

ORDINANCE NO. 4937

AN ORDINANCE OF THE CITY OF ELLENSBURG, WASHINGTON, GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO CONSOLIDATED COMMUNICATIONS OF WASHINGTON COMPANY, LLC.

WHEREAS, Consolidated Communications of Washington Company, LLC ("CCWC") is the successor in interest to the Ellensburg Telephone Company dba FairPoint Communications, and holds a current telecommunications franchise with the City of Ellensburg, Washington ("City") under Ordinance No. 4193; and

WHEREAS, the City has authority to regulate telecommunication franchises pursuant to RCW 35A.47.040 and Ellensburg City Code Chapters 11.40 and 11.41; and

WHEREAS, CCWC and the City desire to enter into an agreement authorizing CCWC to use certain rights-of-way within the City for its communications system, subject to certain terms, conditions and limitations; Now, Therefore, in consideration of mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the City and CCWC agree as follows:

WHEREAS, the CCWC and City of Ellensburg ("City") have engaged in negotiations regarding the right of CCWC to install, operate and maintain a telecommunications system in certain rights-of-way of the City; and

WHEREAS, the City and CCWC desire to set forth the terms and conditions by which CCWC may use the rights-of-way of the City,

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

Section 1. Franchise. The City hereby grants to CCWC a nonexclusive franchise, right and privilege to provide telecommunications services in the City, subject to the terms, conditions and limitations set out in this agreement.

Section 2. Authorization. CCWC is authorized to construct, operate, maintain and replace a telecommunications network in, under, above and across certain City rights-of-way, including any and all of the roads, streets, avenues, alleys, and highways, and rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all roads, streets, avenues, alleys, highways, and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the limits of the City. Nothing provided herein shall limit in any way the City's authority to otherwise exercise its police powers or other local authority.

Section 3. Duration. This agreement and the franchise authorized herein shall be in effect for a period of twenty-five (25) years from the effective date of the ordinance adopted by the City Council approving this agreement. In the event CCWC does not perform any obligation or requirement set out by this agreement, the City Council may, after giving a written demand for

performance, terminate the franchise. Termination for noncompliance requires the giving of notice and an opportunity for a hearing.

Section 4. Administrative Fee and Utilities Occupation Tax.

A. CCWC shall not be subject to a franchise fee for purposes of this agreement. CCWC shall, however, pay a one-time administrative fee of one thousand dollars (\$1,000) relating to the issuance and administration of this agreement. CCWC agrees to pay this administrative fee on or before the effective date of this agreement.

B. CCWC is obligated to pay any utilities occupation tax required by chapter 6.52 of the Ellensburg City Code.

Section 5. Facilities Availability. To the extent CCWC makes facilities available to other governmental entities within the state of Washington, CCWC shall also make such facilities available to the City, subject to similar terms and conditions.

Section 6. General Conditions. This ordinance has been adopted subsequent to the Ellensburg City Council's adoption of Ordinance No. 4161, the Communications Ordinance, as amended by Ordinance No. 4745, which is now codified at chapter 11.40 of the Ellensburg City Code ("ECC"), which governs the terms of this agreement. It is the intent of the parties that the provisions of Ordinance No. 4161 will apply to this franchise, to the extent they are applicable. Certain sections of the Ordinance are specifically referenced in the remaining sections of this ordinance. In the event any provision of this franchise ordinance is inconsistent with a provision of Ordinance No. 4161, it is the intent of the parties that the language of Ordinance No. 4161 should prevail.

The following general conditions shall also apply:

A. Permits and authorizations. CCWC shall apply for and obtain all necessary permits and authorizations prior to the construction, installation or operation of its telecommunications system in those certain rights-of-way specified in Attachment A to this agreement. See ECC 11.40.070.B.2.

B. Installation of facilities. All facilities and equipment shall be installed and maintained at such locations as shown in Attachment A, and any addenda thereto, as may be approved by the City so as to least interfere with existing and planned utilities and with the free passage of traffic and in accordance with the laws of the state of Washington and the ordinances and standards of the City regulating such construction. See ECC 11.41.030.A.2.b.

C. Interference with use of streets. When installing, laying or maintaining telecommunication facilities, apparatus or improvements, CCWC shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any street in as good condition as it was prior to the performance of such work. See ECC 11.40.070.B.3 and 11.40.070.B.7.

D. Safety requirements. CCWC, in accordance with applicable national, state and local safety requirements shall at all times employ ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. See ECC 11.40.070.B.1.

E. Relocation. See ECC 11.40.070.C.

1. As to any relocation of CCWC facilities wherein the cost and expense thereof is to be borne by CCWC in whole or in part, in accordance with this section E, CCWC may, after receipt of written notice requesting such relocation, submit to the City written alternatives to such relocation. Upon receipt the City shall evaluate the alternatives and shall timely advise CCWC in writing if one or more of the proposed alternatives is suitable to accommodate the work which would otherwise necessitate relocation of CCWC's facilities. If so requested by CCWC, the City shall give each alternative proposed by CCWC full and fair consideration. In no case shall the City arbitrarily reject reasonable alternatives. After due consideration, in the event the City is satisfied there is no other reasonable alternative, CCWC shall relocate its facilities as otherwise provided in section E and according to the requirements of ECC 11.40.070.C; provided, however, CCWC may in writing and within five (5) business days of City staff's determination appeal the determination to the City Council. The City Council's determination shall be conclusive and not subject to any further appeal.

2. The provisions of this section E shall in no manner preclude or restrict CCWC from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City.

F. Repairs. If the City requires the relocation (temporary or permanent) of CCWC's facilities for the purpose of repairing or maintaining any City-owned, operated or maintained facility, CCWC shall make such relocation at no cost to the City. See ECC 11.40.070.C.

G. Record of installations.

1. CCWC's responsibility to provide the City with information regarding the location of its facilities is governed by ECC 11.40.070.E.2 and 11.40.090.A.

2. Upon written request of the City, CCWC shall provide the City with the most recent update available of any final plan of potential improvements to its facilities within the public rights-of-way; provided, however, any such plan submitted shall be for informational purposes only and shall not obligate CCWC to undertake any specific improvements, nor shall such plan be construed as a proposal to undertake any specific improvements. See ECC 11.40.070.E.2.

H. Shared use of excavations. See ECC 11.40.070.B.6.

I. Restoration after Construction. If public property or the Public Rights-of-Way are damaged or disturbed during the construction, operation or repair of the telecommunications facilities authorized by this franchise, CCWC will restore the public property or rights-of-way to the

satisfaction of the City or to a condition as good as or better than before the disturbance or damage. See ECC 11.40.070.B.7.

J. Hold Harmless and Indemnity. CCWC agrees to indemnify and hold the City, its employees, agents, officers and officials harmless from any and all claims which may arise out of the operation of this franchise, as provided for in ECC 11.40.080.A.

K. Insurance. CCWC shall maintain in full force and effect throughout the term of this franchise agreement the insurance required by ECC 11.40.080.B. All insurance required of CCWC by this franchise must be approved by the city finance director, and certificates of required insurance shall be filed with the finance director/treasurer. See ECC 11.40.080.B.1 and 11.40.080.B.2.

L. Performance Bond. CCWC shall obtain performance bonds and, if necessary, payment bonds, to ensure the faithful performance of its responsibilities under this franchise, as is required by ECC 11.40.080.C.

M. Nonexclusive. This franchise and the rights it grants to use and occupy the public rights-of-way shall not be exclusive and do not, explicitly or implicitly, preclude the issuance of other franchises to operate telecommunication services within the City.

N. In accepting this franchise CCWC acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power. The City Council expressly reserves unto itself all the police powers to adopt ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this franchise. The City reserves the right to use, occupy and enjoy any public rights-of-way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services and other public street improvement projects.

O. Independent contractor. This franchise shall not be construed to provide that CCWC is the agent or legal representative of the City for any purpose whatsoever. CCWC is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

P. Effect of termination or forfeiture. If this franchise is either terminated or forfeited, CCWC shall cease use of the communications facilities authorized by this franchise. Removal of facilities and restoration of public property and public rights-of-way is governed by ECC 11.40.090.F.

Q. Revocation, reduction of term or forfeiture. If the terms of this franchise are violated, the City may, after providing CCWC with notice and an opportunity to be heard, make an appropriate reduction in the remaining term of the franchise or revoke the franchise, as is

discussed more fully by ECC 11.40.090.E. This franchise may be forfeited as provided for under the terms of ECC 11.40.090.E.3.

R. Inconsistency. If any portion of this franchise should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal or state law and is determined by the City Attorney that such FCC rule, or federal or state law preempts this franchise, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC, federal or state law shall control for so long, but only for so long, as such rule, regulation or law shall remain in effect provided, the remaining provisions of the franchise shall not be affected thereby.

S. Acceptance. This grant of franchise and its terms and provisions shall be accepted by CCWC by the submission of a written instrument, executed and sworn to by a corporate officer before a Notary Public, and filed with the City within thirty (30) days after the effective date of this franchise. Such instrument shall evidence the unconditional acceptance of this franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Section 7. General Provisions.

A. Entire agreement. This franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

B. Modification. No provision of this franchise may be amended or added to excepted by agreement in writing signed by both parties.

C. Full force and effect. Any provision of this franchise which is declared invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

D. Assignment. For information regarding the process to transfer or assign this franchise, see ECC 11.41.030.C.

E. Attorney fees. In the event the City or CCWC defaults on the performance of any terms of this franchise, and CCWC or the City places the enforcement of the franchise or any part thereof, or the collection of any moneys due hereunder in the hands of an attorney, or file a suit upon the same, each party shall pay its own costs, including reasonable attorneys' fees, costs and expenses.

F. No waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

G. Governing law. This franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the state of Washington. The venue for any dispute related to this franchise shall be Kittitas County, Washington.

H. Notices. Any notices required to be given by the City to CCWC or by CCWC to the City shall be delivered to the parties at the following addresses:

City
City of Ellensburg
City Manager
501 N. Anderson Street
Ellensburg, WA 98926
(509) 962-7221

CCWC
Michael J. Shultz
Sr. Vice President Regulatory & Public
Policy
Tel: (724) 449-2545
mike.shultz@consolidated.com

Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

Section 8. Captions. The respective captions of the sections of this franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this franchise.

Section 9. Severability. If any provision of this franchise or its application to any person or circumstance is held invalid, the remainder of the franchise or the application of the provision to other persons or circumstances is not affected.

Section 10. Ratification. Any act taken consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

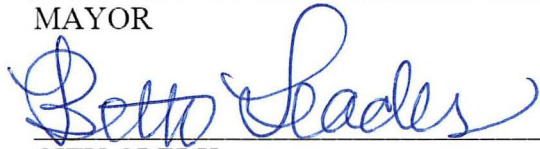
Section 11. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 12. Effective date. This Ordinance shall be effective five (5) days after its passage, approval and publication in accordance with Laws. This Franchise will take effect as of the date of CCWC's written acceptance thereof (the "Effective Date").

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 5th day of February, 2024.


MAYOR

ATTEST:


CITY CLERK

Approved as to form:


CITY ATTORNEY

Publish: 2-8-2024

I, Beth Leader, City Clerk of said City, do hereby certify that Ordinance No. 4937 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4937 was published as required by law.


BETH LEADER

HONORABLE MAYOR AND CITY COUNCIL
CITY OF ELLENSBURG, WASHINGTON

In the matter of the franchise issued to Consolidated Communications of Washington Company, LLC to construct, operate and maintain facilities in, upon, over under, along, across and through the franchise area of the City of Ellensburg, Washington))))))	Franchise Ordinance No. 4937 ACCEPTANCE OF FRANCHISE
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WHEREAS, the City Council of the City of Ellensburg, Washington, has granted a franchise to Consolidated Communications of Washington Company, LLC ("CCWC"), a Washington limited liability corporation, its successors and assigns, by enacting Ordinance No. 4937 bearing the date of February 5, 2024; and

WHEREAS, a copy of said Ordinance granting said franchise was received by CCWC on February 12 2024, from said City of Ellensburg, Kittitas County, Washington.

NOW, THEREFORE, CCWC, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Ellensburg, Kittitas County, Washington.

IN TESTIMONY WHEREOF said CCWC has caused this written Acceptance to be executed in its name by its undersigned Michael Shultz thereunto duly authorized on this 12th day of February, 2024.

ATTEST: CONSOLIDATED COMMUNICATIONS OF WASHINGTON COMPANY, LLC

Michael Shultz

Sr. Vice President Regulatory & Public Policy By: Michael Shultz
(Printed name and title) (signed)

Copy received for City of Ellensburg on February 20th, 2024.

By: Beth Seales

City Clerk