

ORDINANCE NO. 84-O-383

AN ORDINANCE GRANTING TO GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE OF DOING A TELEPHONE AND TELEGRAM BUSINESS WITHIN THE CITY OF BROOKINGS AND EXERCISING THE PRIVILEGES APPURTENANT THERETO. [January 18, 1984]

Sections:

- Section 1. Grant of franchise.
- Section 2. Location of fixtures.
- Section 3. National Electric and Safety Code standards; conformance to city standards.
- Section 4. Restoration of facilities.
- Section 5. Indemnification of city.
- Section 6. Franchise fee and requirements.
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- Section 9. Compliance with statutory provisions.
- Section 10. City rights and remedies.
- Section 11. Acceptance of condition and terms.
- Section 12. [Emergency clause.]

The city of Brookings ordains as follows:

Section 1. Grant of franchise. Permission and authority are hereby granted to the General Telephone Company of the Northwest, Inc., a corporation, its successors and assigns, upon the terms and subject to the conditions of this ordinance, to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, viaducts and elevated roadways and other public ways of the municipality for a period of 20 years from and after the effective date of the passage of this ordinance, unless sooner terminated as hereinafter provided, its lines of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and to use its said property for the transmission of sound and signals or other means of communication by means of electricity.

Furthermore, on the 5th year, 10th year, and 15th year anniversary of the effective date of the passage of this ordinance, General Telephone Company of the Northwest, Inc., and the city of Brookings may, upon mutual consent expressed in written notice given one to the other, negotiate further changes, amendments, deletions or additions hereto upon the passage of a further supporting ordinance.

Section 2. Location of fixtures. The location of said lines of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and the construction thereof, or any change or extension (or the removal thereof), in case said activity shall necessitate the substantial disturbance of any street, alley, viaduct, elevated roadway, bridge or other public way shall be subject to the approval of the Brookings city manager under grant of such authority as may be enacted from time to time by motion of the Brookings city council; said approval not necessary so long as such activities do not unreasonably interfere with ordinary travel and use of streets, alleys, public ways and the like.

The company shall confer with the city on its plans showing the location and character of poles and conduits which comprise a substantial addition or modification of its present system to be erected or laid, and the number of ducts in each conduit and the location on manholes or other openings to gain access to said conduit; and no pole, conduit, vault or anchor shall be erected, constructed or laid upon or in any street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel, until the parties mutually agree that no disturbances of ordinary traffic or the welfare of the public will be harmed, interrupted or take place.

In reference to the above provisions, if the location of any poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures, or the erection, laying or removal of the same, does not interfere unreasonably with ordinary travel and/or use of the streets, alleys, viaducts, elevated roadways, bridges and public ways or any such tunnels of the city and otherwise complies with this ordinance, the Brookings city manager shall approve the same.

Section 3. National Electric and Safety Code standards; conformance to city standards. Whenever the company erects its wires, cables, or electrical conductors over or above any buildings within the municipality, with the consent of the owner or owners thereof, said wires, cables or electrical conductors shall be in conformance with the National Electric and Safety Code standards above the surface of the roof of such building, except in such buildings as the wires are to enter, and except over any garages or out buildings.

The company agrees that in all cases (except as hereinafter expressly otherwise provided) where the municipality shall change the grade or width of any street, alley or other public way, the company will, promptly and at its own expenses, unless otherwise by ordinance provided, change or move its structures so as to conform thereto, and all sidewalks, parkways, or pavements disturbed by the company shall be restored by it to a good condition, and in the event that any such sidewalk, parkway or pavement shall become uneven, unsettled or otherwise require repairing because of such disturbance by the company, then the company shall promptly, upon receipt of notice from the municipality so to do, cause said sidewalk, parkway or pavement to be repaired or

restored to a good condition. The company further agrees that it will, in advance of any paving or repaving of any street, alley or other public way, and upon reasonable notice thereof given the company by the city, install and construct, at its own expense, all conduit, vaults, and manholes reasonably necessary for its future use in said street, alley, or other public way, so as to prevent, so far as possible, the disturbance by the company of any pavement.

Section 4. Restoration of facilities. When any opening is made or work done in, on or under any street, alley, viaduct, elevated roadway, bridge, or other public way, or any public tunnel under the Chetco River or its several branches and/or other rivers, any of which are under the jurisdiction of the city, for any purpose whatsoever by the company, said street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel shall be restored as promptly as possible to a condition satisfactory to the Brookings city manager at the expense of the company.

Whenever the General Telephone Company of the Northwest, Inc., a corporation, its successors, assigns, or agents shall disturb any of the streets, alleys, or public highways for the purposes aforesaid, it or they shall, without delay, put the same in as good condition as it was before it was so broken up, dug, or disturbed, and shall remove from the street all surplus earth, rubbish, or material caused thereby.

Nothing in this ordinance shall be construed in any way to prevent the proper authorities of said city from sewerage, grading, planking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, public highways, or places within said city, in or upon which the poles, wires, or other conductors of said company are or shall be placed; and said company shall, upon receiving 30 days notice, in writing, from the city manager or other official of the municipality having charge of said grading or improvement, use all due diligence to comply with the city's request in removing such pole or poles or other obstruction; and if said company, its successors and assigns, upon such notice shall refuse or neglect to remove such pole or poles or other obstruction, then the same shall be removed by the city at the expense of said company.

Whether it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant of the General Telephone Company of the Northwest, Inc., a corporation, its successors and assigns, for the passage of buildings, machinery, or other objects, the said company, its successors and assigns, 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 buildings, machinery, or other objects shall pay the entire actual cost to the said company, its successors and assigns, of changing, altering, moving or replacing its wires, cables, or other plant so as to permit such passage, and shall deposit in advance with said company, its successors and assigns, a sum equal to such cost as estimated by said

company, its successors and assigns, and shall pay all damages and claims of every 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 negligence of said company, its successors and assigns, so as to permit such passage. Said company, its successors and assigns, shall be given not less than 30 days written notice by the party desiring to move such building or other object.

Said notice shall detail the route of movement of such building or other object over and along the streets and shall bear the approval of said city by the city manager or other authorized city official. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause the said company, its successors and assigns, unnecessary expense or waste of time. The provisions of this section shall be carried out in accordance with the ordinances of the said city regulating such matters.

Section 5. Indemnification of city. The company shall, at its own expense, indemnify and save harmless the municipality from any and all damages, judgments, costs and expenses of every kind, which may arise or result by reason of or in consequence of the acts or neglect of the company, its agents or servants, to fully comply with the provisions of this ordinance, and will save and keep harmless the municipality from any and all damages, judgments, costs and expenses caused by, or incident to, or in any manner resulting from, the erection of such poles, the laying of such conduit, and the stringing, constructing and operating of said cables, anchors, wires and electrical conductors, vaults, laterals, fixtures and equipment, and the maintenance thereof, provided prompt notice in writing of all claims for such damages, costs and expenses, and reasonable opportunity to defend against the same are given the company by the city, together with all information thereon in its possession.

Section 6. Franchise fee. The permission and authority herein granted are upon the express condition that the company, as consideration therefor, and as compensation for the use herein granted of city streets, alleys, viaducts, elevated roadways, bridges, and other public ways, shall pay into the municipal treasury a sum equal to 3.3% of its gross local exchange service receipts and operating revenues which are hereby defined to mean such local service revenues as defined by the Federal Communications Commission in its rules and regulations under operating revenue accounts and gross revenues as defined within the Oregon Administrative Rules relating to city fees, taxes and other assessments, for services rendered resulting from the use of its plant and properties within the city for the transmission of sound and signals or other means of communications by means of electricity. **[Section 6 as amended by Ordinance No. 90-O-383.A, effective June 11, 1990]**

The company shall file with the city a sworn statement of such gross local service receipts after the end of each calendar year and within 30 days after the close of said annual period; and further, upon the city's request, the company shall provide adequate documentation to support its statements. Payments upon said annual statements shall be made upon an annual basis and shall be paid for the preceding year on or before the 15th day of March of each and every year from the calendar year so preceding.

In consideration of the rights and privileges hereby granted, the city of Brookings shall have and the said General Telephone Company hereby grants to it the right and privilege to suspend and maintain on poles placed by said General Telephone Company in the streets and other places of said city any and all wires which said city may require exclusively for its own use for fire alarm and police telegraph purpose, or, if said wires are placed underground, the joint use of one duct in each conduit run of the underground system of the said General Telephone Company free of charge to said city, and all such wires shall be placed upon the poles or in the conduits, if space is available and the company's public service commitments are not jeopardized, so as not to interfere with telephone service and shall not carry currents of voltage dangerous to telephone plant or telephone users and all installation, maintenance and repairs shall be subject to the rules, regulations and supervision of the General Telephone company. The city also agrees, in consideration of the establishment of this service and the furnishing of these facilities to hold the said General Telephone Company entirely free and harmless from all liability from any claim or damages which may arise out of the operation of these special services. The city also agrees that the said General Telephone Company in no way guarantees the operation of any facilities utilizing any equipment supplied by the city or facilities over which the said General Telephone Company does not have full and complete control.

Section 7. Compensation requirements. Nothing in this ordinance contained shall be construed or taken as preventing the city whenever it shall be empowered by law so to do, from establishing, fixing, prescribing, or regulating of, the rates, rentals or charges of telephone companies for any service, instruments, facilities or equipment, or regulating and controlling the plant, facilities, extensions, additions, betterments, equipment, appliances, services, rules, regulations, methods or practices of telephone companies; it being the intention of the parties that the city in no way surrenders any right it may now have or may hereafter acquire to license, tax and/or regulate telephone companies; provided, however, that (except as in this ordinance expressly otherwise provided) as long as the company shall make the payments required by this ordinance, the city shall not, by any general or special ordinance, impose any license or inspection fee or license or inspection tax or any regulation requiring the payment by the company of any compensation to the city additional to that provided by Section 6 of this ordinance.

Section 8. Termination of franchise by default. In the event that the company shall make default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this ordinance, and if any such default or defaults shall continue for a period of six months (exclusive of all times during which the company may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God or the public enemy, labor strikes or the orders or judgments of any commission or court entered in any suit or proceeding brought without its connivance), after written notice thereof to the company from the city, stating the alleged default on the part of the company, then and in each and every such case, the city in addition to all other rights and remedies allowed by law shall be entitled to terminate the grant made to the company in and by this ordinance, and all rights and privileges of the company under this ordinance shall thereupon be at an end.

Section 9. Compliance with statutory provisions. Nothing herein contained shall be construed as authorizing the company, its employees or agents to violate any ordinance of the city herewith now in existence or hereafter enacted; and further, the company shall not violate any provisions of the Oregon Anti-Trust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation thereof; and further, the company shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provisions; and further, should any part hereof contravene such terms and provisions then any provisions herein contained contrary thereto shall be deemed null and void.

Section 10. City rights and remedies. Notwithstanding anything herein stated to the contrary, city shall retain all of its rights and remedies under ORS 221.420 to 221.470. The city shall retain its general municipal police powers and the exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the company in streets, alleys, and public ways; and further, such police powers shall extend to the designation of on what parts of streets, alleys and public ways there may be erected poles, lines, conduits or other apparatus or, in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decrease the obstruction of the streets, alleys or public ways or increase the safety or convenience of the public in their use; and further, said powers shall extend, although not be limited to, the regulation of the use, location, height and size of utility poles as part of the city's general planning and zoning process and powers.

Section 11. Acceptance of condition and terms. General Telephone Company of the Northwest, Inc. shall file its acceptance of this ordinance and the

conditions and terms herein contained within 30 days from the date of the passage hereof; otherwise, this ordinance shall be null and void.

Section 12. [Emergency clause.]

Effective January 18, 1984.