

ORDINANCE NO. 2085

AN ORDINANCE ESTABLISHING A FRANCHISE AGREEMENT BETWEEN UNITED STATES CELLULAR OPERATING COMPANY OF MEDFORD FOR USE OF THE PUBLIC RIGHT OF WAY RELATING TO SMALL CELL WIRELESS FACILITIES

RECITALS:

A. United States Cellular Operating Company of Medford (“USCC”) is a subsidiary of United States Cellular, Inc., a Delaware corporation, wireless cellular service coverage to the citizens of the City of Central Point, Oregon (the “City”), and other surrounding areas;

B. Providing cellular service, particularly 5G wireless service, requires the installation, operation and maintenance of small cell wireless facilities to located within the public ways of the City;

C. The City desires to set forth the terms and conditions by which United States Cellular Operation Company of Medford shall use the public ways of the City.

THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:

Section 1. As used in this ordinance, the following words and phrases shall mean:

City: The City of Central Point, Oregon.

City Manager: The City Manager or his or her designee.

Facilities: Antennas and any associated utility or equipment boxes, transmitters, receivers, radios, amplifiers, ancillary fiber-optic cables and wiring, and ancillary equipment for the transmission and reception of Grantee’s wireless communication signals for voice and other data transmission, including the means and devices used to attach such equipment to poles, peripherals, and wiring, cabling, and power feeds.

Grantee: USCC, its successors and assigns.

Public Way or Right of Way: Any highway, street, road, alley, public right-of-way or utility easement for public use under control of the City within the corporate limits of the City now existing and as annexed during the term of this Franchise.

Section 2. A reliable source for wireless communications services is in the public interest of the City and its inhabitants. Therefore, subject to the provisions and restrictions of this ordinance and the CPMC, the City grants to Grantee the non-exclusive privilege to locate, construct, install, replace, operate and maintain its Facilities over, in, on or under current or future Rights of Way within the City. This includes the privilege to construct new poles or collocate said Facilities within the Public Way or Right of Way on City owned property—such as light poles, utility poles, or

other City structures—or on private facilities under separate agreement, provided proper approval is received in advance.

Section 3. Except as provided in this section, Grantee's Facilities shall be installed underground except along those routes existing at the time of enactment of this ordinance or where infeasible and except to the extent that Grantee's Facilities must remain above-ground to operate. The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole: (1) Materially and demonstrably interferes with the safe operation of traffic control equipment; (2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians; (3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement; (4) Fails to comply with applicable codes, standards and regulations, including the City's design standards; or (5) Fails to comply with the provisions in the City of Central Point Municipal Code. It shall be lawful for Grantee to make all necessary excavations in any public way for the purpose of locating, constructing, operating and maintaining its facilities. Grantee's use of the Public Way and all construction by Grantee shall comply with the standard specifications and special provisions of the City and all other applicable Federal, State and local laws and regulations, and Grantee and the City shall comply with the applicable requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2013), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952. No work affecting the Public Way shall be done by the Grantee without first obtaining the permits required by the City, which may include plan submittal and approval before work begins. During the approval process, Grantee shall bear the burden of proof regarding the infeasibility of installing facilities underground along new routes when requesting customary above-ground Facilities; under such circumstances, the City and Grantee will work together in good faith to reach a mutually agreeable solution consistent with this Section 3.

Section 4. New plans will be furnished promptly for any additions or modifications. Plans for Facilities already existing on the effective date of this Franchise that Grantee has not already provided to the City under previous agreement or ordinance shall be furnished to City within 60 days after the effective date of this Franchise.

Section 5. Nothing in this Ordinance shall be construed in any way to prevent the City from constructing and maintaining any public improvement in any Public Way. In its construction and maintenance of public improvements, the City shall endeavor not to obstruct or prevent the free use by Grantee of its Facilities; however, the City's rights shall be paramount, subject to applicable state and federal law.

Section 6. The City shall have the right to require Grantee to change the location of any Facility within the Public Way when the City determines that a necessary public improvement project requires such change, and the expense thereof shall be paid by Grantee, provided the City's request is (a) not unreasonable or discriminatory in nature, (b) is consistent with a lawful exercise of the City's police power, and (c) subject to applicable state and federal law.

If the City requires Grantee to relocate its Facilities located within the City, the City will make a reasonable effort to provide Grantee with an alternate location for its Facilities within the Public Way. City shall give Grantee written notice to relocate its Facilities at least 120 days prior to the date established by the City as the deadline for relocation. Within 30 days receipt of such notice, Grantee shall do any necessary field investigation and furnish the City with a plan showing the exact location of all of Grantee's Facilities in the construction area and showing necessary adjustments and reasonable time requirements. Thereafter, the City will furnish Grantee with final improvement plans and a schedule which allows Grantee a reasonable time to complete the relocation of its Facilities.

Should Grantee, due to its negligence, fail to relocate any such Facilities by the date established by the above-referenced final improvement plans and schedule, the City may effect such relocation at its own risk. The work shall be done by a qualified contractor. The reasonable and verifiable expense thereof shall be paid by Grantee. Grantee shall pay the City's charges for such work within 30 days after receipt of City's statement of charges, subject to Grantee's rights to pursue legal and equitable remedies.

Section 7. Should it ever become necessary to temporarily rearrange or temporarily relocate Grantee's Facilities at the request of a private person or business, as a condition of City permit requirements or other City-required reasons, Grantee shall perform such temporary rearrangement or relocation as expeditiously as possible upon receipt of reasonable written notice from the person or business desiring the temporary change of the Facilities if such notice meets all of the following requirements:

- (a) approved by the City Manager in writing,
- (b) provides all necessary information about the project,
- (c) provides that the costs incurred by Grantee in making the change be borne by the person or business giving said notice,
- (d) provides that the person or business giving notice shall indemnify and hold harmless the Grantee and City of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such change of Grantee's Facilities, and
- (e) accompanied by a cash deposit or a good and sufficient bond to pay any and all of the Grantee's estimated costs as estimated by Grantee, unless Grantee provides written confirmation that it waives such requirement.

Section 8. Grantee shall at all times maintain all of its Facilities in a good state of repair. Any damage to the Public Way caused by Grantee shall be promptly repaired by Grantee at no cost to the City. Grantee shall have a local representative available at all times through the local utility coordinating notification center, whether it be the Rogue Basin Utilities Coordinating Council, the Oregon Utility Notification Center, or any such successor authority, to locate Grantee's facilities for persons who need to excavate in the Public Way. Should Grantee fail to maintain or repair any such Facilities by the date established by the City, the City may affect such repair at its own risk,

and the reasonable and verifiable expense thereof shall be paid by Grantee within thirty (30) days after receipt of an invoice therefor. Procedures and costs shall be as in Section 6 above.

Section 9. Grantee shall indemnify and hold harmless the City from any and all damages of any kind or character to the extent caused by the location, installation, operation and maintenance of the Grantee's Facilities in the City by Grantee or its contractors, except to the extent caused by the City's or a third party's negligence, recklessness or willful misconduct. Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public Way.

Section 10. The Federal Communications Commission issued an order, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order* (September 26, 2018) (the "FCC Order") that limits the charges a local government can impose on small cell wireless facilities ("SWF") within the Right of Way. As Grantee's Facilities within the Right of Way will be SWF, pursuant to the FCC Order, as to any SWF installed or operated under this Franchise, Grantee shall pay to City a fee of \$270 per year for each SWF in City Rights-of-Way (the "Franchise Fee"). In addition to the Franchise Fee, Grantee shall pay a non-recurring application fee of \$500 for up to five SWFs, and an additional \$100 for each application for a SWF beyond five. In the event that a new pole is required, Grantee shall pay an application fee of \$1,000 for such installation.

The Franchise Fee shall be due and payable beginning on the first day of the month following the installation of the SWF, and thereafter on January 1 of each year. For any partial year in which the payment of the Franchise Fee commences, such fee will be prorated for the remainder of the calendar year.

The Franchise Fee shall not be in addition to any other special license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's wireless communications business or the exercise of this Franchise within the corporate limits of the City, and the amount due to the City under any other special license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting therefore the amount of said Franchise Fee paid hereunder. A deductible "special" tax or charge is one that is levied only on Grantee or only on utility companies.

Grantee shall not deduct any general business taxes or general sales taxes levied or collected by the City. Grantee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions or permit conditions from the Franchise Fee payment required by this section. This provision does not exempt the property of Grantee from lawful ad valorem taxes, local improvement district assessments, or conditions, exactions, fees and charges that are generally applicable during Grantee's real property development or use outside of the right-of-way or use as required by City ordinances. Except as required by the City's moratorium on pavement cuts, Grantee shall not be required to pay any permit fees or similar charges for street opening, installations, construction and the like.

Payment not received within thirty (30) days from the due date shall be assessed interest at the rate

of five percent (5%) of the annual Franchise Fee. Except as otherwise required or allowed by law or rule, no portion of the Franchise Fee shall be noted separately on any bill to any customer or user of services or commodities furnished by Grantee.

Section 11. Payment of the Franchise Fee shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantees that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge, and subject to applicable state and federal law.

Section 12. This Franchise shall commence on the date of full execution and shall continue to be in force for a period of 10 years. At least 120 days prior to the expiration of this Franchise, USCC and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise.

This Franchise may also be terminated at any time upon 45 days written notice for failure to pay the Franchise Fee pursuant to Section 10 of this ordinance or comply with other material provisions of this Franchise or the CPMC unless such failure is remedied within the 45-day period. Grantee may terminate this Franchise at any time for convenience provided it gives at least 45 days written notice prior to the termination date.

If the City elects to adopt a new right-of-way ordinance that regulates and sets fees for the use of the Right of Way by wireless communications carriers for the same purpose as set forth herein (“New Ordinance”), provided such New Ordinance is in compliance with state and federal laws, this Franchise will terminate on January 1 of the first calendar year following the effective date of that ordinance. Thereafter, Licensee’s use of the Right of Way will be governed by the New Ordinance. The City will engage Licensee in the discussion and review of the New Ordinance and allow Licensee the opportunity to provide comment. The City’s agreement to engage Licensee in establishing the New Ordinance is a material inducement to Licensee agreeing to the termination right set forth herein.

Otherwise, if a New Ordinance is not established or the New Ordinance is not in full compliance with state and federal law, this Franchise shall remain in effect.

If USCC contends that the New Ordinance is in violation of state or federal law, USCC must give City written notice of the dispute. Such notice will result in this Franchise Agreement remaining in effect for USCC for an additional 120 days, instead of the New Ordinance going into effect as scheduled. It is contemplated that during that window, the parties shall attempt negotiation, mediation, or other alternative dispute resolution; and/or USCC may approach the Jackson County Circuit Court for the State of Oregon, or the United States District Court for the District of Oregon, seeking a preliminary injunction or other judicial intervention. Those two courts shall be the exclusive venue for litigating whether the New Ordinance is in violation of state or federal law.

Section 13. This Franchise is not transferable. Nothing herein shall be interpreted to limit Grantee’s rights to use contractors, nor its right or responsibility, as applicable, to allow other

entities to use portions of its wireless communication system; in such instances, neither notice to nor consent from the City shall be required.

Notwithstanding anything to the contrary within the terms of this Franchise, Grantee shall have the right to assign its rights and interest under the Franchise to its subsidiaries, affiliates or successor legal entities, to the subsidiaries or affiliates of Grantee, or to any entity which acquires all or substantially all of Grantee's wireless communications assets in the market defined by the Federal Communications System in which the City is located, without notice or consent.

Section 14. The City Manager is authorized to act for the City in all matters pertaining to this Franchise. Grantee may appeal any action of the City Manager to the City Council by giving written notice thereof within twenty-one (21) days after Grantee was notified of such action. The City Council will hear the appeal and render a final decision within thirty (30) days after the notice of appeal is given.

Section 15. Whenever any notice is to be given pursuant to this ordinance, it shall be effective on the date it is sent in writing by registered or certified mail, addressed as follows:

To the City: City Manager
 City of Central Point
 140 South 3rd Street
 Central Point, OR 97502

To Grantee: United States Cellular Operating Company of Medford
 Attention: Real Estate Lease Administration
 8410 W. Bryn Mawr Avenue
 Chicago, Illinois 60631

Copy to:

 USCC Services, LLC
 Attention: Real Estate Lease Administration
 8410 W. Bryn Mawr Avenue
 Chicago, Illinois 60631

Notice of change of address may be given in the same manner as any other notice.


Section 16. This Franchise supersedes all prior franchises between City and Grantee, if any.

Section 17. Proprietary information as identified and provided by the Grantee to the City under this Ordinance is entitled to protection as trade secrets and shall be governed by confidentiality procedures pursuant to ORS 192.501, ORS 192.502 and under any other applicable State or Federal laws.

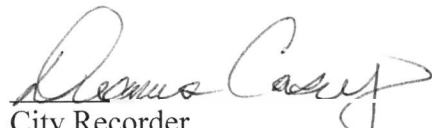
Section 18. This ordinance shall be governed by Oregon law. Nothing in this Ordinance is intended to be inconsistent with the State or Federal Law and further neither the City nor Grantee waives any rights granted under State or Federal Law by agreeing to this Ordinance. If any clause, sentence, or section of this Ordinance, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid.

PASSED by the Council and signed by me in authentication of its passage this 27th day of

January, 2022.


Mayor Hank Williams

ATTEST:


City Recorder

UNCONDITIONAL ACCEPTANCE BY:

I am authorized to bind United States Cellular Operating Company of Medford and to unconditionally accept the terms and conditions of the foregoing City of Central Point Franchise Ordinance, which are hereby accepted by _____ this _____ day of _____, 2022.

United States Cellular Operating Company of Medford

By:

Name:

Title:

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as the _____ of _____ an Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

Notary Public for the State of _____
Print Name:
Residing in:
My Commission Expires: