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ORDINANCE NO. 620

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO TELEPHONE UTILITIES OF WASHINGTON, INC., A WASHINGTON CORPORATION, d/b/a PTI COMMUNICATIONS COMPANY, INC., A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AERIAL AND UNDERGROUND TELECOMMUNICATIONS EQUIPMENT, ELECTRONICS, HARDWARE OR DEVICES OF ANY KIND USED FOR THE PURPOSE OF PROVIDING TELECOMMUNICATIONS SERVICES ON, UNDER, ALONG, OVER AND ACROSS THE PUBLIC STREETS AND ALLEYS OF THE CITY OF GIG HARBOR, WASHINGTON.

WHEREAS, RCW 35A.47.040 authorizes code cities to issue non-exclusive franchises for use of public streets and rights-of-way, and

WHEREAS, this ordinance has been introduced more than five (5) days prior to its passage by the City Council, and

WHEREAS, this ordinance has been submitted to the City Attorney and has received at least a majority vote of the entire City Council, now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
DO ORDAIN AS FOLLOWS:

Section 1. Telephone Utilities of Washington, Inc., dba PTI Communications, a Washington corporation, hereafter designated as PTI Communications, its successors or assigns, are hereby given and granted the nonexclusive right and franchise to construct, operate and maintain aerial and underground telecommunications equipment, electronics, hardware or devices of any kind used for

the purpose of providing telecommunications services under, along, across and over all of the City streets and alleys as now existing or whether hereafter constructed or dedicated.

Section 2. Said franchise encompasses all existing communication lines, and authorizes construction and maintenance of such new lines and underground communications cables as may hereafter be constructed by PTI Communications for providing communication services to private citizens, public bodies, or any other entity requesting communication service.

Section 3. General Construction Limitations and Conditions.

A. PTI Communications's facilities shall be so located or relocated and so erected so as to interfere as little as possible with traffic or with such streets, avenues, highways, bridges and other public places and egress, ingress to abutting property, provided, however, PTI Communications shall not break up, block or disturb any streets or other public thoroughfare without prior written permission from the City. All such construction and installation work, whenever same crosses any of the public properties, shall be done under the supervision of and upon the inspection of the City and PTI Communications shall timely submit to the City, prior to any such work, detailed plans and specifications of any such proposed work. The location of any franchise property in a street or other public area shall be subject to the approval of the City and such approval shall be given in writing and PTI Communications shall be subject to all

applicable ordinances, regulations, permits or licenses as provided by the ordinances of the City as they now exist or as they are amended.

B. During any period of construction, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-way and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and PTI Communications shall at all times post and maintain proper barricades during any such period of construction as is required by the laws and statutes of the State of Washington and the City. Any portion of the streets so excavated shall within a reasonable time as quickly as possible after said excavation be restored and replaced by PTI Communications at its sole cost and expense in at least as good condition as it was immediately prior to the time of such excavation and to be performed in accordance with the applicable rules and regulations of the City.

Section 4. Temporary Removal and Relocations by PTI Communications. PTI Communications agrees and covenants, at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street or other public property any of its installation when so required by the City by reason of traffic condition, public safety, street vacation, dedications of new rights-of-way and the establishment or improvement thereof, including widening, freeway construction, change or establishment of street grade or the construction of any public improvement or

structure by any governmental agency acting in a governmental capacity, provided that PTI Communications shall in all such cases have the privilege to temporarily bypass or permanently relocate, in the authorized portion of the same street or right-of-way upon approval by the City, any section of its cable or appurtenances to be so temporarily disconnected or removed.

Section 5. Raising and Moving Wires. If the raising or moving of wires is required by any party other than the City, at any time to enable use of the streets, or other public rights-of-way or properties, such party shall make written application at least fifteen days in advance of such required use, and PTI Communications shall raise or move said cable, wires and/or other equipment at the expense of the applicant, payable in advance. If the request is made by the City, PTI Communications shall raise or move the same at no charge to the City.

Section 6. The City of Gig Harbor, in the granting of this franchise, does not waive any rights which it now holds or hereafter may acquire to regulate the use and control of the City streets and alleys covered by this franchise.

Section 7. PTI Communications shall indemnify, defend, and hold harmless the City of Gig Harbor, its officers, agents and employees from any and all claims, suits, demands and judgments for damages, costs and reasonable attorney's fees incurred or alleged to have been incurred by any person, including PTI Communications's own employees, and alleged to have arisen directly or indirectly, in whole or in part, from any act or omission on the part of PTI

Communications, its officers, agents, contractors and employees, including, without limitation, the placement, maintenance, repair of electrical poles, appurtenances, wires and other equipment, regardless of whether it is also alleged the City of Gig Harbor, its officers, agents and employees caused or contributed thereto; provided, however this indemnity shall not apply if said damages result from the sole negligence of the City of Gig Harbor, its officers, agents and employees.

Section 8. If at any time the City of Gig Harbor shall change the width, grade or location of its streets, sidewalks or alleys, or install or change its underground utilities or install or change its open drainage facilities, PTI Communications shall upon request of the City, upon thirty (30) days written notice, at its sole expense relocate its facilities maintained pursuant to this franchise in the manner and at the location as directed by the City.

Section 9. This franchise is non-exclusive and does not divest the City of Gig Harbor of the power to grant other franchises for the same or other purposes upon the streets and alleys of the City.

Section 10. Public Liability Insurance. PTI Communications shall maintain in full force and effect during the life of this franchise issued pursuant to this ordinance commercial general insurance naming the City, its officials, employees and agents as additional insureds, and requiring thirty (30) days written notice to the City of any cancellation or material change

thereof, with an insurance company authorized to do business in the State of Washington, in amounts as determined by the City but in no event shall the coverage be less than six million dollars (\$6,000,000) per occurrence, combined single limit for property damage and bodily injury. A certificate or certificates evidencing the effectiveness of said policy or policies, authenticated by the insurance carrier or carriers shall be filed with the City Clerk and likewise authenticated proof of renewals shall be filed showing the above coverage for the duration of the franchise.

Section 11. Where new poles are placed upon the streets and alleys of the City, they shall be placed and located, unless otherwise permitted by the City authority, centered six feet from the right-of-way line. And unless otherwise permitted by such authority the minimum vertical clearance for new or rebuilt overhead electrical power lines upon said streets and alleys shall be 18. The measurement to be from the high point of the street or alley for crossing lines and from ground level on non-crossing lines.

Section 12. Where underground cables and appurtenances are installed or constructed by PTI Communications under the streets and alleys of the City, PTI Communications shall, unless otherwise permitted by the authority of the City, install and construct the same as follows:

A. Underground communication cables shall cross said streets or alleys at a minimum depth of 36 inches below the surface of the finished roadway. Said cables shall be in metal or schedule

80 PVC conduit under said finished roadway. When trenches are cut for placement of above, the cut roadway shall be patched with a like roadway surface material.

B. Underground communication cables placed longitudinally on the streets or alleys shall be confined on a five foot wide strip abutting the right-of-way line. Said cables shall be buried a minimum depth of 30 inches below the ground (street) line.

C. Fiber optic cable may be installed under the terms of this franchise under such conditions are approved by the Public Works Director of the City, provided however, that PTI Communications hereby releases the City from any claim for damage, lost profits and other expenses arising from damage to said fiber optic cables unless said damage is solely caused by any negligent act of the City.

Section 13. The term of this franchise shall be for twenty-five (25) years, commencing the 1st day of March 1992, and ending the 31st day of March, 2016, conditioned upon the acceptance in writing thirty (30) days by PTI Communications of the terms and conditions herein imposed.

Section 14. Revocation. PTI Communications covenants and agrees, for itself, its successors and assigns, that in the event of any neglect, failure, refusal or omission to comply with any of the terms, conditions and regulations of any franchise and the rules and ordinances of the City, that the City may give notice

of such default, and if such default has not been corrected or the conditions of the franchise have not be complied with within thirty (30) days after receipt of such a notice, then any franchise and all rights accruing thereunder shall be immediately subject to forfeiture and termination, at the option of the City. PTI Communications shall thereupon immediately and at its sole expense, remove all lines, poles and other appurtenances from the City right of way, and restore the right of way to its prior condition.

Section 15. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 16. This ordinance shall take effect and be in full force five (5) days after publication of the attached summary which is hereby approved.

APPROVED:


MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:


CITY CLERK, Mark E. Hoppen

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL: 2/10/92
PUBLISHED: 2/26/92
EFFECTIVE DATE: 3/2/92
ORDINANCE NO. _____