

ORDINANCE NO. 175

AN ORDINANCE GRANTING TO UNITED TELEPHONE COMPANY OF THE NORTHWEST, 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 GARIBALDI, POLES, WIRES AND OTHER APPLIANCES AND CONDUCTORS FOR ALL TELEPHONE, TELEGRAPH AND OTHER COMMUNICATION PURPOSES.

THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:

SECTION 1: There is hereby granted by the City of Garibaldi to United Telephone Company of the Northwest, its successors and assigns, the right and privilege to do a general communication business within the City of Garibaldi 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 communications purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of 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: It shall be lawful for United Telephone Company of the Northwest, 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 of Garibaldi.

SECTION 3: Whenever United Telephone Company of the Northwest, 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 failing to do so the City of Garibaldi 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 Grantee, its successors and

assigns, the City shall cause the repairs to be made at the expense of Grantee, its successors and assigns.

SECTION 4: Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City of Garibaldi from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds with the City of Garibaldi in or upon which the poles, wires or other conductors of 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. The City shall not require 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 Chaptrs 456 or 457 without reserving Grantee's right therein or without requiring Grantee to be compensated 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 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, 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 Engineer for the City, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by Grantee in making such rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save Grantee harmless of and from any and all damages of claims whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the facilities of Grantee, and if required by Grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by Grantee.

SECTION 6: In consideration of the rights, privileges, and franchise hereby granted, said Grantee, United Telephone Company of the Northwest, its successors and assigns, upon the effective date of this ordinance, and until the franchise's expiration, shall pay the City of Garibaldi, annually, four percent (4%) of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City of Garibaldi, 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. For the year 1990, payment of said four percent (4%) shall be made only for the period commencing on the date this ordinance becomes effective until December 31, 1990. Such payments made by Grantee will be accepted by the City of Garibaldi from 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 Garibaldi upon Grantee during the term of this franchise.

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 this agreement after 180 days' notice in writing. This ordinance shall be subject to any and all state or federal legislative enactments.

SECTION 8: This ordinance shall, if accepted by 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 this ordinance, if it accepts such ordinance, file with the Recorder of the City of Garibaldi its written acceptance of all the terms and conditions of this ordinance.

SECTION 9. This ordinance shall take effect and be in force 30 days from and after its passage by the city council.

PASSED FIRST READING by the Council this 13th day of August, 1990.

PASSED SECOND READING by the Council this 13th day of August, 1990.

~~PASSED THIRD READING by the Council this ___ day of ___, 1990.~~

APPROVED this 13th day of August, 1990.


Mayor of Garibaldi, Oregon

ATTEST:

