

ORDINANCE NO. 1992-5

AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND USE OF CITY RIGHTS-OF-WAY 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 INGLESIDE ON THE 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  
INGLESIDE ON THE BAY, TEXAS:

SECTION 1.      GRANT OF RIGHT, PRIVILEGE AND USE OF CITY RIGHTS-  
OF-WAY FOR CONSTRUCTION AND MAINTENANCE OF  
TELEPHONE PLANT AND SERVICE

That the right, privilege and authority to use City rights-of-way be, and the same is hereby, granted to GTE Southwest Incorporated, 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 benefitted 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 right-of-way rental agreement 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 agreement a sum of money equal to Four <sup>DB</sup> percent (4 %) of annual "Gross Revenues," as that term is defined herein, collected within the corporate limits of the City ("Annual Fee"). For purposes of this agreement, "Gross Revenues" shall mean all revenue 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 agreement.

(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 books and records which are directly related to

this right-of-way rental agreement regarding any amounts paid under this agreement. 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.

(d) The Telephone Company shall bill, on a monthly basis, to all customers residing within the City, pro rata, the Annual Fee. The amount billed will be identified as local tax according to tariff.

(e) In the event there is any change in the corporate boundaries of the City, whether by annexation, disannexation or otherwise, the City shall provide to the Telephone Company, within sixty (60) days following the date of final passage of any such action, maps of the affected area(s) with sufficient detail to enable the Telephone Company to determine which customers reside inside or outside the City following such action. Within sixty (60) days of receipt of such maps, the Telephone Company shall either begin or cease billing, as appropriate, customers affected by the change in corporate boundaries.



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 right-of-way 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 right-of-way 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 right-of-way taxes.

SECTION 8.

INDEMNITY

The Telephone Company, as a condition of the grants of authority herein and in consideration thereof, shall indemnify and hold the City harmless against all claims for damages to persons or property to the extent proximately caused by the negligence or willful misconduct of Telephone Company's

officers, employees, or agents by reason of the construction, maintenance and operation of the Telephone Company's facilities which are subject to this agreement. This indemnity applies where, and to the extent, the Telephone Company's negligence or intentional act is either the sole or a contributing cause of the injury, death or damage. This indemnity does not extend to any portion of any injury, death or damage caused by either the sole or contributing negligence or intentional act or omission of the City or any third party. 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 AGREEMENT

That this agreement shall be in full force and effect for the period beginning with the effective date hereof and ending Twenty (20) years after such date.

*JSW*




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 5<sup>th</sup> day of May, A.D. 1992.

  
Alfred Robles  
Mayor

ATTEST:

Diana Hargrave  
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 5<sup>th</sup> day of May, 1992.

Alfred Robb  
Mayor

Lillie M. Dawson  
Commissioner-Alderman

John R. Sh  
Commissioner-Alderman

Keith Regan  
Commissioner-Alderman

Edgar Jones  
Commissioner-Alderman

Gregory Allen  
Commissioner-Alderman



STATE OF TEXAS                   §  
   §  
COUNTY OF SAN PATRICIO       §

I, Virginia Hargrave, City Secretary of the City of Ingleside on the Bay, Texas, do hereby certify that the above and foregoing is a true and correct copy of the right-of-way rental agreement granted by the City of Ingleside on the Bay, Texas, to GTE Southwest Incorporated as indicated herein. The same is now recorded in Volume I, Page 5, of the Ordinance Records of the City of Ingleside on the Bay, Texas.

WITNESS MY HAND this the 5<sup>th</sup> day of May,  
A.D. 19    .

Virginia Hargrave  
City Secretary

(Seal)



ACCEPTANCE

WHEREAS, the City Council of the City of Ingleside on the Bay, Texas, did on the 5th day of May, 1992, enact an Ordinance entitled:

"AN ORDINANCE GRANTING THE RIGHT, PRIVILEGE AND USE OF CITY RIGHTS-OF-WAY 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 INGLESIDE ON THE 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."

and

WHEREAS, said Ordinance was on the 5th day of May, 1992 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, GTE Southwest Incorporated hereby accepts said Ordinance and files this its written acceptance with the City Secretary of the City of Ingleside on the Bay, Texas, in his office.

Dated this 14 day of May, A.D. 1992.

GTE SOUTHWEST INCORPORATED

By: Donna L. Russell

Vice President

ATTEST:

Donna L. Russell  
Assistant Secretary



Acceptance filed in the office of the City Secretary of  
Ingleside on the Bay, Texas, this 28 day of May, A.D.  
1992.

Adelia Martinez  
City Secretary



ATTACHMENT A

<u>ACCOUNT TITLE</u>	<u>ACCOUNT</u>
Basic Area Revenue	5001
Optional Extended Area Revenue	5002
Cellular Mobile Revenue	5003
Other Mobile Services Revenue	5004
Local Private Line Revenue	5040
Other Local Exchange Revenue	5060