

ORDINANCE NO. 1355-13

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS
FRANCHISE TO QWEST CORPORATION dba CENTURYLINK QC; AND
DECLARING AN EMERGENCY

WHEREAS the City of Tualatin ("City"), and Qwest Corporation dba CenturyLink, ("CenturyLink") have reached final agreements on the terms and conditions of a nine-year Franchise for CenturyLink to use City streets to provide general communications services.

WHEREAS Century Link has applied for a franchise and deposited the review fee as provided by Tualatin Municipal Code ("TMC") 10-1-250 through 270.

City OF TUALATIN ORDAINS AS FOLLOWS:

Section 1.

The City of Tualatin, Oregon ("City") grants to Qwest Corporation dba CenturyLink QC, its successors and assigns, ("Grantee"), the right and privilege to conduct a general communications business within the City and to place, erect, lay, maintain, and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City poles, wires, whether copper, fiber optic or other technology and other appliances, appurtenances, conductors and facilities for the transmission of communication services for all telephone, telegraph and other communications purposes. In locations where aerial or above ground utility facilities (including aerial cable supports) exist as of the effective date of this Franchise, Grantee shall be allowed to overbuild, upgrade, maintain, replace or add to its existing aerial facilities and supporting structures unless all facilities, except for facilities used for the transmission of electricity at nominal voltages in excess of 35,000 volts, in such area have been mandated to be placed underground per a plan as outlined by the City in accordance with ORS 758.210 — ORS 758.270. In areas where Grantee does not currently have or use existing aerial or above ground utility facilities, such wires and appurtenant equipment may be laid underground or at Grantee's option and subject to City approval, may be strung upon poles or other fixtures above ground. Grantee shall be allowed to place above ground, in locations approved by the City, its fiber distribution hubs, cross connect/digital subscriber line boxes and other cabinet type facilities that are normally placed above ground.

Section 2.

It is lawful for Grantee to make all needed and necessary excavations in the streets, alleys, avenues, thoroughfares and public highways, in the City for the purpose of placing, erecting, laying and maintaining poles, other supports, or

conduits for the wires, whether copper, fiber optic or other technology, appliances, and auxiliary apparatus or repairing, renewing or replacing such equipment. The work shall be done in compliance with the rules, regulations, ordinances, or orders now in effect. City will enter discussions with CenturyLink to achieve acceptable solutions to issues identified by CenturyLink regarding proposed changes to City ordinances, resolutions, rules or orders whenever such discussions are practicable. CenturyLink must comply with future City ordinances, resolutions, rules and orders that generally apply to the reasonable management of the safety and use of public rights of way within the City. However, by entering this Agreement CenturyLink is not waiving its right to challenge or otherwise dispute the legality, validity, or enforceability of any changes to City ordinances, resolutions, rules or orders enacted after the effective date of this ordinance. In addition, this ordinance does not require CenturyLink to comply with future ordinances, resolutions, rules or orders that conflict with any specific provision of this ordinance or that apply only to CenturyLink.

Section 3.

Prior to commencing ordinary construction, extension, or relocation of any of the Grantee's conduit facilities or pole leads in the streets or public places within the City, the Grantee shall give the City reasonable advance notice by advising the City's Engineering and Building Department of the location of the proposed construction, extension or relocation. Grantee shall obtain approval from the City Engineer prior to commencement of such work. Prior to commencement of work, which might affect City utilities, Grantee shall give notice to City's Operations Department for purposes of utility location in accordance with the Call Before You Dig requirements of ORS. The location of the Grantee's facilities shall be approved by the City. Grantee shall not be required to obtain prior approval for 1) Customer service connections/drops, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk, and 2) Routine maintenance or repair of Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours if these hours are between 9:00 a.m. and 3:00 p.m. or after 7:00 p.m. and before 5:00 a.m. on arterial or collector streets.

Section 4.

Whenever the Grantee disturbs a street, alley, thoroughfare or public highway for the purposes stated above, Grantee shall restore it to at least the condition which existed prior to construction as soon as practicable without unnecessary delay. If Grantee fails to do so, the City has the right to fix a reasonable time after providing written notice and an opportunity to cure within which such repairs and restoration of the streets shall be completed, and upon Grantee's failure to make such repairs, the City shall cause such repairs to be made at the expense of the Grantee, after having provided Grantee, its successors or assigns, with written notice and an opportunity to cure. Grantee agrees and covenants to indemnify, defend, and hold harmless the City, its officers, and agents from any and all damages, costs, or claims of whatsoever kind or nature to which it or they may

be subjected as a consequence or result of the negligence of the Grantee or its agents or servants in any manner arising from the Grantee's exercise of the rights and privileges granted in this franchise. Restoration to the condition that existed before excavation or construction does not require CenturyLink to restore areas larger than the areas of excavation and construction; other than a reasonable area contiguous with the excavated area which is necessary to properly restore the area of construction to at least the condition which existed prior to such construction in accordance with City restoration requirements.

Section 5.

Nothing in this Ordinance shall be construed in any way to prevent the proper City authorities from sewerage, grading, planking, rock, paving, repairing, altering, or any street, alley, avenue, thoroughfare and public highway, places and grounds within the City in or upon which the poles, wires, or other conductors of the Grantee shall be placed, but all work or improvements shall be done, if possible, so as to not obstruct or prevent the free use of the poles, wires, conductors, conduits, pipes, or other apparatus.

The City shall not require the Grantee to remove or relocate its facilities or vacate a street, alley, or other public way incidental to a public housing or renewal project that is instituted under ORS Chapters 456 or 457 which will allow relocation assistance to be provided on new developments, without reserving the Grantee's right therein or without requiring Grantee to be compensated for the costs thereof.

Section 6.

Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables, wires, or other apparatus of the Grantee to permit the passage of a building, machinery, or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, the Grantee shall temporarily rearrange, remove, lower, or raise its wires, cables, or other plant so as to permit passage; provided that the person desiring to move such buildings, machinery or other objects shall pay the entire actual cost to Grantee of changing, altering, moving, removing, or replacing the wires, cable or other plant, except as may be incurred through the sole negligence of Grantee. Grantee shall be given not less than fourteen (14) days written notice by the party desiring to move such building or other objects. In an emergency, Grantee shall make a reasonable effort to accommodate requests made under such extraordinary circumstances. The notice shall bear the approval of the City Engineer of the City; and shall detail the route of movement of the building, machinery, or other objects. If required by the Grantee, the notice shall be accompanied by a cashier's check, bank letter of credit, or a good and sufficient bond to pay all such costs as estimated by the Grantee. The moving shall occur with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time.

Section 7.

The City may cause the Grantee to relocate, in a like manner, any pole, underground conduit or equipment belonging to the Grantee whenever the relocation is for public necessity, and the cost shall be borne by the Grantee unless such cost is chargeable by law or tariff to another party, necessitated for the benefit of a third party other than the City or for a commercial purpose of the City. Whenever it is a public necessity to remove a pole, underground conduit, or equipment belonging to the Grantee or on which a wire or circuit of the Grantee is stretched or fastened, the Grantee, shall, upon 30 days written notice from the City, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire, or circuit at Grantee's expense. If Grantee fails, neglects, or refuses to do so, the City, may remove it at Grantee's expense. When facilities are relocated for a commercial purpose of the City or for the benefit of a third party other than the City, the cost shall be borne by the party requesting relocation. "Third party activity" includes any activity conducted under a site/building development permit issued to a private party pursuant to the city code.

Section 8.

In consideration of the rights, privileges, and franchise granted, Grantee, its successors, and assigns, shall pay to the City annually, seven percent (7%) per annum of its gross revenues as defined in ORS 221.515 and 401.710, less net uncollectibles, for local exchange services rendered subscribers within the city limits. The payments shall be made by Grantee on or before March 15 of each year for the calendar year preceding. Such payments made by the Grantee will be accepted by the City from the Grantee, also as payment for any license, privilege or occupation tax or fee for revenue or regulation, and in lieu of the free use or construction of telecommunications facilities and equipment or provision of other in-kind facilities or services, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter to be imposed by the City upon the Grantee during the term of this franchise.

All costs and charges associated with a review or audit or the privilege tax payments as specified in this agreement shall be the responsibility of the City. Any audit finding(s) that are mutually agreed to by the parties shall be corrected within 180 days after mutual agreement. Written notice with reasonable justification for any audit review or other claim shall be provided within three (3) years after the payment has been remitted by CenturyLink to the City.

Section 9.

City may suspend and maintain wires and necessary control boxes on poles place by the Grantee in the streets and other places, or if such wires are placed underground, to place and maintain in the ducts or conduits of Grantee, if space is available, wires which City may require for fire, police and emergency purposes. Utilizing Grantees poles, ducts or conduits shall require the execution

of CenturyLink's pole/conduit attachment agreement prior to the city placing any wires for such purposes. All such wire shall be placed on the poles, ducts or in conduits so as not to interfere with the communication service of Grantee and shall not carry currents or voltage dangerous to telephone plant or telephone users. All installations, maintenance and repairs are subject to the rules, regulations, and supervision of Grantee. In consideration of the establishment of this service and the furnishing of the facilities, City agrees to hold Grantee entirely free and harmless from all claims or liability for damage that arise out of the operation of these wires and control boxes.

Section 10.

The rights, privileges and franchise granted shall continue and be in force until August 1, 2022, which shall begin on the effective date of this ordinance. This ordinance shall be subject to any and all State or Federal legislative enactments.

Section 11.

This ordinance shall take effect on June 24, 2013 and the Grantee shall, within sixty (60) days of the passage and approval of this ordinance file with the Recorder of the City of Tualatin its written acceptance of all the terms and conditions of this ordinance.

Section 12.

If Oregon State law is changed to allow a different or greater franchise fee than is currently allowed by law, the City shall have sixty (60) days from the date the law is effective to provide written notice to Franchisee that the City wishes to change the franchise fee in this Franchise. Upon the City giving written notice, the parties shall negotiate an amendment to this Franchise as may be necessary to implement the new law. Notwithstanding the above, Grantee expressly reserves all rights to challenge any provision in this Franchise or any relevant existing or change in Oregon State Law to the extent inconsistent with federal or other applicable law, including but not limited to Section 253 of the Telecommunications Act.

INTRODUCED AND ADOPTED THIS 24th DAY OF June, 2013.

CITY OF TUALATIN

BY: _____

Lou Ogden
Mayor

Approved as to Form:


Sean T. Brady
City Attorney

ATTEST:

BY: 
City Recorder

WRITTEN ACCEPTANCE OF ORDINANCE NO. 1355-13
CITY OF TUALATIN, OREGON

TO THE MAYOR AND COUNCIL OF THE CITY OF TUALATIN:

WHEREAS on the 24th day of June, 2013, the Tualatin City Council passed Ordinance No. 1355-13 entitled:

AN ORDINANCE GRANTING A FRANCHISE FOR A GENERAL
COMMUNICATIONS BUSINESS TO QWEST CORPORATION dba
CENTURYLINK QC; AND DECLARING AN EMERGENCY

WHEREAS, the ordinance was duly signed and approved on the 24th day of June, 2013, by the Mayor of the City of Tualatin, and attested by the City Recorder.

NOW, THEREFORE, the undersigned, QWEST CORPORATION dba CENTURYLINK QC, the Franchisee named in said ordinance, does hereby for itself and its successors and assigns accepts the terms, conditions and provisions of Ordinance No. 1355-13 and all the terms and conditions of the ordinance.

IN WITNESS WHEREOF, QWEST CORPORATION dba CENTURYLINK QC has caused this acceptance to be duly executed this ___ day of _____ 2013.

QWEST CORPORATION dba
CENTURYLINK QC

By: _____

Title: _____

CITY OF TUALATIN, OREGON



City Recorder