

52216

TRANSMISSION LINE EASEMENT

Vol. M85 Page 13037

M4-443

BONANZA #267.2

Ac. # 671.2

THIS INDENTURE is made and entered into this 30th day of June, 1984, by and between OREGON, CALIFORNIA AND EASTERN RAILWAY COMPANY, a Nevada corporation, of P.O. Box 1088, Klamath Falls, Oregon 97601, herein called "Owner," and UNITED TELEPHONE COMPANY OF THE NORTHWEST, an Oregon corporation, P.O. Box 2458, White City, Oregon 97503, herein called "Grantee," WITNESSETH:

I

Owner, in consideration of the sum of One Hundred and No/100 Dollars (\$100.00), receipt of which is hereby acknowledged and the faithful observance and strict performance of the terms and conditions hereof, hereby grants and conveys to Grantee, its successors and assigns, a right of way, easement, and privilege to construct, maintain, operate, repair, replace and remove in whole or in part, an overhead telephone transmission line with the necessary poles, towers, wires, insulators, fixtures and appurtenances, on, over and across the following described property situated in the County of Klamath, State of Oregon:

Upon, over and across Owner's 100 foot wide strip of land in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, Township 37 South, Range 11 $\frac{1}{2}$ East of W.M., upon which is located Owner's operating railroad, on a right of way 20 feet in width. The centerline of said right of way intersects the centerline of said strip of land, at right angles, at, or near, mile post 23.15 (approximately 61 feet South of the Southerly edge of Horton Road).

Subject as to said lands to all matters of public record, together with the right of ingress and egress to and from said transmission line.

II

The terms and conditions hereof are as follows:

1. Owner shall have the right to fully use and enjoy the above described premises, except as to the rights herein granted, provided that any subsequent grant of easement or rights on said land shall be subject to Grantee's rights hereunder.

2. Owner shall in no event be liable in any manner to Grantee for any damage which may result to Grantee's transmission line as a result of Owner's use of the aforesaid railroad, excepting only such damage as may have been caused by the negligence of Owner, or its employees.

01/5324/17/27
6/15/84

3. Grantee shall construct and install its transmission line in strict accordance with the specifications set forth on EXHIBIT B attached hereto and by this reference made a part hereof.

4. Grantee shall at all times during the term of this easement be liable to Owner for all loss of, damage to, or destruction of, the property of Owner caused by or growing out of any act, or omission to act, of Grantee, whether negligent or otherwise.

5. Grantee hereby agrees to defend, indemnify and save harmless Owner and its employees against any and all loss, damage, liability, claims, demands or costs resulting from injury or harm to persons or property (including, without limitation, Grantee's employees or property) arising out of or in any way connected with Grantee's exercise of the rights herein granted, excepting only such injury or harm as may have been caused solely by the fault or negligence of owner or its employees. The Grantee's activities shall be deemed to include those of its Contractors.

6. Grantee shall, obtain and maintain in full force and effect during the term hereof, at Grantee's sole expense, the following insurance coverage:

Comprehensive General Liability, including contractual, XCU, products and completed operations with minimum limits of \$500,000.00 per occurrence and \$1,000,000.00 aggregate bodily injury and \$500,000.00 property damage or combined single limit of \$1,000,000.00. Owner shall be an additional insured.

Grantee shall furnish Owner with Certificates of Insurance evidencing compliance herewith. Owner shall have the right to require the use of its Insurance Certificate form by Grantee's insurance carrier. Grantee shall require Grantee's insurance carrier to give Owner at least thirty (30) days' written notice prior to any change or cancellation of said coverage, either in whole or in part, and the failure of Grantee's insurance carrier to give said notice as required shall be a default on Grantee's part.

7. Grantee shall pay all taxes and assessments of every kind which may hereafter be levied or become a lien against Owner's said land based on any assessment or valuation of Grantee's transmission line.

8. The easement and rights hereby granted shall continue and be enforced for such time as Grantee shall maintain and use said transmission line provided, however, that upon Grantee's abandonment of

said line, or lines, all rights and interests whatsoever of Grantee with respect to such abandoned portion shall cease and terminate without notice and shall revert to the Owner of said lands, but Grantee shall nevertheless remain liable for all claims and damages arising hereunder.

9. This indenture and all of the rights and obligations hereunder shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this easement, in duplicate, as of the day and year first above written.

ACCEPTED BY:

UNITED TELEPHONE COMPANY
OF THE NORTHWEST

OREGON, CALIFORNIA & EASTERN
RAILWAY COMPANY

By: David C. Baker
David C. Baker

By: J. G. Kauffman
Vice President

Title: Vice President-Operations

Attest: John P. Mendenhall
Assistant Secretary

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this 20 day of June, 19 84, before me personally appeared J. G. Kauffman, to me known to be the Vice President of Oregon, California & Eastern Railway Company, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Robert M. Mogenssen
Notary Public in and for the State of
Washington, residing at Tacoma.

STATE OF Oregon }
COUNTY OF Had River } ss.

13040

On this 7th day of August, 1984, before me personally appeared David C. Baker, to me known to be the Vice President - Operations of United Telephone of the Northwest, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Patricia M. Gibbons
Notary Public in and for the State of
Oregon, residing at Had River.

My commission expires: August 27, 1987

SPECIFICATIONS FOR CROSSING OVER RAILWAY TRACKS

13041

1. (a) Construction and installation of the overhead line shall be performed in a manner as not to unreasonably interfere with or prevent train operations.

(b) Grantee shall place no machinery or equipment on the railroad grade or tracks.

2. (a) Grantee shall notify Owner's railroad dispatcher at least twenty-four (24) hours in advance of the exact time the overhead line crossing of the railroad right of way is to be performed and accomplished and secure the consent and approval of the manager of Owner's said office of the time when such construction and installation work is to be conducted.

(b) Grantee shall employ and furnish a watchman who shall be present at all times during the construction and installation of said overhead line and it shall be the duty of such watchman to flag all rail traffic and adequately warn such traffic of Owner's construction work.

Additionally, warning flags shall be placed at a distance of one fourth ($\frac{1}{4}$) mile before and after the construction site. Both warning flags shall be removed after completion of each day's work and job completion.

3. The overhead line shall be a minimum distance of 33' above the top of the railroad track.

4. All necessary supports for the overhead line shall be at the railroad right of way edge.

5. Where laws or orders of appropriate public authority prescribe a higher degree of protection than specified herein, then the higher degree of protection so prescribed shall be deemed a part of the specifications set forth in this Exhibit.

To Please return to
Don Amburn, UTNW
PO Box 360, Sunnyside
WA 98944

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
 of August A.D., 19 85 at 9:57 o'clock A M., and duly recorded in Vol. M85
 of Deeds on Page 13037

FEE \$21.00

Evelyn Biehn, County Clerk
 By [Signature]