

SPECIAL ORDINANCE NO. 97-1

AN ORDINANCE GRANTING TO UNITED TELEPHONE COMPANY OF THE NORTHWEST A NON-EXCLUSIVE FRANCHISE FOR TELEPHONE SERVICE IN THE CITY OF GRASS VALLEY, OREGON

Final

THE COUNCIL OF THE CITY OF GRASS VALLEY ORDAINS AS FOLLOWS:

Section 1. Rights Granted. Subject to the terms and conditions provided in this ordinance and further subject to the applicable rules, regulations and ordinances of the City of Grass Valley, the City of Grass Valley hereby grants to United Telephone Company of the Northwest, its successors and assigns, hereinafter "Grantee," the right and privilege to provide communication services within the City and to place, erect, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares and public highways, all hereinafter referred to as "streets" within the City, poles, wires and other appliances and conductors for telephone, telegraph and other communications purposes. Following the effective date of this ordinance, Grantee will make best effort to underground its transmission facilities whenever economically feasible. If not economically feasible, such wires and other appliances and conductors may be strung upon poles or other fixtures above ground.

Section 2. Street Excavations. It shall be lawful for Grantee to make any necessary excavations in any street, public right of way or public utility easement in the City for the purpose of placing, erecting and maintaining appliances, poles, or other supports or conduits for wires and appliances and auxiliary apparatus or repairing, renewing, or replacing the same. Work by Grantee shall be performed in compliance with the rules, regulations, ordinances or orders, which may, during the continuance of this franchise, be adopted from time to time by the City of Grass Valley. Prior to commencement of any construction, extension or relocation of any of Grantee's conduit facilities or pole leads in the streets or public places within the City, Grantee shall give the City reasonable advance notice by advising the Public Works Director or authorized designee of the location of the proposed construction, extension or relocation. Grantee shall obtain from the Public Works Director or authorized designee approval prior to commencement of work. The location of Grantee's facilities shall be subject to prior approval by the Public Works Department.

Section 3. Street Restorations. Whenever Grantee disturbs any of the streets in the City for any of the purposes provided herein, Grantee shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so, the City of Grass Valley 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 to be completed by Grantee, the City shall cause such repairs to be made at the expense of Grantee.

Section 4. Indemnification, Bonds, and Other Surety.

- 4.1 Indemnification. Grantee agrees and covenants to indemnify and hold the City of Grass Valley, its agents, employees and officers, harmless from any and all damages, costs or claims of any kind to which the City, or its agents may be subjected as a consequence of or result of the action of Grantee or its agents, which in any manner arise from Grantee's exercise of the rights and privileges granted herein.
- 4.2 Bonds and Other Surety. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The City acknowledges that the legal, financial and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and City recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates. In order to minimize such costs, the City agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor or where required by state or local law. Initially, no bond or other surety will be required. In the event the City determines that one is required in the future, the City agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Notwithstanding the above, bonds or like assurances which may be required by state or local law of other utilities can be sought from Grantee.

Section 5. Public Works and Improvements Not Affected by Franchise.

Nothing in this ordinance shall be construed to prevent the City of Grass Valley from installing or maintaining sewers, grating, planking, rocking, paving, repairing, altering, or improving any of the streets within the City of Grass Valley or upon which the poles, wires, or other conductors of Grantee shall be placed. However, City shall make reasonable attempts to perform maintenance and make improvements so as not to obstruct or prevent the free use of Grantee's equipment and apparatus.

Section 6. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its system in the Service Area (meaning the utility or other easement area used by City) so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. Grantee shall follow such local laws as exist currently or as are amended in the future relating to tree trimming. The Grantee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by Grantee. Such replacement

shall satisfy any and all obligations Grantee may have to the City or property owner for any problems involving trees, fauna or other natural resources pursuant to the terms of this section.

Section 7. Use of Streets by Grantee. The location and method of installation, repair and maintenance of Grantee's facilities and any exercise of the rights of Grantee under the terms of this ordinance shall be subject at all times to reasonable regulation by the City of Grass Valley. Grantee's operation and work shall be carried on so as to avoid any unnecessary interference with traffic or other permissible uses of the streets of the City. Equipment of Grantee or Grantee's agents which interferes with allowable uses of the streets of the City must be moved or removed upon notice from the City Manager, Public Works Director or his or her designee. If Grantee fails to move or remove equipment within the reasonable time allowed in the notice from the City's representatives, then such equipment may be moved or removed by the City, which may charge the cost of moving or removal to Grantee.

Section 8. Relocation of Facilities.

8.1 Whenever the City causes the construction, reconstruction, grading or widening of the Franchise Area (for purposes other than those described in Section 8.2 below) and such construction, reconstruction, grading or widening requires the relocation of Grantee's then existing Facilities within the Franchise Area, the City shall:

8.1.1. provide Grantee, within a reasonable time prior to the commencement of such construction, reconstruction, grading or widening, written notice requesting such relocation, and:

8.1.2 provide Grantee with reasonable plans and specifications for such construction, reconstruction, grading or widening

After receipt of such notice and such plans and specifications, Grantee shall relocate such Facilities within the Franchise Area at no charge to the City. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 8.1, the City shall bear the entire cost of subsequent relocation.

8.2 Whenever any person or entity, other than the City, requires the relocation of Grantee's Facilities to accommodate the work of such person or entity within the Franchise Area, or, whenever the City requires the relocation of Grantee's Facilities within the Franchise Area for the benefit of any person or entity, other than the City, then Grantee shall have the right as a condition of such relocation to require such person or entity to:

8.2.1 make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities; and

8.2.2 indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Grantee's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Grantee's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Grantee's Facilities.

8.3 Any condition or requirement imposed by the City upon any person or entity, other than Grantee (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Grantee's Facilities shall be a required relocation for purposes of Section 8.2.

8.4 Nothing in this Section 8 "Relocation of Facilities" shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities then existing under benefit of easement or such other prior rights.

Section 9. Continuous Service. The service furnished by Grantee shall be continuous and adequate for the requirements of the City of Grass Valley and its inhabitants, subject only to interference or interruptions beyond the reasonable control of Grantee. To insure adequate service within the City of Grass Valley, Grantee shall be subject to rules and regulations prescribed by the City of Grass Valley. However, no City regulations shall conflict with any rule, regulation or order prescribed by any State or Federal government authority which exercises jurisdiction over Grantee.

Section 10. Emergency Override. In the case of any emergency or disaster, the Grantee shall, upon request of the City, make available its facilities for the City to provide emergency information and instructions during the emergency or disaster period. The City shall hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the City, including, but not limited to, reasonable attorneys' fees and costs.

Section 11. Use of Fixtures for Police and Fire Alarms. The City shall have the right, upon reasonable notice to Grantee, and without payment or charge, to attach its police alarms, signal wires or traffic control systems and street and traffic control signs to the poles of Grantee. If there is insufficient space available on Grantee's poles, Grantee's structures may be changed, altered or rearranged at the reasonable expense of the City so as to provide for use by the City.

Such facilities shall be subject to interference by Grantee only to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's facilities.

Section 12. Removal of Overhead Fixtures. Grantee shall, make best effort, if economically feasible, to remove and replace overhead facilities underground at the request of the City of Grass Valley. Costs of replacement may be assessed against property owners as provided in applicable sections of the Oregon Revised Statutes. Costs of removal of the existing overhead system and overhead retirement costs including depreciation shall be borne by Grantee.

Section 13. Temporary Removal of Cable Wires or other Apparatus. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables, wires or other apparatus of Grantee to permit passage of any building, machinery or other object, Grantee will perform such rearrangement within a reasonable period after written notice from the person(s) desiring to move the building or object. The notice shall bear the approval of the City Manager or the Manager's designee and shall detail the route of movement of the building or object and shall provide that the cost of relocation shall be borne by the person(s) requesting the relocation.

Section 14. Privilege Tax.

14.1. Pursuant to ORS 221.515, as now constituted, in consideration of the rights, privileges and franchise hereby granted, the Grantee shall pay to the City, from and after the effective date of this franchise and until its expiration, on a quarterly basis, an amount equal to seven percent (7%) of the gross revenue currently earned by the Grantee within the boundaries of the City. As used in this section, "gross revenues" means those revenues derived from exchange access services, as defined in ORS 401.710, as now constituted, less net uncollectible from such revenues.

14.2. A sworn statement of the gross local service receipts of the Grantee derived from services within the corporate limits of the City shall be filed with the City Clerk by the Grantee on or before the 25th day of the month following each calendar quarter, and payment of the privilege tax shall be made on or before the 25th day of the month following each calendar quarter. Within sixty (60) days after the termination of this franchise, the privilege tax shall be paid for the period elapsing since the close of the last calendar quarter for which the privilege tax has been paid.

14.3. The compensation for the period covered by the sworn statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of the privilege tax due the City through error or otherwise, the difference due the City shall be paid by the Grantee within fifteen (15) days from

discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.

- 14.4. The payments made by the Grantee will be accepted by the City in payment of any license, privilege or occupation tax or fee for revenue or regulation, or for any other purpose now or hereafter imposed by the City upon the Grantee during the term of this franchise, except permit fees for excavation and similar work as required by City ordinance. Such permit fees may be deducted from the privilege tax authorized by this section. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 15. Franchise Not Exclusive. This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- 15.1. Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- 15.2. Constructing, installing, maintaining or operating any City-owned public utility.

Section 16. Term. The rights, privileges, and franchise granted herein shall continue and be in force for an indefinite term from and after July 1, 1996, subject to the termination provision set forth in Section 20.

Section 17. Books of Account and Reports. The Grantee shall keep accurate books of account for the purpose of determining the amounts due to the City under Section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City.

Section 18. Assignment of Franchise. This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; but no transfer of this franchise or any rights thereunder by merger, consolidation, sale, assignment or otherwise shall be made unless the Council first consents by resolution.

Section 19. Specifications and Permits. Grantee's use of the public ways and streets shall comply with the specifications of the Public Works Director or authorized designee, as well as any applicable State or Federal regulations or laws now in effect or hereafter adopted. No work affecting the streets may be done by Grantee without first obtaining all permits required by

the City, which may include plan submittal, approval and payment of fees, prior to the initiation of work.

Section 20. Termination for Cause. In the event Grantee fails neglects or refuses for thirty (30) days after demand in writing by the City to perform any or all of the obligations or requirements specified in this ordinance to be performed by Grantee, then the rights and privileges granted may be terminated by the City and the Grantee shall forfeit all rights and privileges granted herein.

Section 21. Acceptance. This ordinance shall be inoperative unless it is accepted in writing by Grantee within sixty (60) days of its date of passage.

PASSED AND ADOPTED THIS 6th DAY OF January 1997.

Voting Yes, Councilmembers:	<u>5</u>
Voting No, Councilmembers:	<u>0</u>
Absent, Councilmembers:	<u>1</u>
Abstaining, Councilmembers:	<u>0</u>

AND APPROVED BY THE MAYOR THIS 6th DAY OF January 1997.

Attest:

Margaret Snider
Typed Name Margaret Snider
Mayor of the City of Grass Valley

Brenda J. Padgett
Typed Name Brenda Padgett
City Clerk of the City of Grass Valley

Copy Sent to: 3-27-97
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