

ORDINANCE NO. 953

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, EXTENDING A FRANCHISE TO THE SUCCESSOR TO THE LAKE WASHINGTON TELEPHONE COMPANY FOR THE RIGHT, PRIVILEGE AND AUTHORITY TO CONDUCT A GENERAL TELEPHONE BUSINESS WITHIN THE CITY OF REDMOND AND TO UTILIZE THE PUBLIC RIGHTS-OF-WAY OF THE CITY UNDER CERTAIN CONDITIONS; AMENDING ORDINANCE NO. 92 OF SAID CITY; AND ESTABLISHING AN EFFECTIVE DATE.

---

WHEREAS, the most recent franchise granted to The Lake Washington Telephone Company, the predecessor in interest to General Telephone Company of the Northwest, Inc., which was granted pursuant to Ordinance No. 92 of the City of Redmond, has expired, and

WHEREAS, the present successor in business to The Lake Washington Telephone Company is the General Telephone Company of the Northwest, Inc., and

WHEREAS, said General Telephone Company of the Northwest, Inc., has been operating in effect on a continuing basis under said franchise within said City pending passage of a new franchise ordinance, and

WHEREAS, it is hereby stated to be the policy of the City of Redmond that overhead electrical and communication facilities located in or upon public rights-of-way be removed by undergrounding the same under certain circumstances, and

WHEREAS, it is in the public interest and will promote the general health, safety, welfare and morals that the rights, duties and obligations of the grantee be more fully and explicitly delineated, and

WHEREAS, this ordinance was first introduced to the City Council on the sixteenth day of December, 1980, and more than five days have elapsed since the date of its introduction, and

WHEREAS, the City has conducted public discussion at regular public meetings of the City Council concerning

the franchise, has taken testimony relating to the same, has heard the discussion and arguments of the telephone company relating to proposed terms and provisions of said franchise, and

WHEREAS, General Telephone Company of the Northwest, Inc., has advised the City Council that it has a general policy of undergrounding extension of existing facilities and new facilities in public rights-of-way in urban areas such as the City of Redmond and that it is also their policy to underground old facilities as they are needed to be replaced, both policies are consistent with the goals and objectives of the City and should be incorporated in and made a part of the conditions upon which the telephone company is permitted to use the public rights-of-way within the City of Redmond, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON,  
DO ORDAIN AS FOLLOWS:

Section 1. That there be, and there is hereby granted, upon the conditions set forth hereinafter, to the successor in interest to The Lake Washington Telephone Company, the General Telephone Company of the Northwest, Inc., for a period of ten years from and after the effective date of this ordinance, the right to maintain and operate a general telephone system, including all necessary facilities, in the City of Redmond along and under the public rights-of-way of said City, including streets, avenues, alleys and other public highways. Said grant shall include the right to maintain existing facilities subject to the conditions set forth hereinafter, and to place, erect, lay, maintain and replace the existing facilities by undergrounding the same in accordance with the conditions and requirements set forth in this ordinance.

Section 2. Before said grantee, its successors or assigns, shall begin the construction of any conduit or other underground facility along or underneath any of the

said streets, alleys or other public rights-of-way, it or they shall file with the City Engineer of Redmond detailed plans and profiles of said conduit or other underground facility as intended to be laid down along or underneath any of the said streets, alleys or other public rights-of-way, the distance from the curb of said conduit or other underground facility and the depth from the official grade or surface of said street, alley or other public right-of-way. Grantee shall comply with all applicable ordinances and standards of the City and obtain all necessary permits before commencing construction.

Section 3. The construction of said conduit or other underground facility shall not be begun until the City Engineer shall have approved said plans as required to be provided by the preceding section of this ordinance.

Section 4. All facilities shall be erected and maintained at such places and in such positions upon said public rights-of-way, including streets, avenues, alleys and other public ways, as shall least interfere with the free passage and safety of traffic thereon, and in accordance with the laws of the State of Washington and the ordinances of the City of Redmond reasonably regulating such location and construction, whether heretofore or hereafter adopted, as a lawful exercise of the police power of the City.

Section 5. The rights herein granted to said General Telephone Company of the Northwest, Inc., its successors and assigns, shall not be construed so as to deprive the City of Redmond of any of its powers to regulate the use and control of the public rights-of-way including streets and alleys within said City, or to hinder or delay the City of Redmond from improving said rights-of-way as provided by the laws of the State of Washington.

Section 6. All existing poles and related facilities placed in any public right-of-way including streets or alleys in the City shall, at the time of improvement of said public right-of-way, be removed and the grantee's facilities

shall be undergrounded at the cost and expense of the grantee, not the City, in an orderly manner in conjunction with the improvement, unless the Director of Public Works finds that undergrounding should not be required because of the minor nature of the improvement or that there are other circumstances that, in the interest of the public health, safety and general welfare, justify excepting all or a portion of the facilities from being undergrounded in connection with such improvement. "Improvement" as used herein shall include, but is not limited to, the installation of permanent street improvements such as curbs and gutters and/or sidewalks on one or both sides of any street or alley or other right-of-way and/or other improvements to the street which make it a complete improvement in accordance with then applicable City standards. The City shall give not less than 30 days' notice in writing to the grantee of the requirement of undergrounding of such existing facilities. The City will use its powers as granted by law to require abutting users to make connection to the undergrounded facilities.

Section 7. It is the policy of the City for both safety and aesthetic reasons, and the proposed policy of the grantee hereunder for economic and aesthetic reasons, to eventually accomplish total or near total undergrounding of all the grantee's facilities located on public rights-of-way or public property. In order to further this stated purpose, existing lines on poles which are in need of replacement that are located on any public right-of-way in the City including streets or alleys, whether undergrounding is otherwise required by this franchise or not, shall, at the expiration of their economic life and upon a determination of a need for replacement by the grantee, be replaced by undergrounding the facility rather than mere replacement with new pole and/or cable facilities without cost to the City. In addition, whenever other existing aboveground electrical or communication facilities are undergrounded on or along any right-of-way, grantee shall likewise underground

its facilities without cost to the City along said right-of-way and shall coordinate such undergrounding with the other grantees or utilities involved to minimize costs and disruption of the right-of-way and improvements located therein.

Section 8. With respect to poles and other facilities that are not otherwise required to be undergrounded pursuant to the provisions of this franchise, the City of Redmond reserves the right to order the change of position of any such facility whenever in the judgment of the Director of Public Works and/or Traffic Engineer such change is necessary for the public health, safety or general welfare. Such relocation shall be the responsibility of and done at the cost of the grantee.

Section 9. In those instances where it becomes necessary to take up sidewalks or dig up ground in the maintenance of any of grantee's lines, the grantee or its assigns after such maintenance is accomplished shall, without delay, replace said walk and remove all surplus dirt, earth, or other rubbish and place said street, alley or other right-of-way in as good a condition as it was before it was taken up subject to the approval of the City Engineer and in accordance with then applicable City standards.

Section 10. Wherever it becomes necessary to temporarily rearrange, remove, lower or raise the wires, cables or other facilities of the grantee for the passage of buildings, machinery or other objects, grantee shall temporarily rearrange, remove, lower or raise its wires, cables or other facilities as the necessities of the case require.

Provided, however, that the person or persons desiring to move any such building, machinery or other objects, shall pay the entire actual cost to the grantee of changing, altering, removing or replacing its said wires, cables or other facilities so as to permit such passage and shall deposit in advance with said grantee a sum equal to such cost as estimated by said grantee and shall pay all damages and claims of every kind whatsoever direct or

consequential, caused directly or indirectly by the changing, altering, removing or replacing of said wires, cables or other facilities, except as may be occasioned through the negligence of grantee, so as to permit such passage.

And provided, further, however, if any such existing wires, cables or other facilities are required to be moved by the grantee in order for the City to move buildings, machinery or other objects, such temporary rearrangement, removing, lowering or raising shall be done by grantee at its own costs.

The grantee, its successors or assigns shall be given at least forty-eight (48) hours written notice by the party desiring to move such building or other objects. Said notice shall detail the streets and shall bear the approval of said City, by such official as the said City shall designate, and such moving shall be done with as much haste as possible and shall not be unnecessarily delayed or cause the franchisee unnecessary expense or waste of time.

Section 11. All extensions of existing facilities and/or construction of new facilities in the public rights-of-way shall be undergrounded by the grantee without cost to the City.

Section 12. In the event other utilities maintaining poles on public rights-of-way within the City underground their facilities so that they no longer need said poles and grantee is also using said poles, grantee shall coordinate with the other utility or utilities and underground their facilities at their expense and without cost to the City to accomplish removal of the poles.

Section 13. If the grantee willfully violates or fails to comply with any of the provisions of this grant, or through willful or unreasonable negligence fails to heed or comply with any notice given to the grantee under the provisions of this franchise, then the said grantee shall, at the election of the Redmond City Council, forfeit all rights conferred hereunder and this franchise may be revoked or

annulled by the Redmond City Council after a hearing held upon reasonable notice given to the holder of this franchise, or the City may elect, without prejudice to any of its other legal rights or remedies, to obtain an order from the superior court having jurisdiction compelling grantee to comply with the provisions of this ordinance and recover damages and costs incurred by the City by reason of grantee's failure to comply.

Section 14. The grantee, its successors or assigns, shall indemnify, defend and hold harmless the City of Redmond from all claims, actions or damages of every kind and description, including attorneys' fees incurred in defending against said claims and actions and in establishing the right to indemnity provided for herein, which may accrue or be suffered by and/or to any person or persons, corporation or property, that may result by reason of the construction, operation, location and maintenance of said system including poles, wires and underground facilities and including any and all claims, actions or damages arising out of or claimed to arise out of the joint negligence and/or the concurrent negligence of the City and grantee.

The foregoing requirement to indemnify, defend and hold the City harmless from any such claims for bodily injury or property damage shall also include any claims alleging inverse condemnation arising out of the installation, maintenance, operation, construction or existence of grantee's facilities on the public rights-of-way including streets, avenues, alleys and public ways within the City of Redmond.

Section 15. Grantee's continued use of the public rights-of-way of the City and/or the exercise of any rights, privileges or authority granted by virtue of any section of this ordinance shall be deemed to constitute acceptance of the terms and conditions placed upon grantee by this ordinance and grantee shall fully comply with the terms contained

herein as a condition of the continued use by grantee of the public rights-of-way of the City.

Section 16. Grantee, at the time of passage of this ordinance, has stated that it maintains at least a five-year plan for undergrounding of its facilities. Grantee shall file with the City a copy of such existing plan as it relates to facilities located within the City of Redmond and any amendments thereto as soon as practicable after said amendments are adopted. In addition thereto, grantee shall compile and file with the City in an understandable format the projected life expectancy of the various existing above-ground facilities located within the City limits, including any amendments to such schedules. The purpose of these filings is to promote better coordination between the City and grantee. The City shall in turn periodically forward copies of its improvement plans to the grantee, including its comprehensive street improvement program required to be prepared pursuant to state law and any amendments thereto in order to afford grantee the opportunity to coordinate replacement of its facilities with planned improvements of the City.

Section 17. If any section, subsection, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance, it being hereby expressly declared that this ordinance and each section, subsection, clause, phrase and word hereof would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that any one or more of said sections, subsections, sentences, clauses, phrases, word or words thereof be declared invalid or unconstitutional.

Section 18. The terms and provisions of Redmond Ordinance No. 92 as well as any other ordinances or parts of ordinances granting rights to General Telephone Company of the Northwest, Inc., or its predecessors, are hereby amended



and modified to conform with the provisions of this ordinance.

Section 19. In the event the ten-year time period granted in this ordinance expires without being renewed by the City, the terms and conditions of this ordinance shall continue in effect until amended or otherwise changed by the City.

Section 20. The franchise granted by this ordinance shall be in full force and effect five (5) days after passage, publication and posting as required by RCW 35A.47.040.

CITY OF REDMOND

  
MAYOR, CHRISTINE T. HIMES

ATTEST/AUTHENTICATED:

  
CITY CLERK, PAUL F. KUSAKABE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY 

FILED WITH THE CITY CLERK: December 11, 1980  
PASSED BY THE CITY COUNCIL: March 17, 1981  
SIGNED BY THE MAYOR: March 17, 1981  
PUBLISHED: March 26, 1981  
POSTED: March 19, 1981  
EFFECTIVE DATE: March 31, 1981