

*Jerry F. Lewis*

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 WALLIS, TEXAS, ANY AND ALL SUCH 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 THE FIXING OF RATES, FOR THE ASSIGNMENT OF FRANCHISE, FOR CONSIDERATION, FOR REPEAL OF CONFLICTING ORDINANCES AND FOR PARTIAL INVALIDITY.

WHEREAS, the General Telephone Company of the Southwest, hereinafter referred to as the "Telephone Company" is now and has been engaged in the telephone and communications business in the State of Texas, and in furtherance thereof, has erected and maintained certain items of its plant construction in the City of Wallis, Texas, hereinafter referred to as the "City", for many years pursuant to such rights as have been granted it by and under the laws of the State of Texas, and subject to the exercise of such reasonable rights of regulation under the police power as have been also lawfully granted by and under said laws to said City; and

WHEREAS, it is to the mutual advantage of both the City and the Telephone Company that an agreement should be entered into between the Telephone Company and the City establishing the conditions under which the Telephone Company shall operate in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALLIS, TEXAS, THAT:

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, any and all such appliances, structures and fixtures necessary or convenient for rendering telephone and other communication service and for conducting a communications business, including the rendition of local and long-distance telephone service. The appliances, structures and fixtures of the Telephone Company in said City shall remain as now constructed, subject to such changes as, under the limitations and conditions herein prescribed, may be considered necessary by the City in the exercise of its lawful powers and by the Telephone Company in the conduct of its business.

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

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 constricted by the Telephone Company in the construction and maintenance of its communications 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

The surface of any street, alley, highway, or public place disturbed by the Telephone Company in building, constructing, renewing or maintaining its 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 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

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

The Telephone Company on the request of any person shall remove or raise or lower its wires 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.

#### SECTION 6. TREE TRIMMING

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 THE TELEPHONE COMPANY

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 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 of local exchange telephone transmission service within the corporate limits of the City. The first payment hereunder shall be made March 31, 1974, and shall equal in amount to two percent (2%) of the gross receipts received from the date of passage of this Ordinance to December 31, 1973; 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

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. RATE REGULATION

That it is mutually understood and agreed that the rates to be charged to inhabitants of the City of Wallis for local exchange telephone service shall be fixed and regulated 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 upon the fair value of all of its property used and useful in the rendition of local exchange telephone service in the Wallis Texas exchange.

SECTION 10. PERIOD OF TIME OF THIS ORDINANCE - TERMINATION

This agreement shall be in force and effect for a full term and period of thirty-five (35) years from and after its effective date hereinafter provided.

SECTION 11. NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE

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

SECTION 12. SUCCESSORS AND ASSIGNS

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 13. PARTIAL INVALIDITY AND REPEAL PROVISIONS

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 14. LIABILITY OF CITY

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 15. ACCEPTANCE OF AGREEMENT

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 \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY SECRETARY