

ORDINANCE NO. 98-1

AN ORDINANCE GRANTING TO GTE NORTHWEST INCORPORATED, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE A GENERAL COMMUNICATIONS BUSINESS WITHIN THE CITY OF SANDY, REPEALING ORDINANCES 9-86 AND 6-90.

THE CITY OF SANDY DOES ORDAIN AS FOLLOWS:

Section 1. There is hereby granted by the City of Sandy to GTE Northwest Incorporated, its successors and assigns, the right and privilege to conduct a general communication business within the said City of Sandy and to place, erect, lay, maintain and operate in, upon, under and over the streets, alleys, avenues, thoroughfares and public highways within the said City, poles, wires and other appliances and conductors for the telephone and other communications purposes. Such wires and other appliances and conductors may be strung upon poles and other fixtures above ground, or at the option of the Grantee, may be laid underground.

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. Said work shall be done in compliance with the rules, regulations, ordinances and orders which have been heretofore, or which may hereafter during the continuance of this franchise, be required by the city.

Except in an emergency, Grantee shall not excavate in the rights-of-way without first obtaining a City "right-of-way improvement" permit. Grantee will ensure that all requirements are met as the contractor for the work. In emergency situations, Grantee may make initial contact by telephone, but a permit must be obtained as soon as possible.

Section 3. Whenever Grantee shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same according to city specifications or standards as soon as 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.

Section 4. 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 improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, conductors, conduits, pipes, or other apparatus.

Section 5. Except as it may pertain to the City, 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 buildings, 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 hours written notice by the party desiring to move such building 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 be necessarily delayed or cause Grantee unnecessary expense or waste of time. Temporary rearrangements of facilities required by the City for a public purpose shall be accomplished by Grantee without charge in the same manner as permanent relocations described in Section (6) of this ordinance.

Section 6. The City, by its properly constituted authorities, shall have the right to cause the Grantee to move the location of any pole, wire, cable, appliance, conductor, conduit, or other plant whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by the Grantee. The manner of removal or replacement shall be as directed by the City so it shall not interfere with the public work of the City. Public necessity shall be deemed to be whenever any pole, wire, cable appliance, conductor, conduit, or plant of Grantee interferes with the construction of any public improvement located in a street or other public place. The temporary or permanent relocation of facilities to permit private development shall be at the sole expense of the developer.

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 the 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 City may require for, fire and police purposes. All wires shall be placed upon 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 damages which may arise out of the operation of these special services.

Section 7. In consideration of the rights, privileges, and franchise hereby granted, said Grantee shall pay to the City of Sandy from and after the date of the acceptance of this franchise, and until its expiration, quarterly, seven percent per annum of its gross revenues derived from exchange access services as defined in ORS 401.710 within the corporate limits of the City of Sandy less net uncollectables. Payment shall be made quarterly, on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. Such payment made by the Grantee will be accepted by the City of Sandy 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 Sandy upon the Grantee during the term of this franchise.

Section 8. This franchise shall limit the Grantee to providing a network dedicated solely to the purpose of directly serving its end-user customers, other competitive telecommunications providers, local exchange carriers and interexchange carriers with audio, video, data, voice and signal communication including public, education and government cable access services and two-way data transmission services to customers within the City. Under terms of this franchise, the Grantee is prohibited from offering within the City subscriber cable television service, as defined in Section 602 of the Cable Communications Policy Act of 1984 (47 USCA 522, Supp. 1989) as amended, or recognized by the Federal Communications Commission without first obtaining a separate cable franchise from the City. This franchise does not permit the Grantee to provide: a) the retransmission to customers of any broadcast television channel signals authorized by the Federal Communications Commission; b) television services generally provided solely for entertainment purposes on a one-way, non-interactive basis including, but not limited to, broadcast channels, pay channels and pay-per-view programming.

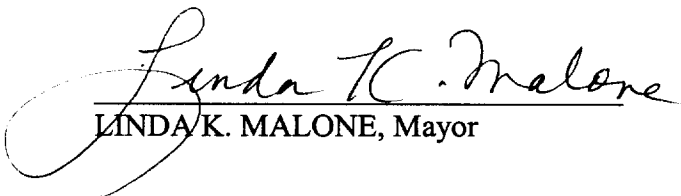
Section 9. The Grantee hereby agrees and covenants to indemnify and save harmless the City and officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of the Grantee or its agents or servants in any manner arising from the rights and privileges herein granted.

Section 10. At such time as PGE or its successors places their transmission lines underground, Grantee shall at the same time put its lines underground.

Section 11. The rights, privileges and franchise herein granted shall continue and be in force for the period of ten years from and after the date of passage of the Ordinance, except that it is understood and agreed that either party may terminate this Agreement after 180 days notice in writing. However, this Ordinance shall be inoperative unless it is accepted in writing by the Grantee within sixty days after the date of passage.

Section 12. Ordinance Numbers 9-86 and 6-90 are hereby repealed.

Adopted by the Common Council of the City of Sandy, Oregon on the 2nd day of March, 1998.


LINDA K. MALONE, Mayor

ATTEST:


CAROL A. JAMES, City Recorder