

## ORDINANCE NO. 1431

AN ORDINANCE granting to the Pacific Telephone and Telegraph Company, its successors and assigns, the right and privilege to do a general telephone and telegraph business and to place, erect, lay, maintain and operate in, upon and under the streets, alleys, avenues, thoroughfares and public highways within the City of Albany, State of Oregon, poles, wires and other appliances and conductors for the transmission of electricity for telephone, telegraph and allied purposes of communication.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

SECTION 1. There is hereby granted by the City of Albany to the Pacific Telephone and Telegraph Company, its successors and assigns, the right and privilege to do a general telephone and telegraph business within said City of Albany and to place, erect, lay, maintain and operate in, upon and under the streets, alleys, avenues, thoroughfares and public highways within the said City, poles, wires and other appliances and conductors for the transmission of electricity for telephone, telegraph and allied purposes of communication. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the grantee, its successors and assigns, may be laid underground in pipes or conduits or otherwise protected, 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 said The Pacific Telephone and Telegraph Company, its successors and assigns, to make all needful excavations in any of such streets, alleys, avenues, thoroughfares and public highways in said City for the purpose of placing, erecting, laying and maintaining poles, or other supports or conduits for said wires or repairing, renewing, or replacing the same. Said 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 Albany.

SECTION 3. Whenever The Pacific Telephone and Telegraph Company, 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 Albany shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by said Company, its successors and assigns, the said City shall cause such repairs to be made at the expense of said The Pacific Telephone and Telegraph Company, 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 Albany from sewerage, grading, planking, racking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways within the City of Albany in or upon which the poles, wires or other conductors of said Company shall 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, wires, conductors, conduits, pipes or other apparatus.

SECTION 5. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the grantee to permit the passage of any building, machinery, or other object, the said grantee will perform such rearrangement on seven (7) days' written notice from the person or persons desiring to move said building, machinery or other objects. Said notice shall bear the approval of such official as the City Council may designate, shall detail the route of movement of the building, machinery or other objects, shall provide that the costs incurred by the grantee in making such rearrangement of its aerial plant will be borne by the person or persons giving said notice and shall further provide that the person or persons giving said notice will indemnify and save said grantee harmless of and from and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the aerial plant of the grantee.

SECTION 6. In consideration of the right and privilege hereby granted, the City of Albany shall have, and the said The Pacific Telephone and Telegraph Company, its successors and assigns, hereby grants to it during the period this franchise shall remain in effect, the right and privilege to place and maintain, where aerial construction exists, a fixture on the top of poles erected and maintained under this franchise, to which may be attached wires not exceeding four (4) and where it has underground conduit available for such purpose, said The Pacific Telephone and Telegraph Company, its successors and assigns, shall furnish to the City of Albany one duct in its main underground conduit system, free of charge to the said City of Albany, to be used for the City's low tension police and fire alarm purposes; provided, however, that when accepted in such joint use as in this section provided the City of Albany shall construct and maintain its circuits, wires and appliances in accordance with accepted safety and construction standards, and in no event shall the said circuits, wires or appliances of the said City of Albany be exposed to power lines or circuits of over five thousand (5000) volts without formal notice to and specific written approval of grantee herein in each such proposed exposure, which approval shall be contingent upon the provision by said City of Albany of such safety and protection measures with respect to its-

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circuits, wires and appliances as will meet the standards prescribed by such public authority as may have jurisdiction in the premises, or at the option of the grantee, as may be by it considered adequate; and provided further that in case of rearrangement of said plant, the said City of Albany will at its own expense care for its own fixtures, wires and construction and provided further that the said The Pacific Telephone and Telegraph Company, its successors and assigns, assume no liability whatsoever, wither to said City or to any person, firm or corporation whatsoever, for any damage or claim of any kind arising out of the construction, maintenance, operation, removal or presence of the equipment herein described and to be used by the City solely in maintaining the efficiency of its fire alarm system and police force.

SECTION 7. In further consideration of the rights, privileges, and franchise hereby granted, said grantee, The Pacific Telephone and Telegraph Company, its successors and assigns, shall furnish, install and maintain during the term of this franchise and without charge to the City of Albany, for local service, two business individual line telephones, for the exclusive use of the said City of Albany for strictly municipal purposes, at such locations within the corporate limits as may be designated by the Common Council of the City of Albany, and the said The Pacific Telephone and Telegraph Company, its successors and assigns, shall pay to the City of Albany, from and after the effective date of this franchise and so long as it shall remain in effect, annually two per cent (2%) per annum of its gross local service receipts derived from the operation of telephones located within the corporate limits of the City of Albany as said corporate limits now exist or may hereafter be extended. Payment of said two per cent (2%) shall be made on or before the fifteenth day of March of each and every year for the calendar year preceding, with the exception that in the year 1938, payment shall be made only for the period commencing on the date this franchise becomes effective and ending December 31, 1937, and such 2% payment made by the grantee, together with the value to the City of Albany of the privilege of using the serial and underground plant of the grantee, as herein provided for, will be accepted by the City of Albany from the grantee for the use of said franchise, and no other compensation of any kind shall be exacted for the use of the same during the life of the franchise. And provided the grantee accepts this franchise and makes said 2% payment and furnishes to the City of Albany the privilege of using the aerial and underground plant of the grantee, and furnishes the two individual line telephones, as herein provided for, then the City of Albany will not exact any further compensation of any kind for the use of said franchise during the period said franchise shall remain in effect, but this provision shall not exempt the grantee from any lawful taxation on his or its property, nor from any licenses, charges or impositions not levied on account of such use.

SECTION 8. At the expiration of the term or period of this franchise the City of Albany, at its own election and upon the payment therefor of a fair valuation to be made in the manner hereinafter provided, may take over to itself the property and plant of the grantee herein used in connection with rendering exchange or local service in the City of Albany, but in no case shall the value of the franchise of the grantee be considered or taken into account in fixing such valuation. Said property and plant may be acquired by the City either upon the payment to the grantee, its successors or assigns, of such sum as may be fixed by such State Regulatory Body as then may have jurisdiction to determine and fix such valuation for the purpose herein provided for, OR, upon payment to the grantee under the terms hereinafter provided, of such sum as may be fixed by the majority of the board of five arbitrators appointed in the manner hereinafter provided.

At the time said City desired to purchase the property of said grantee it shall notify said grantee in writing, of its intention so to do, and state therein whether it will require the fixing of the valuation of such property by said Regulatory Body or by a Board of Arbitrators, and such valuation of the property of grantee shall be made by the body so designated by said City.

In the event arbitrators are appointed for the purpose of determining the value of said property, two shall be appointed by the City and two by the grantee, and the fifth arbitrator shall be selected and appointed by the four arbitrators appointed as herein provided, said arbitrators shall be appointed within thirty (30) days after declaration by the City of its intention to purchase the property of said grantee. In the event such arbitrators fail to make and file an award within the time hereinafter limited, said arbitrators shall be discharged ipso facto, and a new board of five arbitrators shall be appointed in the same manner as was the original board. Said Board of Arbitrators shall, immediately upon the appointment of its members, enter upon the discharge of its duties. Any vacancy in said board shall be filled by the party who made the original appointment to the place becoming vacant. In the event said grantee shall fail to appoint said arbitrators within (30) days after the declaration by the City of its intention to purchase the property of said grantee, or in the event of the death or resignation of arbitrators so appointed, and no new arbitrator shall be appointed to fill such vacancy within ten (10) days thereafter, or in the event the four arbitrators appointed by the City and the said grantee, as hereinbefore provided, shall fail to appoint such fifth arbitrator within sixty (60) days after the declaration of the City of its intention to purchase said property of said

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grantee, then, upon application either by the City or by said grantee, after five (5) days' notice in writing to the other party, such arbitrator shall be appointed by the Chief Justice of the Supreme Court of the State of Oregon, and the arbitrator so appointed shall have the same powers and duties as though he had been appointed in the manner hereinabove prescribed. The cost of such arbitration shall be shared and borne equally by the grantee and the City.

The award of the arbitrators must be made and filed with the City Clerk of said City within twelve (12) months after their appointment.

The value of the physical property of the grantee, its successors and assigns, as determined by said Board of Arbitrators or by said Regulatory Body, shall be paid to said grantee in lawful money of the United States within sixty (60) days from and after the time the award of the said arbitrators shall be filed as herein provided. In fixing the value of the property of said grantee, no allowance shall be made by said Regulatory Body or by said Board of Arbitrators, as the case may be, for any franchise, or the good will of said grantee.

Upon payment by the City to said grantee, its successors or assigns, of the value of said property determined as herein provided and upon the enactment of an ordinance authorizing the same, then the plant and property so valued, purchased and paid for shall become the property of the City by virtue of the grant and payment thereunder without the formal execution of any instrument of conveyance.

SECTION 9. The franchise hereby granted shall not be sublet or assigned without the consent of the City of Albany, expressed by Ordinance duly passed by the Council and approved by the Mayor of the City.

SECTION 10. The rights, privileges and franchise herein granted shall continue and be in force for the period of twenty (20) years from and after the date this Ordinance becomes effective.

SECTION 11. This Ordinance shall take effect and be in force from and after ten (10) days after its passage and approval and the said grantee shall, within thirty (30) days of the passage of this Ordinance, file with the Recorder of the City of Albany, its written acceptance of all the terms and conditions of this Ordinance.

PASSED AND ADOPTED BY THE COMMON COUNCIL THIS 24th DAY OF NOVEMBER 1937.  
APPROVED BY THE MAYOR THIS 26th DAY OF NOVEMBER, 1937.

ATTEST: *K.R. Horton*  
RECORDER OF THE CITY OF ALBANY.

C.R. Ashton  
MAYOR

State of Oregon )  
County of Linn ) ss  
City of Albany )

I, K.R. Horton, duly qualified and acting Recorder of the City of Albany, Linn County, Oregon, hereby certify that I have compared the above copy of City of Albany Ordinance # 1431, passed and adopted by the Common Council of said City of the 24th day of November, 1937, and approved by the Mayor on the 26th day of November, 1937, and that the above copy is a true and correct transcript and of the whole thereof of said Ordinance # 1431.

WITNESS my hand and the seal of the City of Albany, Linn County, Oregon, this 26th day of November, 1937.

*K.R. Horton*  
RECORDER OF THE CITY OF ALBANY