

CITY OF BAY CITY

ORDINANCE NO. 620

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO UNITED TELEPHONE COMPANY OF THE NORTHWEST, DBA SPRINT, HEREINAFTER REFERRED TO AS "GRANTEE," ITS SUCCESSORS AND ASSIGNS, THE RIGHT OF PRIVILEGE TO PROVIDE A NONCABLE TELEPHONE SERVICE WITHIN THE CITY AND TO UTILIZE THE PUBLIC RIGHT OF WAYS AND REPEALING ORDINANCE NO. 590.

THE CITY COUNCIL OF THE CITY OF BAY CITY, OREGON ORDAINS AS FOLLOWS:

Section 1. Repeal. Bay City Ordinance No. 590 is hereby repealed in its entirety. Furthermore, all resolutions and ordinances regarding the telephone franchise within the City of Bay City are hereby repealed.

Section 2. Franchise Granted. Subject to the terms and conditions provided in this Ordinance and further subject to the applicable rules, regulations and ordinances of the City of Bay City, the City of Bay City hereby grants to the United Telephone Company of the Northwest, its successors and assigns, hereinafter "Grantee," a nonexclusive franchise for the right and privilege to provide local telephone services within the City and to place, erect, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares and public highways, all hereinafter referred to as "streets" within the City, poles, wires and other appliances and conductors for telephone purposes. Following the effective date of this Ordinance, such wires and other appliances and conductors shall be laid underground, or at Grantee's option and subject to City approval, may be strung upon poles or other fixtures above ground.

Section 3. Term. This franchise shall expire five years from the date of Council approval of this ordinance. However, either party may ask for a review of the rates or any terms contained herein in any even numbered year. Unless, any change is agreed to by both parties the privileges and franchise herein granted shall be continuous for the entire term unless there is earlier termination in accordance with this Ordinance.

Section 4. Excavations. It shall be lawful for said Grantee to make all necessary excavations in any street, public right of way or public utility easement in the City for the purpose of placing, erecting, laying and maintaining poles, or other supports or conduits for said wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. Work by Grantee 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 Bay City. Prior to commencement of any construction, extension or relocation of any of Grantee's conduit facilities or pole leads in the streets or public places within the City, Grantee shall give the City reasonable advance notice by advising the City Public Works Superintendent of the location of the proposed construction, extension or relocation. Grantee shall obtain from the City Public Works Superintendent

approval prior to commencement of work. The location of Grantee's facilities shall be subject to prior approval by the City Public Works Superintendent.

Section 5. Restoration of Streets. Whenever Grantee disturbs any of the streets in the City for any of the purposes provided herein, Grantee shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so, the City of Bay City 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 completed by Grantee, the City shall cause such repairs to be made at the expense of the Grantee.

Section 6. City Rights. Nothing in this Ordinance shall be construed in any way to prevent the City of Bay City 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 Bay City in or upon which the poles, wires or other conductors of 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. However, City shall make reasonable attempts to perform maintenance and make improvements so as not to obstruct or prevent the free use of Grantee's equipment and apparatus.

Section 7. Moving of Buildings. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Grantee to permit passage of any building, machinery or other object moved over the "streets" within the City, the Grantee will perform such rearrangement within a reasonable period after written notice from persons desiring to move said building, machinery or other object. The notice shall bear the approval of the City Public Works Superintendent and shall detail the route of movement of the building or object and shall provide that the cost of relocation shall be borne by the person(s) requesting the relocation.

Section 8. Jurisdiction of City. The location and method of installation, repair and maintenance of Grantee's facilities and any exercise of the rights of Grantee under the term of this Ordinance shall be subject at all times to reasonable regulation by the City of Bay City to the extent that such regulation is not inconsistent with existing regulation by state or federal governmental entities. Grantee's operation and work shall be carried on so as to avoid any unnecessary interference with traffic or other permissible uses of the streets of the City. Equipment of Grantee or Grantee's agents which interferes with allowable uses of the streets of the City must be moved or removed upon notice from the City Recorder, City Public Works Superintendent or his or her designee. If Grantee fails to move or remove equipment within the time allowed in the notice from the City's representatives, then such equipment may be moved or removed by the City, which may charge the cost of moving or removal to Grantee.

Section 9. Relocation. Without charge to the City and with at least 180 days notice, Grantee shall remove and change the location or position of Grantee's facilities upon request of the City for the purpose of construction, improvements or repairs to streets, sewers or other facilities of the City.

Section 10. Attachments to Poles. The City shall have the right, upon reasonable notice to Grantee, and without payment or charge, to attach its fire alarm, police, tsunami alarm, signal wires or traffic control systems and street and traffic control signs to the poles of Grantee. If there is insufficient space available on Grantee's poles, Grantee's structures may be changed, altered or rearranged at the reasonable expense of the City so as to provide for such of the City. Such facilities shall be subject to interference by Grantee only to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's facilities.

Section 11. Underground Cables. As part of the City's urban renewal plan and with at least one year's notice, Grantee shall remove and replace overhead facilities underground at the request of the City of Bay City. As part of its notice to Grantee, the City will arrange to meet and discuss with Grantee the urban renewal plan in order to coordinate work projects and plan timeliness. Costs for removal and replacement, including any unrecovered costs of overhead facilities that are unusable as underground facilities, above what can be assessed against property owners will be borne by the City.

Section 12. Franchise Fee. In consideration of the rights, privileges, and franchise hereby granted, said Grantee, shall pay to the City of Bay City from and until its expiration, 4 percent per annum beginning March 14, 2006, of its gross local service revenues derived from local exchange access services, less net uncollectibles. Payment of this franchise fee shall be made on a quarterly basis on or before April 30, July 31, October 31 and January 31 for the calendar quarter immediately preceding. If a payment is not mailed by that date, the payment shall be deemed delinquent and shall accrue interest at the rate of 18 percent per annum from the closing date of the applicable reporting period.

Section 13. Information Required. With each franchise fee payment, Grantee shall furnish a short statement from its chief financial officer or his/her designee, setting forth the amount and calculation of payment of the franchise fee. The statement shall detail the gross local exchange access service revenues subject to tax under Section 12 of this ordinance which have been received by Grantee from its operations within the City and shall specify the nature and amount of all exclusions and deductions from such revenue applied by Grantee in calculating the franchise fee. In addition, Grantee shall provide all information for its Bay City operations to the State of Oregon, as is required by state rule or regulation. The City may require additional information pertaining to the franchise payments at any time. In the event that an audit of the franchise fee payments results in a determination that an additional payment is due to the City, such additional payment shall be subject to interest at the rate of 18 percent per annum from the date the original payment was due.

Section 14. Fee Re-evaluation. In the event state law changes to allow an increase in the amount which can be collected without passing this cost onto its citizens, the City Council may increase the franchise fee in any even numbered year. If the Bay City City Council determines that the franchise fee is to be changed, it shall provide Grantee 90 days prior written notice of any change. The effective date of any change of the franchise fee shall be specified by ordinance of the Bay City City Council.

Section 15. Street Work. Grantee's use of the public ways and "streets" shall comply with the specifications of the City Public Works Superintendent as well as any

applicable state or federal regulations or laws now in effect or hereafter adopted. No work affecting the "streets" may be done by Grantee without first obtaining all permits required by the City, which may include plan submittal, approval and payment of fees, prior to the initiation of work.

Section 16. Lack of Performance. In the event that Grantee fails, neglects or refuses for 60 days after demand in writing by the City to perform any or all of the obligations or requirements specified in this Ordinance to be performed by Grantee, without good cause shown, then the rights and privileges granted may be terminated by the City and the Grantee shall forfeit all rights and privileges granted herein.

Section 17. Indemnification. The Grantee hereby agrees and covenants to indemnify and save harmless the City and its officers, employees and agents (hereinafter referred to as agents) from any and all damages, costs or claims of any kind to which the City or its agents may be subjected as a consequence of or the result of the action of Grantee or its agents, which in any manner arises from Grantee's exercise of the rights and privileges granted herein and arising from any injury to persons or property by reason of any negligent or willful act or omission of the Grantee, its agents or employees whether occurring on the City's real property, right of way, poles, lines, vehicles or other City owned or operated equipment in exercising the rights and privileges herein granted.

Section 18. Successors. This franchise agreement shall be binding on all Grantee's successors and assigns. Any transfer of this agreement shall be subject to the successor or assign signing a new acceptance of the franchise ordinance and filing said written acceptance with the City within 30 days of the transfer and the City authorizing said transfer.

Section 19. State and Federal Law. If any provision of this ordinance is in conflict with any current or subsequently adopted state or federal law, then this ordinance shall be interpreted to be revised to the extent necessary to comply with the applicable state or federal law. In the event there are significant changes in state or federal law which would require revision of this ordinance in order for the City or for Sprint to be in compliance with the law, this ordinance may be changed at any time for such purpose.

PASSED and ADOPTED by the City Council this 14<sup>th</sup> day of February, 2006 and APPROVED by the Mayor this 14<sup>th</sup> day of February, 2006.

/s/ Shaena E. Peterson  
Shaena E. Peterson, Mayor

Attest:

/s/ Linda Dvorak  
Linda Dvorak, City Recorder

**ACCEPTANCE**

This franchise ordinance is accepted by United Telephone Company of the Northwest, dba Sprint, this 23<sup>rd</sup> day of February, 2006.

UNITED TELEPHONE COMPANY

By: /s/ Nancy L. Judy  
02/23/2006 Date  
A duly authorized officer or employee