

**ORDINANCE NO. 1030**

AN ORDINANCE GRANTING TO USWEST COMMUNICATIONS, INCORPORATED, HEREINAFTER SOMETIMES REFERRED TO AS “GRANTEE”, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO DO A GENERAL COMMUNICAION 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 ATHENA, POLES, WIRES AND OTHER APPLIANCES AND CONDUCTORS FOR AL TELEPHONE AND OTHER COMMUNICATION PURPOSES.

The City of Athena, Oregon ordains as follows:

**SECTION 1:** There is hereby granted by the City of Athena to USWEST Communications, Incorporated, its successors and assigns, the right and privilege to do a general communication business within said City of Athena 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 al 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 successor 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 that may, during the continuance of this franchise, be adopted from time to time by the City of Athena.

**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 Athena 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:** Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City of Athena 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 Athena 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 Grantees' right 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 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 Company harmless of and from any and all damages or 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, USWEST Communications, Incorporated, its successors and assigns, shall pay to the City of Athena from and after the date of acceptance of this franchise, and until its expiration, annually, seven percent (7%) 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 Athena, less net uncollectible. Payment shall be made on or before the fifteenth (15<sup>th</sup>) day of March of each and every year for the calendar year preceding, with the exception that in the year 1999, payment shall be made only for the period commencing on the date this ordinance becomes effective and ending December 31, 1998. Such payment made by the Grantee will be accepted by the City of Athena 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 Athena upon the Grantee during the term of this franchise.

**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. This Ordinance shall be subject to any and all State or Federal legislative enactment.

**SECTION 8:** NOW THEREFORE, an emergency is hereby declared to exist and this Ordinance shall take effect immediately upon its passage and approval; provided, however, that Grantee shall have thirty (30) days from passage and approval in which to file with the Recorder of the City of Athena its written acceptance of all the terms and conditions of this Ordinance.

Passed by the Council and approved by the Mayor April 9, 1998.