

ORDINANCE NO. 668

AN ORDINANCE GRANTING TO CANBY TELEPHONE ASSOCIATION, AN OREGON COOPERATIVE ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY (20) YEARS FROM AND AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, THE RIGHT AND PRIVILEGE TO PLACE, ERECT AND MAINTAIN POLES, WIRES AND OTHER APPLIANCES AND CONDUCTORS AND TO LAY UNDERGROUND WIRES FOR THE TRANSMISSION OF ELECTRICITY FOR COMMUNICATION PURPOSES IN, UPON, UNDER AND OVER THE STREETS, ALLEYS, AVENUES, THOROUGHFARES AND PUBLIC HIGHWAYS OF THE CITY OF CANBY, OREGON; FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE AND DECLARING AN EMERGENCY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: There is hereby granted by the City of Canby (hereinafter referred to as "City") to the Canby Telephone Association, an Oregon cooperative association, its successors and assigns, (hereinafter referred to as "Grantee") the right and privilege to conduct a general communication business within the City of Canby and to place, erect, lay, maintain and operate in, upon, under and over the streets, alleys, avenues, thoroughfares and public highways within the said City, poles, wires and other appliances and conductors for the transmission of electricity for communication purposes. Such wires and other appliances, conductors and fixtures which are now strung upon poles above ground, may remain as now installed, but any new construction or installations, or relocations of such facilities shall be installed underground. Underground construction may be impossible in some cases and in this event a report of that fact shall be made in writing to the Canby Public Works Director before construction work commences and said Director must first give written approval of the proposed above ground installations.

Section 2: It shall be lawful for Grantee to make all needful

and necessary excavations in any of said streets, alleys, avenues, thoroughfares and public highways. Said work shall be done in compliance with the rules, regulations, ordinances and orders which have been heretofore or which may hereafter during the continuance of this franchise, be required by the City.

Section 3: Whenever Grantee shall disturb any of the streets, alleys, avenues, thoroughfares and public highways for the purpose aforesaid, it shall restore the same to good order and condition as soon as practicable without unnecessary delay and failing to do so, City shall have the right to fix a reasonable time within which such repairs and restoration shall be completed and upon failure of such repairs and restoration being made by Grantee, City shall cause such repairs to be made at the expense of the Grantee.

Section 4: Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, paving, repairing, altering or improving any of the streets, alleys, avenues, thoroughfares and public highways in or upon which the poles, wires, conductors, pipes or other apparatus may be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus.

Section 5: Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the wires, cables or other plant of Grantee for the passage of buildings, machinery or other objects, Grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other plant as the necessities of the case require;

provided, however, that the person or persons desiring to move any such buildings, machinery or other objects, shall pay the entire actual cost to Grantee of changing, altering, moving, removing or replacing its wires, cables or other plant so as to permit such passage, and shall deposit in advance with Grantee a sum equal to such cost as estimated by Grantee and shall pay all damages and claims of any kind whatsoever, direct or consequential, caused directly or indirectly by the changing, altering, moving, removing or replacing of said wires, cables, or other plant, except as may be occasioned through the sole negligence of Grantee. Grantee shall be given not less than ninety-six (96) hours written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets, alleys, avenues, thoroughfares and public highways and shall bear the approval of the City. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or waste of time.

Section 6: In consideration of the rights and privileges hereby granted, City shall have, and Grantee hereby grants to it, the right and privilege to suspend and maintain wires and necessary control bases on poles placed by the Grantee in the streets, and other places aforesaid, or if such wires are placed underground, to place and maintain in the pipes or conduits of Grantee, if space therein is available, wires which City may require for fire and police purposes. All such wires shall be placed upon the poles or in

conduits so as not to interfere with communication service and shall not carry currents or voltage dangerous to telephone plant or telephone users, and all installations, maintenance and repairs shall be subject to the rules, regulations and supervision of the Grantee. City agrees in consideration of the establishment of this service and the furnishing of such facilities to hold Grantee entirely free and harmless from all claims or liability for damage which may arise out of the operation of these special services.

Section 7: As further consideration for the rights and privileges herein granted, Grantee agrees to pay to the City an annual franchise fee of three percent (3%) of the gross annual revenue for local exchange service rendered subscribers within the City limits, such revenue to be determined in accordance with lawful rates and rate groupings applicable to the exchange, exclusive of extended area service. Such payments shall be made by Grantee on or before March 15th of each year for the preceding calendar year, and the first and last payments shall be for that fractional part of the calendar year during which this franchise is in effect.

It is understood and agreed that the aforesaid percentage rate of compensation is a standard franchise fee paid by telephone companies to other cities for the rights and privileges and franchises of the nature contemplated herein and in the event that during the term hereof the Grantee shall agree in a negotiated franchise to pay any other city a percentage rate of compensation exceeding that provided herein, said increased rate of compensation shall thereafter

be payable to the City and this ordinance and franchise shall be amended accordingly. Either party may on 90 days written notice to the other require a meeting of the parties or authorized representative to consider any increase in compensation which may be required under the provisions of this section.

Section 8: That on or before the 1st day of March, 1980, and on and before said day in each year thereafter during the term of this franchise, the Grantee shall file with the City Recorder a statement under oath showing the amount of gross revenue of the Grantee within the City on the basis outlined in Section 7 hereof for the calendar year immediately preceding the year in which the statement is filed. The annual franchise fee for the year for which the statement is filed shall be computed on the gross revenue so reported. Upon receipt of such annual payment, on or before March 15th of each year, the City Recorder shall issue a receipt therefor, which shall be full acquittance of the Grantee for the payment. If controversy arises as to the amount of gross revenue within the meaning of this ordinance, the amount of such gross revenue shall be determined by three (3) arbiters one of whom shall be appointed by the City, one by the Grantee, and the third shall be appointed by the other two, and the determination of the three arbiters after examination of the Grantee's records shall be deemed the correct amount. Any difference of payment due either the City or the Grantee through error or otherwise shall be payable within fifteen (15) days of discovery of such error. Should the Grantee fail or neglect to pay any of said annual payments provided for in this section for thirty (30) days after any

annual payment shall become due and payable and after thirty (30) days written notice from the City, the City, by its properly constituted authority, may at its option either continue this franchise in force and/or proceed by suit or action to collect such payment or declare a forfeiture of this franchise because of the failure to make payment but without waiving the right to collect earned franchise payment.

Section 9: The rights, privileges and franchise hereby granted shall continue and be in force for a period of twenty (20) years from the effective date of this ordinance; however, this agreement shall be reviewed by the parties during the last quarter of the fifth, tenth, and fifteenth calendar years after the effective date of this ordinance for any necessary changes that either of the parties feel are required. Any disagreement shall be resolved by arbiters as provided for in the foregoing Section 8 and the decision of the arbiters shall be binding on both parties.

Section 10: The Grantee hereby agrees and covenants to indemnify and save harmless the City and the officers thereof against all damages, costs and expenses whatsoever to which it, or they, may be subjected in consequence of negligence of the Grantee, or its agents or servants, in any manner arising from the rights or privileges herein granted.

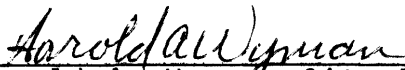
Section 11: The Grantee shall, within thirty (30) days from the date of this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails

to do so, this ordinance shall be void.

Section 12: If the City decides to grant a franchise or other type of permit to any person, firm or corporation to operate and maintain a Community Antenna and Television System (CATV) in the City during the term of this franchise agreement, it shall first offer such CATV franchise or permit to this Grantee upon the same acceptable terms and conditions which may have been offered by such other person, firm or corporation. The Grantee shall be notified within fifteen (15) days of such acceptable offer and shall have fifteen (15) days from receipt of such notice to accept such offer. Notice by the City of an acceptable offer for a CATV franchise or permit shall be in writing and delivered to the manager of the Grantee at its main office in Canby, Oregon, and acceptance of the offer by the Grantee shall also be made in writing and delivered to the Canby City Recorder at the Canby City Hall.

Section 13: Inasmuch as it is necessary for the peace, health and safety of the citizens of Canby, an emergency is hereby declared and this ordinance shall be in full force and effect immediately upon its enactment by the Council.

Submitted to the Canby City Council and read the first time at a regular meeting of the Council on the 3rd day of October, 1979; ordered posted as provided by the Canby City Charter and scheduled for second reading and action of the Canby City Council at a regular meeting thereof on the 7th day of November, 1979, at the Council Chambers at the Canby City Hall.



Harold A. Wyma, City Recorder

Passed on final reading of the Canby City Council this 7th day
of November, 1979, by the following vote: YEAS 6 NAYS 0.

Robt E. Rapp
Robt. E. Rapp, Mayor

ATTEST:

Marilyn K. Perkett
Marilyn K. Perkett, City Recorder Pro Tem