



BENNY L. JASSO, MAYOR

AARON SERA, ADMINISTRATOR

Phone (575) 546-8848 · Fax (575) 546-6442
E-MAIL: deming@cityofdeming.org Website: www.cityofdeming.org
P.O. BOX 706 · DEMING, NEW MEXICO 88031
POPULATION 14,000

**CITY COUNCIL
SPECIAL MEETING AGENDA
January 30, 2018
10:00 A.M.**

CALL TO ORDER/PLEDGE OF ALLEGIANCE

1. Approval of Election Precinct Board for the 2018 Municipal Election
2. Approval to Appoint an Alternate Judge
3. Approval for Out-of-State Travel Request for Sgt. James Fetrow and Officer Robert Chavez to attend SWAT Command and Leadership Class in Wayne, New Jersey on February 5-9, 2018.
4. Public Hearing to Consider an Ordinance for a Telecommunications and Internet System Franchise Agreement
5. Adjourn Meeting

The next regular City Council Meeting is scheduled for February 12, 2018 at 6:00 p.m.

CITY COUNCIL SPECIAL MEETING MINUTES January 30, 2018

Council Present: Benny L. Jasso, Mayor
Joe “Butter” Milo, Councilor

David L. Sanchez, Councilor
Dr. Victor Cruz, Mayor Pro-Tem

Council/Staff Absent: Roxana Rincon, Councilor

Staff Present: Aaron Sera, City Administrator
Laura Holguin, Treasurer
Bryan Reedy, Community Svcs. Director
Jim Massengill, Public Works Director

Raul Mercado, Fire Chief
Edgar Davalos, Fire Battalion Chief
Alex Valdespino, Police Captain

Recording Secretary: Lila Jasso, Administrative Secretary

Mayor Jasso called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance.

1. Approval of Election Precinct Board for the 2018 Municipal Election

Mr. Sera stated that the list of the Election Precinct Board by position to serve at the combined precinct locations. He went on to say that this is a requirement for the 2018 Municipal Election in March.

Councilor Sanchez moved to accept the Election Precinct Board for the 2018 Municipal Election, as presented. Councilor Milo seconded the motion; motion carried unanimously.

2. Approval to Appoint an Alternate Judge

Mr. Sera stated that a situation has arisen in which Judge Van Gundy and Alternate Judge Renteria must recuse themselves from a certain case. He asked that Council approve the recommendation to appoint Amy Hernandez as a one-time Alternate Judge.

Councilor Sanchez moved to approve the appointment of Amy Hernandez as one-time Alternate Judge. Councilor Milo seconded the motion; motion carried unanimously.

3. Approval for Out-of-State Travel Request for Sgt. James Fetrow and Officer Robert Chavez to attend SWAT Command and Leadership Class in Wayne, New Jersey on February 5-9, 2018.

Cpt. Valdespino stated that due to the recent retirement of Det. Esquivel, there is new leadership for the SWAT Team. He stated that this course will teach them the legal liabilities, decision making, barricade and hostage procedures, selection of equipment, team selection, and the legal overviews of deploying the SWAT Team. Cpt. Valdespino stated that it is a must for their department to have two leaders certified in this field.

Mayor Jasso asked if there was only one person trained in this leadership field. Cpt. Valdespino stated that there were two, one of which was Officer Chavez, but he had only been to the basic leadership course, where Sgt. Esquivel had been to the Command Course. Cpt. Valdespino stated that he would like to send both, Sgt. Fetrow and Officer Chavez to the Command Course, a situation arises and one is not available.

Councilor Milo asked if the SWAT Team has a bomb squad or if they come from Las Cruces. Cpt. Valdespino stated that our SWAT Team does not have a bomb squad.

Councilor Sanchez moved to approve the out-of-state travel request for Sgt. James Fetrow and Officer Chavez to attend SWAT Command and Leadership Class in Wayne, New Jersey on February 5-9, 2018, as presented. Councilor Milo seconded the motion; motion carried unanimously.

4. Public Hearing to Consider an Ordinance for a Telecommunications and Internet System Franchise Agreement

Councilor Sanchez stated for the record that he would like to recuse himself from any discussion or vote on this item, due to a possible conflict of interest.

Mr. Sera stated that the first reading of the proposed ordinance had previously been presented to Mayor Jasso and Council in December.

Mr. Reedy stated that in the first reading, it was discovered in APPENDIX A, that the Business and Residential Internet Services were included in the list of franchise fees to be charged. He went on to say that this has since been removed, since there is a federal law that does not allow for that fee to be charged. Mr. Reedy stated that another change was to Section 10, in which the following was added:

“The parties agree, that at this time, the City is pre-empted by federal law from collecting franchise fees from Western New Mexico Telephone Company (hereafter WNM) for monies collected from the sale of any internet services to residents within the City of Deming. If the law should change wherein the city would no longer be pre-empted from collecting franchise fees from WNM’s sale of any internet services, then the parties agree the franchise agreement shall be re-opened and the parties shall negotiate those additional franchise fees in good faith.”

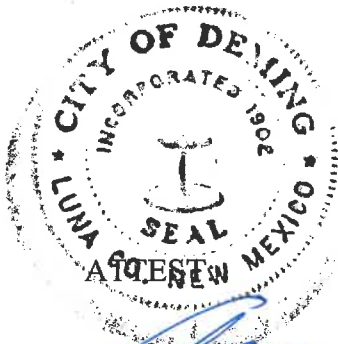
Mayor Jasso opened the floor for public comment. There were none.

Mayor Jasso closed the public hearing session.

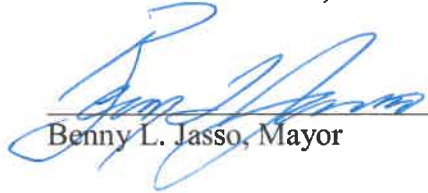
Mayor Pro-Tem Cruz moved to approve the ordinance for a Telecommunications and Internet System Franchise Agreement. Councilor Milo seconded the motion; motion carried unanimously.

5. Adjourn Meeting

With no further business to discuss, Councilor Milo moved to adjourn the meeting. Councilor Sanchez seconded the motion; motion carried unanimously. Meeting adjourned at 10:09 a.m.



CITY OF DEMING, NEW MEXICO


Benny L. Jasso, Mayor


Aaron Sera, Administrator/Clerk

**CITY OF DEMING, NEW MEXICO
ORDINANCE NO. 1269**

**AN ORDINANCE GRANTING CERTAIN RIGHTS AND PRIVILEGES TO THE
WESTERN NEW MEXICO COMMUNICATIONS CORPORATION,
ITS SUCCESSORS AND ASSIGNS**

BE IT ORDAINED by the City Council of the City of Deming, State of New Mexico:

SECTION 1 Grant of Authority. There is hereby granted by the City of Deming, hereinafter called the "City," to WNM Communications Corporation, its successors and assigns, hereinafter called the "Company," the non-exclusive right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now in use or dedicated, and all extensions thereof, and additions thereto, in said City, poles, wires, cables, underground conduits, manholes and other telecommunications facilities necessary or proper for the maintenance and operation in said City of Deming the Company's telecommunications business; provided, however, that no poles or other facilities shall be placed where the same will interfere with any street, roadway or traffic control facilities or with any existing utility facilities and shall be placed in such a manner as to cause a minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or public ways and places. Any and all changes made by the Company for Company reasons in the location of the poles, wires, cables, underground conduits, manholes and other communications facilities shall not require the City to pay for the change in any street, roadway or traffic control facility caused by the change of the locations by the Company. The cost thereof shall be paid by the Company. Any and all changes requested by the City for City reasons in the location of the Company's poles, wires, cables, underground conduits, manholes and other communications facilities shall not require the City to pay for the change. The cost thereof shall be paid by the Company.

SECTION 2 Company Liability. The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City and to such regulations as the City may, by resolution or ordinance, hereafter provide. It is expressly understood and agreed by and between the Company and the City that the Company shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Company in the construction or maintenance of its telecommunications and internet access system in the City. The City shall notify the Company's representative in writing within ten (10) days after the presentation of any claim or demand either by suit or otherwise made against the City on account of any negligence as aforesaid on the part of the Company. Failure to promptly notify the Company as required herein shall operate as a release of the Company's obligation to save the City harmless regarding the claim or demand.

SECTION 3 House moving and Other Unusual Use. Any person or corporation desiring to move a building or other structure along, or to make any unusual use of, the streets, alleys and public ways of the City which shall interfere with the poles, wires or facilities of the Company or the City, shall first give notice to the Company or the City, as the case may be, and shall pay to the Company or the City, as the case may be, a sum sufficient to cover the expense and damages incident to the cutting, altering and moving of the wires or other facilities of the Company or the City, and before a permit is given by the City therefor, the applicant shall present a receipt from the Company showing the payment. Thereupon the Company, upon presentation of said permit, shall within a reasonable time thereafter provide for and do such cutting, altering and moving of said wires and facilities as may be necessary to allow such moving or other unusual use of the streets, alleys and public ways of the City. Nothing in this section shall be construed as requiring the City to approve, coordinate, direct, control or mandate the route for any person or corporation desiring to move a building or other structure within the City.

SECTION 4 Consideration. As a further consideration for this franchise, the Company shall pay to the City franchise payments in an amount equal to four percent (4%) of the monthly local exchange recurring revenues, exclusive of all federal and state excise taxes and surcharges, received for basic local exchange services as listed in Appendix A hereto furnished to subscribers of the Company, not including uncollectable revenues related to those services, within the City of Deming. Payment shall be made in quarterly installments within sixty (60) days after the end of each calendar quarter during the term of this franchise.

SECTION 5 Inspection of Books. The City shall have the right within thirty days of a written request to the Company to inspect the books and records of the Company pertaining to the Company's monthly recurring revenues for basic local exchange services as listed in Appendix A hereto received from the Company's subscribers located within the limits of the City at a time mutually agreed upon by the parties.

SECTION 6 Payment in Lieu of Other Taxes. In consideration of the franchise payments hereinabove provided for, it is expressly understood and agreed by the Company and the City that these payments shall be in lieu of any and all other franchise, license, occupation, or other forms of excise or revenue taxes based upon or measured by the revenues, employees, payroll, property, facilities or equipment of the Company, excepting, however, general ad valorem property taxes, special assessments for local improvements and sales or gross receipts taxes (all hereinafter referred to as "excepted taxes"). The franchise payments shall continue only so long as the Company is not prohibited from making the payments by any lawful authority having jurisdiction in the premises. Furthermore, if the City does levy, charge or collect or attempt to levy, charge or collect any other franchise, license, occupation or other form of excise or revenue taxes of the type above specified in this paragraph (other than excepted taxes), the obligation to make franchise payments hereunder shall be abated to the extent such other taxes are levied, charged or collected by the City.

SECTION 7 Annexation of Territory. Upon any annexation of territory to the City of Deming, monthly, recurring local exchange revenues for services listed in Appendix A hereto received from subscribers located within the annexed area shall be included in the base for computation of payments due to the City. Such inclusion shall be effective thirty (30) days after written notice to the Company by the City delivered to the Company representative, of such annexation.

SECTION 8 Non-waiver of Other Rights. It is expressly understood and agreed by and between the City and the Company that neither the grant nor acceptance of this franchise shall constitute a waiver, either upon the part of the Company or the City, of any rights or claims had or made by either with respect to the occupancy of the streets, alleys, and public places of the City, under the laws of the Territory of New Mexico and under the Constitution and general statutes of the State of New Mexico, nor shall anything herein in anyway prejudice or impair any rights or claims existing independently of this franchise of the City or the Company, or its predecessors or successors, with respect to the construction, operation, and maintenance, either before or after the life of this franchise of a telecommunications system the City.

SECTION 9 Use of System by City. The City shall have the right, during the life of the franchise, free of charge, where aerial construction and utility poles exist, of maintaining upon the utility poles of the Company within the City limits security cameras, wire and utility pole fixtures necessary for a police and fire alarm system and a security camera system with the City, such security cameras, wire and utility pole fixtures referenced above shall be constructed and maintained to the satisfaction of the Company.

SECTION 10 Term of Franchise. The franchise and rights herein granted shall continue in force and effect for a term of ten (10) years after the effective date of this franchise.

SECTION 11 Effective Date. This Ordinance shall become effective thirty (30) days after its enactment; provided the Company, within those thirty (30) days, shall have filed with the City Clerk of the City of Deming an unconditional acceptance thereof. Within ten (10) days after the filing of the acceptance, the City Clerk shall acknowledge in writing the receipt of the Company's acceptance.

SECTION 12 Severability Clause. If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Council, the Governing Body of the City of Deming, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof regardless of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.

APPENDIX A

LISTING OF SERVICE CATEGORIES INCLUDED IN “MONTHLY RECURRING REVENUES” FOR THE CALCULATION OF FRANCHISE FEES

Business Local Access –
Business Measured Usage Local Access Service –
Flat Usage Local Access Trunks –
Low Income Telephone Assistance Program Local Access –
Measured Rate Local Access Trunk Usage –
Public Access Line (PAL) Service –
Residential Local Access –
Residential Measured Usage Local Access Service –

THE FOLLOWING IS A NON-EXCLUSIVE LISTING OF CATEGORIES OF REVENUE NOT REPRESENTING THE RETAIL SALE OF LOCAL ACCESS SERVICES AND THEREFORE EXCLUDED FROM THE DEFINITION OF “MONTHLY RECURRING REVENUES” AND, THEREFORE, ARE NOT INCLUDED IN THE CALCULATION OF ANY FEE DUE TO THE CITY.

Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks.

Bad debt write-offs and customer credits

Revenue from directory advertising

Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including but not limited to support governments

Revenues from digital or other electronic content, such as computer software, music and video downloads

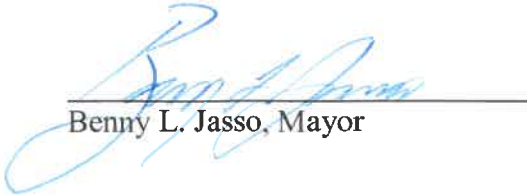
Revenues from equipment sales, rentals, installation and maintenance

Revenues from any carrier purchased for resale

Revenues from private line services not for switched local access service

PASSED, ADOPTED AND APPROVED THIS 11th day of December, 2017, at a regular meeting of the City of Deming, State of New Mexico.

City of Deming, New Mexico


Benny L. Jasso, Mayor

ATTEST:


Aaron Sera, City Administrator/Clerk

I Aaron Sera, City Clerk for the City of Deming, New Mexico, a municipal corporation, hereby certify that the attached Ordinance No. 1269 and Appendix A is a true and correct copy of the original document maintained in my office and of which I am the custodian.




Aaron Sera, City Administrator/Clerk