

ORDINANCE NO. 624
CITY OF DAYTON, OREGON

An Ordinance Granting a Telecommunications Franchise to McMinnville Access Company to Use City Rights of Way to Provide Telecommunications Services

WHEREAS, Chapter 6 of the Dayton Municipal Code governs the construction and franchising of telecommunications carriers operating within the City and desiring to occupy City rights of way; and

WHEREAS, McMinnville Access Company, doing business as Online Northwest, has requested a franchise pursuant to Chapter 6; and

WHEREAS, the City has reviewed the request and application filed by McMinnville Access Company and finds that the company has the requisite authority to provide these services and that the level of impact on the City's rights of way will be acceptable, and the City Council therefore desires to issue a franchise.

The City of Dayton Ordains as follows:

Section 1: Franchise Grant.

a. Subject to the terms and conditions contained herein, the City of Dayton does hereby grant to McMinnville Access Company ("Grantee") a telecommunications franchise to locate its telecommunications facilities within the rights of way of the City.

b. Such grant is subject to all of the laws and ordinances of the City of Dayton and the State of Oregon in existence at the time of this franchise grant or hereafter enacted or amended. Notwithstanding the foregoing sentence, Grantee is not required to provide the performance and completion bond otherwise required in DMC 6.11.5 (15).

c. The scope of this grant allows the installation, maintenance and repair of telecommunications facilities by Grantee in the City's rights of way to provide telecommunications services. In the event the Grantee intends to provide services other than telecommunications services, Grantee shall be required to obtain an additional or revised franchise from the City to the extent required by law.

d. The terms "telecommunications facilities," "telecommunications services," "rights of way" and any other term used in this franchise that is defined in Chapter 6.11 of the Dayton Municipal Code shall have the meaning set forth therein.

Section 2: Construction standards. The construction standards of Chapter 6.11 of the Dayton Municipal Code, or any other applicable construction standards hereafter enacted, shall apply to all work performed by the Grantee in City rights of way.

Section 3: Franchise Fee. The annual franchise fee payable to the City shall be five percent (5%) of Grantee's gross revenues earned from the provision of telecommunications services to customers in the City. "Gross revenues" shall mean any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations imposed by federal or state law. "Gross revenues" shall not include any tax, fee, or assessment of general applicability imposed on Subscribers and collected by the Grantee from Subscribers for pass-through to a government agency, not including the franchise fee, which is included in "gross revenues" to the extent it is collected from Subscribers. In lieu of all or a portion of the franchise fee payment required under this section, Grantee may provide telecommunications or other services to the City or its affiliated entities. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation, and the offset value of any such services provided to the City or its affiliated entities, and other details of the offset, will be mutually agreed in writing by the parties in the form of an amendment to this franchise, memorandum of understanding, or other documentation. The franchise fee shall be paid quarterly, in arrears, for each quarter during the term of the license. The franchise fee shall be due and payable within forty-five (45) days of the end of each calendar quarter.

Section 4: Term. The term of this franchise shall be ten (10) years. It shall be effective thirty (30) days after the enactment date set forth below, provided Grantee complies with Section 5.

Section 5: Acceptance. The grant of franchise herein is conditioned upon Grantee's acceptance of all terms and conditions hereof in writing in the form attached hereto as Exhibit A within thirty (30) days of City Council enactment of this Ordinance. In the event Grantee fails to timely file the acceptance, this Ordinance shall be null and void.

PASSED AND ADOPTED this 1st day of June, 2015.

Mode of Enactment:

Date of first reading: May 4, 2015 In full _____ or by title only _____

Date of second reading: June 1, 2015 In full _____ or by title only _____

No Council member present at the meeting requested that the ordinance be read in full.

_____ A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.

Final Vote:

In Favor: Bixler, Collins, Marqueuz, Price, Wytoski

Opposed: None

Absent: Frank, Taylor

Abstained: None



Elizabeth Wytoski, Mayor

6/3/15
Date of Signing

ATTESTED BY:



Peggy Selberg,
City Recorder

6/1/2015
Date of Enactment

Exhibit A

ACCEPTANCE

City Recorder
City of Dayton
PO Box 339
416 Ferry Street
Dayton, OR 97114

This is to advise the City of Dayton, Oregon that McMinnville Access Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 624, passed by the City Council on June 1, 2015 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise.

McMinnville Access Company

BY Kathryn Tate
TITLE CEO
DATE 6/15/15

This Acceptance was received by the City of Dayton on June 17, 2015.

Peggy Kelly
City Recorder