

ORDINANCE NO. 5493

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 3.40, AMERICAN TELEPHONE AND TELEGRAPH, INC. FRANCHISE, TO ADD NEW LANGUAGE GRANTING A NON EXCLUSIVE AUTHORITY TO CONDUCT BUSINESS AS A TELECOMMUNICATIONS CARRIER WITHIN THE CITY OF ALBANY, FIXING TERMS, CONDITIONS, AND COMPENSATION: AND DECLARING AN EMERGENCY.

WHEREAS, American Telephone and Telegraph, Inc., (Franchisee) has been operating a system within the City of Albany; and

WHEREAS, the City intends by the adoption of this ordinance to authorize the continued operation of the system; and

WHEREAS, it is the determination of the City Council that such continued operation can contribute significantly to the communication needs and desires of the City,

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Chapter 3.40 of the Albany Municipal Code is hereby amended to incorporate the changes noted herein:

3.40.010 Franchise Granted.

There is hereby granted by the City of Albany, hereinafter referred to as "City", to ~~American Telephone and Telegraph Corporation~~ **AT&T Corp.**, authorized to conduct business in Oregon, their successors and assigns, hereinafter each referred to as "Franchisee", the non-exclusive right and privilege to conduct business as a telecommunications carrier as that term is defined in ORS 133.721(8) within the City and to place, erect, lay, maintain and operate in, upon, over and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City, poles, wires and other appliances and conductors for all telephone, telegraph and other communication purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Franchisee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary to property to operate and maintain the same. Notwithstanding the foregoing, the City Manager or his/her designee shall have the authority to prescribe which public ways will be used and the location of communications facilities within the public ways will be used and the location of communication facilities within the public way as may be reasonably necessary to minimize public inconvenience. This Franchise Agreement anticipates ~~40,132~~ **8,389** feet of cable and/or of conduit owned and maintained by Franchisee at \$2.00/ft resulting in an annual fee of ~~\$20,264.00~~ **\$16,788**. The Franchisee agrees to provide a map documenting the location of the ~~40,132~~ **8,389** feet of conduit. This franchise does not authorize a cable television system nor video programming.

3.40.060 Rearrangement of Facilities to Permit Moving of Building and Other Objects.

Upon seven days notice in writing from any person desiring to move a building or other object, the Franchisee shall temporarily raise, lower or remove its facilities upon any street, bridge, or public place ~~with~~ **within** the City, when necessary to permit the person to move the building or other object across or along such street, bridge or public place. The raising, lowering, or removal of the facilities of the Franchisee shall be in accordance with all applicable ordinances and regulations of the City. The notice required by this section shall bear the approval of the City Manager, and shall detail the route of movement of the building or other objects.

3.40.130 Payment

Effective August 14, 2000, and until the franchise's expiration, said Franchisee shall pay to the City annually, \$2.00 per linear foot of conduit and/or cable owned and maintained by Franchisee. This franchise fee shall be deposited in the U.S. mail, postage prepaid, addressed to the Administrative Services Director of the City and postmarked on or before **the** last business day of September. If a payment is not mailed by the date set

forth above, the payment shall be deemed delinquent and shall accrue interest at the rate of nine percent per annum from the date of the applicable reporting period. The franchise payments made by Franchisee will be accepted by the City from the Franchisee, in payment of any separate fees that are imposed by the City on Franchisee for street openings, construction or inspection or maintenance of fixtures or facilities. However, Franchisee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this chapter. Franchisee shall also pay to the City as additional consideration under this franchise an Administrative Fee totaling \$2,000, due on the effective date of this franchise, which may be deducted from Franchisee's payment set forth herein.

3.40.150 Reporting of Funds.

With each franchise fee payment, the Franchisee shall furnish a sworn statement or declaration under oath from ~~the Chief Finance Officer~~ **an authorized officer** or designee, setting forth the amount and calculation of the payment. The statement shall detail the gross linear feet of cable and/or conduit which exists within the Albany City limits and the calculation of the franchise fee paid, and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Franchisee in calculating the franchise fee. The City Manager of the City may require the Franchisee to provide any additional information reasonably necessary for administration of the franchise fee. The Franchisee shall keep available and open to inspection by the City Manager of the City, all accounts, books, and other records reasonably necessary for ascertaining the franchise liability. Franchisee shall provide any additional information requested by the City within 48 hours of any such request delivered to Franchisee, to be produced at Albany City Hall, office of the City Manager, during regular office hours. 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 nine percent per annum from the date the original payment was due. No interest shall be due with respect to annexation by the City for which notice was not provided to Franchisee pursuant to the provision of ORS 222.005

3.40.160 Indemnification.

The Franchisee shall defend, indemnify and hold harmless the City, its agents, officers and employees from any and all claims, demands, and damages of any kind, including attorney's fees which may arise, from any negligent act or omissions of the Franchisee, its agents, officers or employees, in connection with the Franchisee's operations pursuant to this franchise. **Notwithstanding the above, the franchisee shall not indemnify the City, its contractors, agents, officers and employees for any negligence or intentional act of the City or its contractors, agents, officers and employees.**

3.40.170 Continuation - Termination.

The rights, privileges and franchise herein granted shall continue and be in force until August 14, ~~2003~~, **2006** except that it is understood and agreed that either party may at any time terminate or renegotiate this agreement upon ~~six~~ **24** months notice in writing. **Franchisee shall have the right to extend this agreement through August 14, 2011, but the terms for the period August 14, 2006, through August 14, 2011, shall be negotiated prior to August 14, 2006.**

3.40.180 Forfeiture and Remedies.

In addition to any other rights set out elsewhere in this franchise, the City reserves the right to declare a forfeiture of the franchise, and all of the Franchisee's rights arising thereunder in the event that Franchisee violates any material provision of the franchise, including but not limited to failing to pay or any suspension of Franchisee's payments of franchise fees to the City under this franchise, failure by Franchisee to submit timely reports regarding the calculation of its gross revenues-based franchise fees to the City, failure to maintain the liability insurance and/or bonds required under this Franchise, or failure to comply with all other state, federal or local laws as set forth in this franchise. **In the event Franchisee violates any material provision of the franchise, the City shall provide written notice of default and shall allow 65 days for Franchisee to remedy the violation. Extraordinary events, (earthquake, flood, fire) beyond the control of the Franchisee, shall result in an additional 60 days to remedy the violation.** All remedies and penalties

under this chapter, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this chapter, including termination of the franchise, are not exclusive, and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this chapter or acceptance of any payment due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation itself.

3.40.210 Successors and Assigns.

This Franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors and assigns. Franchisee, however, shall not make any assignment without the written consent of the City, and any assignment made without the City's consent shall be null and void. **The City will not unreasonably withhold approval of an assignment.**

Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, safety, and health of the citizens of the City of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by Council: July 25, 2001

Approved by the Mayor: July 25, 2001

Effective Date: July 25, 2001

  
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Mayor

ATTEST:

  
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City Recorder