

ORDINANCE NO. 2639

AN ORDINANCE GRANTING TO US SPRINT COMMUNICATIONS COMPANY, A NEW YORK GENERAL PARTNERSHIP, ITS SUCCESSORS OR ASSIGNS, A FRANCHISE TO OWN, OPERATE, AND MAINTAIN A BURIED COMMUNICATIONS SYSTEM AND MAINTAIN THAT PORTION OF RIGHT-OF-WAY TO CITY STANDARDS ABOVE AND AROUND THE COMMUNICATIONS SYSTEM

THE CITY COUNCIL OF THE CITY OF MOSES LAKE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Location of Franchise: US Sprint, a New York General Partnership (Grantee), is granted the right, privilege and franchise to construct a buried communication system, sometimes referred to herein as "facilities", which has been approved by the City of Moses Lake as to location along and under the public right-of-ways of said City; to operate and maintain the communication system and to provide perpetual maintenance of the portions of the right-of-ways disturbed by construction and maintenance of the said system. This franchise is a non-exclusive grant.

Section 2. Term: The rights, privileges, and franchise hereby granted to and conferred upon the Grantee shall, unless this franchise be sooner terminated, extend until 11:59 p.m. on December 23, 2037, a period of twenty-five (25) years from the expiration of the previous grant of franchise set forth in City of Moses Lake Ordinance No. 1298, and the Grantee shall, within thirty (30) days after the date of the passing of this ordinance, file with the Finance Director, its written acceptance of all terms and conditions of this ordinance, and if such acceptance is not filed as herein provided, this ordinance shall be null and void in all respects as if never passed.

Section 3. Assignment: The rights granted by this ordinance inure to the benefit of the Grantee, and any parent, subsidiary, affiliate, or any successor entity now or hereafter existing. The rights shall not be assignable without the express written consent of the governing body of the City of Moses Lake, except Grantee may assign its rights under this ordinance to a parent, subsidiary, affiliate, or successor entity without such consent so long as (1) such parent, subsidiary, affiliate, or successor entity assumes all obligations of Grantee hereunder, (2) is bound to the same extent as Grantee hereunder, and (3) notice of such assignment is transmitted to the City of Moses Lake at least thirty (30) days prior to its effective date. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the City that fully recites the terms and conditions, if any, upon which consent is given.

Section 4. Contractual Relationships: This ordinance and written acceptance thereof by the Grantee shall constitute the contract between the City of Moses Lake and the Grantee and the same shall be binding upon and inure to the benefit of the Grantee, its successors and assigns, under the conditions herein imposed.

Section 5. Non-Interference: All facilities of the Grantee shall be placed in such a manner as not to interfere with any present public or private irrigation or drain ditches, drains, sewers, water mains, conduits, sidewalks, paving, curbs, gutters, signs, landscaping, or other public improvements, and all repairs thereto or replacements required shall be accomplished as provided in Section 5. The City of Moses Lake reserves the right to construct, change, or repair any public improvements, and to change the grades of any streets, alleys, or sidewalks; written notice of such intention to change any streets, alleys, or sidewalks, where any part or parts of the communication system of the Grantee may be involved, shall be first given the Grantee, and if any changes or repairs are required, the Grantee shall, at its own expense, lower, change, or alter its facilities as necessary, and in accordance with the standard engineering practice and any regulations pertaining thereto; and, the Grantee shall not interfere with the conduits, water lines, drains, sewers, sidewalks, paving, or other public utilities or City operated utilities therein. No pipe or conduit shall be laid closer than two feet (2') to any water main or other pipe or conduit of other utilities, except by written permission of the City.

Section 6. Hold Harmless: All earth, materials, sidewalks, paving, crossings, or improvements of any kind, disturbed, injured, or removed by the Grantee shall be fully repaired or replaced promptly by the Grantee, and the Grantee shall protect and save the City harmless for any loss or damages thereon. The Grantee shall further be required to conform to any ordinance of the City of Moses Lake with reference to cutting any streets or sidewalks and the replacement thereof. Repairs, replacement, or maintenance of City owned facilities within the right-of-way necessitated because of the disturbance thereof shall be the responsibility of the Grantee to repair, replace, or maintain during the term of this franchise.

Section 7. Maps and Records: The Grantee shall at all times keep maps and records showing the locations and sizes of all facilities placed by it or owned by it in the City, and such maps and records shall be furnished to the officials of the City of Moses Lake at all reasonable times. The Grantee shall provide a location service or contract with some local utility to provide local utilities and excavators with the location in the field of its buried cables upon request. This location service provided by the Grantee shall have a twenty-four (24) hour telephone number answering service and be available for emergency location seven (7) days per week in the field. Emergency locate service is defined as being able to locate buried utility facilities within four (4) hours after receiving a request.

Section 8. Reasonable Rules: The Grantee, its successors and assigns, may make such reasonable rules and regulations for the protection of its property for the service and charges to its customers, for the prevention of loss and waste, for safety purposes, for the conduct and operation of its business as may be advisable or necessary from time to time, all in accordance herewith and in conformity with existing laws and regulations.

Section 9. Default and Forfeiture: In case of failure on the part of the Grantee, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Grantee, its successors or assigns, do or cause to be done, any act or thing prohibited by or in violation of the terms of this ordinance, the Grantee, its successors or assigns, shall forfeit all rights and privileges granted by this ordinance, and all rights thereunder shall cease; provided that such forfeiture shall not occur nor take effect until the City of Moses Lake shall carry out the following proceedings:

- A. Before the City may proceed to forfeit this franchise, it shall serve, by certified mail, at the last address provided by the Grantee, a written notice upon the Grantee, its successors or assigns, setting forth clearly and in detail the failure or violation complained of and the Grantee, its successors or assigns, shall have ninety (90) days thereafter in which to comply with the conditions of this franchise.
- B. If such failure or violation continues beyond said ninety (90) days, then the City Council of the City of Moses Lake, at its sole discretion, shall have the right to forthwith determine that this franchise is forfeited. Said determination shall be made, however, only upon proof established to the satisfaction of the City Council.
- C. Provided, however, that such failure or default or violation, shall not constitute grounds for forfeiting of this franchise if due materially, substantially and reasonably to acts of God, fire, flood, storm or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war or war preparation induced conditions or bona fide legal proceedings beyond the control of the Grantee, its successors or assigns.

Section 10. Liability and Indemnification: The Grantee, by its use of this right and privilege, covenants and agrees with the City to at all times protect and save harmless the City from all claims, accidents, suits, liability, loss, expense or damage of any kind and description which may accrue to or be suffered by any person or persons, firm, corporation or to any building for any damage arising out of the ownership, excavation, installation, construction, repair or operation of said system or any act done by the Grantee under this right and privilege. Notwithstanding the above, Grantee shall not hold the City harmless from any claims, accidents, suits, liability, loss, expense, or damage as a result of the negligent acts or omissions or the City, its employees, agents, or contractors.

The Grantee further agrees as follows:

- A. Grantee shall carry comprehensive general liability and comprehensive automobile liability insurance with bodily injury limits of not less than one million dollars (\$1,000,000) per occurrence, and property damage limits of not less than one million dollars (\$1,000,000).
- B. Grantee's Comprehensive General Liability and Comprehensive Automobile Liability Insurance shall be written by an insurance company with a Best B+ rating or higher and be qualified to do business in the State of Washington. Grantee agrees to furnish the City with certified copies of Certificates of Insurance of said policies, which shall provide that insurance shall not be canceled unless thirty (30) days prior written notice shall first be given to the City.

- C. The City has the right to adjust the limits of insurance every five (5) years to maintain coverage within a direct ratio with any inflationary changes in the economy.

Section 11. Taxes and Fees: The Grantee shall, during each year of operation under this franchise, pay to the City the utility tax in accordance with the City of Moses Lake's Municipal Code Title 3, now existing or hereafter amended, if applicable. The Grantee will supply an annual statement of revenues received from any service provided by them within the city limits of Moses Lake.

Section 12. Severability: In the event that any sentence, clause, paragraph, or section of this ordinance be held void by any court, it shall not affect the balance thereof, and this ordinance shall become effective upon passage and approval by the City of Moses Lake and its acceptance in writing by US Sprint which acceptance must be filed within thirty (30) days after the passage and approval by the City Council of the City of Moses Lake, Washington.

Adopted by the City Council and signed by its Mayor on December 22, 2011

ATTEST:

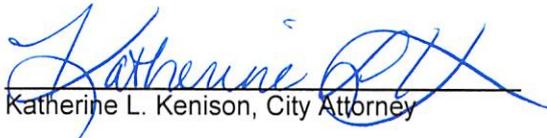


Jon Lane, Mayor



Ronald R. Cone, Finance Director

APPROVED AS TO FORM:



Katherine L. Kenison, City Attorney