

ORDINANCE NO. 1059-00

AN ORDINANCE GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS SERVICES FRANCHISE TO RCN TELECOM SERVICES OF OREGON, INC.

WHEREAS, RCN Corporation, doing business as RCN Telecom Services of Oregon, Inc., a Delaware corporation ("Grantee,") is certified by the Oregon Public Utility Commission to provide telecommunications services within the State of Oregon; and

WHEREAS, in 1980 the Metropolitan Area Communications Commission ("MACC") was formed by Intergovernmental Cooperation Agreement ("IGA") to enable its member jurisdictions to work cooperatively and jointly on communications issues, and the City is a member of MACC; and

WHEREAS the Grantee has formally requested a franchise agreement through MACC for the provision of telecommunications services in order to provide service in several MACC member jurisdictions in conjunction with Grantee's application for a franchise to provide cable and broadband access services; and

WHEREAS, the City has the separate authority to grant franchises for telecommunications services, the terms and conditions of which are governed by the separate cable and broadband access franchise recommended by MACC and approved by the City, as well as by the provisions of the City's lawfully adopted code, ordinances and regulations and this franchise; and

WHEREAS, it is in the best interest of the City and its citizens to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights of way; and

WHEREAS, 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;

Now, therefore,

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Franchise Grant.

(a) The City of Tualatin grants to Grantee, the right, privilege, and franchise to occupy the public rights of way of the City, as the boundaries of the City may exist now or during the term of this ordinance, for the purpose of providing telecommunication services. This grant includes the right to place and maintain poles, wires, and other equipment customarily associated with telecommunications services. Such equipment must be laid underground unless the City specifically permits wires or cables to be strung upon poles or other fixtures above ground.

(b) The grant of franchise is subject to: (i) the other terms and conditions set forth in this ordinance, (ii) any applicable ordinances and regulations of the City, including but not limited to ordinances and regulations regarding development, tree pruning or removal, erosion control, and work in the public right-of-way, and (iii) the applicable terms and conditions of the separate ordinance granting a franchise to Grantee for the provision of cable and broadband access services.

Section 2. Franchise term. The rights, privileges and franchise herein granted shall continue and be in force for the period of fourteen years from and after the effective date of this ordinance.

Section 3. Franchise fee.

(a) Amount. In consideration of the rights and privileges granted, Grantee agrees to pay to the City the sum of 5% (five percent) of its gross revenues earned in the provision of telecommunications services to customers located within the corporate limits of the City.

(b) Payment schedule. Franchise fees due under this ordinance shall be paid consistent with the requirements of the Grantee's related cable and broadband access services franchise adopted by separate ordinance.

(c) Franchise fees not a tax. The franchise fee imposed by this ordinance is not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution. The franchise fee is further exempt from all tax limitation measures and laws in effect at the time of adoption of this ordinance or which may thereafter be enacted or adopted.

Section 4. Assignment or transfer of system or franchise. Ownership or control of a majority interest in the franchise granted pursuant to this ordinance, or to the telecommunications system constructed under the authority of this franchise grant 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.

- (a) 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 this franchise.
- (b) 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 this franchise.
- (c) Any transfer or assignment of this franchise, or of the system or integral part of the system without prior approval of the City shall be void and is cause for revocation of the franchise.

Section 5. Franchise Acceptance. This Ordinance shall, if accepted by Grantee, take effect and be in force 30 days from and after its passage and approval. Grantee shall, within 30 days of the passage and approval of this Ordinance, file with the City Recorder its written acceptance of all the terms and conditions of the ordinance. The acceptance shall be signed by a duly authorized representative of Grantee, and shall be in substantially the form which is attached as Exhibit A.

Section 6. General Provisions.

(a) City work in rights of way. Nothing in this Ordinance shall be construed to prevent or impair the City from grading, constructing, paving, altering, improving, sewerage, repairing, or maintaining any of the rights of way within the jurisdiction of the City which are occupied by fixtures, facilities, appliances, or structures of Grantee, but all such work or improvements by the City shall be done in such a manner and by such means as to prevent or minimize impairment of use of said fixtures, facilities, appliances, or structures by Grantee. If avoidance of obstructions or impaired use of Grantee's facilities and structures cannot be done without additional costs to the City, the Grantee shall compensate the City for any additional costs to undertake such work, if the Grantee does not perform the work required.

(b) Franchise nonexclusive. The franchise granted is nonexclusive.

(c) Severability. The provisions of this Ordinance are severable. If any portion of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

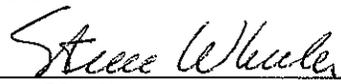
INTRODUCED AND ADOPTED this 9th day of October, 2000.

CITY OF TUALATIN, Oregon

BY  _____

Mayor

ATTEST:

BY  _____

City Recorder

Exhibit A, Ordinance No. _____

ACCEPTANCE OF FRANCHISE

WHEREAS, the CITY OF _____, OREGON, under date of _____, 2000 passed ORDINANCE NO. _____, entitled as follows, to wit:

AN ORDINANCE OF THE CITY OF _____ GRANTING A NONEXCLUSIVE TELECOMMUNICATIONS SERVICES FRANCHISE TO RCN TELECOM SERVICES OF OREGON, INC.

NOW, THEREFORE, the undersigned, _____, the duly authorized representative of the Grantee named in said Ordinance, does for itself and its successors and assigns accept the terms, conditions and provisions of Ordinance No. _____ and agrees to be bound thereby and to comply therewith.

RCN TELECOM SERVICES OF OREGON, INC.

By: _____ [printed name]

Its: _____ [printed title]

Date: _____