

Utility

Oct. 1, 1970

ORDINANCE NO. 3

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 BEACH CITY, POSTS, POLES, WIRES, 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; REQUESTING AND AUTHORIZING THE PROVISION OF FACILITIES AND EQUIPMENT FOR AND THE FURNISHING OF CERTAIN EXTENDED AREA TELEPHONE SERVICE; PROVIDING FOR THE FIXING OF RATES, FOR THE ASSIGNMENT OF FRANCHISE, FOR CONSIDERATION, FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

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

SECTION 1. CONSTRUCTION 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, herein-after 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, posts, poles, wires, conduits and other appliances, structures and fixtures necessary or convenient for rendering telephone and other communication service and for conducting a general local and long-distance telephone business. The Telephone Company is hereby authorized to provide facilities and equipment for the furnishing of extended area service between the exchange service areas of the Beach City, Texas telephone exchange and the telephone exchange(s) of Baytown, Shiloh, Tri-City, Highlands and Mont Belvieu, or, on an optional basis, the Houston Enlarged Metropolitan exchange as such exchange(s) ~~is~~ (are) now or may hereafter be constituted. The Telephone Company is authorized to provide such extended area service in its Beach City exchange in lieu of purely local exchange service, it being intended that the Telephone Company shall not be required to provide extended area service and purely local exchange service upon a selective basis. "Extended area service", as



used herein, means the implementation of telephone service by the Telephone Company to its subscribers in the service area of its Beach City exchange whereby they may not only call and be called by one another, without specific charge therefor, as under a purely local exchange service, but whereby they may also call and be called by subscribers of one, or more or all of the connecting exchanges hereinabove enumerated without specific charge therefor.

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 in 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.

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. OPERATION AND MAINTENANCE OF TELEPHONE PLANT

That the Telephone Company shall maintain its system in reasonable operating condition at all normal times during the continuance of this agreement. An exception to this condition is automatically in effect when service furnished by the Telephone Company is interrupted, impaired, or prevented by fires, strikes, riots, or other occurrences beyond the control of the Telephone Company, or by storms, floods or other casualties, in any of which events the Telephone Company shall do all things, reasonably within its power to do, to restore normal service.

#### SECTION 5. 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 6. 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 7. ANNUAL CASH CONSIDERATION TO BE PAID BY 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 and maintenance therein or thereon of the Telephone Company's poles, conduits, or other telephone 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 annually during the continuance of this agreement a sum of money equal to two percent (2%) of the annual gross receipts for the preceding year received by the Telephone Company from the rendition to subscribers located within the corporate limits of the City of local exchange and extended area telephone transmission service. The first payment hereunder shall be made March 31, 1971, and shall equal in amount to two percent (2%) of the gross receipts received from ~~the date~~ December 31, 1969 ~~of passage of this ordinance~~ to December 31, 1970; and thereafter payment shall be made annually on March 31st, as herein provided.

SECTION 8. 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 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 9. DELEGATION OF AUTHORITY

That the City may delegate to a designated official or officials the exercise of any and all of the powers conferred upon the City hereby or by applicable State statutes and law which relate to the supervision and regulation of the Telephone Company in its exercise of the rights and franchises herein conferred, but the governing body of the City of Beach City, Texas, shall reserve to itself exclusively the power to fix and regulate charges and rates of the Telephone Company to the full extent that such power is provided by law and this franchise. All lawful powers not delegated by the governing body of the City of Beach City, Texas, are reserved to, and shall be exercised by, said governing body exclusively.

At all reasonable times, during the continuance of the rights herein granted, the local exchange and general offices of the Telephone Company shall be open to the said governing body or its designated official for inspection of original contracts, books of account and cost operating records pertaining to its operations covered by this franchise. Any method of accounting heretofore or hereafter adopted or authorized by any law of the United States or of the State of Texas or under or pursuant to the authority of any such law shall be deemed proper and sufficient accounting as to all matters covered thereby.

#### SECTION 10. RATE REGULATION

That it is mutually understood and agreed that the rates to be charged to inhabitants of the City of Beach City, Texas



for extended area service (in lieu of strictly local exchange service) shall be fixed and regulated by the governing body of said City of Beach City (provided such City, at such time, retains statutory rate-making authority) in accordance with the statutes and laws of the State of Texas; provided, however, that such rates and charges shall be sufficient to provide the Telephone Company with a fair return on the fair value of its property used and useful in the rendition of such telephone services to the subscribers in the Beach City exchange.

SECTION 11. DISCONTINUANCE OR INTERRUPTION OF EXTENDED AREA SERVICE

Discontinuance or interruption of all or any portion of the extended area service requested and authorized hereby shall not be grounds for forfeiture of this franchise, provided such discontinuance or interruption results from causes beyond the control of the Telephone Company, including acts or omissions by the owner or owners of connecting exchange or exchanges participating in the rendition of such extended area service.

SECTION 12. PERIOD OF FRANCHISE

The right, privilege and franchise hereby granted shall be for a period of thirty-five (35) years from the date of passage and approval of this ordinance, subject to the conditions hereinabove and hereinafter set forth.

SECTION 13. NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE

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

SECTION 14. 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 15. 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 16. LIABILITY OF CITY

That during the period this ordinance is in existence and enjoyed by the Telephone Company, the Telephone Company shall indemnify and hold harmless the City from any and all claims for losses, damages and injuries occasioned to or sustained by any persons, firms or corporations, or their property by reason of the existence, maintenance, operation or continuance of this ordinance and the exercise of all rights herein contracted for, except as herein otherwise provided.

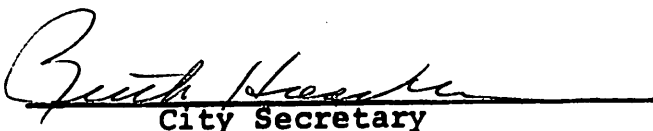
SECTION 17. ACCEPTANCE OF AGREEMENT

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 passage and approval by the Mayor, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED this 27<sup>th</sup> day of October,  
A.D. 1920.

  
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 27 day of Oct., 1970.

Jimmy McCallister  
Mayor

A. J. Crawley  
Commissioner-Alderman

Tom Bayless  
Commissioner-Alderman

Beth Sandler  
Commissioner-Alderman

Travis E. Reed  
Commissioner-Alderman

\_\_\_\_\_  
Commissioner-Alderman



ACCEPTANCE

WHEREAS, the City Council of the City of  
Beach City, Texas, did on the 27th day of  
October, 19 70, 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 BEACH CITY, POSTS, POLES, WIRES, 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; REQUESTING AND AUTHORIZING THE PROVISION OF FACILITIES AND EQUIPMENT FOR AND THE FURNISHING OF CERTAIN EXTENDED AREA TELEPHONE SERVICE; PROVIDING FOR THE FIXING OF RATES, FOR THE ASSIGNMENT OF FRANCHISE, FOR CONSIDERATION, FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.",

and

WHEREAS, said ordinance was on the 27th day of  
October, 19 70, 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 ordi-  
nance as enacted, approved and attested, the General Telephone Company  
of the Southwest hereby accepts said ordinance and files this its  
written acceptance with the City Secretary of the City of Beach City,  
Texas, in his office.

DATED this 6th day of November,  
A.D. 19 70.

GENERAL TELEPHONE COMPANY  
OF THE SOUTHWEST

By: Robert M. Houston  
Vice President

ATTEST:

Helen Dyson  
Assistant Secretary

APPROVED AS  
TO FORM

J. H. Gray  
LAW DEPT.

Acceptance filed in the office of the City Secretary of  
Beach City, Texas, this 20th  
day of November, 19 70.

Beach Houston  
City Secretary