

Article 11-9

UNION TELEPHONE COMPANY

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11-901 Scope.

All capitalized terms not otherwise defined herein are defined pursuant to 47 U.S.C. §153 ("Definitions").

11-902 Grant of Authority.

(a) This ordinance grants to Union Telephone Company (d/b/a "Union Wireless")(herein referred to as "Company"), a corporation created and existing under and by virtue of the laws of the State of Wyoming, upon the terms and subject to the conditions of this Franchise and its enacting Ordinance, a non-exclusive right to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys and all other public rights-of-way of the City of Rock Springs for a period of Ten (10) years from and after its acceptance by Company (and thereafter until terminated by at least six (6) months written notice either by the City of Rock Springs to the Company or by the Company to the City of Rock Springs), a Telecommunications System, including but not limited to lines, poles, anchors, wires, cable, conduit, vaults, hand holds, laterals and other fixtures and equipment (the "Facilities"), and to use said System for the transmission of sound, signals, data, or other means of Telecommunications.

(b) In the event at least six (6) months' written notice shall be given by the City of Rock Springs to the Company, or by the Company to the City of Rock Springs of its desire to terminate the permission and authority granted by this Franchise, the permission and authority granted by this Franchise shall thereupon expire in accordance with such notice. Whereupon, this ordinance shall be null and void and of no effect whatsoever and all rights and privileges granted by this Franchise shall be at an end.

11-903 Location of Facilities.

(a) The location of Company's Facilities and the Telecommunications System, and the construction thereof, or any change or extension (or the removal thereof), in case said removal shall necessitate the substantial disturbance of any street, alley, or other public right-of-way, shall be subject to the approval of the Governing Body of the City of Rock Springs and the Department of Engineering, which approval shall not be unreasonably denied, conditioned or delayed. Any street, alley, or other public right-of-way so disturbed shall be returned as closely as possible to its original state.

(b) The Company shall place on file with the Clerk plans showing the location and character of each pole and each conduit to be erected or laid, and the number of ducts in each conduit and the location of manholes, handholds, vaults, or other openings to gain access to said conduit; and no portion of the Telecommunications System or associated Facilities shall be erected, constructed, or laid upon, under or over any street, alley, or other public right-of-way, until a permit therefore has issued, subject to the approval of the Department of Engineering and Operations, which shall indicate the time, manner and place of laying, constructing or erecting the said Telecommunications System.

(c) In any instance (except as hereinafter expressly otherwise provided) where the City of Rock Springs requires construction in the public right-of-way for

purposes of repair, widening, repaving, regrading or any other relevant purpose where Company's Telecommunications System and associated Facilities are installed, the Company shall, as soon as reasonably possible, upon written notice from the City of Rock Springs, remove or relocate its Facilities to conform with the City of Rock Springs's written notice. The Relocation of Facilities by Company shall be at no cost to the City if (i) such request is for the protection of the public health, safety and welfare pursuant to lawful authority delegated to the City; (ii) the Facilities have been installed pursuant to this or any other Company franchise and not pursuant to a property or other similar right, including, but not limited to, a right-of-way, grant, permit, or license from a state, federal, municipal or private entity; and (iii) the City provides a new location for the Facilities. Otherwise, a Relocation required by the City pursuant to such written notice shall be at the City's expense. Following Relocation of any Facilities, Company may maintain and operate such Facilities in a new location within City limits without additional payment. If a City project is funded by federal or state monies that include an amount allocated to defray the expenses of Relocation of Facilities, then the City shall compensate Company up to the extent of such amount for any Relocation costs mandated by the project to the extent that the City actually receives or is otherwise authorized to direct or approve payment of such federal or state funds; however, the City shall ensure that receipt of compensation from federal or state sources shall not restrict or otherwise obligate Company's ownership of the Facilities in any way.

(d) Notwithstanding the preceding paragraph, Company shall not be responsible for any costs associated with an authorized City project that are not attributable to Company's Facilities in the City right of way. Further, all such costs shall be allocated among all utilities or other persons whose facilities or property are subject to Relocation due to an authorized

City project.

(e) Any portion of public right-of-way disturbed by Company's removal or relocation of its Telecommunications System and associated Facilities, shall either be restored by Company to the condition existing prior to Company's construction, or as specified by any permit issued by the City. Company shall, upon receipt of written notice from the City of Rock Springs, for a period of eighteen (18) months following Company's removal, relocation, and restoration of public rights-of-way subject to this sub-section, repair any damaged, uneven, or settled sections of right-of-way caused by Company's removal or relocation of its Facilities.

11-904 Compensation.

Federal law confirms "the authority of a State or local government to manage the public rights-of-way [and] to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." 47 U.S.C. §253(c). Therefore, consistent with the provisions of Chapter 9, Article 2, Section 3 of these ordinances, as consideration for costs incurred by the City of Rock Springs for managing the public rights-of-way occasioned by Company's use and occupancy of public rights-of-way for provision of telecommunications services, Company shall pay to the City of Rock Springs two per cent (2%) of the gross revenue received for telephone or telecommunications services rendered to persons within the corporate limits of the City Rock Springs. Said sum shall be due at the end of each calendar quarter, and shall be paid within forty-five (45) days from the end of said quarter. Company and the City of Rock Springs mutually acknowledge the foregoing sum to be a fair and reasonable compensation for management of Company's use and occupancy of the public rights-of-way.

11-905 Compliance with Existing Law.

This Franchise is contingent for its existence and continuance upon Company's continued compliance with all relevant state and federal statutes and regulations, including rules and regulations promulgated by the Wyoming Public Service Commission.

11-906 Indemnification.

(a) The Company shall, at its own expense, indemnify and save harmless the City of Rock Springs from any and all damages, judgment, costs and expenses of every kind, which may arise or result by reason of or in consequence of the intentional acts or negligence of the Company, its agents or servants.

(b) The Company hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against the City of Rock Springs arising from or growing out of any damages to the property of the Company resulting from any act or omission of the City of Rock Springs, its agents and employees, occurring prior to the date of the passage and acceptance of this Ordinance.

11-907 Default/Severability.

(a) In the event that the Company shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions and conditions of this Franchise, and if any such default or defaults shall continue for a period of six (6) months (exclusive of all times during which the Company may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God, labor strikes, or the orders or judgment of any commission or court entered in any suit or proceeding brought without its connivance) after written notice thereof to the Company from the City of Rock Springs is received by Company, stating the alleged default on the part of the Company, then and in each and every such case, the City of Rock Springs, in addition to

all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Company in and by this Ordinance and Franchise, and all rights and privileges of the Company under this Franchise shall thereupon be at an end.

(b) If any section, sentence, clause or phrase of this Franchise is for any reason declared to be illegal, invalid, unconstitutional or void, all other sections thereof not so held shall be and remain in full force and effect.

11-908 Effective Date.

This Franchise and its enacting Ordinance shall be in full force and from and after the date of its publication. All the rights and privileges granted to the Company hereunder may pass to its legal successor or successors organized under the laws of the state or by assignment of any corporation organized under the laws of the state acquiring all or substantially all of the assets or equity of the Company, or that part thereof located in the City of Rock Springs, subject to all the terms and conditions of this Franchise, and provided that said successor or successors or said assignee shall have filed with the Clerk its acceptance of said terms and conditions.

11-909 Repeal of Conflicting Legislation.

All Ordinances or parts of Ordinances in conflict with this Franchise and its enacting Ordinance are hereby repealed, if any such Ordinances do in fact exist.

11-910 Acceptance.

Within sixty (60) days after the passage of this ordinance, Company shall file with the City an unconditional written acceptance of the Franchise declaring its acceptance of the Franchise and its intention to be bound by the terms and conditions of the Franchise.

(Ord. 2018-02, 2/6/18)