

ORDINANCE NO. 54

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO GENERAL TELEPHONE COMPANY OF THE SOUTHWEST, 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 PELICAN BAY, 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 INVALIDITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
PELICAN BAY, TEXAS:

SECTION 1. GRANT OF RIGHT, PRIVILEGE AND FRANCHISE FOR CON-
STRUCTION AND MAINTENANCE OF TELEPHONE PLANT AND
SERVICE

That the right, privilege and franchise be, and the same is hereby, granted to General Telephone Company of the Southwest, hereinafter 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 operate 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 sidewalk. 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 its telephone 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, control 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 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 which 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 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 expense 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. ANNUAL CASH CONSIDERATION TO BE PAID BY THE TELEPHONE COMPANY

That to indemnify the City for any and all possible damages to its streets, alleys, and public grounds which may result from the placing therein of the Telephone Company's poles, conduits, or other equipment or apparatus, and to compensate the City for its superintendence of this agreement, and as the cash consideration for the same, the Telephone Company agrees to pay to the City quarterly during the continuance of this agreement a sum of money equal to two percent (2%) of the quarterly gross receipts derived by the Telephone Company from exchange access rates, contained in Sections 6 and 36 of its approved General Exchange Tariff, charged customers within the corporate limits of the City during the preceding quarter. The first payment hereunder shall be made June 30, 1982, and shall equal in amount to two percent (2%) of the gross receipts derived from exchange access rates from the date of passage of this Ordinance to March 31, 1982; and thereafter payment shall be made quarterly on September 30th, December 31st, March 31st and June 30th, as herein provided, in arrears.

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, alleys, and public places 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 franchise 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.

NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE

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

SECTION 9.

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 10.

PERIOD OF FRANCHISE

That this agreement shall be in full force and effect for the period beginning with the effective date hereof and ending Twenty-Five (25) years after such date.

SECTION 11.

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 12.

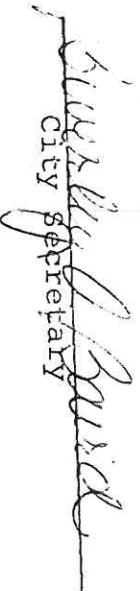
ACCEPTANCE OF AGREEMENT

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 19th day of January, A.D. 1982.


Mayor


ATTEST:

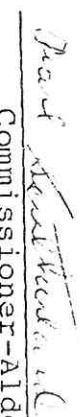

City Secretary

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 19th day of January, 1982.


Mayor


Commissioner-Alderman


Commissioner-Alderman


Commissioner-Alderman


Commissioner-Alderman


Commissioner-Alderman

ACCEPTANCE

WHEREAS, the City Council of the City of Pelican Bay, Texas, did on the 19th day of January, 1982, enact an Ordinance entitled:

"AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND FRANCHISE TO GENERAL TELEPHONE COMPANY OF THE SOUTHWEST, 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 PELICAN BAY, TEXAS, SUCH AS 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 INVALIDITY."

and

WHEREAS, said Ordinance was on the 19th day of January, 1982, duly approved by the Mayor of said City and the seal of said City was thereto affixed and attested by the City Secretary;

NOW THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, General Telephone Company of the Southwest hereby accepts said Ordinance and files this its written acceptance with the City Secretary of the City of Pelican Bay, Texas, in his office.

Dated this 19th day of February, A.D. 1982.

GENERAL TELEPHONE COMPANY
OF THE SOUTHWEST

By: Ward Whitworth
Vice President

TEST:

[Signature]
Secretary

Acceptance filed in the office of the City Secretary of Pelican Bay, Texas, this 19th day of February, A.D. 82.

[Signature]
City Secretary