

ORDINANCE NO. 460

AN ORDINANCE GRANTING TO GTE - NORTHWEST, INCORPORATED, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO MAINTAIN POLES, WIRES, AND OTHER APPLIANCES AND CONDUCTORS AND TO LAY UNDERGROUND WIRES FOR THE TRANSMISSION OF ELECTRICITY FOR COMMUNICATION PURPOSES IN CERTAIN STREETS, ALLEYS, AVENUES, THOROUGHFARES, AND PUBLIC HIGHWAYS OF THE CITY OF WILSONVILLE, OREGON, AND TO CONDUCT LOCAL EXCHANGE TELEPHONE SERVICE WITHIN THE SAID CITY OF WILSONVILLE, OREGON.

THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Grantee GTE Rights and Privileges: There is hereby granted by the City of Wilsonville (hereinafter "City") to GTE - Northwest, Incorporated, a Washington Corporation (hereinafter "Grantee"), its successors and assigns, the right and privilege to conduct a local exchange telephone service within said City, and to place, erect, lay, maintain, and operate in, upon, under, and over certain streets, alleys, avenues, thoroughfares, and public highways within the said City, poles, wires, and other appliances and conductors for the transmission of electricity for communication purposes. Such new wires and other enlarged appliances and conductors shall be laid underground in pipes or conduits or otherwise protected unless the City expressly waives such requirements by action of the City Council. Grantee shall have the right to maintain existing above-ground poles, wires, and other appliances and conductors, but whenever these existing facilities are to be substantially enlarged or expanded, then they shall be placed underground unless the City expressly waives such requirements by action of the City Manager, City Engineer or Director of Public Works.

Section 2. Excavations; Application; Emergency: It shall be lawful for Grantee to make all needful and necessary excavations in any of said streets, alleys, avenues, thoroughfares, and public highways but on the following conditions:

- A. An application for the required excavations shall first be filed with the City Manager, City Engineer, or Director of Public Works and a permit issued by the City which may specify the time when the conditions under which the work is to be done. If work is to be performed in emergency situations for repair and restoration of service, the City shall be notified at first practical date as to exact nature and location of said emergency work.

- B. Said work shall be done in compliance with the rules, regulations, ordinances, and order which have been heretofore or which may hereafter be made or required by the City.

Section 3. Restoration and Repairs: Whenever Grantee shall disturb any of the streets, alleys, avenues, thoroughfares, and public highways for the purposes aforesaid, it shall restore the same in good order and condition as soon as practicable without any unnecessary delay and failing to do so, City shall have the right to fix a reasonable time within which such repairs and restorations 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. Indemnification: 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 right and privileges hereby granted.

Section 5. Insurance: During the period of this franchise, the Grantee must maintain public liability and property damage insurance that names the Grantee and the City, its officers, agents and employees from all claims referred to in Section 4. The coverage must be at least \$300,000 for injury to each person, \$500,000 personal injury for each occurrence, and \$500,000 for each occurrence involving property damages plus cost of defense, or a single limit policy of not less than \$500,000 for all claims per occurrence, plus cost of defense. Grantee must maintain Workers' Compensation insurance and comprehensive automobile insurance consistent with statutory requirements. Proof of insurance shall be filed with the City Recorder at the time of filing of Grantee's acceptance of this franchise, as required by Section 11, and annually on that date or the annual renewal date of such policies.

Section 6. Removal of Location: 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 the Grantee. Whenever it shall be of 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 pole, underground conduit, equipment, wire, or circuit, at Grantee's expense, and if the Grantee fails, neglects, or refuses to do so, the City, by its properly constituted authorities, may remove the same at the expense of the Grantee.

Section 7. Temporary Measures; Notice: Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant as the necessities of the case require the Grantee shall do so at the expense of the person or persons requesting such measures. A sum equal to the cost of such measures, as estimated by the Grantee, shall be deposited with the Grantee by the person or persons requesting such measures. Further, all damages and claims, whether direct or indirect, caused by such measures shall be borne by the person or persons requesting the measures, except as may be occasioned by the sole negligence of the Grantee. Grantee shall be given not less than ninety-six (96) hours written notice by the party desiring such action by Grantee. Said notice shall detail the route of movement by any 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 unnecessarily delayed or cause Grantee unnecessary expense or waste of time.

Section 8. Consideration; City Rights and Privileges: 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 the Grantee in the streets and other places aforesaid, or if such wires are placed underground, to place and maintain in the pipes, conduits, or other facilities of Grantee, if space therein is available wires which City may require for fire, police, and other public safety 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 plants 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 9. Further Consideration; Fees. As further consideration Grantee agrees to pay to City five percent (5%) of the gross annual revenue for local exchange service rendered subscribers within the City limits, such revenue to be determined in accordance the lawful rates and rate groupings applicable to the exchange, exclusive of the extended area service. Such payments shall be made by Grantee on or before March 15 of each year for the calendar year preceding and the first and last payments shall be for that fractional part of the calendar year during which this franchise is in effect.

Section 10. Right to Amend Franchise: The City reserves the right to amend Section 9 of this franchise, upon sixty days written notice to Grantee, to require that Grantee pay an increased fee at a rate within the maximum permitted by Oregon law, and this ordinance and franchise shall be amended accordingly.

Section 11. Term: the rights, privileges, and franchise hereby granted shall continue and be in full force for a period of five (5) years beginning July 1, 1996. However, this ordinance shall be inoperative unless it is accepted in writing by the Grantee within sixty (60) days after the date of its passage.

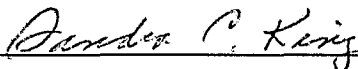
Section 12. Acceptance: If grantee refuses to accept this Ordinance, or operates within the City for thirty (30) days after the date this Ordinance is adopted without a franchise from the City, then the grantee shall pay five percent (5%) of the gross revenues per year from August 1, 1996, to the City and continue at five percent (5%) per year until agreement is signed or operates per a franchise from the City as ORS 221.450.

Section 13. Severability. The invalidity of any section, clause, sentence or provision of this ordinance shall not affect the validity of any other provision of this ordinance which can be given effect without reference to the invalid part or parts.

Therefore, all ordinance and parts of ordinances of previous date, insofar as the same are in conflict herewith, are hereby repealed and annulled. This ordinance is

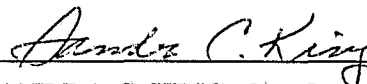
intended to be a successor ordinance to Ordinance No. 352 and to take effect immediately upon the expiration of Ordinance No. 352, therefore an emergency is declared and this ordinance shall take effect immediately upon its final reading and passage by the Wilsonville City Council, nunc pro tunc July 1, 1996.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 15th day of July, 1996, and scheduled for the second reading at a regular meeting of the Council on the 19th day of August, 1996, commencing at the hour of 7 o'clock p.m. at the Community Development Hearings Room.



SANDRA C. KING, City Recorder

ENACTED by the City Council on the 19th day of August, 1996, by the following votes: YEAS: 4 NAYS: 0



SANDRA C. KING, City Recorder

DATED and signed by the Mayor this 21 day of August, 1996.



GERALD A. KRUMMEL, Mayor

SUMMARY OF VOTES:

Mayor Krummel	<u>Yes</u>
Councilor Hawkins	<u>Absent</u>
Councilor Lehan	<u>Yes</u>
Councilor Leahy	<u>Yes</u>
Councilor MacDonald	____Yes