

ORDINANCE NO. 546-0

AN ORDINANCE GRANTING TO GENERAL TELEPHONE COMPANY OF THE NORTHWEST INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT 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 TROUTDALE, OREGON AND TO CONDUCT A GENERAL COMMUNICATION BUSINESS WITHIN THE CITY OF TROUTDALE, OREGON.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE:

Section 1. There is hereby granted by the City of Troutdale, Grantor, to the General Telephone Company of the Northwest Inc., a Washington corporation, Grantee, its successors and assigns, the right and privilege to conduct a general communication business within the City of Troutdale and to place, erect, lay, maintain and operate in, upon, under and over the streets, alleys, avenues, thoroughfares and public highways within the City, poles, wires and other appliances and conductors for the transmission of electricity for communication purposes. Such wires and other appliances and conductors shall be strung upon poles and other fixtures above ground, unless prohibited by City ordinances, or, these wires, appliances and conductors shall, at the option of the Grantee, be laid underground in pipes or conduits or otherwise protected.

Section 2. It shall be lawful for Grantee to make all needed and necessary excavations in any of the streets, alleys, avenues, thoroughfares and public highways. This work shall be done in compliance with the separate agreements, standards, 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 purposes 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 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 the poles, wires, conductors, conduits, pipes or other apparatus.

Section 5. It is the policy of the City for both safety and aesthetic reasons to eventually accomplish total or near total undergrounding of all of the Grantee's facilities located on public right-of-way or public property. In order to further this stated purpose, each existing facility which is in need of total replacement that is located on any public right-of-way in the City including streets or alleys, shall at the expiration of its economic life and upon a determination of a need for replacement by the Grantee, be replaced by undergrounding the facility, except where because of terrain or sub-surface conditions, undergrounding cannot be accomplished by cable burying equipment. Nothing herein shall be construed to prevent Grantee from replacing existing sections of a facility or augmenting existing facilities not otherwise requiring replacement, unless such augmentation violates City standards, rules, regulations, ordinances and orders, not in conflict with this franchise, which have heretofore or which may be hereafter during the continuance of this franchise, be required by the City.

With respect to poles and other aerial facilities, Grantor reserves the right to order the change of position of any such facility whenever such change is necessary as a part of any regrading, widening or other public improvement of the public right-of-way. Such relocation shall be the responsibility of and done at the cost of the Grantee. In the event Grantor desires that such facilities, not otherwise in need of replacement or at the expiration of their economic life, be placed underground at the time of improvement of the public right-of-way, Grantor will bear that portion of the cost of undergrounding such facilities as is equal to the difference between the cost of relocating and the cost of undergrounding such facilities, less any credit for salvage. However, in such case(s) that a public works improvement project together with all ordinances, standards, codes, orders and rules leave no physical relocation space for overhead facilities, then said relocation shall be underground and all such costs of relocation born by the Grantee if Grantee cannot relocate through condemnation or otherwise.

Section 6. 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, excepting the Grantor, 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. This notice shall detail the route of movement of such building or other objects over or 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 7. In consideration of the rights and privileges hereby granted subject to the following conditions:

(a) Grantor shall have, and Grantee hereby grants to it, the right and privilege to suspend and maintain wires and necessary control boxes 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, police and public works 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.

(b) Grantee shall pay to City the franchise fee of three percent per annum as provided by Section 7 of the previous franchise Ordinance No. 482-0 for the period beginning January 1, 1990, and ending June 30, 1990. Grantee shall make such payment on or before September 15, 1990.

(c) Grantee shall pay to City from July 1, 1990 until expiration of this franchise, a privilege tax of seven percent of its gross revenues earned within the boundaries of the City as authorized by ORS 221.515. As used in this subsection, "gross revenues" means those revenues derived from exchange access services, as defined in ORS 401.710, less net uncollectibles

from such revenues. Payments shall be made by Grantee on or before 45 days after the preceding quarter commencing with the quarter ending September 30, 1990, and continuing for each quarter for the term of this franchise.

Section 8. This franchise granted shall continue in force through June 30, 2000, except that either City or Grantee may terminate the franchise after 180 days notice in writing. This ordinance is subject to applicable state or federal legislative enactments.

Section 9. All ordinances and parts of ordinances of previous date, insofar as the same are in conflict herewith, are hereby repealed and annulled.

PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 26TH DAY OF JUNE. 1990.

YEAS: 3

NAYS: 2 (BUI, BURGIN)

ABSTAINED: 0

*Sam K. Cox*

Sam K. Cox, Mayor

Dated: June 28, 1990

ATTEST:

*Valerie Raglione*  
Valerie Raglione, CMC  
City Recorder  
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