

ORDINANCE BILL 4 for 1995

ORDINANCE NO. 1085

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF SWEET HOME TO TELEPHONE UTILITIES OF OREGON, INC., dba PTI COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS THE RIGHT TO FURNISH, SELL AND DISTRIBUTE TELECOMMUNICATIONS SERVICES TO THE CITY AND TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE TO A TELEPHONE PLANT, TRANSMISSION LINE OR LINES AND TO TRANSMIT COMMUNICATIONS IN AND TO THE CITY OF SWEET HOME TO ALL PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CITY AND IN THE TERRITORY ADJACENT THERE AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS MAY BE NECESSARY, FIXING THE TERMS AND CONDITIONS THEREOF, REPEALING ORDINANCE NO. 997 AND 1045 AND DECLARING AN EMERGENCY.

NOW, THEREFORE THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

ARTICLE I - Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

1.1 "City" refers to and is the City of Sweet Home, Linn County, Oregon, and includes the territory as currently is or may in the future be included within the boundaries of the City of Sweet Home.

1.2 "City Council" refers to and is the legislative body of the City of Sweet Home.

1.3 "Company" refers to and is Telephone Utilities of Oregon, Inc. dba PTI Communications and its successors and assigns.

1.4 "Communications Facilities" refer to and are only those facilities reasonably necessary to provide telecommunications services within the City, excluding cable television.

1.5 "Facilities" refer to and are all facilities reasonably

necessary to provide telecommunications services into, within and through the City and include plants, works, systems, lines, equipment, underground links, switches, wires and radio links.

1.6 "Public Utilities Commission" refers to and is The Public Utilities Commission of the State of Oregon or other authority succeeding to the regulatory powers of The Public Utilities Commission of the State of Oregon.

1.7 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of telecommunications services from the Company under rates temporary or permanent, authorized by the Public Utilities Commission of the State of Oregon and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments as provided under ORS 221.515 and ORS 759.105.

1.8 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements, public ways and other public places in said City.

ARTICLE II - Grant of Non-Exclusive Franchise

Section 1. Grant of Non-Exclusive Franchise. The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Ordinance, a non-exclusive right to furnish, sell and distribute telecommunications services to the City and all persons, businesses and industries within the City; a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide communication facilities to the City and to all persons, businesses and industries within the City and in the territory adjacent thereto; and a non-exclusive right to make reasonable use of all streets and other public places as may be necessary to carry out the terms of this Ordinance. The City reserves the right to construct, install, maintain, and operate any public improvement work or facility; do any work that the City may find desirable on, over, under any street; and vacate, alter or close any street.

Section 2. Term of Franchise. The term of this franchise shall be for five (5) years, beginning July 1, 1995 and expiring June 30, 2000.

ARTICLE III - Franchise Fee

Section 1. Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the City a sum equal to seven percent (7%) of the Revenue derived annually

from the provision of services with the City, provided that if Oregon Law or Administration Rules are changed to allow a higher fee to be charged including additional tax or charge on the telephone customer bill then the rate of the franchise fee set forth in this section shall be increased accordingly and the Company shall pay the City that higher fee.

Section 2. Payment Schedule. For the franchise fee owed on revenue received after the effective date of this Ordinance, payments shall be made in quarterly installments due on or before the last day of the month following the end of each calendar year quarter. Payments at the beginning and end of the term of this Ordinance shall be prorated. All payments shall be made to the City of Sweet Home at 1140 12th Avenue, Sweet Home, Oregon or to any other address as directed by the City. The City Council, or any committee appointed by the City Council, shall have access to the books of the Company for the purpose of auditing or checking to ensure that the franchise fee has been correctly computed and paid.

Section 3. Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax, privilege tax or similar tax, assessment or excise upon the privilege of doing business or in connection with the physical operations thereof, but does not exempt the Company from any lawful taxation upon its real property, sales and use taxes or any other tax not related to the franchise or the physical operation thereof. However, this section does not relieve the Company from obtaining any permit required by the City to conduct business in its streets or on other public property nor does it relieve the Company from paying the Public Works Permit Fee.

ARTICLE IV - Conduct of Business

Section 1. Conduct of Business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Oregon or City and the City, at its option reserves the right to specify whether the Company's wires, lines or other facilities are strung on poles or other fixtures above ground, direct buried, or underground in pipes or conduits.

Section 2. Tariffs on File. The Company shall keep on file in its office in Lebanon, Oregon, or other location in the vicinity, copies of all its tariffs currently in effect and on file with the Public Utilities Commission. Said tariffs shall be

available for inspection by the public.

Section 3. Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the Public Utilities Commission.

Section 4. Compliance with Company Tariffs. The Company shall furnish communication facilities within the City to the City and to all persons, businesses and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the Public Utilities Commission.

Section 5. Applicability of Company Tariffs. The City and Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

ARTICLE V - Construction, Installation & Operation of Company Facilities

Section 1. Location of Facilities. Company facilities shall not interfere with the City water mains, sewer mains, gas mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of street and other public places and shall be maintained in good repair and condition.

Section 2. Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable codes of the State of Oregon and the United States of America and City of Sweet Home. All public and private property whose use conforms in restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent lots, streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of Company in the event the Company fails to perform such work within a reasonable time after Notice from the City. Except in an emergency, prior to making an excavation in any street, the Company shall obtain from the City approval for the proposed excavation and of its location. Except for an emergency, the Company shall notify the City at least 24

hours prior to starting excavation.

Section 3. Relocation of Company Facilities. If at any time the City requests the Company to relocate any distribution line, service connection, or other facility installed or maintained in streets or other public place in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the City. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. The City will reasonably exhaust alternatives not requiring relocation in all cases. The City reserves the right to relocate the above line, service connection or other facility at the expense of the Company in the event that the Company fails to perform such relocation within a reasonable time after notice from the City e.g. compliance with ADA requirements.

Section 4. Service to New Areas. If during the term of this franchise the boundaries of the City are extended, the Company shall extend service to the newly incorporated areas. Service to annexed areas shall be in accordance with the terms of this franchise agreement, including payment of franchise fees and in accordance with the Rules and Regulations of the Oregon Public Utilities Commission.

Section 5. Restoration of Service. In the event the Company's communications system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

Section 6. Rules and Regulations. All lines and equipment constructed under this grant shall be constructed in accordance with established practices as prescribed by current REA specifications and drawings and the rules and regulations of the Public Utilities Commission of the State of Oregon, and its duly or legally constituted successors in authority; and the rights and privileges herein granted in said streets, alleys and public highways shall be subject at all times to such ordinances and reasonable regulations as are now or shall hereafter be ordained or passed by said City concerning similar uses and excavations in the care of streets, alleys and public highways.

Section 7. Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable

regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein and not in violation of any state or federal laws. The Company agrees to comply with all such regulations, now existing or duly adopted, in the construction, maintenance and operation of its facilities and in the provisions of telecommunications services within the City.

Section 8. Inspection, Audit and quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Ordinance at all reasonable times, but no more than once per year. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner. The cost of such audit shall be paid by the City provided no irregularities are found.

Section 9. Maps. The Company shall prepare and submit to the City Council a map showing the location of its distribution system within the City and showing the location of all appurtenances incident to the distribution system, insofar as such facilities can reasonably be determined. The map shall be revised no more frequently than annually by the addition of the information hereby required as the system is extended or revised. The City agrees that any such maps shall not be used by it or disseminated to the public for use in locating underground facilities.

ARTICLE VI - Indemnification of the City

Section 1. City Held Harmless/Insurance. The Company shall maintain its structure, apparatus and other equipment as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save the City harmless from all liability or damage and all reasonable attorney fees and other expenses necessarily accruing against the City arising out of the exercise by the Company of the rights and privileges hereby granted, provided such liability or damage was not caused by the City.

Section 2. Notice to Company. The City will provide notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

Section 3. Payment of Expense. The Company shall pay for all expenses relating to the publication of notice and ordinances arising out of the process for obtaining this franchise.

ARTICLE VII - Assignment; Saving Clause; Amendment

Section 1. Assignment. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the Company not including a third party unless the City shall approve such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

Section 2. Saving Clause. If any portion of this franchise Ordinance is declared illegal or void by a court of competent jurisdiction, the remainder of the Ordinance shall survive and not be affected thereby. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent.

Section 3. Amendment. This franchise agreement may be amended by written amendment, signed by both parties.

ARTICLE VIII - Fire Emergency; Repeal; and Emergency Clause

Section 1. Fire Emergency. In case it shall be necessary to cut or remove any of the said wires, lines, cables and other facilities of the Company in order to get fire ladders or other apparatus to a building during a City conflagration, the City shall not be liable for any damages done to such wires, lines, cables and other facilities. The City shall notify the Company of such incident within eight (8) hours from the time of occurrence. However, if the City fails to give the eight (8) hours notice this fact shall not cause the City to be liable for damages.

Section 2. Repeal. Sweet Home Ordinance 997 and Sweet Home Ordinance 1045 are repealed.

Section 3. Emergency Clause and Acceptance. Whereas, it is necessary, and it is for the interest and benefit of the City that this Ordinance become effective immediately, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect after the passage by the Council and approval by the Mayor. The Company shall within 30 days from the date the Ordinance takes effect file with the City its written unconditional acceptance of the franchise and if the Company fails so to do this Ordinance shall be void.

Passed by the Council and approved by the Mayor this 27th day

of _____ June _____, 1995.



Mayor

ATTEST:



City Manager / Ex Officio City Recorder

APPROVED:

Telephone Utilities of Oregon, Inc.
dba PTI Communications

By: 

Dated: ~~JUNE 13, 95~~
July July