

ORDINANCE NO. 419

AN ORDINANCE GRANTING TO TELEPHONE UTILITIES OF OREGON, INC., DBA PTI COMMUNICATIONS, THE RIGHT TO CONSTRUCT AND 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 A GENERAL COMMUNICATION BUSINESS WITHIN ONE AREA OF THE CITY.

THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. There is hereby granted by the City of Wilsonville to Telephone Utilities of Oregon, an Oregon Corporation, dba PTI Communications, its successors and assigns the right and privilege to conduct a telephone communications and utility business in that area of the City of Wilsonville which is south of the Willamette River and to construct, place, erect, lay, maintain and operate in and under the streets, alleys, avenues, thoroughfares and public highways within said areas of the City south of the Willamette River wires and other appliances and conductors for the transmission of electricity for communication purposes. Such wires and other new or enlarged appliances and conductors shall be laid underground in pipes or conduits or otherwise protected.

Section 2. It shall be lawful for grantee to make all needful and necessary excavations for the purposes set forth in Section 1 above in any of said streets, 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 and a permit issued by the City which may specify the time when and the conditions under which the work is to be done.
- B. Said work shall be done in compliance with the rules, regulations, ordinances and orders which have been heretofore or which may hereafter be made or required by the City.
- C. In the case of an emergency, notification shall be given to the City as soon as reasonably practical and any work performed shall be done in a workmanlike manner given the emergency circumstances then and there existing. However, the City reserves the right once the emergency has passed to require any such emergency work to be brought into compliance with any rules, applicable regulations, ordinances and orders of the City if the City deems same to be necessary.

Section 3. Whenever grantee shall disturb any of the streets, alleys, avenues, thoroughfares and public highways for the purpose aforesaid it shall restore the same in good order and conditions 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 restorations shall be completed and upon failure of the grantee to make such repairs and restorations the City may cause such repairs to be made at the expense of the grantee. The grantee, by its acceptance of this franchise, 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 the negligence of the grantee or its agents or servants in any manner arising from the rights and privileges hereby required.

Section 4. The City, by its properly constituted authorities, shall have the right to cause the grantee to move the location of any existing pole, underground conduit or equipment belonging to grantee whenever the relocation thereof shall be for public necessity; the expense thereof shall be paid by the grantee. Whenever it shall be necessary for public necessity to remove any pole, underground conduit or equipment belonging to the grantee or upon 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. 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 5. 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 costs as estimated by grantee and shall pay all damages and claims of any 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 sole negligence of grantee. Grantee shall be given not less than ten (10) days 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 unnecessarily delayed or cause grantee unnecessary expense or waste of time.

Section 6. Exemption in Case of Emergency: In case it shall be necessary to cut or remove any of the said wires, cables or other conductors or equipment of the grantee in order to get fire ladders or other apparatus to a building during a City conflagration, the said City shall not be liable for any damages done to such wires, cables or conductors or equipment. The Grantor shall notify the Grantee of such incident within eight (8) hours from the time of occurrence.

Section 7. The City reserves the right to:

- A. Construct, install, maintain and operate any public improvement, work or facility;
- B. Do any work that the City may find desirable on, over or under any street;
- C. Vacate, alter or close any street;
- D. Whenever the City shall excavate or perform any work in any of the present and future streets, alleys and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb grantee's facilities, the City shall notify grantee sufficiently in advance of such contemplated excavation or work to enable grantee to take such measures as may be deemed necessary to protect such facilities from damage and possible inconvenience or injury to the public. In any such case, the grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work; and
- E. Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency and instrumentality other than the City, grantee's rights shall be preserved as to any of its facilities then existing in such street or public place.

Section 8. In consideration of the rights and privileges hereby granted, the City hereby reserves to itself free of charge the right and privilege to place and maintain wires and necessary control boxes in the pipes or conduits of grantee which City may reasonably require for fire, police and other municipal purposes. All such new or expanded facilities shall be placed in the conduits so as not to interfere with the communication services 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.

As further consideration, grantee agrees to pay the City a franchise fee or privilege charge equivalent to five percent (5%) of gross revenues from services rendered to subscribers within the City limits on or after August 1, 1993. Gross revenues mean those revenues from exchange access services as defined in ORS 401.710, less net uncollectibles from such services. Quarterly payments shall be made by grantee on or before the last day of the month following the end of each calendar quarter. The grantee shall include in its payment for the quarter ending September 30, 1993, the amount of unpaid franchise fee owed under the prior franchise agreement.

Section 9. It is understood that in 1980, the Tualatin Rural Fire Protection District installed a 9-1-1 comprehensive emergency services telephone number which provides more efficient access to emergency services to all citizens in Wilsonville. It is further understood that all citizens of Wilsonville have helped to finance the 9-1-1 emergency services telephone number through payment of a tax levy.

In consideration of the rights and privileges hereby granted by the City to Telephone Utilities of Oregon, Inc. dba PTI Communications, and in further consideration of the facts stated in the first paragraph of this Section, grantee agrees that it shall not charge its customers within the City any fee for access to the above described 9-1-1 system. Provided, however, the parties shall revisit this if a statewide charging system for 9-1-1 is adopted.

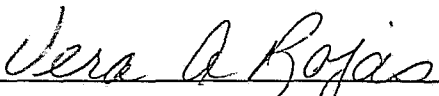
Section 10. The rights, privileges and franchise hereby granted shall be for five (5) calendar years, commencing August 1, 1993.

Section 11. 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, 1993, to the City and continue at five percent (5%) per year until agreement is signed or operates per a franchise from the City as per ORS 221.450.

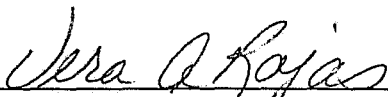
Section 12. All ordinances and parts of ordinances of previous date, insofar as the same are in conflict herewith, are hereby repealed and annulled; and this Ordinance shall take effect immediately upon its final reading and passage by the Wilsonville City Council.

SUBMITTED to the Wilsonville City Council and read the first time at a regular meeting on the 2nd day of August, 1993, commencing at the hour of 7:00 P.M. at the

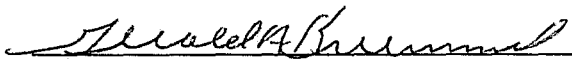
Wilsonville City Hall Annex, with the second reading scheduled for the 16th day of August, 1993, at the before mentioned time and place.


VERA A. ROJAS, CMC/AAE CITY RECORDER

ENACTED by the City Council on the 16th day of August, 1993, by the following votes: YEAS: 5 NAYS: 0


VERA A. ROJAS, CMC/AAE, CITY RECORDER

DATED and signed by the Mayor this 18th day of August, 1993.


GERALD A. KRUMMEL, Mayor

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Hawkins	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>