

ORDINANCE NUMBER 76 - 006

AN ORDINANCE WHEREBY THE CITY OF NEW BERLIN TEXAS, AND THE SOUTHWESTERN BELL TELEPHONE COMPANY AGREE THAT THE TELEPHONE COMPANY SHALL CONTINUE TO ERECT AND MAINTAIN ITS POLES, WIRES, ANCHORS, CABLES, MANHOLES, CONDUITS AND OTHER PLANT CONSTRUCTION AND APPURTENANCES ALONG, ACROSS, ON, OVER, THROUGH, ABOVE AND UNDER ALL PUBLIC STREETS, AVENUES, ALLEYS, PUBLIC GROUNDS AND PIACES IN SAID CITY, UNDER REGULATIONS AND RESTRICTIONS AND THAT THE CITY SHALL RECEIVE AN ANNUAL PAYMENT AND THE RIGHT TO USE CERTAIN FACILITIES OF THE TELEPHONE COMPANY, ALL AS HEREIN PROVIDED :

WHEREAS, the Southwestern Bell Telephone Company, hereinafter referred to as the "Telephone Company," is now and has been engaged in the telephone business in the State of Texas and in furtherance thereof, has erected and maintained certain items of its plant construction in the City of New Berlin, Texas, herein after 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 BOARD OF ALDERMAN OF THE CITY OF NEW BERLIN, TEXAS, THAT:

SECTION 1. CONSTRUCTION AND MAINTENANCE OF TELEPHONE PLANT AND SERVICE.

The poles, wires, anchors, cables, manholes, conduits and other plant construction and appurtenances, used in or incident to the giving to telephone service and to the maintenance of a telephone business and system by the Telephone Company in the 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 exer-

cise of its lawful powers and by the Telephone Company in the exercise of its business of furnishing telephone service; and the Telephone Company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its said plant and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require along, across, on, over, through, above and under all the public streets, avenues, alleys and public grounds and places within the present limits of the City and within said limits as the same from time to time maybe extended, subject to the regulations, limitations and conditions herein prescribed.

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 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 Board of Aldermen 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 telephone plant and system shall be restored by the telephone company within a reasonable time after the completion of the work to as good a condition as before the commencement of work and maintained to the satisfaction of the Board of Aldermen 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 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 the 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 Board of Aldermen, 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 damage 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 superintendance 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 the agreement a sum of money equal to two per-cent (2%) of the annual gross receipts for the preceding year received by the Company from the rendition of local exchange telephone transmission service within the corporate limits of the City. The total sum of money paid hereunder shall not in any event exceed the amount allowed by the Public Utility Commission of Texas as a reasonable and necessary expense of operation for rate making purposes. The first payment hereunder shall be made April 15, 1977, and shall equal in amount two per-cent (2%) of the gross

receipts received from January 1, 1976, to December 31, 1976; and thereafter payment shall be made annually on April 15, as herein provided.

SECTION 8. PAYMENT OF CASH CONSIDERATION TO BE IN LIEU OF ANY OTHER PAYMENTS EXCEPT USUAL GENERAL OR SPECIAL ADVOLOREM 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 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 volorem, special or other character of tax; and in lieu of any imposition except the usual general or special ad volorem 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 maybe 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. FACILITIES TO BE FURNISHED CITY AS ADDITIONAL CONSIDERATION

In addition to the consideration set forth in Section 7, the Telephone Company shall hold itself ready to furnish, subject to the use of the City, such wire space as may be required from time to time by the City upon the poles now owned or here after erected by the Telephone Company in the City for the use of the City's police and fire alarm system; provided that the required wire space shall not exceed the wire capacity of one cross arm on any one pole. The location on the poles of this fire and police wire space shall be determined on specific applications for space, at the time the applications are received from the City, and will be allotted in accordance with the considerations for electrical construction of the United States Department of Commerce, Bureau of Standards. In its wire construction on the Telephone Company's poles, the City will follow the suggestions and requirements laid down for wire construction in the Rules and Regulations of the Bureau of Standards of the United States Department of Commerce. Where conduits are laid or are constructed by the Telephone Company, said Company shall hold itself ready to furnish sufficient duct space not to exceed capacity of one duct for use by the City in carrying its police and fire alarm wires. All such wires, whether on poles or in conduits, shall be constructed, maintained and operated in such manner as not to interfere with nor create undue hazard in the opera-

tion of the telephone system of the Telephone Company. It it further agreed that the Telephone Company shall not be responsible to any party or parties whatsoever for any claims, demands, losses, suits, judgments for damages or injuries to persons or property by reason of the construction, maintenance, inspection or use of the police and fire alarm wires belonging to the City, and the City shall insure, indemnify and hold the Telephone Company harmless against all such claims, losses, demands, suits and judgments.

SECTION 10. ATTACHMENTS ON POLES AND SPACE IN DUCTS NOT HERE AFFECTED

Nothing in this ordinance contained shall be construed to require or permit any electric light or power wire attachments by the City or for the City, nor to require or permit any electric light or power wires to be placed in any duct used by the City in the Telephone Company's conduits. If light or power attachments are desired by the City or for the City, or if the City desires to place electric light or power wires in any duct used by the City, then a further separate noncontingent agreement shall be prerequisite to such attachments or such use of any duct used by the City. Nothing herein contained shall obligate or restrict the Telephone Company in exercising its right voluntarily to enter into pole attachment, pole usage, joint ownership, and other wirespace and facilities agreements with light and power companies and with other wire using oompanies which may be privileged to operate within the City

SECTION 11. PERIOD OF TIME OF THIS ORDINANCE - TERMINATION

This agreement shall be in full force and effect for the period beginning with the effective date hereof and ending five (5) years after April 1, 1976 provided that at the end of the expiration of the initial period, such term shall be automatically renewed forthwith for successive periods of five (5) years, conditioned, however, that if during the last four months of the initial period or of any successive five (5)year period, not less than ninety days' prior written notice shall be given either to the Telephone Company by the City or to the City by the Telephone Company, setting forth the desire of the giver of such notice to terminate this agreement, then in such case this agreement shall terminate at the expiration of the then current period.

SECTION 12. NO EXCLUSIVE PRIVILEGES CONFERRED BY THIS ORDINANCE

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

SECTION 13. 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.

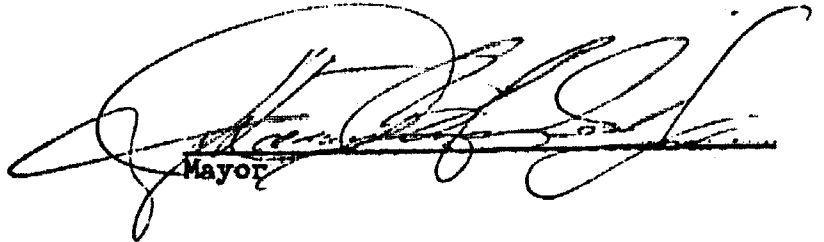
SECTION 14. PARTIAL INVALIDITY AND REPEAL PROVISIONS

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 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 Clerk, 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.

PASSED, APPROVED and ADOPTED this 18th day of OCTOBER, 1976.

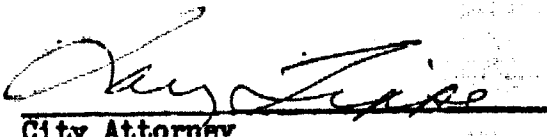


Mayor



Christine Koop
City Clerk

APPROVED AS TO FORM:



City Attorney

ACCEPTANCE

WHEREAS, the Board of Aldermen of the City of New Berlin, Texas, did on the 18 day of October, 1976, enact an ordinance entitled:

"AN ORDINANCE WHEREBY THE CITY OF NEW BERLIN, TEXAS, AND THE SOUTHWESTERN BELL TELEPHONE COMPANY AGREE THAT THE TELEPHONE COMPANY SHALL CONTINUE TO ERECT AND MAINTAIN ITS POLES, WIRES, ANCHORS, CABLES, MANHOLES, CONDUITS, AND OTHER PLANT CONSTRUCTION AND APPURTENANCES, ALONG, ACROSS, ON, OVER, THROUGH, ABOVE AND UNDER ALL PUBLIC STREETS, AVENUES, ALLEYS, PUBLIC GROUNDS AND PLACES IN SAID CITY, UNDER REGULATIONS AND RESTRICTIONS AND THAT THE CITY SHALL RECEIVE AN ANNUAL PAYMENT AND THE RIGHT TO USE CERTAIN FACILITIES OF THE TELEPHONE COMPANY, ALL AS HEREIN PROVIDED."

and

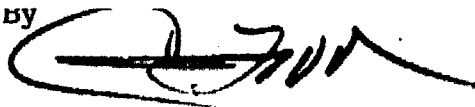
WHEREAS, said ordinance was on the 18 day of October, 1976, duly approved by the Mayor of said City and the Seal of said City was thereto affixed and attested by the City Clerk:

NOW, THEREFORE, in compliance with the terms of said ordinance as enacted, approved and attested, the Southwestern Bell Telephone Company hereby accepts said ordinance and files this its written acceptance with the City Clerk of the City of New Berlin, Texas in his office.

Dated this 1st day of December, 1976 .

SOUTHWESTERN BELL TELEPHONE COMPANY

by



Vice President and General Manager

Acceptance filed in the office of the City Clerk of New Berlin,
Texas, this day of Dec 10, 1976 .

Auristine Koepf
City Clerk