

AN ORDINANCE AMENDING THE GRANTING)
OF A NON-EXCLUSIVE FRANCHISE TO)
TELEPHONE UTILITIES OF OREGON,)
INC., dba PTI COMMUNICATIONS,)
ITS SUCCESSORS AND ASSIGNS, A)
LICENSE AND FRANCHISE TO)
CONSTRUCT, PLACE, ERECT, LAY,)
MAINTAIN AND OPERATE IN, UPON,)
OVER, AND UNDER THE PRESENT AND)
FUTURE STREETS, ALLEYS, AVENUES,)
BRIDGES, AND PUBLIC PLACES OF)
THE CITY OF LEBANON, LINN)
COUNTY, OREGON, POLES, WIRES,)
CABLES, CONDUCTORS, AND OTHER)
APPLIANCES AND APPURTENANCES FOR)
ALL TELEPHONE, TELEGRAPH, AND)
OTHER COMMUNICATION SERVICES TO)
THE CITY OF LEBANON, THE)
INHABITANTS THEREOF AND OTHER)
SUBJECT TO THE TERMS AND)
CONDITIONS AND TO THE MAKING OF)
THE PAYMENTS SPECIFIED IN THE)
ORDINANCE AND, DECLARING AN EMERGENCY.)

ORDINANCE BILL NO. 5
for 1993

ORDINANCE NO. 2129

THE CITY OF LEBANON ORDAINS AS FOLLOWS:

Ordinance Bill No. 20 for 1992, Ordinance No. 2125, is amended to read as follows:

Section 1. Rights Granted:

The City of Lebanon, Linn County, Oregon, hereinafter called the City, does hereby grant to Telephone Utilities of Oregon, Inc., dba PTI Communications, and to its successors and assigns, hereinafter called the Grantee, a license and non-exclusive franchise for the period of one year from and after its passage to construct, place, erect, lay maintain, and operate in, upon, over and under the present and future streets, alleys, avenues, bridges, and public places of the City (all hereinafter referred to as the streets) poles, wires, cables, conductors, and other appliances and appurtenances for all telephone, telegraph, and other communication services to the City, the inhabitants thereof, and others and to persons and corporations beyond the limits of the City, subject to the terms and conditions and payments hereinafter specified. Such wires, conductors, and other appliances may be strung on poles or other fixtures above ground, direct buried, or underground in pipes or conduits, at the option of the City, and such other apparatus may be used as may be necessary or proper to operate and maintain same.

Section 2. Street Excavation and Restoration:

It shall be lawful for Grantee to make all needful excavations in any of such streets in said City for the purpose of placing, erecting, laying, and maintaining poles, or other supports or conduits for said wires, cables, appliances, and auxiliary apparatus or for repairing, renewing or replacing the same. Said 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. Except in emergencies, prior to making an excavation in any street, the Grantee shall obtain, from the City, approval of the proposed excavation and of its location. Except for emergencies, the Grantee shall notify the City at least 24 hours prior to starting excavation. When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the street to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portions of a street to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

Section 3. The City Reserves the Right to:

1. Construct, install, maintain and operate any public improvement, work or facility;
2. Do any work that the city may find desirable on, over or under any street;
3. Vacate, alter or close any street;
4. Whenever the City shall excavate or perform any work in any of the present and future streets, alleys and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's facilities, the City shall notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such facilities from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work; and
5. Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such street or public place.

Section 4. Relocation of Facilities:

All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets and in accordance with any specifications adopted by the City governing the location of the facilities. The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the streets of the City and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality.

Section 5. Rearrangement of Facilities to Permit Moving of Buildings and Other Objects:

1. Whenever any person has obtained permission of the proper City officials to use any of the streets of said City for the purpose of moving any building or other large object, the Grantee upon reasonable notice (as defined herein) from such person and his paying the actual costs thereof, shall raise or remove any and all of the said wires or cable which may obstruct the moving of such building or objects so as to allow the unobstructed passage of the same; and in case of the failure of Grantee to comply with the terms of this section, the superintendent of streets or other proper officer of the City is hereby authorized to remove said wires or cables at the expense of Grantee. Grantee shall be given no less than five (5) working days written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such buildings or other objects over and along the streets, alleys, avenues, thoroughfares and public highways, and shall have the approval of the City. In approving the application for such moving, the City shall require that such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause Grantee unnecessary expense or delay.

Section 6. Exemption In Case Of Emergency:

In case it shall be necessary to cut or remove any of the said wires, cables or other conductors or equipment of the Grantee, in order to get fire ladders or other apparatus to a building during a City conflagration, the said City shall not be liable for any damages done to such wires, cables or conductors or equipment. The Grantor shall notify the Grantee of such incident within eight (8) hours from the time of occurrence.

Section 7. Compensation:

In consideration of the rights, privileges and franchise hereby granted, the Grantee shall pay to the City, a franchise fee or charge equivalent to 4% percent of the Grantee's gross tarified local service revenues other than competitive services derived from customers located within the corporate limits of the city during the previous calendar quarter. The first payment shall be due within 60 days after January 1, 1993, based on the gross tarified local service revenues other than competitive services for the calendar quarter beginning January 1, 1993. The franchise fee required by this section shall be due for each quarter year, or fraction thereof, within 60 days after the close of such quarter year or fraction thereof. The Grantee shall furnish to the City with each payment of franchise fee required by this section a written statement, under oath, executed by an officer of Grantee showing the amount of taxable revenues of the Grantee within the City for the period covered by the payment computed on the basis set out in this section. Such franchise fee as shall be applicable under this franchise will be accepted by the City from the Grantee also in payment of any license, privilege or occupation tax. Provided that if Oregon law or administrative rules are changed to allow a higher franchise fee to be recovered as an operating expense of the Grantee, and not as additional tax or charge on the telephone customer's bill, then the rate of the franchise fee set forth in this section shall be increased accordingly and the Grantee shall pay the City that higher fee.

Section 8. City Installations: Services Furnished by Grantees:

In further consideration of the rights and privileges herein granted, the Grantee, its successors, and assigns hereby grants, without charge, to the City the right and privilege to suspend and maintain on poles placed by Grantee in the streets such signal wires as are necessary for the exclusive use of the City for fire alarm and police signal circuits, or other signal or control circuits, required by the City. In the event that the use of poles in certain areas is discontinued by Grantee and underground circuits are substituted therefor, then Grantee will reserve space in the underground conduit to accomodate the fire alarm and police signal circuits and other City signal circuits which otherwise would be suspended on Grantee's poles for which no charge shall be made. All wires of the City shall be so placed on the poles or in the conduits of Grantee so as not to interfere with the communication service of the grantee and shall not carry such electrical current or voltage as may endanger Grantee's plant or customers. All installations, maintenance and repair shall be subject to the rules, regulations and supervision of the Company and shall comply with the National Electric Safety Code.

Section 9. Indemnification:

The Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to or death of persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and Franchise hereby granted.

Section 10. Assignment of Franchise:

This Franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee.

Section 11. Permits and Inspections:

Nothing in this ordinance shall be construed to limit the right of the City to require the Grantee to pay reasonable costs incurred by the City in connection with the issuing of a permit, making of an inspection, or performing any other service for or in connection with the Grantee or its facilities, whether pursuant to this ordinance or any other ordinance or resolution now in effect or hereafter adopted by the City.

Section 12. Repeal:

Ordinance No. 1904, enacted January 12, 1983, is hereby repealed and any ordinances or parts of ordinances of previous dates, insofar as the same are in conflict herewith, are hereby repealed and annulled.

Section 13. Acceptance:

The Grantee shall, within 30 days from the date this Ordinance takes effect, file with the City, its written unconditional acceptance of this Franchise.

Section 14. Emergency Clause:

Whereas, it is necessary to maintain the peace, health and safety of the citizens of Lebanon, an emergency is hereby declared to exist. This ordinance, therefore, shall become

effective immediately and put into full force upon its passage by the Council and approval by the Mayor.

PASSED by the Council by a vote of 6 for and 0 against and approved by the Mayor this 28th day of April, 1993.

Robert L. Smith
Mayor

ATTEST:

Thyl D. Willard
City Recorder

AGREED:

Telephone Utilities of Oregon, Inc.
dba PTI Communications

By : [Signature]

Title: Vice President

Date : 5/17/93