

ORDINANCE NO. 159

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO GTE SOUTHWEST INCORPORATED, GRANTEE, AND ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, ERECT, BUILD, EQUIP, OWN, MAINTAIN AND OPERATE IN, ALONG, UNDER, OVER AND ACROSS THE STREETS, AVENUES, ALLEYS, BRIDGES, VIADUCTS AND PUBLIC GROUNDS OF THE CITY OF WHEELER, TEXAS, SUCH POSTS, POLES, WIRES, CABLES, CONDUITS AND OTHER APPLIANCES, STRUCTURES AND FIXTURES NECESSARY OR CONVENIENT FOR RENDITION OF TELEPHONE AND OTHER COMMUNICATION SERVICE AND FOR CONDUCTING A GENERAL LOCAL AND LONG DISTANCE TELEPHONE BUSINESS; PROVIDING FOR CONSIDERATION: FOR PERIOD OF GRANT; FOR ASSIGNMENT; FOR METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INCALIDITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEELER TEXAS:

SECTION 1. GRANT OF RIGHT, PRIVILEGE AND FRANCHISE FOR CONSTRUCTION AND MAINTENANCE OF TELEPHONE PLANT AND SERVICE

That the right, privilege and franchise be, and the same is hereby, granted to GTE Southwest Incorporated, hereinagter referred to as the "Telephone Company" and its successors or assigns, subject to the terms and conditions hereinafter set forth, to construct, erect, build, equip, own, maintain, and sperate in, along, under, over and across the streets, alleys, avenues, bridges, viaducts and public grounds of the City, such posts, poles, wires, cables, conduits and other appliances, structures and fixtures necessary or convenient for rendering telephone and other communication services and for conducting a general local/extended area and long-distance telephone business.

SECTION 2. SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUIT

That all poles to be placed shall be of sound material and reasonably straight, and shall be so set that they will not interfere with the flow of water to any gutter or drain, and so that the same will interfere as little as practicable with the ordinary travel on the street or sidewald. The location and route of all poles, stubs, guys, anchors, conduits and cables to be placed and constructed by the Telephone Company in the construction and maintenance of itstelephone system in the City, and the location of all conduits to be laid by the Telephone Company within the limits of the City under this ordinance, shall be subject to the reasonable and proper regulation, contril and direction of the City Council or of any City official to whom such duties have been or may be delegated.

That nothing in this ordinance is intended to add to or to detract from any authority granted by the Legislature of the State of Texas to the City.

### SECTION 3. STREETS TO BE RESTORED TO GOOD CONDITION

That the surface of any street, alley, highway or public place within the City disturbed by the Telephone Company in building, constructing, renewing or maintaining its telephone plant and system shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work and maintained to the satisfaction of the City Council, or of any city official to whom such duties have been or may be delegated, for one year from the date the surface of said street, alley, highway or public place is broken for such construction or maintenance work, after with time responsibility for the maintenance shall become the duty of the City. No such street, alley, highway, or public place shall be encumbered for a longer period than shall be encumbered for a longer period than shall be necessary to execute the work.

### SECTION 4. TEMPORARY REMOVAL OF WIRES

That the Telephone Company on the request of any person shall remove or raise or lower its wires within the City temporarily to permit the moving of houses or other bulky structures. The expenses of such temporary removal, raising or lowering of wires shall be paid by the benefited party or parties, and the Telephone Company may require such payment in advance. The Telephone Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes. The Clearance of wires above ground or rails within the City and also underground work shall conform to the basic standards of the National Electrical Safety Code, National Bureau of Standards, United States Department of Commerce, as promulgated at the time of erection thereof.



## SECTION 5. TREE TRIMMING

That the right, license, privilege and permission is hereby granted to the Telephone Company, its successors and assigns, to trim trees upon and overhanging the streets, alleys, sidewalks and public places of the City, so as to prevent the branches of such trees from coming in contact with the wires or cables of the Telephone company, and when so ordered by the City, said trimming shall be done under the supervision and direction of the City Council or of any City official to whom said duties have been or may be delegated.

## SECTION 6. CASH CONSIDERATION TO BE PAID BY THE TELEPHONE COMPANY.

(a) In consideration for the rights and privileges herein granted, the company's usage of public rights-of way, the temporary interference with the use of public rights-of-way, the administration of this franchise by the City, and other costs and obligations undertaken by the City herein, the Company hereby agrees to pay the city during the term of this franchise a sum of money equal to two Percent ( 2% ) of annual "Gross Revenues," as that term is defined herein, collected within the corporate limits of the City. For purpose of the franchise, "Gross Revenues" shall mean all revenue whatsoever derived within the corporate limits of the City from regulated, noncompetitive local exchange transmission services that directly employ Company facilities located in the City's public right-of-way as further described by each revenue code contained in Attachment A hereto, which is hereby made a part of this franchise.

(b) Such fee payment shall be made in four (4) calendar quarterly payments. Each payment shall be due and payable on or before the last day of the calendar month following the close of the calendar quarter for which the payment is calculated.

(c) The City shall have the right to review or audit the Company's franchise related books and records regarding any amounts paid under this franchise. The City shall give written notice to the Company of any additional amount claimed to be due to the city as a result of the City's review. Such notice shall be given no later than forty-eight (48) months following the close of the calendar year covered by such statement(s). The additional amount due to the City, if any, shall be paid within thirty (30) days following determination by the parties that such amount is due and payable.

## SECTION 7. PAYMENT OF CASH CONSIDERATION TO BE IN LIEU OF ANY OTHER PAYMENTS EXCEPT USUAL GENERAL OR SPECIAL AD VALOREM TAXES

That the City agrees that the consideration set forth in the preceding section hereof shall be paid and received in lieu of any tax, license, charge, fee, street or alley rental or any other character of charge for use and occupancy of the streets, avenues, alleys, bridges, viaducts and public grounds of the City; in lieu of any pole tax or inspection fee tax; in lieu of any easement or franchise tax, whether levied as an ad valorem, special or other character of tax; and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied. Should the City not have the legal power to agree that the payment of the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals, and easement or franchise taxes aforesaid, then the City agrees that it will apply so much of said payment as may be necessary to the satisfaction of the Telephone Company's obligations, if any to pay any such taxes, licenses, charges, fees, rentals, and easement or franchise taxes.

SECTION 8. INDEMNITY

The Telephone Company, as a condition of the grant of this franchise, and in consideration thereof, shall indemnify and hold the City harmless against all claims for damages to persons or property by reason of the construction, maintenance and operation of the Telephone company's facilities, and conduct of its business, in any way growing out of the granting of this franchise, directly, or indirectly, when such injury shall be found by a court of competent jurisdiction to have been caused by the negligent act or omission, or intentional misconduct, of the Telephone Company or any of its officers, agents or employees, or by any person for whose negligent act or omission or intentional misconduct the Telephone Company is by law responsible, provided that the City provides to the Telephone Company written notice of any such claim or the filing of such lawsuit within ten days of the City's receipt thereof. Provided further, that this indemnity shall only apply to the extent that the loss, damage, or injury results from the negligence or intentional wrongful act or omission of the Telephone Company, its officers, agents, or employees, and does not apply to the extent such loss, damage, or injury is attributable to the negligence or intentional wrongful act or omission of the City, or the city's agents, representatives, or employees or any other person or entity. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the Telephone Company and the City.

SECTION 9. NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE

That nothing herein contained shall be construed as giving to the Telephone Company any exclusive privileges.

SECTION 10. SUCCESSORS AND ASSIGNS

That the rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION 11. PERIOD OF FRANCHISE

That this agreement shall be in full force and effect for the period beginning with the effective date hereof and ending five (5) years after such date.

SECTION 12. PARTIAL INVALIDITY AND REPEAL PROVISIONS

That if any section, sentence, clause, or phrase of this Ordinance is for any reason held to be illegal, ultra vires or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this Ordinance. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed.



SECTION 13. ACCEPTANCE OF AGREEMENT

That the Telephone Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

Approved this 17 day of June, A.D. 1991

Wanda Heib  
Mayor

ATTEST:

Claudine Jonsteward  
City Secretary

The City, Acting herein by its duly constituted authorities, hereby waives the three separate meetings and hereby declares the foregoing Ordinance passed and finally effective as of this 17 day of June, 1991.

Wanda Heib  
Mayor

Barbara Feely  
Councilmember

Walter Simmons  
Councilmember

Bob McLain  
Councilmember

Mark Frankenburg  
Councilmember

Don E. Rose  
Councilmember