

162822

ACCEPTANCE

RECEIVED
JUL 13 1990

**OFFICE OF THE
CITY AUDITOR**

April 5, 1990

Auditor of the City of Portland
Room 202, City Hall
Portland, Oregon 97204

This is to advise the City of Portland, Oregon, that I hereby accept the terms and provisions of

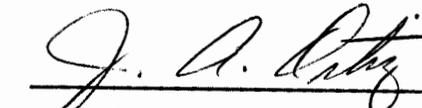
Ordinance No. 162822, passed by Portland City Council on March 8, 1990,
granting a franchise to American Telephone and Telegraph Company for a
period of ten years,

and in consideration of the benefits to be received thereunder by me I hereby agree to abide by and
perform each and all of the terms and provisions thereof applicable to me.

Very truly yours,

AMERICAN TELEPHONE & TELEGRAPH COMPANY

Signature:



Title:

MANAGER - CABLE SYSTEMS

Address:

4430 Rosewood Drive, Suite 3688
P.O. Box 9083
Pleasanton, CA 94566-9083

Approved as to form:



City Attorney - DEPUTY

*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.

CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)
11/16/90

PRODUCER CP1259-0
Marsh & McLennan, Inc.
1221 Avenue of the Americas
New York, NY 10020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

- COMPANY LETTER **A Self Insured Retention**
- COMPANY LETTER **B Travelers Insurance Co of I**
- COMPANY LETTER **C Natl Union Fire Ins Co of Pittsburgh**
- COMPANY LETTER **D Self Insured Retention Hartford Fire Insurance Company**
- COMPANY LETTER **E Employers Reinsurance Corporation**

INSURED
American Telephone and Telegraph Company
550 Madison Ave.
New York, N.Y. 10022

COVERAGES
THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE (MM/DD/YY)	POLICY EXPIRATION (MM/DD/YY)	LIABILITY LIMITS IN THOUSANDS		
						EACH OCCURRENCE	AGGREGATE
A	GENERAL LIABILITY	Self Insured Retention \$2.5 million	01/01/90	01/01/91	BODILY INJURY	\$	\$
	<input checked="" type="checkbox"/> COMPREHENSIVE FORM				PROPERTY DAMAGE	\$	\$
	<input checked="" type="checkbox"/> PREMISES/OPERATIONS				BI & PD COMBINED	\$	\$
	<input checked="" type="checkbox"/> UNDERGROUND EXPLOSION & COLLAPSE HAZARD				PERSONAL INJURY		\$
	<input checked="" type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS CONTRACTUAL						
	APPROVED AS TO FORM						
B	AUTOMOBILE LIABILITY	TJCAP 203T353-7-90 TJCAP-203T354-9-90 TEECAP 203T355-0-90 (TEX) TSIEX 203T356-2-90 (MASS)	09/01/90	09/01/91	BODILY INJURY (PER PERSON)	\$	
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (PER ACCIDENT)	\$	
	<input type="checkbox"/> ALL OWNED AUTOS (PRIV. PASS.)				PROPERTY DAMAGE	\$	
	<input type="checkbox"/> ALL OWNED AUTOS (OTHER THAN) (PRIV. PASS.)				BI & PD COMBINED	\$ 2500	
	HIRE AUTOS						
	NON-OWNED AUTOS						
	GARAGE LIABILITY						
C	EXCESS LIABILITY	BE 279845	10/15/90	10/15/91	BI & PD COMBINED	\$ 5000	\$ 5000
D	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY	SELF INSURED RETENTION \$500,000 10WBML 4967 (CALIF.) 10WERML 2241E (TEX)	1/1/90 4/1/90 3/1/90	1/1/91 4/1/91 3/1/91	STATUTORY		
					\$	(EACH ACCIDENT)	
					\$	(DISEASE-POLICY LIMIT)	
E	OTHER	281169	8/1/90	8/1/91	Different Limits in Various States		

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS All Operations of the Insured.

CITY OF PORTLAND, ITS OFFICERS, AGENTS AND EMPLOYEES ARE NAMED AS ADDITIONAL INSURED.

CERTIFICATE HOLDER
CITY OF PORTLAND
1220 S.W. 5TH. RM. 202
PORTLAND, OREGON 97204

ATT: MS. MARY FLANAGAN

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Thomas J. Edridge

NORTH AMERICAN FINANCE GROUP - TRADE FINANCIAL SERVICES
SORT # 5878
111 WALL STREET NEW YORK, NY 10043

NOVEMBER 23, 1990

CITY OF PORTLAND
OFFICE OF CABLE COMMUNICATIONS
AND FRANCHISE MANAGEMENT
1120 SW 5TH AVENUE, ROOM 1021
PORTLAND, OR 97204

REF: IRREVOCABLE LETTER OF CREDIT NO. NY-0882-30007896

GENTLEMEN:

BY ORDER OF OUR CLIENT, AMERICAN TELEPHONE AND TELEGRAPH COMPANY (AT&T), 1300 MT. KEMBLE AVENUE, BASKING RIDGE, NJ 07920, WE HEREBY OPEN OUR CLEAN IRREVOCABLE LETTER OF CREDIT NO. NY-0882-30007896 IN YOUR FAVOR FOR AN AMOUNT NOT TO EXCEED IN THE AGGREGATE U.S. \$100,000.00 (ONE HUNDRED THOUSAND AND 00/100), EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR 111 WALL STREET OFFICE, NEW YORK N.Y. 10043, WITH OUR CLOSE OF BUSINESS ON NOVEMBER 30, 1991 UNLESS RENEWED AS HEREINAFTER PROVIDED.

WE ARE ADVISED THIS LETTER OF CREDIT IS OPENED IN ACCORDANCE WITH TERMS AND CONDITIONS OF FRANCHISE NO. 162882 GRANTED TO AT&T BY THE CITY OF PORTLAND.

FUNDS HEREUNDER ARE AVAILABLE TO YOU AGAINST PRESENTATION OF YOUR SIGHT DRAFT DRAWN ON US MENTIONING THEREON OUR LETTER OF CREDIT NO. NY-0882-30007896 ON OR BEFORE THE EXPIRY DATE OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, ACCOMPANIED BY YOUR SIGNED STATEMENT CERTIFYING THAT AT&T HAS FAILED TO SATISFACTORILY FULFILL ITS OBLIGATIONS UNDER FRANCHISE NO. 162822 GRANTED TO AT&T BY THE CITY OF PORTLAND.

THIS LETTER OF CREDIT WILL BE AUTOMATICALLY RENEWED, WITHOUT AMENDMENT, FOR A ONE YEAR PERIOD UPON THE EXPIRATION DATE SET FORTH ABOVE AND UPON EACH ANNIVERSARY OF SUCH DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE, OR PRIOR TO ANY ANNIVERSARY OF SUCH DATE, WE NOTIFY BOTH YOU AND YOUR CLIENT IN WRITING BY REGISTERED MAIL THAT WE ELECT NOT TO SO RENEW THIS LETTER OF CREDIT.

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1983 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATIONS NO. 400

CITIBANK N.A.

Citibank, N.A.

Thomas J. Turner S.O.
AUTHORIZED SIGNATURE.

162822

THOMAS TURNER, S.O.
NAFG/Trade Financial Services
111 Wall St./3rd Fl./Zone 11
(212)657-9540

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FORM OF ENDORSEMENT

Without prejudice to coverage that would otherwise exist herein, the City of Portland, its officers, agents and employees are named as additional insured under this policy as to any claim or claims for injury or damage to persons or property resulting from or growing out of activities of the named insured, but only in respect to the terms and conditions of Ordinance No. 162822.

This policy shall not be cancelled without first giving 30 days written notice to the Auditor of the City of Portland, Room 202, City Hall, Portland, OR 97204.

Following is the text of Oregon Revised Statutes giving limits of public liability through December 31, 1988. Changes effective January 1, 1989 are noted. To comply with the terms of the ordinance please arrange for liability insurance naming the City as additional insured (note form of endorsement on back) in the greater amount effective January 1, 1989.

30.270. Amount of Liability. (1) Liability of any public body or its officers, employees or agents acting within the scope of their employment or duties on claims within the scope of ORS 30.260 to 30.300 shall not exceed:

(a) \$50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence.

(b) \$100,000 to any claimant for all other claims arising out of a single accident or occurrence.

* (b) \$100,000 to any claimant as general and special damages for all other claims arising out of a single accident or occurrence unless those damages exceed \$100,000, in which case the claimant may recover additional special damages, but in no event shall the total award of special damages exceed \$100,000.

(c) \$300,000 for any number of claims arising out of a single accident or occurrence.

* (c) \$500,000 for any number of claims arising out of a single accident or occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds \$300,000, any party may apply to any circuit court to apportion to each claimant a proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence.

* (3) Where the amount awarded to or settled upon multiple claimants exceeds \$500,000, any party may apply to any circuit court to apportion to each claimant the proper share of the total amount.....balance unchanged

(4) Liability of any public body and one or more of its officers, employees, or agents, or two or more officers, employees or agents of a public body, on claims arising out of a single accident or occurrence, shall not exceed in the aggregate the amounts limited by subsection (1) of this section.

(5) For any claim arising in connection with a nuclear incident, no provision of this section shall limit the amount of damages recoverable for injuries or death or loss or damage to property, or loss of use of property as a result of a nuclear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

*Effective January 1, 1989

162822
1731



CITY OF

Mike Lindberg, Commissioner of Public Affairs

David C. Olson, Director

1021 Portland Bldg.

1120 S.W. Fifth Ave.

Portland, Oregon 97204

(503) 796-5385

PORTLAND, OREGON

OFFICE OF CABLE COMMUNICATIONS
AND FRANCHISE MANAGEMENT

RECEIVED
JAN 02 1990

January 2, 1990

OFFICE OF THE
CITY AUDITOR

TO: Mary Howard
Council Clerk

FROM: Jo Zettler, Deputy Director
Office of Cable Communications
and Franchise Management

SUBJ: AT&T franchise ordinance

This is one of those ordinances that has to be published, per attached memo we sent you earlier in the year. The cost of publication will be paid out of an advance deposit currently sitting in a trustee account with the City Treasurer. Give me or Donetta Johnson a call at 796-5385 and we'll transfer the money to your designated BUC #.

Thanks.



CITY OF

Mike Lindberg, Commissioner of Public Affairs

David C. Olson, Director

1021 Portland Bldg.

1120 S.W. Fifth Ave.

Portland, Oregon 97204

(503) 796-5385

PORTLAND, OREGON

OFFICE OF CABLE COMMUNICATIONS
AND FRANCHISE MANAGEMENT

Dec. 29, 1989
~~April 7, 1989~~

To: Mary Newell
Auditor's Office

From: Jo Zettler *JZ*
Office of Cable Communications and Franchise Management

Re: ~~Olympic Pipe Line Company~~ franchise ordinance
American Telephone Telegraph

As you and I discussed the other day, our office filed an ordinance this morning requesting approval of a franchise with Olympic Pipe Line Company. According to the City Charter, Section 10.207, the franchise has to be filed with the Auditor's Office and then published at least 20 days before the first reading by Council, as follows:

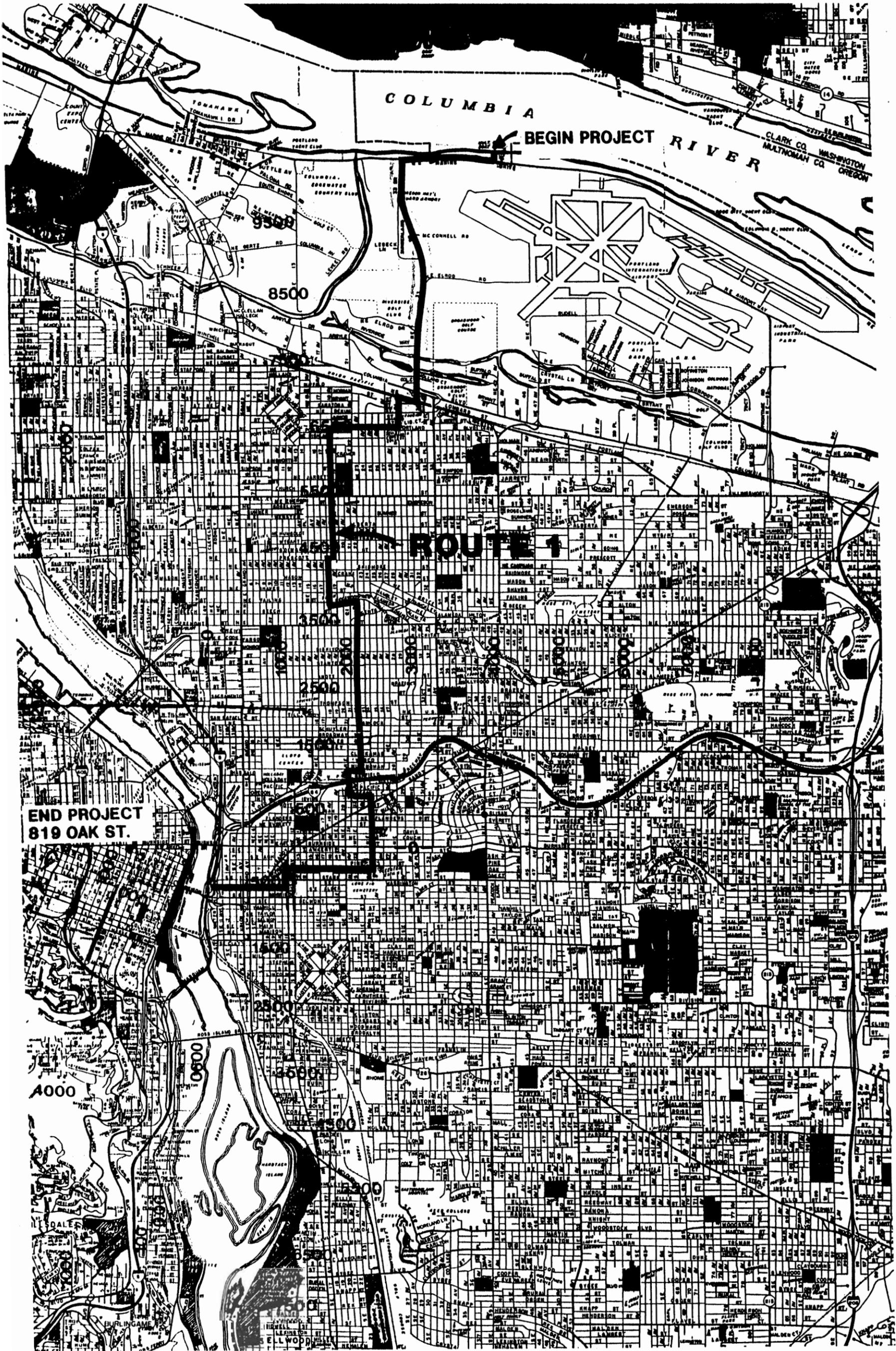
...Such proposed ordinance shall be published in full, once in the City official newspaper. There shall also be published, in a conspicuous place in such daily newspaper of the City having a circulation in excess of fifteen thousand..., a notice prepared by the Auditor, that an application has been made for a franchise, giving the name of the applicant, the character and location of the proposed grant, and requesting any person having any objections to such proposed franchise or any provisions thereof to file the same in writing with the Auditor within twenty (20) days from the first publication of such notice. §10-207.

My understanding is that our official newspaper is the Daily Journal of Commerce and that the notice of application goes in the Oregonian. We need to publish the franchise and notice by next Wednesday, April 12, so that the ordinance can be heard by Council on Wednesday, May 3. I've made a note to call you the week before that Council session to remind you to put it on the Council agenda.

I think I've now pretty much exhausted my knowledge of this whole thing, and you probably already knew all of this, but if you have any questions give me a call and I'll do some research.

Thanks.

cc: David Olson
Larry Robb



COLUMBIA

BEGIN PROJECT

RIVER

CLARK CO. WASHINGTON
MULTNOMAH CO. OREGON

8500

ROUTE 1

END PROJECT
819 OAK ST.

4000

**COLUMBIA RIVER TO PORTLAND
LIGHTGUIDE SYSTEM**



DAVID EVANS AND ASSOCIATES, INC.

EXHIBIT A
162822

ORDINANCE NO. **162822**

Grant a franchise to American Telephone and Telegraph Company for a period of ten years. (Ordinance)

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT

A. 1. The City of Portland (City), does hereby grant to American Telephone and Telegraph Company, (AT&T), a New York corporation that is qualified to do business in Oregon, (Grantee), and to its successors and assigns, a franchise to install, operate and maintain conduits, ducts, cables, and other necessary facilities, as part of Grantee's telecommunications system, in and under the surface of City streets, as shown in red on the map attached hereto and incorporated by reference as Exhibit A.

2. Grantee may seek to amend, alter or add to its telecommunications system by filing a map showing such proposed changes with the City's Office of Cable Communications and Franchise Management and with the City Engineer. However, the total length of Grantee's telecommunication system in City streets shall not exceed 78,750 linear feet as approved by the City. The City shall respond with its approval, modifications, or denial within 45 days from receiving Grantee's proposal. Grantee shall file a map showing the final amendment, alterations or additions, as built, with the City Auditor, the City's Office of Cable Communications and Franchise Management and the City Engineer.

B. The term of this franchise, and all rights and obligations pertinent thereto, shall be ten years from the effective date of the franchise unless terminated sooner as provided herein. The effective date of this franchise shall be 60 days after passage by the City Council unless Grantee fails to file a written acceptance of this franchise as provided in Section 21 of this franchise.

Section 2. DEFINITIONS

For the purpose of this franchise agreement, the following terms, phrases, and their derivations, shall have the meanings given below unless the context indicates otherwise. 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 include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Streets" means the streets, alleys, public highways and public right of way under the jurisdiction of the City of Portland.

B. "Telecommunications system" means the Grantee's system of conduits, ducts, cables, and other necessary facilities, including the

associated electronics, hardware, devices and equipment in whatever form, connecting transmission facilities owned by the Grantee and used for the purpose of telecommunications services.

C. "Telecommunications services" means interexchange telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area, as defined in United States v. American Telephone and Telegraph Company, 552 F. Supp. 131, 229 (D.C. Dist. Col. 1982), aff'd, Maryland v. United States, 460 U.S. 1001 (1983), as amended to the effective date of this franchise.

Section 3. COMPENSATION AND AUDITING

A. 1. The Grantee agrees to pay a franchise fee as compensation for the use of the streets throughout the duration of this franchise in the amount of \$1,100,000.

2. The Grantee's compensation payment to the City shall be made on or before the effective date of this franchise. Payment not received by the City within forty-five (45) days from the due date shall be assessed interest at the rate of one percent (1%) compounded monthly from the due date until the date on which the City receives the payment.

B. Except as otherwise required by law, no portion of this franchise fee shall be noted separately on any bill to any customer or user of services or commodities furnished by Grantee.

C. The Grantee shall pay the cost of publication of the franchise and any amendments thereto, as such publication is required by law. Grantee shall also pay the City for such reasonable pre-franchising costs as the City incurs in entering into this franchise agreement with the City.

D. Payment of this franchise fee shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. However, the City waives application of City Code Section 7.14.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS

A. 1. Insurance. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City and its officers, agents, and employees from the claims referred to in Section 7. The insurance shall provide coverage at all times for not less than \$300,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damages plus costs of defense; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities

of the State of Oregon during the term of the franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be cancelled or materially altered without thirty (30) days written notice first being given to the City Auditor. If the insurance is cancelled or materially altered within the term of this franchise, Grantee shall provide a new policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the amounts required, for the duration of the franchise.

2. The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance under this section shall be cause for immediate termination of this franchise by the City.

3. In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide the same amount of protection for the Grantee and the City, its officers, agents, and employees as otherwise required under this section. The adequacy of the self-insurance shall be subject to the approval of the City Attorney. Failure to maintain adequate self-insurance under this section shall be cause for immediate termination of this franchise by the City.

B. Letter of Credit. Upon the effective date of the franchise, the Grantee shall furnish proof of the posting of an irrevocable letter of credit running to the City, with good and sufficient surety approved by the City, in the sum of \$100,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise. The letter of credit shall be in a form satisfactory to the City Attorney. During the term of the franchise, Grantee shall file with the City Auditor a duplicate copy of the letter of credit along with written evidence of the required premiums. Such letter of credit shall be maintained by the Grantee throughout the term of this franchise.

C. Construction Letter of Credit. During all times when Grantee is performing any construction work in or under the City streets, Grantee shall post an additional irrevocable letter of credit running to the City, with good and sufficient surety approved by the City, in the sum of \$100,000, conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of Sections 6 and 7 of this franchise. Grantee shall pay all premiums charged for the letter of credit, and shall keep the same in full force and effect at all times during its construction work in or under

the City streets, including the removal of all of Grantee's system installed in the City's streets. The letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work by the City Engineer. The letter of credit shall be in a form satisfactory to the City Attorney. During the duration of the construction work, Grantee shall file with the City Auditor a duplicate copy of the letter of credit along with written evidence of the required premiums.

Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its telecommunications system in a safe condition. Grantee shall consult and cooperate with the City while conducting its defense of the City.

Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its facilities in a timely manner in accordance with a relocation schedule furnished Grantee by the City Engineer in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

Section 6. CONSTRUCTION AND RELOCATION.

A. Subject to applicable regulations of the City, Grantee may perform all necessary construction to install, operate and maintain conduits, ducts, cables, and other necessary facilities, as part of Grantee's telecommunications system. All construction and maintenance of any and all conduits, ducts, cables or other facilities within City streets incident to Grantee's provision of service shall, regardless of who performs construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction of any such facilities, and for excavation and laying of any conduits, ducts, cables or other facilities within City streets. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee.

Prior to beginning construction, Grantee shall provide the City with a construction schedule for work in the City's streets and the estimated total cost of such work. When Grantee's construction of facilities in the City's streets is completed, Grantee shall provide the City with actual figures on the total time spent installing its facilities, and the total amount of city streets, measured linearly, occupied by Grantee's system, with a map showing same.

Grantee may make excavations as needed in the City streets for the construction, maintenance or extension of the Grantee's system. Prior to

doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any further franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government owning or maintaining facilities which may be affected by the proposed excavation.

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

B. Within forty-eight (48) hours after any City bureau or City franchisee, licensee or permittee notifies Grantee of a proposed street excavation, the Grantee shall;

- (a) Mark all of its locatable underground cables, ducts, conduits or other facilities within the area of the proposed excavation;
- (b) Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or
- (c) Notify the excavator that the Grantee does not have any underground facilities in the vicinity of the proposed excavation.

C. The City shall have the right to require Grantee to change the location of any of Grantee's conduits, ducts, cables or other facilities within the street area when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by the City, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its conduits, ducts, cables or other facilities located within the City's streets, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the City's streets.

D. Grantee's system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, ducts, cables, vaults, structures or other facilities that may have been laid in the streets by or under the City's authority. The telecommunications system constructed or erected by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

E. Upon Grantee's acquisition of any conduits, ducts, cables or other facilities in any City street, or upon any addition to the City of any area in which Grantee retains any such property in any street, the Grantee shall submit to the City a statement describing all such properties involved, whether authorized by franchise or prior right, and specifying the location of

all such properties. Such conduits, ducts, cables or other facilities shall immediately be subject to the terms of this franchise.

Section 7. RESTORATION OF STREETS. Whenever Grantee disturbs the surface of any street for any purpose mentioned in Section 6, Grantee shall promptly refill the opening and restore the street surface to a condition satisfactory to the City Engineer.

Following excavation of the surface of any such street, Grantee shall be responsible for restoration of the street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any street opening made by Grantee, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in streets shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with all rules, regulations and ordinances of the City.

Section 8. RESERVATION OF CITY STREET RIGHTS. Nothing in this franchise shall be construed to prevent the City from constructing sewer, grading, paving, repairing and/or altering any street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the free use and operation of the system of the Grantee herein. However, if any of the Grantee's system interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's system shall be removed or replaced in the manner the City shall direct. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

Section 9. USE OF CONDUITS BY CITY. The City may require Grantee to install or affix and maintain City-owned cables, wires and other equipment for municipal purposes upon or within any and all of Grantee's ducts or conduits. For the purposes of this section, the term "municipal purposes" includes but is not limited to the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems and other public purposes. Grantee may charge the City its usual and customary fees for installation and maintenance of said City-owned equipment. However, Grantee shall not charge the City any fees for use of Grantee's conduits or ducts, nor shall the value of such use of Grantee's conduits or ducts be deducted from its franchise fee and/or other fees payable to the City. Grantee shall not be responsible for any damage resulting to the cables, wires or other property of the City occurring as a result of City's use of Grantee's conduits or ducts.

In the case of new construction of conduits or ducts by Grantee, Grantee shall, after providing prior written notice to the City and upon the City's request, install one two-inch duct to be reserved for municipal purposes. Grantee need not, however, install manholes or handholes for the City.

Section 10. STREET VACATION. If any street or portion thereof used by Grantee is vacated by the City during the term of this franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street area, Grantee shall, without expense to the City, forthwith remove its facilities from such street, and restore, repair or reconstruct the street area where such removal has occurred, and place the street area in such condition as may be required by the Council. In the event of failure, neglect or refusal of Grantee, after thirty days' notice by City Council, to repair, improve or maintain such street portions, the City may do such work or cause it to be done, and the cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket.

Section 11. MAINTENANCE OF FACILITIES. Grantee shall provide and put in use all equipment and appliances necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any person, firm or corporation within the City. Grantee, at its own expense, shall repair, renew, change and improve said facilities and appliances from time to time as may be necessary to accomplish this purpose. Grantee shall not connect in a manner that requires any customer to install conduits, ducts, cables or other facilities, under or over a City street or other public right of way.

Section 12. COMMON USERS. Whenever in the judgment of the City Engineer it is deemed impracticable to permit construction of an underground conduit system by any other business which may at the time have authority to construct or maintain conduits or ducts in the City streets, the City Engineer may require Grantee to afford to such business the right to use such of Grantee's conduits or ducts as the City Engineer finds practicable in common with the Grantee, pursuant to the terms and conditions of an agreement for use of conduits and ducts being entered into by the parties. If the parties fail to agree within a reasonable time, the City Council shall establish by resolution such terms, conditions and regulations as it may determine to be fair and equitable.

Section 13. DISCONTINUING USE OF FACILITIES. Whenever Grantee intends to discontinue using any facility within the streets, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the facility and the date on which the Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding the Grantee's request that any such facility remain in place, the City Engineer may require the Grantee to remove the facility from the street area or modify the facility in order to protect the public health and safety or otherwise serve the public

interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee removes or modifies the affected facility as directed by the City Engineer, or until the rights to and responsibility for the affected facility are accepted by another person or corporation having authority to construct and maintain such facilities, Grantee shall be responsible for all necessary repairs, relocations of the facility, and maintenance of the street area in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility.

Section 14. HAZARDOUS SUBSTANCES

A. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous substances (as defined by Oregon Revised Statutes 465.210(9) (1989)), relating to Grantee's conduits, ducts, cables, or any other of Grantee's facilities in the City streets.

B. Grantee shall maintain and inspect its conduits, ducts, cables, vaults, structures or other facilities located in the City streets. Upon reasonable notice to Grantee, the City may inspect Grantee's conduits, ducts, cables, or other facilities in the City streets to determine if any release of hazardous substances has occurred, or if a release of hazardous substances may occur, from or related to Grantee's facilities. In removing or modifying Grantee's conduits, ducts, cables or other facilities as provided in this franchise, Grantee shall also remove all residue of hazardous substances related to such facilities.

C. Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of hazardous substances related to Grantee's facilities in City streets.

Section 15. FRANCHISE NOT EXCLUSIVE. This franchise is not exclusive. The City expressly reserves the right to grant rights or franchises to other persons or corporations, as well as the right in its own name as a municipality, to use its streets for similar or different purposes allowed Grantee hereunder.

Grantee shall provide the City with a copy of all of its significant communications with the Oregon Public Utility Commission, such as tariff filings and formal comments on open dockets.

Section 16. REGULATION. The power and right reasonably to regulate the exercise of the privileges permitted by this franchise in the public interest shall at all times be vested in the City Council. Grantee shall not be relieved of its obligation to promptly comply with any provision of this franchise by a failure of the City to promptly enforce compliance with this franchise. Services furnished by Grantee under this franchise shall be rendered using the best practicable commercial methods and practice, insuring

the least danger of life and property compatible with the best obtainable service.

Section 17. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

A. Neither this franchise nor any property owned and operated by Grantee by authority hereof shall be sold, leased, mortgaged, assigned or otherwise transferred without the prior consent of the City as expressed by ordinance, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall notify the City of any transfers to such entities within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of system tangible assets of Grantee's telecommunications system for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's telecommunications system without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this franchise.

B. Grantee shall not lease or sublease any of its conduits, ducts, cable or other facilities, or the public right-of-way in which such are contained, without the City's consent as expressed by ordinance. However, Grantee may dedicate or lease its telecommunications system or any portion thereof, or otherwise make its system available in the ordinary conduct of its business, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its system.

C. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Auditor an executed counterpart or certified copy thereof. No sale, lease, mortgage, assignment, transfer or merger may occur until the successor, assignee or lessee has complied with the requirements of Section 8 of this franchise.

For the purpose of determining whether the City will consent to any assignment, transfer, merger, lease or mortgage, the City may inquire into the qualifications of the prospective party. The Grantee shall assist the City in any such inquiry. The City may condition any assignment, transfer, merger, lease or mortgage upon such conditions as it deems appropriate.

Section 18. FORFEITURE AND OTHER REMEDIES.

A. Forfeiture. In addition to any other rights set out elsewhere in this franchise, the City reserves the right to declare a forfeiture of the franchise, and all of Grantee's rights arising thereunder, in the event that:

- (1) The Grantee violates any material provision of the franchise; or,
- (2) The Grantee's construction schedule is delayed for over 18 months; or,

- (3) The Grantee becomes unable or unwilling to pay its debts, or is adjudged a bankrupt; or,
- (4) The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or,
- (5) The Grantee fails to obtain and maintain any permit required by any federal or state regulatory body.

B. Additional Remedies. In addition to any rights set out elsewhere in this franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

- (1) Impose a financial penalty of up to \$1,000, per franchise violation; or,
- (2) Suspend the Grantee's franchise rights until the Grantee corrects or otherwise remedies the violation.

In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

C. Revocation. The City Council may revoke this franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the franchise.

D. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) days prior written notice of its intent to exercise its rights under this section, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if the Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this section.

Section 19. EXPIRATION.

A. Upon the expiration of this franchise, the City shall have the right, at its election, to:

- (a) Renew or extend the franchise to Grantee, in accordance with the Portland City Charter and applicable law;

- (b) Invite additional proposals and award this franchise to another grantee;
- (c) Terminate the franchise without further action; or,
- (d) Take such further action as the City deems appropriate.

Until such time as the City exercises its rights under this section the Grantee's rights and responsibilities within the City shall be controlled by the terms of the franchise.

Section 20. CHARTER AND GENERAL ORDINANCES TO APPLY.

A. This franchise is hereby made subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, now in effect or hereafter made effective, and particularly to the applicable provisions presently contained in Sections 10-101 through 10-218 inclusive, of said Charter (1942 compilation and revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City of Portland, which are hereby expressly made a part of this franchise.

B. If any provision of this franchise, or its application to any person or circumstance, is declared invalid or unenforceable, the remainder of this franchise shall not be affected thereby.

C. The City shall take such actions as are lawful and necessary to ensure that information identified by Grantee as confidential, such as trade secrets or business records required by the City to be produced by Grantee, shall remain confidential and shall not be subject to public disclosure.

D. Any litigation between the City and the Grantee arising under or regarding this franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

Section 21. WRITTEN ACCEPTANCE. On or before the thirtieth day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. A failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

Section 22. NOTICE. Any notice provided for under this franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

ORDINANCE No.

If to the City: Office of Cable Communications and Franchise
Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 1021
Portland, Oregon 97204

If to the Grantee: AT&T District Engineering
and Construction Manager
4430 Rosewood Drive
P.O. Box 9083, Suite 3688
Pleasanton, CA 94566-9083

Section 23. OTHER AUTHORITY SUPERSEDED. Upon effectiveness of this franchise, any and all authority to operate previously granted to Grantee by the City, is superseded by this franchise.

Passed by the Council, **MAR 08 1990**

Commissioner Mike Lindberg
JZettler and BWalters
December 29, 1989

BARBARA CLARK
Auditor of the City of Portland

By *Mary Flanagan* Deputy

389
Agenda No. 182

ORDINANCE No. 162822

Title

Grant a franchise to American Telephone and Telegraph Company for a period of ten years. (Ordinance)

JAN 31 1990

PASSED TO SECOND READING MAR 07 1990 9:30 A.M.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
BLUMENAUER	✓	
BOGLE	✓	
KOCH	✓	
LINDBERG	✓	
CLARK	—	—

FOUR-FIFTHS AGENDA	
BLUMENAUER	
BOGLE	
KOCH	
LINDBERG	
CLARK	

Filed DEC 29 1989

BARBARA CLARK
Auditor of the CITY OF PORTLAND

By Mary L. Howard
Deputy

INTRODUCED BY
Commissioner Lindberg

NOTED BY THE COMMISSIONER
Affairs <i>MDL/DJ</i>
Finance and Administration
Safety
Utilities
Works

BUREAU APPROVAL
Bureau: Office of Cable Comm. and Franchise Management
Prepared By: Jo Zettler Date: 12/29/89
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>[Signature]</i>

AGENDA	
Consent	Regular X

NOTED BY
City Attorney <i>Benjamin Watters</i>
City Auditor
City Engineer