



City of Grand Island

Tuesday, July 09, 2002

Council Session

Item F3

#8747 - Consideration of Amending Chapter 34 of City Code Relative to Telecommunications

Following up on our article in "The Blues" issue of two weeks ago, the ordinance proposes a substantial simplification of the current telecommunications chapter of the City Code. Because the anticipated influx of new telecommunications providers to Grand Island in the wake of the Telecommunications Act of 1996 did not occur and we have few problems with the existing telecommunications providers other than a persistent failure of contractors to obtain permits to build in City rights of way and check for interference with existing infrastructure, this simplification is appropriate. The amendments will likely allow us to have a new opportunity to reinforce the need for contractors to obtain permits before commencing trenching and digging the rights of way. Also, it is an opportunity to check again whether there are companies providing local exchange service in Grand Island other than Qwest and Alltel so that the City's occupation taxes can be collected in accordance with the code.

Staff Contact: Charlie Cuypers

ORDINANCE NO. 8747

An ordinance to amend Chapter 34 of the Grand Island City Code; to amend Sections 34-1 through 34-68 pertaining to telecommunications; to renumber Sections 34-1 through 34-68 as now existing; to repeal Sections 34-1 through 34-68 as now existing, and any ordinance or parts of ordinances in conflict herewith; and to provide for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. Article I and Sections 34-1 through 34-68 of the Grand Island City Code is hereby amended to read as follows:

Article I. Telecommunications

§34-1. Purpose

The purpose of this Chapter is to:

- (A) Establish a local policy concerning telecommunications providers and services;
- ~~— (B) Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and services;~~
- ~~(B)(C)~~ (C) Promote competition in telecommunications;
- ~~(C)(D)~~ (D) Minimize unnecessary local regulation of telecommunications providers and services;
- ~~— (E) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;~~
- ~~(D)(F)~~ (F) Permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;
- ~~(E)(G)~~ (G) Conserve the limited physical capacity of the public ways held by the City;
- ~~— (H) Assure that the City's current and ongoing costs of granting and regulating private access to and use of the public ways are fully paid by the persons seeking such access and causing such costs;~~
- ~~— (I) Secure fair and reasonable compensation to the City and the residents of the City, in a nondiscriminatory manner, for permitting private use of the public ways;~~
- ~~(E)(J)~~ (J) Assure that all telecommunications carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- ~~— (K) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare;~~
- ~~— (L) Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.~~

§34-2. Definitions

Terms used in this Chapter shall have the following meanings:

Affiliate shall mean a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

City shall mean the City of Grand Island, its elected and appointed officers, employees, and duly appointed and authorized agents.

City Property shall mean all real property owned or controlled by the City whether in fee ownership or other interest.

Code shall mean the Grand Island City Code ~~(1988 Ed.)~~, as amended.

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~~Excess Capacity shall mean the volume or capacity in any existing, or future duct, conduit, manhole, handhole or other utility facility within the public ways that is or will be available for use for additional telecommunications facilities.~~

~~FCC or Federal Communications Commission shall mean the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.~~

~~Grantee shall mean both licensees and franchisees granted certain rights and obligations as more fully described herein.~~

~~Nebraska Public Service Commission or NPSC shall mean the State administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the State of Nebraska to the extent prescribed by law.~~

Overhead Facilities shall mean utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

Person shall mean corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities and individuals.

Public Ways includes the surface of a space above and below any real property in the City which the City owns or in which it holds an interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, easements, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the ownership or control of the City, and any rights-of-way established, dedicated or devoted for public utility purposes.

Rights-of-Way shall mean all real property and public ways, which the City owns or in which the City has an ownership interest.

State shall mean the State of Nebraska.

Surplus Space shall mean that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Nebraska Public Service Commission to allow its use by a telecommunications carrier for a pole attachment.

Telecommunications Carrier includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities used or to be used to transmit, receive, distribute, provide or offer telecommunications service.

Telecommunications Facilities shall mean the plant, equipment and property within the City used to transmit, receive, distribute, provide or offer telecommunications service.

Telecommunications Provider includes every person who provides telecommunications service over telecommunications facilities.

Telecommunications Service shall mean the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium, unless excluded or exempted by local, state or federal law.

Underground Facilities shall mean utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

Usable Space shall mean the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Nebraska Public Service Commission.

Utility Facilities shall mean the plant equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within public ways and used or to be used for the purpose of providing utility or telecommunications services.

§34-3. Penalties

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be guilty of an infraction. Upon conviction any person violating any provision of this chapter shall be subject to a fine as provided by § 1-7 of this Code. A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

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§34-4. Other Remedies and Regulations

Nothing in this chapter shall be construed as limiting any other remedies at law or in equity that the City may have for enforcement of this chapter. The City Administrator is authorized to establish regulations and procedures for the implementation of this chapter.

§34-5. Registration, Fees and Duration

(A) To the extent permitted by law, ~~any telecommunications carrier or provider who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways and/or to provide telecommunications service, including but not limited to local exchange service, to persons or areas within the City~~ all telecommunications carriers or providers engaged in the business of transmitting, supplying or furnishing of telecommunications service originating, terminating or existing, within the City shall register with the City pursuant to this Chapter and pay all fees provided herein, ~~unless otherwise required to apply for and obtain a license or franchise pursuant to this Chapter.~~

(B) A registration shall remain in effect for a period of five (5) years from the date on which the City Administrator certifies that the information required pursuant to §34-6 has been submitted to the Administrator. A registration may be renewed by either submitting information in duplicate to the City Administrator as set forth in §34-6 or submitting affidavits in duplicate attesting that the information submitted for the initial registration remains unchanged except to the extent modified by attachments to said affidavits. Upon filing a registration renewal the registrant shall pay all fees as provided herein.

§34-6. Registration Required

All telecommunications carriers or providers required to register pursuant to §34-5, shall register with the City by submitting information in duplicate to the City Administrator which shall include the following:

(A) The identity and legal status of the registrant including any affiliates.

(B) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

(C) A general description of registrant's existing or proposed telecommunications facilities within the City.

~~(D) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.~~

~~(E) Information sufficient for the City to determine whether the registrant is subject to licensing or franchising.~~

~~(D)(F)~~ Information sufficient for the City to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal tax or fee.

~~(E)(G)~~ Copies of the registrant's certificate of convenience and necessity issued by the Nebraska Public Service Commission.

(H) A copy of relevant portions of the registrant's certificate of convenience and necessity application may be filed in lieu of items (C), ~~(D)~~ and ~~(E)~~ above.

(I) Such other information as the City may require for purposes of this Chapter.

§34-7. Registration Purpose, Exception

(A) The purpose of registration is to:

(1) Provide the City with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the City, or that own or operate telecommunication facilities within the City;

(2) Assist the City in enforcement of this Chapter;

(3) Assist the City in the collection and enforcement of any municipal taxes, ~~franchise fees, license fees or charges~~ that are lawfully permissible and may be due the City; and

(4) Assist the City in monitoring compliance with local, state and federal laws.

(B) A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control is excepted from the registration requirement pursuant to this Chapter, provided that such company or person does not use or occupy any public ways of the City.

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§34-8. License and Fees

~~———— To the extent permitted by law and except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways for the purpose of providing telecommunications service to persons and areas outside the City shall first obtain a license granting the use of such public ways from the City pursuant to this Chapter and pay all the fees as provided herein. A license shall not be required by any person that obtains a franchise pursuant to §34-19.~~

§34-9. License Application

~~———— All telecommunications carriers required to obtain a license pursuant to §34-8 shall apply for a license from the City by submitting information in duplicate to the City Administrator which shall include the following:~~

- ~~—— (A) The identity and legal status of the applicant including any affiliates.~~
- ~~—— (B) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the license application.~~
- ~~—— (C) A general description of applicant's existing or proposed telecommunications facilities within the City and the geographic area to be covered by the license.~~
- ~~—— (D) A confirmation that the telecommunications service that the applicant intends to offer or provide, or is currently offering or providing, is to persons, firms, businesses or institutions outside the City.~~
- ~~—— (E) Information sufficient for the City to determine whether applicant is subject to licensing or franchising.~~
- ~~—— (F) Information sufficient for the City to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the applicant constitutes an occupation or privilege subject to any municipal tax or fee.~~
- ~~—— (G) Copies of the applicant's certificate of convenience and necessity issued by the Nebraska Public Service Commission.~~
- ~~—— (H) A copy of relevant portions of the applicant's certificate of convenience and necessity application may be filed in lieu of items (C), (D) and (E) above.~~
- ~~—— (I) Such other information as the City may require for purposes of this Chapter.~~

§34-10. License; Determination by the City

~~———— After receiving a complete application hereunder, the City Administrator shall make a recommendation to the Mayor and City Council to grant or deny the license application in whole or in part. If the application is recommended for denial, the recommendation shall include the reasons for denial. The Mayor and City Council shall grant or deny the license application in whole or in part after receiving a recommendation of the City Administrator. The decision of the Mayor and City Council on the application shall be made within sixty (60) days of the filing of a complete application; provided, time may be extended upon request of the applicant or to permit the City to obtain additional information relevant to the application. The following standards shall apply when determining to grant or deny the license application:~~

- ~~—— (A) The financial and technical ability of the applicant.~~
- ~~—— (B) The legal status of the applicant.~~
- ~~—— (C) The capacity of the public ways to accommodate the applicant's facilities.~~
- ~~—— (D) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the application is granted.~~
- ~~—— (E) The damage or disruption, if any, of existing or future public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same.~~
- ~~—— (F) The public interest in minimizing the cost and disruption of construction within the public ways.~~
- ~~—— (G) The type of service that applicant will provide.~~
- ~~—— (H) The availability of alternate routes or locations for the proposed facilities.~~
- ~~—— (I) Applicable federal, state and local laws, regulations, rules and policies.~~

§34-11. License; Agreement

~~———— No license granted hereunder shall be effective until the Mayor and City Council have approved a written agreement with the applicant setting forth the particular items and provisions under which the license to occupy and~~

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~~use public ways will be granted. A license granted hereunder shall be limited to a grant of rights to use specific public ways and defined portions thereof, as may be indicated in the license agreement.~~

~~§34-12. License, Nonexclusive Grant~~

~~_____ No license granted hereunder shall confer any exclusive right, privilege or license to occupy or use the public ways or property or to provide telecommunications services or any other purposes.~~

~~§34-13. License, Rights Granted and Term~~

~~_____ (A) No license granted hereunder shall convey any right, title or interest in public ways but shall be deemed a license only to use and occupy the public ways for the limited purposes and term stated in the grant.~~

~~_____ (B) No license granted hereunder shall authorize or excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use public ways.~~

~~_____ (C) No license granted hereunder shall be construed as any warranty of title.~~

~~_____ (D) Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five (5) years from the date of execution of the license agreement by the Mayor following approval by the Mayor and City Council.~~

~~§34-14. License; Construction Permits~~

~~_____ All licensees shall obtain construction permits and pay all fees required by law.~~

~~§34-15. License; Compensation to City~~

~~_____ In the absence of state or federal law to the contrary, each license granted hereunder is subject to the City's right which is expressly reserved, to annually fix a fair, reasonable and non discriminatory compensation to be paid for use of public ways or property and such municipal, occupation, or license taxes as are authorized by state and federal law.~~

~~§34-16. License; Amendment of Grant~~

~~_____ (A) A license application supplement and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways which are not included in a license and license agreement previously granted hereunder. The license application supplement shall consist of such information as would have been required but was not included in the initial license application pursuant to §34-9.~~

~~_____ (B) If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the City shall grant a license amendment without further application.~~

~~§34-17. License; Renewal Applications; Renewal Determinations~~

~~_____ (A) Unless applicable state or federal law establishes a different time period for renewal, a licensee that desires to renew its license hereunder shall not more than 180 days nor less than 60 days before expiration of the current license, file an application in duplicate with the city for renewal of its license which shall include updated information required for a license application. A license may be renewed by either submitting information in duplicate to the City Administrator as set forth in §34-9 or submitting affidavits in duplicate attesting that the information submitted for the initial license application remains unchanged except to the extent modified by prior amendments or attachments to said affidavits. Upon filing a license renewal, the applicant shall pay all fees as provided herein.~~

~~_____ (B) Within 90 days after receiving a complete application hereunder, the Mayor and City Council shall make a determination on behalf of the City granting or denying the renewal application in whole or in part. If the application is denied, the determination shall include the reasons for denying approval of the application. The standards enumerated in §34-10 shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this Chapter and the license agreement.~~

~~§34-18. License; Obligation to Cure as a Condition of Renewal~~

~~_____ No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement or of the requirements of this Chapter and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured or a plan detailing the corrective action to be taken by the licensee has been approved by the City Administrator.~~

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ORDINANCE NO. 8747 (Cont.)

§34-19. Franchise and Fees

~~_____ To the extent permitted by law and except as otherwise provided herein, any telecommunications carrier or provider who desires to provide telecommunications service, including but not limited to local exchange service, to persons or areas within the City, shall first obtain a franchise granting the use of public ways in the City to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways and to provide telecommunications service pursuant to this Chapter and to pay all fees as provided herein.~~

§34-20. Franchise Application

~~_____ All telecommunications carriers or providers required to obtain a franchise pursuant to §34-19 shall apply for a franchise from the City hereunder by submitting information in duplicate to the City Administrator which shall include the following:~~

- ~~_____ (A) The identity and legal status of the applicant including any affiliates.~~
- ~~_____ (B) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the franchise application.~~
- ~~_____ (C) A general description of applicant's existing or proposed telecommunications facilities within the City and the geographic area to be covered by the franchise.~~
- ~~_____ (D) A description of the telecommunications service that the applicant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.~~
- ~~_____ (E) Information sufficient for the City to determine whether applicant is subject to licensing or franchising.~~
- ~~_____ (F) Information sufficient for the City to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the applicant constitutes an occupation or privilege subject to any municipal tax or fee.~~
- ~~_____ (G) Copies of the applicant's certificate of convenience and necessity issued by the Nebraska Public Service Commission.~~
- ~~_____ (H) A copy of relevant portions of the applicant's certificate of convenience and necessity application may be filed in lieu of items (C), (D) and (E) above.~~
- ~~_____ (I) Such other information as the City may require for purposes of this Chapter.~~

§34-21. Franchise; Determination by the City

~~_____ After receiving a complete application hereunder, the City Administrator shall make a recommendation to the Mayor and City Council to grant or deny the franchise application in whole or in part. If the application is recommended for denial, the recommendation shall include the reasons for denial. The Mayor and City Council shall grant or deny the franchise application in whole or in part after receiving a recommendation of the City Administrator. The decision of the Mayor and City Council on the application shall be made within sixty (60) days of the filing of a complete application; provided, time may be extended upon request of the applicant or to permit the City to obtain additional information relevant to the application. The following standards shall apply when determining to grant or deny the franchise application:~~

- ~~_____ (A) The financial and technical ability of the applicant.~~
- ~~_____ (B) The legal status of the applicant.~~
- ~~_____ (C) The capacity of the public ways to accommodate the applicant's facilities.~~
- ~~_____ (D) The capacity of the public ways to accommodate additional utility and telecommunications facilities if the application is granted.~~
- ~~_____ (E) The damage or disruption, if any, of existing or future public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same.~~
- ~~_____ (F) The public interest in minimizing the cost and disruption of construction within the public ways.~~
- ~~_____ (G) The type of service that applicant will provide.~~
- ~~_____ (H) The availability of alternate routes or locations for the proposed facilities.~~
- ~~_____ (I) Applicable federal, state and local laws, regulations, rules and policies.~~

§34-22. Franchise; Agreement

~~_____ No franchise granted hereunder shall be effective until the Mayor and City Council have approved a written agreement with the applicant setting forth the particular items and provisions under which the franchise to occupy~~

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~~and use public ways will be granted. A franchise granted hereunder shall be limited to a grant of rights to use specific public ways and defined portions thereof, as may be indicated in the franchise agreement.~~

~~§34-23. Franchise; Nonexclusive Grant~~

~~_____ No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the public ways or property or to provide telecommunications services or any other purposes.~~

~~§34-24. Franchise; Rights Granted and Term~~

~~_____ (A) No franchise granted hereunder shall convey any right, title or interest in public ways but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant.~~

~~_____ (B) No franchise granted hereunder shall authorize or excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use public ways.~~

~~_____ (C) No franchise granted hereunder shall be construed as any warranty of title.~~

~~_____ (D) Unless otherwise specified in a franchise agreement, a franchise granted hereunder shall be in effect for a term of not more than five (5) years from the date of execution of the franchise agreement by the Mayor following approval by the Mayor and City Council.~~

~~§34-8, 34-25. Registration Franchise; Construction Permits~~

~~All registrants franchisees shall obtain permits and pay all fees required by the code law prior to commencement of construction.~~

~~§34-9, 34-26. Registration Franchise; Compensation to City~~

~~In the absence of state, federal or other law to the contrary, each registrant franchise granted hereunder is subject to the City's right, which is expressly reserved, to annually fix a fair, reasonable and non discriminatory compensation to be paid for use of public ways or property and such municipal occupation, or franchise taxes as are authorized by state and federal law.~~

~~§34-27. Reserved~~

~~§34-28. Franchise; Service to the City~~

~~_____ A franchisee shall make its telecommunications services available to the City at its most favorable rate for similarly situated users in the State of Nebraska.~~

~~§34-29. Franchise; Amendment of Grant~~

~~_____ (A) A franchise application supplement and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public ways which are not included in a franchise and franchise agreement previously granted hereunder. The franchise application supplement shall consist of such information as would have been required but was not included in the initial franchise application pursuant to §34-20.~~

~~_____ (B) If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.~~

~~_____ (C) A franchise application supplement shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted. The franchise application supplement shall consist of such information as would have been required but was not included in the initial franchise application pursuant to §34-20.~~

~~§34-30. Franchise; Renewal Applications; Renewal Determinations~~

~~_____ (A) Unless applicable state or federal law establishes a different time period for renewal, a franchisee that desires to renew its franchise hereunder shall not more than 180 days nor less than 60 days before expiration of the current franchise, file an application in duplicate with the City for renewal of its franchise which shall include updated information required for a franchise application. A franchise may be renewed by either submitting information in duplicate to the City Administrator as set forth in §34-20 or submitting affidavits in duplicate attesting that the information submitted for the initial franchise application remains unchanged except to the extent~~

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modified by prior amendments or attachments to said affidavits. Upon filing a franchise renewal, the applicant shall pay all fees as provided herein.

~~_____ (B) Within 90 days after receiving a complete application hereunder, the Mayor and City Council shall make a determination on behalf of the City granting or denying the renewal application in whole or in part. If the application is denied, the determination shall include the reasons for denying approval of the application. The standards enumerated in §34-21 shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this Chapter and the license agreement.~~

~~§34-31. Franchise, Obligation to Cure as a Condition of Renewal~~

~~_____ No franchise shall be renewed until any ongoing violations or defaults in the franchisee's performance of the franchise agreement or of the requirements of this Chapter and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured or a plan detailing the corrective action to be taken by the licensee has been approved by the city Administrator of his/her designee.~~

~~§34-32. Conditions of Grant of License or Franchise, General Duties~~

~~_____ (A) All grantees shall comply with all requirements of the Grand Island City Code.~~

~~_____ (B) All grantees shall provide written confirmation sufficient for customary land survey and land title insurance purposes concerning the location of its facilities in public ways and disclaiming any interest in public ways where it has no license or franchise to construct or operate its facilities.~~

~~_____ (C) Any act that a grantee is or may be required to perform under this ordinance, its license, franchise or applicable agreement or law shall be performed at the grantee's expense.~~

~~§34-10, 34-33. Conditions of Registration Grant of License or Franchise; Interference with the Public Ways~~

~~No registrant grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City. All such facilities shall be moved by and at the expense of the registrant grantee, temporarily or permanently, as determined by the City.~~

~~§34-34. Conditions of Grant of License or Franchise; Damage to Property~~

~~_____ Any grantee or any person acting on a grantee's behalf that impairs or damages any public way, or other property located in, on or adjacent thereto, shall restore said public way or other property in conformance with §34-41 of this Chapter.~~

~~§34-35. Conditions of Grant of License or Franchise; Notice of Work~~

~~_____ Unless otherwise provided in a license or franchise agreement, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work in or about the public ways without providing three (3) working days advance written notice to the City. Any private property owner whose property will be affected by a grantee's work shall be afforded the same notice.~~

~~§34-36. Conditions of Grant of License or Franchise; Repair and Emergency Work~~

~~_____ In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the Directors of Public Works and Director of Utility Operations as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.~~

~~§34-11, 34-37. Conditions of Grant of License or Franchise; Maintenance of Facilities~~

~~Each registrant grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local laws, codes, rules and regulations requirements.~~

~~§34-12, 34-38. Conditions of Grant of License or Franchise; Relocation or Removal of Facilities~~

~~(A) Within thirty (30) days following written notice from the City, a registrant grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the City Administrator shall have determined that such removal, relocation, change or alteration is reasonably necessary for:~~

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- (1) The construction, repair, maintenance or installation by the City or other governmental entity of any public improvement in or upon the public ways.
- (2) The operations of the City or other governmental entity in or upon the public ways.
- (3) The vacation of a public street or the release of a utility easement.

(B) Provided the City has complied with the One Call Notification System Act the City shall not be liable for any damage to or loss of any telecommunications facility within the public ways as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the public ways by or on behalf of the City unless directly or proximately caused by the willful, intentional or malicious acts of the City.

~~§34-13,34-39. Conditions of Grant of License or Franchise, Removal of Unauthorized Facilities~~

Within thirty (30) days following written notice from the City, any ~~registrant grantee, telecommunications carrier,~~ or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways shall at its own expense, remove such facilities or appurtenances from the public ways. If such ~~registrant or responsible person grantee~~ fails to remove such facilities or appurtenances, the City may cause the removal and charge the ~~registrant or responsible person grantee~~ for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- ~~—(A) Upon expiration or termination of the grantee's license or franchise.~~
- ~~(A)(B)~~ Upon abandonment of a facility within the public ways.
- ~~—(C) If the system or facility was constructed or installed without the prior grant of a license or franchise.~~
- ~~(B)(D)~~ If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- ~~(C)(E)~~ If the system or facility was constructed or installed at a location not permitted by the City ~~grantee's license or franchise.~~
- ~~(D)(F)~~ Any such other circumstances deemed reasonably necessary by the City Administrator in order to protect public health, safety and welfare.

~~§34-14,34-40. Conditions of Grant of License or Franchise, Emergency Removal or Relocation of Facilities~~

The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall use its best efforts to notify the grantee through its Emergency Management Department and the One Call Notification System Act prior to cutting or moving the grantee's telecommunication facilities.

~~§34-15,34-41. Conditions of Grant of License or Franchise, Restoration of Rights-of-Way~~

The Registrant ~~Grantee~~ shall comply with the following:

- (A) When a registrant ~~grantee~~, or any person acting on its behalf, does any work in or affecting any public ways, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property including trees, landscaping and grounds to the same condition which existed before the work was undertaken.
- (B) If weather or other conditions do not permit the complete restoration required hereunder, the registrant ~~grantee~~ shall temporarily restore the affected ways or property. Such temporary restoration shall be at the registrant ~~grantee's~~ sole expense and the registrant ~~grantee~~ shall promptly undertake and complete the required permanent restoration when the weather conditions no longer prevent such permanent restoration.
- (C) A registrant ~~grantee~~ or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such public ways.

~~§34-42. Conditions of Grant of License or Franchise, Facilities Maps~~

~~Each grantee shall provide the City with an accurate as-built map or maps certifying the location of all of the grantee's telecommunications facilities within the public ways. Each grantee shall provide updated as-built maps annually unless no material changes have occurred. Commencing on January 1, 2002 the "As-Built" Facilities Map must be delivered in digital form with GPS coordinates locating all facilities to at least sub-decimeter accuracy. The digital format will be compatible with the City's Geographic Information System (GIS) system so that it can be~~

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displayed as a layer or theme in the City's GIS system. Commencing on January 1, 2002, the digital "As Built" Facilities Map will be updated and delivered to the City monthly, except that delivery will not be required if no change to the Facility has been made in the preceding month.

§34.43. Conditions of Grant of License or Franchise; Duty to Provide Information

~~Within ten (10) days of a written request from the City Administrator each grantee shall furnish the City Administrator with information sufficient to demonstrate:~~

- ~~— (A) That grantee has complied with all requirements of this Chapter.~~
- ~~— (B) That all taxes and fees due the City in connection with the telecommunications services and facilities provided by the grantee has been properly collected and paid by the grantee.~~
- ~~— (C) That all books, records, maps and other documents maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the City Administrator at reasonable times and intervals and shall remain proprietary and confidential to the extent provided by law if so requested in writing by grantee.~~

§34.44. Conditions of Grant of License or Franchise; Leased Capacity

~~Subject to the provisions of §34.48 and §34.65, a grantee shall have the right to enter into interconnection and resale agreements with a telecommunications carrier or provider in order to provide telecommunications service, including but not limited to local exchange service, to persons or areas within the city, provided that:~~

- ~~— (A) Grantee shall furnish the City with a notice of any such interconnection or resale agreements which shall contain the following information:
 - ~~(1) The identity and legal status of the transferee.~~
 - ~~(2) The name, address, and telephone number of an officer or agent of the transferee.~~
 - ~~(3) Sufficient general information concerning the proposed lease or agreement and the transferee for the City to make a determination concerning whether said transferee is subject to filing a registration or an application for franchise pursuant to this chapter.~~~~
- ~~— (B) The proposed transferee, lessee or person shall comply with all of the requirements of this Chapter.~~
- ~~— (C) Notice as provided herein shall be submitted to the City Administrator within ten (10) business days of execution of such agreement by the grantee.~~

§34.45. Conditions of Grant of License or Franchise; Grantee Insurance

~~Unless otherwise provided in a license agreement or franchise agreement, each grantee occupying or using public ways or property shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents, representatives and employees as additional named insured with:~~

- ~~— (A) Comprehensive general liability insurance with limits not less than:
 - ~~(1) Five Million Dollars (\$5,000,000.00) for bodily injury or death to each person;~~
 - ~~(2) Five Million Dollars (\$5,000,000.00) for property damage resulting from any one accident; and,~~
 - ~~(3) Five Million Dollars (\$5,000,000.00) for all other types of liability.~~~~
- ~~— (B) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000.00) for each person and Three Million Dollars (\$3,000,000.00) for each accident.~~
- ~~— (C) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000.00).~~
- ~~— (D) Comprehensive form premises operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three Million Dollars (\$3,000,000.00)~~
- ~~— (E) The liability insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy shall contain the following endorsement:
 - ~~“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Clerk of such intent to cancel or not to renew.”~~~~
- ~~— (F) Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Chapter.~~

Approved as to Form ? _____
July 5, 2002 ? City Attorney

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~~§34-46. Conditions of Grant of License or Franchise; General Indemnification~~

~~In addition to and distinct from the insurance requirements of this Chapter, each grantee shall agree as part of its license agreement or franchise agreement to defend, indemnify and hold the City and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the Grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Chapter or by a license agreement or franchise agreement made or entered into pursuant to this Chapter.~~

~~§34-47. Conditions of Grant of License or Franchise; Coordination of Construction Activities~~

~~All grantees are required to cooperate with the City and with each other as follows:~~

- ~~— (A) By March 1 of each year, grantees shall provide the Director of Public Works and Director of Utility Operations with a schedule of their proposed construction activities which may affect the public ways for that year.~~
- ~~— (B) Each grantee shall meet with the City or grantees and users of the public ways annually or as determined by the City to schedule and coordinate construction.~~
- ~~— (C) All construction locations, activities and schedules shall be coordinated to minimize public inconvenience, disruption and/or damages.~~

~~§34-48. Conditions of Grant of License or Franchise, Change of Ownership Or Control Of Grantee~~

~~The grantee shall file with the City Administrator a copy of any order issued by the Nebraska Public Service Commission or notification filed with the commission in connection with any change of ownership or control of the grantee. Following the filing of such order or notification, the City shall have thirty (30) days to notify the grantee or its successor whether a new license or franchise is required as a result of the change of ownership or control.~~

~~§34-49. Reserved~~

~~§34-50. Conditions of Grant of License or Franchise; Revocation or Termination of Grant~~

~~A license or franchise granted by the City to use or occupy public ways may be revoked for any one or more of the following reasons:~~

- ~~— (A) Construction or operation at an unauthorized location.~~
- ~~— (B) Unauthorized transfer of control of the grantee.~~
- ~~— (C) Unauthorized assignment of a license or franchise.~~
- ~~— (D) Unauthorized sale, assignment or transfer of the grantee's franchise or license assets or an interest therein.~~
- ~~— (E) Misrepresentation by or on behalf of a grantee in any application to the City.~~
- ~~— (F) Abandonment of telecommunications facilities in the public ways.~~
- ~~— (G) Failure to relocate or remove facilities as required in this Chapter.~~
- ~~— (H) Failure to pay lawfully permitted taxes, compensation, fees or costs when and as due the City.~~
- ~~— (I) Insolvency or bankruptcy of the grantee.~~
- ~~— (J) Violation of a material provision of this Chapter or Code.~~
- ~~— (K) Violation of a material term of a license, franchise or associated agreement.~~

~~§34-51. Conditions of Grant of License or Franchise; Notice and Duty to Cure~~

~~In the event that the City Administrator believes that grounds exist for revocation of a license or franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty (30) days to furnish evidence:~~

- ~~— (A) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation of noncompliance.~~

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~~—(B) That rebuts the alleged violation or noncompliance.~~

§34-52. Conditions of Grant of License or Franchise; Hearing

~~—In the event that a grantee fails to provide evidence pursuant to §34-51 reasonably satisfactory to the City Administrator, the City Administrator shall refer the apparent violation or noncompliance to the Mayor and City Council. The Mayor and City Council shall upon request by the grantee, provide the grantee with notice and reasonable opportunity to be heard concerning this matter.~~

§34-53. Conditions of Grant of License or Franchise; Standards for Revocation or Lesser Sanctions

~~—Based on a preponderance of the evidence that the grantee has violated or failed to comply with a material provision of this Chapter or its license or franchise or associated agreement, the City Council shall determine whether to revoke the license or franchise, and issue a written decision relating thereto, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:~~

- ~~—(A) Whether the misconduct was egregious.~~
- ~~—(B) Whether substantial harm resulted.~~
- ~~—(C) Whether the violation was intentional.~~
- ~~—(D) Whether there is a history of prior violations of the same or other requirements.~~
- ~~—(E) Whether there is a history of overall compliance.~~
- ~~—(F) Whether the violation was voluntarily disclosed, admitted or cured.~~

§34-54. Construction; Codes

~~—Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the National Building Code, National Electrical Code, Uniform Plumbing Code and A.N.S.I. standards.~~

~~§34-16, §34-55. Construction; Applications~~

~~Applications for permits to construct telecommunications facilities in public ways shall be submitted upon forms provided by the Public Works Department. The applicant shall pay all permit and plan review fees and shall include any additional information as requested by the Public Works Department. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:~~

- ~~(A) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.~~
- ~~(B) The location and route of all facilities to be installed on existing utility poles.~~
- ~~(C) The location and route of all facilities to be located under the surface of the ground including the line and grade proposed for the burial at all points along the route which are within the public way.~~
- ~~(D) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations, if known, which are within the public way along the underground route proposed by the applicant.~~
- ~~—(E) The location of all other facilities to be constructed within the city, but not within the public ways.~~
- ~~—(F) the construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.~~
- ~~(E)(G) A landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.~~

§34-56. Construction; Engineer's Certification

~~—All permit applications shall be accompanied by the certification of a representative of the applicant that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.~~

§34-57. Construction; Traffic Control Plan

~~—All permit applications which involve work on, in, under, across or along any public way used for vehicular or pedestrian traffic shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.~~

Approved as to Form	?	_____
July 5, 2002	?	City Attorney

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§34-58. Construction; Issuance of Permit

~~Within thirty (30) days or longer period of time which is reasonable under the circumstances after submission of all plans and documents required of the applicant and payment of the permit and plan review fees lawfully required by the City, the Public Works Department, if satisfied that the application, plans and documents comply with all requirements of this Chapter, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the Director of Public Works and Director of Utility Operations may deem necessary or appropriate.~~

§34-59. Construction; Construction Schedule

~~Subject to the provisions in this Chapter regarding emergency work, the permittee shall submit a written construction schedule to the Director of Public Works and Director of Utility Operations ten (10) working days before commencing any work in or about the public ways. The permittee shall further provide written notification to the Director of Public Works and Director of Utility Operations not less than five (5) working days in advance of any excavation or work in the public ways. Before any work is commenced, requisite approvals and permits from the City and city staff must first be obtained.~~

§34-60. Construction; Compliance with Permit

~~All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The Director of Public Works and Director of Utility Operations or their respective representatives and designees shall be provided access to the work and such further information as they may require to ensure compliance with such requirements.~~

§34-61. Construction; Display of Permit

~~The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the Director of Public Works and Director of Utility Operations or their respective designees at all times when construction work is occurring.~~

§34-62. Construction; Noncomplying Work

~~Upon order of the Director of Public Works and Director of Utility Operations all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this Chapter shall be removed. The permittee, at its expense in cooperation with other existing facility owners, shall relocate any facilities which are not located in compliance with permit requirements and then provide as-built maps to the City to show conformance.~~

§34-63. Construction; As-Built Drawings

~~Within thirty (30) days after completion of construction, the permittee shall furnish the Public Works Department with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. Commencing on or before January 1, 2002, "As-Built" drawings must be delivered in digital format acceptable to the City. Digital versions of all previous "As-Built" drawings will also be delivered to the City, if available, on or before January 1, 2002. The drawing files will be tied to the Facilities Map so that "As-Built" for the portion of the system being viewed on the Facilities Map can be easily selected and displayed.~~

~~§34-17.~~ §34-64. Construction; Location of Facilities

~~Unless otherwise required in current or future City ordinances regarding underground construction requirements, a~~All facilities shall be constructed, installed and located in accordance with the following terms and conditions unless hardship or a valid reason to locate elsewhere can be demonstrated to the City Administrator:

(A) A ~~registrant grantee~~ with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles, and then only if surplus space is available. If either of the foregoing do not exist, grantee, with prior written approved of the ~~Utilities~~ Director of Utility Operations may construct additional poles.

(B) Whenever all existing telephone, electric utilities, cable facilities or telecommunications facilities are located underground within public ways, a ~~registrant franchisee~~ with written authorization to occupy the same public ways must also locate its telecommunications facilities underground.

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(C) Whenever all new or existing telephone, electric utilities, cable facilities or telecommunications facilities are located or relocated underground within public ways, a registrant franchisee that currently occupies the same public ways shall concurrently relocate its facilities underground at its expense.

§34-18, 34-65. Construction; Conduit Occupancy

In furtherance of the public purpose of reduction of public way excavation, it is the goal of the City to encourage both the shared occupancy of underground conduit as well as the construction, whenever possible, of excess conduit capacity for occupancy of future public way occupants.

§34-19, 34-66. Fees; Registration, Application and Public Way Occupancy

The following fees, which shall be listed on the City's User Fee Schedule, shall be paid in connection with the administration of this Chapter:

- (A) Registration Fee to be paid at the time of filing registration information.
- ~~(B) License Application Fee to be paid at the time of filing a license application.~~
- ~~(C) Franchise Application Fee to be paid at the time of filing a franchise application.~~
- ~~(D) License or Franchise Amendment Fees to be paid at the time of filing a supplementary application.~~
- ~~(B)(E) Occupation tax for local exchange service to be paid quarterly.~~
- ~~(F) Permit and plan review fee to be paid at the time of filing an application for permit to construct telecommunications facilities subject to adjustment upon completion of plan review.~~
- ~~(G) Public Way Occupancy Fee to be paid prior to installation or construction of telecommunications facilities on a public way.~~
- ~~(C)(H) Pole Rental to be paid annually for installing and operating telecommunications facilities on or in conjunction with City utility facilities, including particularly utility poles.~~

§34-67. Fees; Preapplication Conference and Application Fee

~~Following acceptance of an application by the City, the applicant shall participate in a conference with the City Administrator and city staff for the purpose of reviewing the application, confirming information and identifying issues related to compliance with this Chapter and the issuance of a license or franchise.~~

§34-20, 34-68. Severability

If any section, subsection, sentence, clause, phrase or other portion of this Chapter, or its application to any person is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

SECTION 2. Section 34-1 through 34-68 as now existing, and any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. That this ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the Grand Island Independent as provided by law.

ORDINANCE NO. 8747 (Cont.)

Enacted: July 9, 2002.

Ken Gnadt, Mayor

Attest:

RaNae Edwards, City Clerk