

ORDINANCE NO. 002

AN ORDINANCE WHEREBY THE CITY OF RAVENNA, TEXAS, AND GTE SOUTHWEST, INCORPATED AGREE THAT, FOR THE PURPOSE OPERATING ITS TELECOMMUNICATIONS BUSINESS, THE TELEPHONE COMPANY SHALL CONSTRUCT, ERRECT, BUILD, EQUIP, OWN, MAINTAIN AND OPERATE IN, ALONG, UNDER, OVER AND ACROSS THE STREETS, AVENUES, ALLEYS, BRIDGES, VIADUCTS AND PUBLIC GROUNDS OF THE CITY, SUCH POSTS, POLES, WIRES, CABLES, CONDUITS AND OTHER APPLIANCES, STRUCTURES AND FIXTURES NECESSARY OR CONVENIENT FOR RENDITION OF TELEPHONE AND OTHER COMMUNICATION SERVICES IN SAID CITY AND FOR CONDUCTING A GENERAL LOCAL AND LONG-DISTANCE TELEPHONE BUSINESS; PRESCRIBING THE CONDITIONS GOVERNING THE USE OF PUBLIC RIGHT-OF-WAY FOR THE TELEPHONE COMPANY'S TELECOMMUNICATIONS BUSINESS; PRESCRIBING THE ANNUAL COMPENSATION DUE THE CITY UNDER THIS ORDINANCE; PROVIDING FOR AN INDEMITY CLAUSE; SPECIFYING GOVERNING LAWS; FOR FUTURE CONTIGENCIES; FOR REPEAL OF CONFLICTING ORDIANCES; FOR RELEASE OF ALL CLAIMS UNDER PRIOR ORDIANCES; FOR ALTERNATE DISPUTE RESOLUTION; FOR A LIMITATIONS PERIOD; FOR VENUE; AND METHOD OF ACCEPTANCE.

WHEREAS, GTE Southwest Incorporated, hereinafter referred to as the **Telephone Company**, is now and has been engaged in the telecommunications business in the State of Texas and in furthermore thereof, has erected and maintained certain items of its physical plant in the City of Ravenna, 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 reasonable exercise of the police powers granted by and under said laws of the City; and

WHEREAS, it is recognized by the parties hereto that changes in the telecommunications industry, changes in technology, changes in state and federal laws, and changes in the accounting practices mandated by the Uniform System of Accounts promulgated by the Federal Communications Commission ("FCC"), along with regulatory requirements of the Public Utility Commission of Texas ("PUC"), have caused the traditional method of determining the amount of compensation to municipalities to become impractical for telecommunications utilities. In order to address these issues in a manner beneficial to both the City and the Telephone Company, the City and the Telephone Company have chosen the method of determining the amount of compensation provided for in this Ordinance to eliminate the expense and the time related to audits, to achieve administrative simplicity, to provide the city with predictable revenues and an opportunity for growth and to avoid the expense and delays of litigation which could be necessary to resolve any issues in controversy between the parties; 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 maintain and construct its physical plant in the public rights-of-way within the City a corporate limits in the future;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CIMMISSIONERS
OF THE CITY OF RAVENNA, TEXAS,**

THAT:

SECTION 1. DEFINITIONS

Whenever used in this Ordinance, the following words and terms shall have the definitions and meanings provided in this section:

(a) FACILITIES: All Telephone Company duct spaces, manholes, poles conduits, underground and overhead passageways, and other equipment, structures and appurtenances and all associated Transmission Media, which are located in the City rights-of-way.

(b) TRANSMISSION MEDIA: All Telephone Company cables, fibers, wires or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice or data or other purposes, which are located in the City rights-of-way.

(c) **RIGHTS-OF-WAY:** All present and future streets, avenues, highways, alleys, bridges, viaducts and public grounds within the city limits of the City.

(d) **CITY:** The City of Ravenna, Texas.

(e) **TELEPHONE COMPANY:** GTE Southwest Incorporated.

SECTION 2: **CONSTRUCTION AND MAINTENANCE OF TELEPHONE PLANT
AND SERVICE**

Pursuant to the laws of the State of Texas, the Telephone Company has the non-exclusive right and privilege to use and occupy the public rights-of-way in the City for the operation of a telecommunications system. The Telephone Company's facilities and Transmission Media used in or incident to the provision of telecommunications service and to the maintenance of telecommunications business by the Telephone Company in the City shall remain as now constructed, subject to such changes as under the conditions prescribed in this Ordinance may be considered necessary to the public health and safety by the City in the exercise of its lawful police powers and such changes and extensions as may be considered necessary by the Telephone Company in the pursuit of its telecommunications business. The terms of this Ordinance shall apply throughout the City, and shall include the provision of telecommunication services in any newly annexed areas upon the effective date of such annexation.

SECTION 3: SUPERVISION BY CITY OF LOCATION OF POLES AND CONDUITS

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 the 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, cables and any other facilities to be placed and constructed by the Telephone Company in the construction and maintenance of its telecommunications 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 Commissioners or of any City official to whom such duties have been or may be delegated. 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 4: ATTACHMENTS TO POLES AND SPACE IN DUCTS

Nothing contained in this Ordinance shall be construed to require or permit any pole attachments for electric light or power wires or communications facilities or systems not provided by the Telephone Company to be attached to the Telephone Company's poles or other physical plant or placed in the Telephone Company's conduit. If the City desires pole attachments for electric light or power wires or communications facilities or system not

provided by the Telephone Company, or if the City desires to place communications facilities or systems not provided by the Telephone Company in any Telephone Company duct, then a further separate, noncontingent agreement shall be prerequisite to such attachment(s) or such use of any duct by the City. Nothing contained in this Ordinance shall obligate or restrict the Telephone Company in exercising its rights voluntarily to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies which are authorized to operate within the City.

SECTION 5: STREET TO BE RESTORED TO GOOD CONDITION

The surface of any street, avenue, alley, highway, viaduct or public ground within the City distributed by the Telephone Company in building, constructing, renewing, or maintaining its telecommunications system shall be restored within a reasonable time after completion of the work in compliance with the applicable provisions of the Code of Ordinances and maintained to the satisfaction of the Board of Commissioners, or of any City official to whom such duties have been or may be delegated, for a period of one (1) year following completion of the restoration, after which time responsibility for the maintenance shall revert to the City. No such street, avenue, alley, highway, viaduct or public ground shall be encumbered for a longer period than shall be necessary to execute the work.

SECTION 6: **TEMPORARY REMOVAL OF ARIAL WIRES**

The Telephone Company on 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 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 7: **TREE TRIMMING**

In the pursuit of maintaining its telecommunications system, the Telephone Company, its contractors, agents, successors and assigns shall have the right to trim trees upon and overhanging the streets, avenues, alleys, bridges, viaducts and public grounds of the City, so as to prevent the branches of such trees from coming in contact with the wires, cables or other facilities of the Telephone Company.

SECTION 8: **COMPENSATION TO THE CITY**

(a) As compensation for the Telephone Company's use and occupancy of the City's rights-of-way and for the City's oversight and supervision of such use and occupancy, in consideration for all other agreements and promises made herein the City and in lieu of and in full compensation for any lawful tax, license, charge, right-of-way permit fee or inspection fee, whether charged to the Telephone Company or its contractor(s), or any right-of-way easement or street or alley rental or franchise tax or other character of charge for the use and occupancy of the rights-of-way within the City, except the usual general ad valorem taxes, special assessments in accordance with State law or Sales Taxes now or hereinafter levied by the City in accordance with State law, or properly development or building fees, the City hereby imposes upon the Telephone Company, and the Telephone Company agrees to pay, an annual fee (the "Annual Fee"). The amount of the "Annual Fee" for the first effective year of this Ordinance shall be \$750.00. In no event shall the "Annual Fee" be less than the above amount for each year this Ordinance is in effect, except as provided in the case of disannexation as set forth in paragraph 8(e), or as provided in Section 12 herein.

The Telephone Company will bill the "Annual Fee" pro rata, to its customers residing within the corporate limits of the City. The pro rata charge to each customer shall be calculated as follows: No later than the date the Telephone Company accepts this

Ordinance, and three months prior to each subsequent anniversary date of this Ordinance, the Telephone Company shall determine the "Customer Fee". To determine the "Customer FEE", the "Annual Fee" shall be divided by twelve (12); the result shall be divided by the sum of the weighted local exchange access lines as determined by applying appropriate allocation factors to the number of access lines in each class of service. The resultant will be the "Customer Fee". For purposes of this calculation, "local exchange access lines" shall be defined as residence, single line business, multi-line business, Centrex, Centranet, key lines and PABX trunks. The number of such access lines shall be determined for the end of the month prior to the month in which this agreement is finally passed by the City. Each residential customer shall pay for each residential local exchange access line, a monthly amount equal to the "Customer Fee". Each business customer shall pay for each business local exchange access line a monthly amount weighted and calculated according to the business customer's class of service.

The Telephone Company shall annually adjust its billings to customers to account for any undercollection or overcollection of the "Annual Fee" due the City.

For the second and subsequent years while this Ordinance remains in effect, the "Annual Fee" is subject to adjustment by application of the Growth Factor set out in paragraph 8(c). This adjustment for the Growth Factor will be made effective as of each

Anniversary date of this Ordinance.

(b) The "Annual Fee" for each year shall be paid in four equal payments. The due dates shall be February 28, May 31, August 31, and November 30, with the first payment under this Ordinance due on February 28. In the event of any over or undercollection from the customers, then the Telephone Company may make a pro rata credit or charge to the customer billing for affected customers at the end of each calendar year. No such adjustment may be made more than 150 days following the date of expiration of this Ordinance. If, however, it is impractical to credit any overcollection to customers, then such overcollection shall be paid to the City and credited to the next year's "Annual Fee", and the "Customer Fee" appropriately adjusted to reflect such credit.

(c) The Growth Factor shall be an annual increase of five (5) percent of the "Annual Fee". This increase will be made effective as of each anniversary date of this Ordinance.

(d) Payment of the "Annual Fee" shall not relieve the Telephone Company from paying all applicable municipally-owned utility service charges. Should the City not have the legal power to agree that the payment of the foregoing charge shall be in lieu of the taxes, licenses, charges, rights-of-way permit or inspection fees, rentals, rights-of-way

easements of franchise taxes as described in Section 8(a) above, then the City agrees that it will apply so much of such payments as may be necessary to the satisfaction of the Telephone Company's obligation, if any, to pay any such taxes, licenses, charges, rights-of-way permit or inspection fee, rentals rights-of-way easements or franchise taxes.

(e) In the event that either (1) territory within the boundaries of the City shall be disannexed and a new incorporated municipality created which includes such territory or (2) an entire, existing incorporated municipality shall be consolidated or annexed into the City, then notwithstanding any other provision of this Ordinance, the Annual Fee shall be adjusted. To accomplish this adjustment, within the sixty (60) days following the action effecting a disannexation/annexation as described above, the City shall provide the Telephone Company with maps of the affected area(s) showing the new boundaries of the City.

In the event of an annexation as described above, the Annual Fee paid to the City will be adjusted to include the amount of the Annual Fee paid by the Telephone Company to the existing incorporated municipality being annexed. In the event that the annexed municipality had no ordinance imposing an Annual Fee or in the event of disannexation, then the adjustment to the Annual Fee will be based on the City's net gain or loss of

telephone subscribers using the same methodology prescribed in section 8(a) above. The effective date of the adjustment shall be within 120 days following the annexation/disannexation action by the City, provided that the City will have supplied the appropriate annexation/disannexation maps to the Telephone Company in accordance with the provisions herein.

SECTION 9: **SUCCESSORS AND ASSIGNS**

The rights, powers, limitations, duties and restrictions herein provided for shall insure to and be binding upon the parties hereto and upon their respective successors and assigns.

SECTION 10: **PERIOD OF ASSIGNMENT**

This agreement shall be in full force and effect for a period beginning with the effective date hereof and ending five (5) years after such date. This Ordinance may be extended for an additional five (5) year period if mutually agreed to in writing by both parties.

SECTION 11: **FUTURE CONTINGENCIES**

Notwithstanding anything contained in this Ordinance to be contrary, in the event that (1) this Ordinance or any part hereof, (2) any tariff provision by which the Telephone Company seeks to collect the charge imposed by this Ordinance, or (3) any procedure provided in this Ordinance, or (4) any compensation due the City under this Ordinance, becomes, or is

declared or determined by judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the Telephone Company and the City shall meet and negotiate in good faith to obtain a new ordinance that is in compliance with the authority's decision or enactment ; and, unless explicitly prohibited, the new ordinance shall provide the City with a level of compensation comparable to that set forth in this ordinance so long as such compensation is recoverable by the Telephone Company in a mutually agreed manner permitted by law for the unexpired portion of the term of this ordinance.

SECTION 12. GOVERNING LAW

- (a) This ordinance shall be constructed in accordance with the City Charter and City Codes in effect on the date of passage of this ordinance to the extent that such Charter and Codes are not in conflict with or in violation to the Constitution and laws of the United States or the State of Texas.

- (b) This ordinance shall be construed and deemed to have been negotiated at arms length and drafted by the combined efforts of the City and the Telephone Company.

SECTION 13: **ALTERNATIVE DISPUTE RESOLUTION**

- (a) Notwithstanding any other provision of this ordinance, the Parties hereto agree that any claim, cause of action or other dispute based upon or arising out of this ordinance (a "dispute") shall be conducted, decided, determined and/or resolved pursuant to and in accordance with the provisions of this Section. The parties desire to resolve disputes arising out of this Ordinance without litigation. Accordingly, in the event of any dispute hereunder, the Parties hereto agree to attempt to good faith to resolve their dispute between themselves. At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Ordinance. The parties intend that these negotiations be conducted by non-lawyer, business representatives.
- (b) Except for action seeking a temporary restraining order or injunction related to the purpose of this Ordinance, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure, and also agree not to sue any party to this Ordinance with respect to any controversy or claim arising out of the or relating to this Ordinance or its breach prior to exhausting the procedures set out in this section.

(c) If the parties are unable to settle their dispute within sixty (60) days of the initial request, either party may, on written notice to the other party, initiate non-binding mediation of the dispute before a single mediator affiliated with Judicial Arbitration and Mediation Services, Inc. (JAMS) in Dallas County, Texas or another mediation service mutually agreeable to the parties. Mediation is a forum in which an impartial person, the mediator, facilitates communication between the Parties to promote reconciliation, settlement, or understanding among them. A Mediator may not impose his own judgement on the issues for that of the Parties. Unless expressly authorized by the Parties, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute. Unless the Parties agree otherwise, all matters, including the conduct and demeanor of the Parties and their counsel during mediation, are confidential and shall be inadmissible as settlement discussion pursuant to Rule 408 of the Federal Rules of Evidence or the applicable state rules. The mediator shall be selected by agreement of the Parties within thirty (30) days after each Party first requests mediation of the other. If a single mediator cannot be agreed upon, then each Party shall select its own Mediator from those on the JAMS approved list; those two mediators will then select a third independent mediator who will conduct the mediation session(s).

The Mediator's fees will be borne equally by both Parties. In the event mediation is requested, the applicable statutes of limitations shall be automatically tolled until the Mediator declares an impasse. In the event mediation fails, the Parties may then resort to means outside the scope of this Section.

SECTION 14: LIMITATIONS PERIOD

The City and the Telephone Company mutually agree that any dispute, claim or cause of action one party may have against the other party arising from or in any way related to this Agreement must be brought to the attention of the party, by written notice received no later than four (4) years from the date of the act or omission giving rise to the dispute, claim or cause of action; otherwise, such dispute, claim or cause of action shall be waived and the party asserting such dispute, claim or cause of action shall be barred from pursuing the same.

SECTION 15: INDEMNITY

The Telephone Company shall indemnify and hold the City harmless from all costs, expenses (including reasonable attorney's fees) and damages to persons or property arising directly or indirectly out of the construction, maintenance or operation of the Telephone Company's facilities found to be caused solely by the negligence of the Telephone Company. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the Telephone Company and the City.

SECTION 16: REPEAL OF CONFLICTING PROVISIONS

All other ordinances and agreements and parts of agreements and ordinances in conflict with this provisions of this Ordinance are hereby repealed.

SECTION 17: VENUE

Venue for any proceeding under this Agreement shall be in Fannin County, Texas.

SECTION 18: NOTICE

For any purpose related to this Ordinance, notice to the City shall be to:

City of Ravenna, Texas

P.O. Box 88

Ravenna, Texas 75476

Notice to the Telephone Company shall be to:

Area Manager-Municipal Franchises

GTE Southwest Incorporated

P.O. Box 1001 MC TXD01214

San Angelo, TX 76902

Notice will be effective upon delivery at the above addresses until the City or the Telephone Company notifies the other, in writing, of a change of address.

SECTION 19: ACCEPTANCE OF AGREEMENT

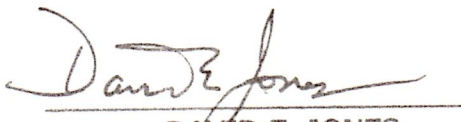
The Telephone Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. Upon such filing, this Ordinance shall take effect and the effective date of this Ordinance shall be deemed to be the first day of the calendar quarter following the acceptance and it shall be in force from and after such date, and shall effectuate and make binding the agreement provided by the terms hereof.

APPROVED this 11th day of January, A.D. 1994.




CLAUDE L. LEWIS
MAYOR

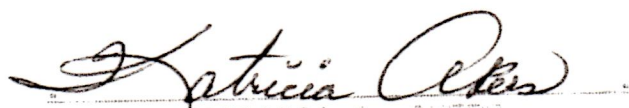
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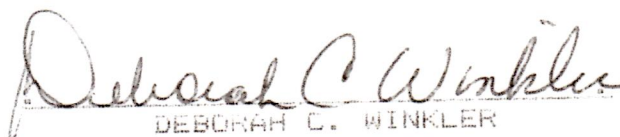


DAVID E. JONES
CITY SECRETARY

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 11th day of January, 1994.


CLAUDE L. LEWIS
MAYOR

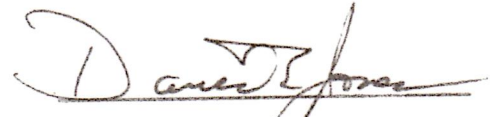

PATRICIA A. AKERS
COMMISSIONER


DEBORAH C. WINKLER
COMMISSIONER

STATE OF TEXAS
COUNTY OF FANNIN

I, David E. Jones, City Secretary of the City of Ravenna, Texas, do hereby certify that the above and foregoing is true and correct copy of the rights-of-way rental agreement between the City of Ravenna, Texas, GTE Southwest Incorporated as indicated herein. The same is now recorded in Volume 01, Page 04, of the Ordinance Records of the City of Ravenna, Texas.

WITNESS MY HAND this 11th day of January, A. D. 1994.



DAVID E. JONES
CITY SECRETARY

(SEAL)

ACCEPTANCE

WHEREAS, the Board of Commissioners of the City of Ravenna, Texas, did on the 11th day of January, 1994, enact an Ordinance entitled:

AN ORDINANCE WHEREBY THE CITY OF RAVENNA, TEXAS, AND GTE SOUTHWEST INCORPORATED AGREE THAT, FOR THE PURPOSE OF OPERATING ITS TELECOMMUNICATIONS BUSINESS, THE TELEPHONE COMPANY SHALL 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, SUCH POSTS, POLES, WIRES, CABLES, CONDUITS AND OTHER APPLIANCES, STRUCTURES AND FIXTURES NECESSARY FOR CONVENIENT FOR RENDITION OF TELEPHONE AND OTHER COMMUNICATION SERVICES IN SAID CITY AND FOR CONDUCTING A GENERAL LOCAL AND LONG-DISTANCE TELEPHONE BUSINESS; PRESCRIBING THE CONDITIONS GOVERNING THE USE OF PUBLIC RIGHTS-OF-WAY FOR THE TELEPHONE COMPANY'S TELECOMMUNICATIONS BUSINESS; PRESCRIBING THE ANNUAL COMPENSATION DUE THE CITY UNDER THIS ORDINANCE; PROVIDING AN INDEMNITY CLAUSE; SPECIFYING GOVERNING LAWS; PROVIDING FOR ASSIGNMENT; FOR A PERIOD OF AGREEMENT; FOR FUTURE CONTINGENCIES; FOR REPEAL OF CONFLICTING ORDINANCES; FOR EXCLUSION OF VIDEOD SERVICES; FOR RELEASE OF ALL CLAIMS UNDER PRIOR ORDINANCES; FOR ALTERNATE DISPUTE RESOLUTION; FOR A LIMITATIONS PERIOD; FOR VENUE; AND FOR METHOD OF ACCEPTANCE;

and

WHEREAS, said Ordinance was on the 11th day of January, 1994 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 Ravenna, Texas, in his office.

Dated this 13 day of May, A.D. 1994.

GTE SOUTHWEST INCORPORATED

By:


VICE PRESIDENT

ATTEST:


ASSISTANT SECRETARY

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Acceptance filed 5 in the office of the City Secretary of
Ravenna, Texas, this 5 day of July, A.D. 1994.



DAVID E. JONES
CITY SECRETARY