

CITY OF SHERWOOD

ORDINANCE NO. 930

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 SHERWOOD, OREGON, AND TO CONDUCT A GENERAL COMMUNICATION BUSINESS WITHIN SAID CITY OF SHERWOOD, OREGON.

THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1. Subject to the other terms and conditions set forth in this document, there is hereby granted by the City of Sherwood to General Telephone Company of the Northwest, Inc., a Washington corporation, its successors and assigns, subject to the development ordinances and regulations of the City, the right and privilege to conduct a general communication business within the said City, or such other public property as may come within the jurisdiction of the City during the term of this agreement. This grant is for the purpose of furnishing, as a public utility, the products and services utilized in providing telephone, telegraph, and other communication products and services. This grant includes the right to erect, construct, place, replace, reconstruct, lay, maintain, and operate poles, wires, switching equipment, amplifying equipment, fixtures, facilities, appliances, structures and other devices including, but not limited to, electronic, optical and mechanical devices customarily associated with Grantee's function and purpose of serving as a common carrier of information for communication purposes.

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. All work shall be in compliance with applicable rules, regulations, ordinances or laws of the City, county and state.

Section 3. Prior to the commencement of any ordinary construction, extension or relocation of any of Grantee's facilities upon, over, under or across any of the streets, highways, or other public property within the jurisdiction of the City, the Grantee shall advise the City's Department of Public Works of the location of such proposed construction, extension, or relocation and shall obtain from the City Engineer approval prior to commencement of such work. No less than one working day prior to commencement of any work which might affect City utilities, Grantee shall give notice to City's Maintenance Department for purposes of utility location. The location of all such facilities shall be at places approved by the City.

Section 4. 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 is 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. 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 and privileges granted herein.

Section 5. The City, by its properly constituted authorities, shall have the right to cause the Grantee to move the location of any pole, underground conduit or equipment belonging to Grantee whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by Grantee. Whenever it shall be necessary for public necessity to remove any pole, underground conduit or equipment belonging to Grantee, or on which any wire or circuit of the Grantee shall be stretched or fastened, the Grantee shall, upon written notice from the City or its properly constituted authorities, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire or circuit, at Grantee's expense, and if Grantee fails, neglects or refuses to do so, the City, by its properly constituted authorities, may remove the same at the expense of Grantee.

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 improvement 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 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 desiring to move any such building, 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 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 of the party desiring to move such buildings 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 unnecessarily be delayed or cause Grantee unnecessary expense or waste of time.

Section 7. 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 boxes on poles placed by 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 the City may require for fire and police purposes. All such wires shall be placed on 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 8. Effective July 1, 1991, and until the franchise's expiration, said Grantee shall pay to the City of Sherwood, annually, 3.960000001% of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City of Sherwood less net uncollectibles and revenue paid directly to the Grantee by the United States of America or any of its agencies. 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. Such payments made by the Grantee will be accepted by the City of Sherwood 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 openings, installations, construction or for any other purpose now or hereafter to be imposed by the City of Sherwood upon the Grantee during the term of this franchise.

Section 9. It is understood and agreed that the percentage to be paid to the City by Grantee under the terms and provisions of Section 7 above is the standard franchise fee paid by the Grantee to other cities it serves for the rights, 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 city in Oregon a percentage rate of compensation exceeding that provided for herein, said increased rate of compensation shall thereafter be payable to the City and this ordinance and franchise shall be amended accordingly.

Section 10. The rights, privileges and franchise hereby granted shall continue and be in full force for a period of ten (10) years from the date of its passage. However, this franchise shall be inoperative unless it is accepted in writing by the Grantee within sixty (60) days after the date of its passage.

Section 11. All ordinances and parts of ordinances of previous date, insofar as the same are in conflict herewith, are repealed, effective upon the date this ordinance becomes effective. Inasmuch as it is necessary that there be an

applicable effective franchise ordinance at all times and the existing franchise ordinance has expired, an emergency is hereby declared to exist and this ordinance shall become effective on its passage by the City Council and approval by the Mayor.

Duly passed by the City Council
this 26 day of June, 1991.

Polly Blankenbaker
Polly Blankenbaker, City Recorder

Approved by the Mayor this 26 day
of June, 1991.

Rick A. Hohnbaum
Rick A. Hohnbaum

| | <u>Aye</u> | <u>Nay</u> |
|-----------|------------|------------|
| Birchill | <u>✓</u> | <u>—</u> |
| Boyle | <u>✓</u> | <u>—</u> |
| Hohnbaum | <u>✓</u> | <u>—</u> |
| Hitchcock | <u>✓</u> | <u>—</u> |
| Kennedy | <u>✓</u> | <u>—</u> |

CITY OF SHERWOOD

ORDINANCE NO. 91-930

AN ORDINANCE GRANTING TO GTE NORTHWEST INCORPORATED, 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 SHERWOOD, OREGON, AND TO CONDUCT A GENERAL COMMUNICATION BUSINESS WITHIN SAID CITY OF SHERWOOD, OREGON.

THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1. Subject to the other terms and conditions set forth in this document, there is hereby granted by the City of Sherwood to GTE Northwest Incorporated, formerly known as General Telephone Company of the Northwest, Inc., a Washington corporation, its successors and assigns, subject to the development ordinances and regulations of the City, the right and privilege to conduct a general communication business within the said City, or such other public property as may come within the jurisdiction of the City during the term of this agreement. This grant is for the purpose of furnishing, as a public utility, the products and services utilized in providing telephone, telegraph, and other communication products and services. This grant includes the right to erect, construct, place, replace, reconstruct, lay, maintain, and operate poles, wires, switching equipment, amplifying equipment, fixtures, facilities, appliances, structures and other devices including, but not limited to, electronic, optical and mechanical devices customarily associated with Grantee's function and purpose of serving as a common carrier of information for communication purposes.

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. All work shall be in compliance with applicable rules, regulations, ordinances or laws of the City, county and state.

Section 3. Prior to the commencement of any ordinary construction, extension or relocation of any of Grantee's facilities upon, over, under or across any of the streets, highways, or other public property within the jurisdiction of the City, the Grantee shall advise the City's Department of Public Works of the location of such proposed construction, extension, or relocation and shall obtain from the City Engineer approval prior to commencement of such work, except in case of emergency repairs. No less than one working day prior to commencement of any work which might affect City utilities,

Grantee shall give notice to City's Maintenance Department for purposes of utility location. The location of all such facilities shall be at places approved by the City.

Section 4. 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 is 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. 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 the negligence of the Grantee, or its agents or servants, in any manner arising from the rights and privileges granted herein.

Section 5. To the extent otherwise provided by State law, the City, by its properly constituted authorities, shall have the right to cause the Grantee to move the location of any pole, underground conduit or equipment belonging to Grantee whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by Grantee. Whenever it shall be necessary for public necessity to remove any pole, underground conduit or equipment belonging to Grantee, or on which any wire or circuit of the Grantee shall be stretched or fastened, the Grantee shall, upon written notice from the City or its properly constituted authorities, meet with City representatives and agree in writing to a plan and date certain to remove such poles, underground conduit, equipment, wire or circuit, at Grantee's expense, and if Grantee fails, neglects or refuses to do so, the City, by its properly constituted authorities, may, after ten days written notice to Grantee, remove the same at the expense of Grantee.

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 improvement 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 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 desiring to move any such building, 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 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 of the party desiring to move such buildings 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 unnecessarily be delayed or cause Grantee unnecessary expense or waste of time.

Section 7. Effective July 1, 1991, and until the franchise's expiration, said Grantee shall pay to the City of Sherwood, annually, 3.960000001% of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City of Sherwood less net uncollectibles and revenue paid directly to the Grantee by the United States of America or any of its agencies. 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. The first and last payments shall be for that fractional part of the calendar year during which this franchise is in effect. Such payments made by the Grantee will be accepted by the City of Sherwood 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 openings, installations, construction or for any other purpose now or hereafter to be imposed by the City of Sherwood upon the Grantee during the term of this franchise.

Section 8. The City may change the privilege tax rate by ordinance, but no more frequently than annually.

Section 9. The rights, privileges and franchise hereby granted shall continue and be in full force for a period of ten (10) years from the date of its passage. However, this franchise shall be inoperative unless it is accepted in writing by the Grantee within sixty (60) days after the date of its passage.

Section 10. All ordinances and parts of ordinances of previous date, insofar as the same are in conflict herewith, are repealed, effective upon the date this ordinance becomes effective. Inasmuch as it is necessary that there be an applicable effective franchise ordinance at all times and the existing franchise ordinance has expired, an emergency is hereby declared to exist and this ordinance shall become effective on its passage by the City Council and approval by the Mayor.

Duly passed by the City Council
this ____ day of _____, 1991.

Polly Blankenbaker, City Recorder

Approved by the Mayor this ____ day
of _____, 1991.

Rick A. Hohnbaum

| | <u>Aye</u> | <u>Nay</u> |
|-----------|------------|------------|
| Birchill | _____ | _____ |
| Boyle | _____ | _____ |
| Hohnbaum | _____ | _____ |
| Hitchcock | _____ | _____ |
| Kennedy | _____ | _____ |