

ORDINANCE NO. 11, SERIES 1991

AN ORDINANCE GRANTING TO US WEST COMMUNICATIONS, INCORPORATED, HEREINAFTER SOMETIMES REFERRED TO AS "GRANTEE", ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO DO A GENERAL COMMUNICATION BUSINESS 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 OF FLORENCE, POLES, WIRES AND OTHER APPLIANCES AND CONDUCTORS FOR ALL TELEPHONE AND OTHER COMMUNICATION PURPOSES.

THE CITY OF FLORENCE, OREGON ORDAINS AS FOLLOWS:

Section 1. There is hereby granted by the City of Florence to US WEST Communications, Incorporated, its successors and assigns, the right and privilege to do a general communication business within said City of Florence 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 said City, poles, wires and other appliances and conductors for all telephone and other communications purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same.

Section 2. It shall be lawful for said Grantee, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds in said City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits for such wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City of Florence.

Section 3. Whenever Grantee, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so the City of Florence shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by the Grantee, its successors and assigns, the said City shall cause the repairs to be made at the expense of the Grantee, its successors and assigns.

Section 4. The City of Florence may require the Grantee to move or relocate any of its facilities whenever the City Council determines that the movement or relocation is necessary for the construction, installation, or maintenance of any public work or

improvement of the City. However, nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City of Florence from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City of Florence in or upon which the poles, wires or conductors of the Grantee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus. The City shall not require Grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving Grantee's rights therein or without requiring Grantee to be compensated for the costs thereof.

Section 5. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Grantee to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, the Grantee will perform such a rearrangement within a reasonable period after written notice from the owner or contractor-mover desiring to move said building, machinery or other objects. Said notice shall bear the approval of the Engineer for the City, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by the Grantee in making such a rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save the Grantee harmless of and from any and all damages of claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the facilities of the Grantee, and if required by the Grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the Grantee.

Section 6. In consideration of the rights, privileges, and franchise hereby granted, said Grantee, US WEST Communications, Incorporated, its successors and assigns, shall pay to the City of Florence from and after the date of the acceptance of this franchise, and until its expiration, four percent (4%) per annum of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City of Florence, less net uncollectibles. The reasonable value of any utility service or the uses of any Grantee facilities used or reserved for use by the City without Grantee's prescribed charges shall be credited toward any payment due the City under this provision.

Payment of this franchise fee shall be made quarterly on or before April 30, July 31, October 31, and January 31 for the calendar quarter immediately preceding. However, the first payment due after the effective date of this ordinance will include the period beginning January 1, 1991. Such four percent (4%) made by the

Grantee will be accepted by the City of Florence from the Grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation, 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 of Florence upon the Grantee during the term of this franchise.

The franchise fee required of Grantee by this Section shall not exceed seven percent (7%), but may be decreased or increased from time to time by the City upon ninety days prior written notice to Grantee. City shall not adjust the franchise rate more frequently than once every 12 months.

Section 7. The rights, privileges and franchise herein granted shall continue and be in force for the period of twenty (20) years from and after the date this Ordinance becomes effective, except that it is understood and agreed that either party may terminate this Agreement after 180 days notice in writing.

Section 8. This Ordinance shall, if accepted by Grantee, take effect and be in force thirty (30) days from and after its passage and approval. Said Grantee shall, within thirty (30) days of the passage and approval of this Ordinance, file with the Recorder of the City of Florence its written acceptance of all terms and conditions of the Ordinance.

Section 9. This Ordinance supersedes Ordinance No. 516, and upon the effective date of this Ordinance, Ordinance No. 516 shall lapse and be of no further effect.

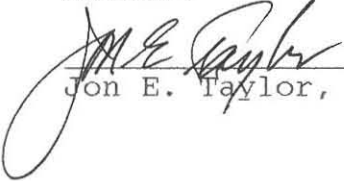
PASSED AND ADOPTED by the City Council this 3rd day of ^{June}~~May~~, 1991.

APPROVED by the Mayor, this 4th day of ^{JUNE}~~May~~, 1991.



Wilbur E. Ternyik, MAYOR

ATTEST:



Jon E. Taylor, CITY RECORDER

WRITTEN ACCEPTANCE OF ORDINANCE NO. 11, Series 1991

CITY OF FLORENCE, OREGON

TO THE MAYOR AND COUNCIL OF THE CITY OF FLORENCE:

WHEREAS, on the 3rd day of June, 1991, the Council of the City of Florence, Oregon, passed Ordinance No. 11-1991 entitled:

AN ORDINANCE GRANTING TO U S WEST COMMUNICATIONS, INCORPORATED, HEREINAFTER SOMETIMES REFERRED TO AS "GRANTEE", ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO DO A GENERAL COMMUNICATION BUSINESS 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 OF FLORENCE, POLES, WIRES AND OTHER APPLIANCES AND CONDUCTORS FOR ALL TELEPHONE AND OTHER COMMUNICATION PURPOSES.

WHEREAS, said ordinance was duly signed and approved on the 4th day of June, 1991, by the Mayor of said City, and attested by the City Recorder, and;

WHEREAS, said ordinance was granted upon the condition that the said grantee shall, within thirty (30) days of the passage and approval of said ordinance, file with the City Recorder of the City of Florence, its written acceptance of all the terms and conditions of said ordinance;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that U S WEST Communications, does hereby accept Ordinance No. 11-1991 and all the terms and conditions of said ordinance.

IN WITNESS WHEREOF, U S WEST Communications, has caused this acceptance to be duly executed this 12 day of June, 1991.

U S WEST COMMUNICATIONS, INCORPORATED

out M. B. C. Engelen
Vice President and CEO - Oregon

Jan E. Taylor
City Recorder of the City of Florence