

RESOLUTION 21 -

**RENEWING A TELECOMMUNICATIONS SERVICE FRANCHISE GRANTED
TO VALLEY TELEPHONE COOPERATIVE, INC.**

KNOW ALL MEN BY THESE PRESENTS, THAT,

WHEREAS, VALLEY TELEPHONE COOPERATIVE. INC., pursuant to Arizona Revised Statutes (“A.R.S”) § 40-283, and a resolution of the Cochise County Board of Supervisors was granted a franchise on August 3, 1964, to erect , construct , and operate telephone lines across, over and along public roads and highways and alleys and streets in unincorporated cities, towns, and villages in Cochise County, and this franchise was renewed on March 20th, 2011 through Resolution No. 11-10, which resolution expanded the area of the franchise area to be coextensive with the boundaries of Cochise County, and this franchise was renewed again on March 8, 2016 through Resolution No. 16-07; and

WHEREAS, VALLEY TELEPHONE COOPERATIVE. INC. has requested that Cochise County approve the renewal of its franchise; and

WHEREAS, reasonable public notice of the Application and Request for Renewal has been provided in the manner required by A.R.S. 40-283 of the filing of this application and request for amendment and of the public hearing on this matter set for March 23, 2021 at 10:00 a.m. at the regular meeting place of the Board in the city of Bisbee, Arizona, as the time and place for the consideration of this matter; and

WHEREAS, it appears from the affidavit of publication in the Herald-Review that due and regular notice of said date, time and place set for consideration of such action has been published once a week for three consecutive weeks prior to the date of the said hearing, to wit: on the dates of March 3, 2021 and March 10, 2021 and March 17, 2021 in the said newspaper and the matter being called at 10:00 o’clock a.m., and it appearing that the Board of Supervisors has not received a petition signed by more than 50% of the qualified electors of Cochise County asking the Board to deny the Application and Request for Amendment on or before the date set for consideration thereof; and

WHEREAS, said Application for Renewal came on to be heard on the 23rd day of March, 2021 before the Board of Supervisors of Cochise County, and the Board considered the Application and Request to Amend and it being determined by the Board of Supervisors of Cochise County that the grant of this franchise is regular, proper and authorized by law and in the best interests of Cochise County and the inhabitants thereof and good cause appearing to grant the Application to Amend:

NOW THEREFORE, BE IT RESOLVED AND ORDAINED by the Cochise County Board of Supervisors as follows:

1. That this Board of Supervisors of Cochise County, Arizona, acting for and on behalf of said County (the "County"), does hereby grant unto VALLEY TELEPHONE COOPERATIVE, INC. (hereinafter called "Grantee") a nonexclusive right, privilege, license, and franchise (hereinafter "the franchise") to construct, install, operate, and maintain along, over, under and across the streets, alleys, and highways under the jurisdiction of the County, facilities for the purpose of maintaining and operating a telecommunications system, and all other facilities and improvements necessary for telecommunications. This grant does not include the authorization to use State highways and those areas within the corporate boundaries of any city or town. This grant is subject to the terms, conditions, and limitations expressed below or incorporated herein by reference.
2. The County reserves the right to impose future restrictions, limitations, and conditions upon the exercise of the rights granted herein as it deems best for the public safety and welfare. The Grantee is further required to comply with all lawful, applicable ordinances of Cochise County regulating the conduct of work within the public rights-of-way; as such ordinances are now enacted or may be amended or adopted from time to time. The Grantee is required to obtain a separate Right-of-Way Use Permit from the County prior to initiating any construction in the right-of-way and to pay the applicable fees for the associated inspections.
3. The franchise granted hereby shall not be exclusive, and nothing herein shall be construed to prevent the County from granting other like or similar franchises to any other person, firm, or corporation.
4. The Grantee shall bear all expenses and costs, including damages and compensation for the alteration of the direction, surface, grade, or alignment

of a public roadway or for revenues lost by the Grantee, which may arise in connection with its exercise of the rights granted herein.

5. The Grantee shall erect, construct, and maintain all facilities authorized herein in a good and workmanlike manner and in compliance with all valid laws, ordinances, and regulations, which may be in force from time to time. All such work shall be performed in such a manner as may be necessary to avoid any unreasonable damage, disturbance, or modification to existing public rights-of-ways, including roads, streets, highways, bridges, borrow ditches or shoulders thereon.
6. The Grantee shall, immediately upon erecting, constructing, replacing or repairing its facilities, or any part thereof, at its own cost and expense, restore any effected public right-of-way, including any road, street, highway, bridge, borrow ditch or shoulder thereon, to not less than the same condition which existed prior to the Grantee's action.
7. The County does not waive or relinquish any rights it may have to the full and complete use of the public rights-of-way subject to this franchise, whether for road purposes or otherwise. The rights of the County in and to the use of the right-of-way are, and shall be, paramount and superior to the rights of the Grantee. In the event that the location of the Grantee's facilities may interfere or conflict with the County's use, expanded use, alteration, improvement, or maintenance of the County's rights-of-way, the County may require the Grantee to relocate, at the Grantee's expense, all facilities which give rise to such interference or conflict. The County will provide the Grantee with reasonable notice of any relocation requirement and will provide a reasonable period of time for the Grantee to perform such relocation.
8. The Grantee assumes the sole responsibility for all liability for any injury or damage to any person or property, or to the road and right-of-way itself, caused by or arising out of the exercise of the rights granted herein and attributable to any act or omission of the Grantee. The Grantee shall indemnify, defend and hold harmless Cochise County, its officers, departments, employees and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature, including all costs of legal defense, arising out of the exercise of these rights which are attributed to any act or omission of the Grantee, its agents, employees, or anyone acting under its direction, control or on its behalf.

9. The County grants this franchise for a term of five (5) years from the date of its authorization. This franchise may not be sold, leased, assigned, conveyed or transferred in any manner, in whole or in part, including pursuant to the sale or merger of the Grantee corporation itself, without the express written consent of the County, which consent shall not be unreasonably withheld.
10. The County reserves the right to alter or amend the terms of this franchise in any manner necessary to protect the safety or welfare of the public or the public interest. This reservation includes, but is not limited to, the authority to impose such amended franchise fees, rentals or use payments, or other form of compensation or assessment as the County may be authorized, now or in the future, to impose under the laws of the State of Arizona and the United States.
11. The County may terminate this franchise in the event that the Grantee fails to comply with the terms and conditions of this franchise. The Board of Supervisors, or its designee, shall provide the Grantee with written notice of noncompliance and allow the Grantee a period of not less than sixty (60) days to remedy any breach. If the Grantee continues to fail to comply with the terms of this franchise after this notice and remedy period, the Board of Supervisors may, following a public hearing, revoke all rights granted herein and render this franchise null and void.
12. Upon termination of the franchise, whether by expiration or its term, or for cause, or by voluntary abandonment, and after written notice from the County, the Grantee may remove all of its facilities, installed pursuant to the rights granted herein within one hundred eighty (180) days of such termination, and shall repair any damages caused thereby. All such facilities which are not removed within this period shall be deemed to be abandoned and shall become the property of the County.
13. This franchise will not be effective for any purpose until the Grantee has indicated its acceptance in writing below.
14. The rights, privileges, and franchise granted herein are made pursuant to the laws of Arizona, including A.R.S. §§ 40-283 and 9-582, et seq., which are incorporated herein by reference.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Cochise, State of Arizona, has caused these presents to be executed and signed by the Chairman of the Board of Supervisors on this ____ day of _____, 2021.

BOARD OF SUPERVISORS, COUNTY OF COCHISE:

Ann English, Chair

ATTEST:

APPROVED AS TO FORM:

Kim Lemons, CPCC
Clerk, Board of Supervisors

Paul Correa
Civil Deputy Cochise County Attorney

ACCEPTANCE OF FRANCHISE

This is to certify that transferee and grantee **VALLEY TELEPHONE COOPERATIVE. INC.**, an Arizona Corporation, has on the ____ day of _____, 2021, accepted the amended franchise described in the foregoing resolution. Grantee agrees that it will be bound by, observe, and carry out the terms of the amended franchise.

GRANTEE: **VALLEY TELEPHONE COOPERATIVE. INC.**

By: _____
(Printed Name)

Title: _____

CERTIFICATE OF CLERK

I, **Kim Lemons**, CPCC, Clerk of the Board of Supervisors of Cochise County, Arizona, do hereby certify that the foregoing excerpt from the minutes of the meeting of the Board of Supervisors of Cochise County, Arizona held on **Tuesday, March 23, 2021**, constitutes a true and correct copy of the said minutes insofar as they relate to the Application of **VALLEY TELEPHONE COOPERATIVE. INC.** for the amended franchise described in the foregoing resolution in the County and to the granting of said amendment pursuant to the resolution hereinabove set out, all as appears in the official records of the Board of Supervisors.

IN WITNESS WHEREOF, I have set my hand and official seal of the Board of Supervisors of Cochise County, Arizona this 23rd day of March 2021.

Kim Lemons, CPCC
CLERK, BOARD OF SUPERVISORS
COCHISE COUNTY, ARIZONA