL BROADBAND A NONEXCLUSIVE FRANCHISE FOR THE  
PROVISION OF TELECOMMUNICATIONS SERVICES  
WITHIN THE CITY OF MILWAUKIE

WHEREAS, Portland General Distribution, LLC, dba Portland General Broadband, an Oregon Limited Liability Company, hereinafter referred to as "Grantee", wishes to provide telecommunications services within the City of Milwaukie and to construct facilities in city rights of way for those purposes; and

WHEREAS, Grantee has applied for a franchise pursuant to the City's Code, and the City has reviewed said application and has determined that it meets all the requirements of the City's Code and should be approved, subject to the terms and conditions stated herein;

Now, therefore,

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: Grant of Franchise. The City of Milwaukie ("City") hereby grants to Grantee, a nonexclusive franchise to use the public rights of way within the City to provide telecommunications services, subject to the following limitations:

(a) Grantee is hereby authorized to provide only those services as stated on the Application of Registration submitted by the Grantee. Grantee agrees that it shall not permit a third party to provide video services over the Grantee's network installed in the City rights of way.

(b) This franchise is subject to all applicable provisions of the Milwaukie Municipal Code, Chapter 3.13, specifically including but not limited to the requirements for insurance, indemnification, and performance security required by the Code, unless specifically otherwise stated in this franchise.

(c) Grantee shall maintain a clause in its standard Facilities Agreement to be signed by all lessees of Grantee's conduit or fiber optic lines authorizing the Grantee to disclose the lessee's business name and address to the City. Upon entering into a new lease agreement with a new lessee, Grantee shall provide a one-time notice of the lessee's business name and address to the City.

Section 2: Term. The term of this franchise shall be five years, commencing with the effective date of this Ordinance.

Section 3: Franchise Area. The Grantee is authorized by this franchise to use public rights of way throughout the City, as the City limits may exist now or in the future.

#### Section 4: Franchise Fee.

(a) As consideration for the use of the City's rights of way, Grantee shall remit to the City the greater of:

- (i) a minimum franchise fee of \$4000 per annum; or,
- (ii) five percent (5%) of its gross revenues earned in the provision of telecommunication services including the lease or resale of its facilities within the City. The calculation of this fee shall be subject to any applicable rules of the Oregon Public Utility Commission and any applicable provisions of the Oregon Revised Statutes.

(b) Franchise fee payments shall be made quarterly on or before 45 days after the end of the preceding quarter, continuing through the term of this franchise. Payments not received by the 45<sup>th</sup> day of each quarter will be assessed interest at the rate of one and one half percent per month until paid.

(c) The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. Any difference of payment due the City following audit shall be payable within thirty (30) days after written notice to the Grantee, and shall bear interest at the rate of 9 per cent per annum. In the event the audit discloses that Grantee has underpaid by more than 2% of its annual payment obligation, Grantee shall pay the City's expenses of performing the audit.

#### Section 5: Franchise Acceptance and Conditions.

(a) *Acceptance.* Within thirty (30) days of the passage of this Ordinance by the City Council, the Grantee shall file with the City Manager a written statement accepting the terms and conditions of this franchise grant. Timely filing of such acceptance shall be a condition of this franchise becoming effective.

(b) *Insurance.* The insurance requirements of Section 3.24.080(H) of the City Code may be satisfied by grantee self-insurance, provided Grantee submits a certificate of such insurance to remain in full force throughout the term of the franchise and in a form acceptable to the City. Such self-insurance shall fully protect the City to the extent of Grantee's indemnity obligations, and the approval of such written certificate shall be a condition of this franchise becoming effective.

(c) *Performance surety.* The bonding requirements of Section 3.13.070 (J) of the City Code may be satisfied by one of the following:

- (i) a surety bond, or
- (ii) a letter of credit issued by an acceptable financial institution, or
- (iii) funds deposited in an escrow account with an acceptable financial institution on or before the date this agreement is approved by the City Council.

(d) *Abandonment of facilities.* At such time as Grantee intends to discontinue using or to remove any telecommunications network facility or facilities within the City, Grantee shall submit a specific plan for such discontinuance or removal to the City Engineer or designee and shall gain the City Engineer's approval. The City Engineer may allow Grantee to abandon in place any facility or facilities, may require the Grantee to remove or modify the facility or facilities within the public

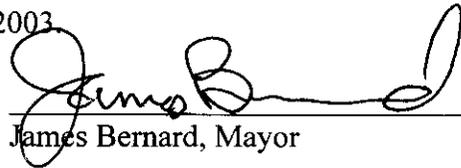
rights of way or other public place or property, may cause the facility or facilities to be removed at the Grantee's expense, or may take any combination of these actions. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time that Grantee's property is completely removed and all restorations to the public rights of way or other public places or property have been completed, Grantee shall be responsible for all necessary repairs, relocations, and maintenance of the facility or facilities in the same manner and degree as if the facility or facilities were in active use, and the Grantee shall retain all liability for such facility or facilities.

Section 6: Franchise nonexclusive. The franchise hereby granted is not exclusive, and shall not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights of way.

READ for the first time at the regular meeting of the City Council, City of Milwaukie, Oregon, on the 7 day of January, 2003.

READ for the second time and passed by the City Council, City of Milwaukie, Oregon at the regular meeting on the 7 day of January, 2003.

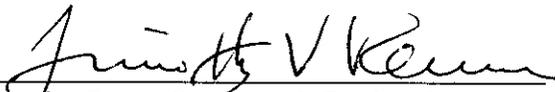
Signed by the Mayor on January 7, 2003.

  
James Bernard, Mayor

ATTEST:

  
Pat DuVal, City Recorder

Approved as to form:

  
James H. V. Keenan  
Ranis, Crew, Corrigan & Bachrach  
City Attorney