

0401-85-5

Ordinance No. 90-16

AN ORDINANCE GRANTING THE RIGHT TO DO A GENERAL COMMUNICATION BUSINESS.

An ordinance granting to Pacific Northwest Bell Telephone Company, doing business as U. S. West Communications, hereinafter sometimes referred to as "Grantee," its successors and assigns, the right and privilege to do a general communication business and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City of Astoria, poles, wires and other appliances and conductors for all telephone, telegraph and other communication purposes.

THE CITY OF ASTORIA, OREGON DOES ORDAIN AS FOLLOWS:

Section 1. That there is hereby granted by the City of Astoria ("City") to Pacific Northwest Bell Telephone Company, its successors and assigns, the non-exclusive right and privilege to do a general communication business within the City and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City, poles, wires, and other appliances and conductors for all telephone, telegraph and other communication purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same.

Section 2. That it shall be lawful for Pacific Northwest Bell Telephone Company, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds in the City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits for such wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may, during the continuance of this franchise, be adopted from time to time by the City.

Section 3. That whenever Pacific Northwest Bell Telephone Company, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and, the Grantee failing to do so, the City shall have the right to fix a reasonable time within which the repairs and restoration of streets shall be completed, and upon failure of the repairs being made by the Grantee, its successors and assigns, the City shall cause the repairs to be made at the expense of the Grantee, its successors and assigns.

Section 4. That nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, planking, rocking, paving, repairing, altering or improving any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City, in or upon the poles, wires or other conductors of the Grantee shall be placed, but all 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. Any relocation of Grantee's facilities required by the City to avoid interference with the widening, relocation or other improvement of the streets shall be made at

Grantee's expense. If the removal or relocation of facilities is caused by an identifiable development of property in the area, or is made for the convenience of a customer, this agreement shall not preclude the Grantee from charging the expense of removal or relocation to the developer or customer. The vacation of any street by the City shall be subject to Grantee's rights of occupancy hereunder, and Grantee shall not be required to relocate its facilities without reimbursement for the cost thereof unless such vacation is for other public use by the City. The City shall not require the Grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters 456 and 457 without reserving Grantee's right therein or without facilitating compensation to the Grantee for the costs thereof.

Section 5. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Grantee to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, the Grantee will perform such a rearrangement within a reasonable period after written notice from the owner or contractor-mover desiring to move said building, machinery or other objects. Such notice shall bear the approval of the Public Works Director for the City, or his designee, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by the Grantee in making such a rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save the Grantee harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the facilities of the Grantee, and if required by the Grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the Grantee.

Section 6. That, in consideration of the rights, privileges, and franchise hereby granted, said Grantee, Pacific Northwest Bell Telephone Company, its successors and assigns, shall pay to the City from and after the date of the acceptance of this franchise, and until June 30, 1990, annually, three percent (3%) per annum of its gross local service revenues derived from services within the corporate limits of the City less net uncollectibles and revenue paid directly to the Grantee by the United States or any of its agencies. Effective July 1, 1990, said Grantee shall pay the City annually, seven percent (7%) of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City less net uncollectibles.

The reasonable value of any utility service or the use of any Grantee facilities used or reserved for use by the City without Grantee's prescribed charges shall be credited toward any payment due the City under this provision. Payment of this franchise fee shall be made on or before the fifteenth day of March of each and every year for the calendar year preceding. For the year 1990, payment of said three percent (3%) shall be made only for the period commencing on the date this ordinance becomes effective to June 30, 1990, and payment of said seven percent (7%) shall be made for the period July 1, 1990 to December 31, 1990. Such payments made by the Grantee will be accepted by the City from the Grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit or inspection fees or similar charges for street opening, installations, construction or for any other purpose now or hereafter to be imposed by the City upon the Grantee during the term of this franchise. However, the City may require permits, but without fee, for street openings, installation and construction.

Section 7. The rights, privileges and franchise herein granted shall continue and be in force for a period of twenty (20) years from and after the date this ordinance becomes effective, except that it is understood and agreed that either party may terminate or re-negotiate elements of this agreement after 180 days notice in writing. This ordinance shall be subject to any and all State or Federal legislative enactments, or other regulatory mandates.

Section 8. This ordinance shall, if accepted by the Grantee, take effect and be in force thirty (30) days from and after its passage and approval. Said Grantee shall, within thirty (30) days of the passage and approval of the ordinance, if it accepts such ordinance, file with the Finance Director of the City its written acceptance of all the terms and conditions of this ordinance.

ADOPTED BY THE CITY COUNCIL THIS 4TH DAY OF JUNE, 1990.

APPROVED BY THE MAYOR THIS 4TH DAY OF JUNE, 1990.

Edwin Henningsgaard
Mayor

ATTEST:

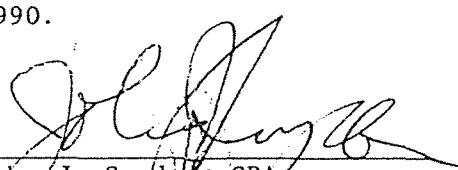
[Signature]
Finance Director

ROLL CALL ON ADOPTION	YEA	NAY	ABSENT
Commissioner Ellsberg	X		
Van Dusen	X		
Thiel	X		
Mathews	X		
Mayor Henningsgaard	X		

Certification of Copy

I, John J. Snyder, CPA, Finance Director of the City of Astoria, Clatsop County, State of Oregon, do hereby certify that the attached two copies of Ordinance No. 90-16 are full, true and correct copies of the original thereof, as the same is in my custody as Finance Director of the City of Astoria, and that said ordinance was duly adopted by the affirmative vote of five members of the City Council at a regular meeting of the Council of said City duly and regularly called and held, at which five members of the Council, being a quorum, were present and acting. I further certify that said ordinance was duly attested by me as Finance Director, and was presented to and duly approved by the Mayor within three days of the passage thereof.

WITNESS my hand and seal of the City of Astoria this 7th day of June, 1990.



John J. Snyder, CPA
Finance Director of the
City of Astoria