

ORDINANCE NO. 2019-01

AN ORDINANCE CREATING TITLE 3.10, "UNION TELEPHONE COMPANY FRANCHISE" WITHIN THE RIGHTS OF WAY OF THE TOWN OF ENCAMPMENT, WYOMING.

WHEREAS, Union Telephone Company (d/b/a "Union Wireless"), desires to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way the Town of Encampment; and,

WHEREAS, Article 13, §4 of the Wyoming Constitution states that no street passenger railway, telegraph, telephone or electric light line shall be constructed within the limits of any municipal organization without the consent of its local authorities.; and,

WHEREAS, the Town of Encampment desires to grant to Union Telephone Company, its successors and assigns, a Franchise to construct, erect, renew, repair, maintain. upgrade and operate in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the Town of Encampment, a system for transmission of telecommunications services, and to provide for compensation to the Town of Encampment for management of its rights-of-way in connection.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF ENCAMPMENT, STATE OF WYOMING:

Section 1. That Title 3.10 UNION TELEPHONE COMPANY, is hereby created, granting UNION TELEPHONE COMPANY a Franchise to construct, erect, renew, repair, maintain, upgrade and operate a system for transmission of telecommunications services in, upon, along, across, under and over the streets, alleys, and all other public rights-of-way within the corporate limits of the Town of Encampment, as follows:

**Title 3.10**

**UNION TELEPHONE COMPANY**

**1. Scope.**

All capitalized terms not otherwise defined herein are defined pursuant to 47 U.S.C. §153 ("Definitions").

**2. Grant of Authority.**

This Ordinance grants permission and authority to Union Telephone Company (d/b/a "Union Wireless")(herein referred to as "Company"), a corporation created and existing under and by virtue of the laws of the State of Wyoming, upon the terms and subject to the conditions of this Franchise and its enacting Ordinance, to construct, erect, renew, repair, maintain, upgrade and operate in, upon, along, across, under and over the streets, alleys and all other public rights-of-way of the Town of Encampment. After its acceptance by Company (and thereafter until terminated by at least six (6) months written notice either by the Town of Encampment to the Company or by the Company to the Town of Encampment), a Telecommunications System, including but not limited to lines, poles, anchors, wires, cable, conduit, vaults, hand holds,

laterals and other fixtures and equipment (the "Facilities"), and to use said System for the transmission of sound, signals, data, or other means of Telecommunications.

In the event at least six (6) months' written notice shall be given by the Town of Encampment to the Company, or by the Company to the Town of Encampment of its desire to terminate the permission and authority granted by this Franchise, the permission and authority granted by this Franchise shall thereupon expire in accordance with such notice. Whereupon, this ordinance shall be null and void and of no effect whatsoever and all rights and privileges granted by this Franchise shall be at an end.

### **3. Facilities.**

(a) The location of Union's Facilities and the Telecommunications System, and the construction thereof, or any change or extension (or the removal thereof), in case said removal shall necessitate the substantial disturbance of any street, alley, or other public right-of-way, shall be subject to the approval of the Governing Body of the Town of Encampment and the Department of Engineering, which approval shall not be unreasonably denied, conditioned or delayed.

(b) The Company shall place on file with the Town Clerk plans showing the location and character of each pole and each conduit to be erected or laid, and the number of ducts in each conduit and the location of manholes, handholds, vaults, or other openings to gain access to said conduit; and no portion of the Telecommunications System or associated Facilities shall be erected, constructed, or laid upon, under or over any street, alley, or other public right-of-way, until a permit therefore has issued, subject to the approval of the Department of Engineering and Operations, which shall indicate the time, manner and place of laying, constructing or erecting the said Telecommunications System.

(c) In any instance (except as hereinafter expressly otherwise provided) where the Town of Encampment requires construction in the public right-of-way for purposes of repair, widening, repaving, regrading or any other relevant purpose where Company's Telecommunications System and associated Facilities are installed, the Company shall, as soon as reasonably possible, upon written notice from the Town of Encampment, remove or relocate its Facilities to conform with the Town of Encampment's written notice. Any portion of public right-of-way disturbed by Company's removal or relocation of its Telecommunications System and associated Facilities, shall be restored by Company to the condition existing prior to Company's construction. Company shall, upon receipt of written notice from the Town of Encampment, for a period of eighteen (18) months following Company's removal, relocation, and restoration of public rights-of-way subject to this sub-section, repair any damaged, uneven, or settled sections of right-of-way caused by Company's removal or relocation of its Facilities.

(d) Company, at their own cost and expense, will remove and dispose of infrastructure including poles, anchors, vaults, hand holds, and pedestals that were installed under this franchise agreement upon termination of this agreement by either party.

### **4. Compensation.**

(a) Federal law confirms the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government." 47 U.S.C. §253(c). Therefore, as consideration for costs incurred by the Town of Encampment for managing the public rights-of-way occasioned by Company's use and occupancy of public rights-of-way for provision of Telecommunications Services, Company

shall pay to the Town of Encampment the sum of one thousand dollars (\$1,000.00) upon Company's acceptance of this Franchise, and one thousand dollars (\$1,000.00) in each succeeding year. Company's initial payment shall be due within thirty (30) days after final approval of this Franchise by the Governing Body of the Town of Encampment. Subsequent payments shall be due within thirty (30) days after the anniversary date of final approval and acceptance hereof. Company and the Town of Encampment mutually acknowledge the foregoing sum to be a fair and reasonable compensation for management of Company's use and occupancy of the public rights-of-way.

**5. Compliance with Existing Law.**

This Franchise is contingent for its existence and continuance upon Company's continued compliance with all relevant state and federal statutes and regulations, including rules and regulations promulgated by the Wyoming Public Service Commission.

**6. Indemnification.**

(a) The Company shall, at its own expense, indemnify and save harmless the Town of Encampment from any and all damages, judgment, costs and expenses of every kind, which may arise or result by reason of or in consequence of the intentional acts or negligence of the Company, its agents or servants.

(b) The Company hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against the Town of Encampment arising from or growing out of any damages to the property of the Company resulting from any act or omission of the Town of Encampment, its agents and employees, occurring prior to the date of the passage and acceptance of this Ordinance.

**7. Default/Severability.**

(a) In the event that the Company shall default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions and conditions of this Franchise, and if any such default or defaults shall continue for a period of six (6) months (exclusive of all times during which the Company may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God, labor strikes, or the orders or judgment of any commission or court entered in any suit or proceeding brought without its connivance) after written notice thereof to the Company from the Town of Encampment is received by Company, stating the alleged default on the part of the Company, then and in each and every such case, the Town of Encampment, in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Company in and by this Ordinance and Franchise, and all rights and privileges of the Company under this Franchise shall thereupon be at an end.

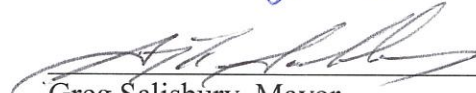
(b) If any section, sentence, clause or phrase of this Franchise is for any reason declared to be illegal, invalid, unconstitutional or void, all other sections thereof not so held shall be and remain in full force and effect.

**8. Effective Date.**


This Franchise and its enacting Ordinance shall be in full force and from and after the date of its publication. All the rights and privileges granted to the Company hereunder may pass to its legal successor or successors organized under the laws of the state or by assignment of any corporation organized under the laws of the state acquiring all or substantially all of the assets or equity of the Company, or that part thereof located in the Town of Encampment, subject to all

the terms and conditions of this Franchise, and provided that said successor or successors or said assignee shall have filed with the Clerk its acceptance of said terms and conditions.

PASSED AND APPROVED this 11<sup>th</sup> day of July, 2019.

  
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Greg Salisbury, Mayor

Attest:

  
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Doreen Harvey, CMC  
Clerk/Treasurer

1<sup>st</sup> Reading: May 9, 2019

2<sup>nd</sup> Reading: June 13, 2019

3<sup>rd</sup> Reading: July 11, 2019