

**AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 3.20,  
PACIFIC NORTHWEST BELL TELEPHONE FRANCHISE,  
AND DECLARING AN EMERGENCY**

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

Section 1. Albany Municipal Code Chapter 3.20, Pacific Northwest Bell Telephone Franchise, is hereby amended to read as follows:

Chapter 3.20

PACIFIC NORTHWEST BELL TELEPHONE FRANCHISE

Sections:

- 3.20.010 Granted
- 3.20.020 Excavations--Compliance required
- 3.20.030 Street repair--Expense responsibility
- 3.20.040 Improvements--Utility obstruction prohibited
- 3.20.050 Cables, wires--Rearrangement--Notice
- 3.20-060 Payment
- 3.20-070 Other fees and charges
- 3.20.080 Reporting of funds
- 3.20.090 Compliance with other laws
- 3.20.100 Indemnification
- 3.20.110 Continuation--Termination

3.20.010 Granted. There is hereby granted by the City of Albany, hereinafter referred to as "City", to Pacific Northwest Bell Telephone Company, its successors and assigns, hereinafter referred to as "Grantee", the right and privilege to do a general communication business within the City and to place, erect, lay, maintain and operate in, upon, over and under 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 communication purposes. 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, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. Notwithstanding the foregoing, the City Manager or his/her designee shall have the authority to prescribe which public ways will be used and the location of communications facilities within the public way as may be reasonably necessary to minimize public inconvenience.

3.20.020 Excavations--Compliance required. It shall be lawful for Grantee, to make all needful excavations in any of such 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 said wires and appliances and auxiliary apparatus 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.

3.20.030 Street repair--Expense responsibility. Whenever Grantee 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 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 City shall cause such repairs to be made at the expense of Grantee.

3.20.040 Improvements--Utility obstruction prohibited. Nothing in this chapter shall be construed in any way to prevent the proper authorities of the City from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City in or upon which the poles, wires or other conductors of Grantee 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, and the moving of company facilities, where required due to such work by the City, will be done by Grantee without cost to the City. However, any such work done for or at the request of a private individual, entity, developer or development shall be done at the expense of such private individual, entity, developer or development.

3.20.050 Cables, wires--Rearrangement--Notice. 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 within a reasonable period after 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 council may designate, shall detail the route of movement of the building, machinery or other objects, shall provide that the costs of such rearrangement shall 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 Grantee harmless of and from any 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, and, if required by grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all costs as estimated by Grantee.

3.20.060 Payment. In consideration of the rights, privileges, and franchise hereby granted, said Grantee shall pay to the City, from and after the effective date of the franchise and until June 30, 1990, quarterly, three percent (3%) per annum of its gross local service revenues as presently defined in the Uniform System of Accounts adopted by the Federal Communication Commission for Class A Companies, received from services located within the corporate limits of the City less net uncollectibles and revenue paid directly by the United States of America or any of its agencies. Effective July 1, 1990, and until the franchise's expiration, said Grantee shall pay to the City, monthly, seven percent (7%) of its gross revenues derived from exchange access services, as defined in ORS 401.710, within the corporate limits of the City, less net uncollectibles. This franchise fee shall be deposited in the U.S. mail, postage prepaid, addressed to the Chief Financial Officer of the City and postmarked on or before the last business day of the month following the month for which the payment is due. If a payment is not mailed by the date set forth above, the payment shall be deemed delinquent and shall accrue interest at the rate of twelve percent (12%) per annum from the date of the applicable reporting period. The franchise payments made by the Grantee will be accepted by the City from the Grantee, also in payment of any separate fees that are imposed by the City on Grantee for street openings, construction or inspection or maintenance of fixtures or facilities. However, Grantee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this ordinance.

3.20.070 Other fees and charges. Nothing in this ordinance shall give the Grantee any credit against any nondiscriminatory business tax to the extent such tax applies to revenues other than those revenues that are the subject of the franchise fee, or any ad valorem property tax now or hereafter levied against real property or personal property within the City, or against any local improvement assessments levied on the Grantee's property.

3.20.080 Reporting of funds. With each franchise fee payment, the Grantee shall furnish a sworn statement from the Chief Finance Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the gross revenues subject to tax received by the grantee from its operations within the City, and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Grantee in calculating the franchise fee.

The City Manager of the City, may require the Grantee to provide any additional information reasonably necessary for administration of the franchise fee. The Grantee shall keep available and open to inspection by the City Manager of the City, during regular office hours, all accounts, books, and other records reasonably necessary for ascertaining the franchise liability.

In the event that an audit of the franchise fee payments results in a determination that an additional payment is due to the City, such additional payment shall be subject to interest at the rate of twelve percent (12%) per annum from the date the original payment was due. No interest shall be due with respect to annexation by the City for which notice was not provided to Grantee pursuant to the provision of ORS 222.005.

3.20.090 Compliance with other laws. The Grantee's use of the public way shall comply with the standard specifications of the City, if any, and all other applicable federal and state laws and regulations now in effect or hereinafter adopted. No work affecting the public way shall be done by the Grantee without first obtaining all permits required by the City, which may include plan submittal, approval and the payment of fees that are applicable to all utilities other than telecommunications utilities, before work begins.

3.20.100 Indemnification. The Grantee shall defend, indemnify and hold harmless the City, its agents, officers and employees from any and all claims, demands, and damages of any kind, including attorney's fees which may arise, from any negligent act or omissions of the Grantee, its agents, officers or employees, in connection with the Grantee's operations pursuant to this franchise.

3.20.110 Continuation--Termination. The rights, privileges and franchise herein granted shall continue and be in force for the period of ten (10) years from and after the effective date of the ordinance codified herein, except that it is understood and agreed that either party may at any time terminate or renegotiate this agreement upon six months' notice in writing.

Section 2. Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the

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citizens of the City of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council. Grantee shall within thirty (30) days, if it accepts such Ordinance, file with the Recorder of the City of Albany, its written acceptance of all terms and conditions of this Ordinance.

Passed by Council: June 27, 1990

Approved by Mayor: June 28, 1990

Effective Date: June 27, 1990

  
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MAYOR

ATTEST:

  
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City Recorder