

ORDINANCE NO. 667

AN ORDINANCE GRANTING TO US WEST COMMUNICATIONS, INCORPORATED, HEREINAFTER SOMETIMES REFERRED TO AS "GRANTEE", ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO DO A GENERAL COMMUNICATION BUSINESS AND TO PLACE, ERECT, LAY, MAINTAIN AND OPERATE IN, UPON, OVER AND UNDER THE STREETS, ALLEYS, AVENUES, THOROUGHFARES AND PUBLIC HIGHWAYS, PLACES AND GROUNDS WITHIN THE CITY OF MADRAS, POLES, WIRES AND OTHER APPLIANCES AND CONDUCTORS FOR ALL TELEPHONE AND OTHER COMMUNICATION PURPOSES; AND REPEALING ORDINANCE NOS. 455 AND 473.

The City of Madras, Oregon ordains as follows:

Section 1 [Franchise Granted] There is hereby granted by the City of Madras to US West Communications, Incorporated, its successors and assigns, the right and the privilege to do a general communications business within said City of Madras and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares and public highways, places and grounds within the said City, poles, wires and other appliances and conductors for all telephone and other communications purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, its successors and assigns, may be laid underground and such other apparatus may be used as may be necessary or proper to operate and maintain the same. However, Grantee agrees and acknowledges that for all new subdivisions and developments, undergrounding shall be required unless otherwise mutually agreed due to time and cost considerations.

Section 2 [Excavations] It shall be lawful for said Grantee, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds in said City for the purposes of placing, erecting, laying and maintaining poles or other supports or conduits for such wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City of Madras.

Section 3 [Restoration of Streets] Whenever Grantee, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay and failing to do so the City of Madras, 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 being made by the Grantee, its successors and assigns, the said City shall cause the repairs to

be made at the expense of the Grantee, its successors and assigns.

Section 4 [City Excavation of Streets] Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City of Madras from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City of Madras in or upon which the poles, wires or conductors of the Grantee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus. The City shall not require Grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving Grantee's right therein or without requiring Grantee to be compensated for the costs thereof.

Section 5 [Moving of Buildings, Etc.] Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wire or other apparatus of the Grantee to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways with the City, the Grantee will perform such a rearrangement within a reasonable period after written notice from the owner or contractor-mover desiring to move said building, machinery or other objects. Said notice shall bear the approval of the City, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by the Grantee in making such a rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save the Company harmless of and from any and all damages of claims whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the facilities of the Grantee, and if required by the Grantee, shall be accompanied by a cash deposit or good and sufficient bond to pay any and all such costs as estimated by the Grantee.

Section 6 [Franchise Fee] In consideration of the rights, privileges and franchise hereby granted, said Grantee, US West Communications, Incorporated, its successors and assigns, shall pay the City of Madras from and after the date of the acceptance of this franchise and until its expiration, quarterly, seven percent (7%) per annum of its gross revenues derived from exchange access services as defined in ORS 401.710 within the corporate limits of the City of Madras less net uncollectibles. Such payment shall be made on a quarterly basis on or before April 30, July 31, October 31 and January 31 for the calendar quarters immediately preceding. Such payment made by the Grantee will be accepted by the City of Madras from the Grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit in inspection fees or similar charges for street opening, installation, construction or for any other purpose now or hereafter to be imposed by the City of Madras upon the Grantee during the term of this franchise.

Section 7 [Term of Franchise] The rights, privileges and franchise herein granted shall continue and be in force for the period of twenty (20) years from and after the date this

Ordinance becomes effective, except that it is understood and agreed that either party may terminate or renegotiate this Agreement after 180 days notices in writing. This Ordinance shall be subject to any and all State or Federal legislative enactments.

Section 8 [Effective Date] This Ordinance shall, if accepted by Grantee, take effect and be in force thirty (30) days from and after its passage and approval. Said Grantee shall, within thirty (30) days of the passage and approval of this Ordinance, file with the Recorder of the City of Madras its written acceptance of all the terms and conditions of the Ordinance.

Section 9 [Repeal] Ordinance Numbers 455 and 473 are hereby repealed.

Passed by the City Council and approved by the Mayor this 26th day of May, 1998.