

ORDINANCE NO. 34-1991

AN ORDINANCE WHEREBY THE CITY OF ABILENE, TEXAS, AND SOUTHWESTERN BELL TELEPHONE COMPANY AGREE THAT, FOR THE PURPOSE OF OPERATING ITS TELECOMMUNICATIONS BUSINESS, THE TELEPHONE COMPANY SHALL MAINTAIN AND CONSTRUCT ITS POLES, WIRES, ANCHORS, FIBER, CABLES, MANHOLES, CONDUITS AND OTHER PHYSICAL PLANT AND APPURTENANCES IN, ALONG, ACROSS, ON, OVER, THROUGH, ABOVE AND UNDER ALL PUBLIC STREETS, AVENUES, HIGHWAYS, ALLEYS, SIDEWALKS, BRIDGES OR PUBLIC WAYS IN SAID CITY; PRESCRIBING THE ANNUAL COMPENSATION DUE THE CITY UNDER THIS ORDINANCE; PRESCRIBING THE CONDITIONS GOVERNING THE USE OF PUBLIC RIGHTS-OF-WAY AND THE PERFORMANCE OF CERTAIN CONSTRUCTION WORK ON PUBLIC RIGHTS-OF-WAY FOR THE TELEPHONE COMPANY'S TELECOMMUNICATIONS BUSINESS; PROVIDING AN INDEMNITY CLAUSE; SPECIFYING GOVERNING LAWS; PROVIDING FOR A RELEASE OF ALL CLAIMS UNDER PRIOR ORDINANCES; PROVIDING FOR FUTURE CONTINGENCIES; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS ORDINANCE BY THE TELEPHONE COMPANY; AND PROVIDING FOR A TERM AND AN EFFECTIVE DATE.

WHEREAS, Southwestern Bell Telephone Company (hereinafter referred to as the "TELEPHONE COMPANY") is now and has been engaged in the telecommunications business in the State of Texas and in furtherance thereof, has erected and maintained certain items of its physical plant in the City of Abilene, 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 to the CITY; and

WHEREAS, the TELEPHONE COMPANY has operated its telecommunications business in the CITY under successive ordinances of the CITY, the last of which was Ordinance Number 132 adopted November 7, 1941, which provided compensation to the CITY pursuant to that agreement based upon a percentage of gross receipts received by the TELEPHONE COMPANY from certain local services rendered within the corporate limits of the CITY; and

WHEREAS, it is recognized by the parties that changes in the telecommunications industry, changes in technology, changes in state and federal law, 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 Texas Public Utility Commission ("PUC"), have caused the traditional method of determining the amount of compensation to municipalities to become administratively impractical for telecommunications utilities. In order to resolve these issues in a manner satisfactory 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 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 CITY in the future;

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

SECTION 1 - PURPOSE

Pursuant to the laws of the State of Texas, the CITY Charter and this Ordinance, the TELEPHONE COMPANY has the NON-EXCLUSIVE right and privilege to USE the public RIGHTS-OF-WAY in the CITY for the operation of a telecommunications system subject to the restrictions set forth herein. The TELEPHONE COMPANY may USE such RIGHTS-OF-WAY for its telecommunications FACILITIES. The TELEPHONE COMPANY'S FACILITIES and TRANSMISSION MEDIA used in or incident to the provision of telecommunications service and to the maintenance of a 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 to all operations of the TELEPHONE COMPANY within the CITY, and shall include all operations and FACILITIES used in whole or in part in the provision of telecommunications services in newly annexed areas upon the effective date of any annexation.

SECTION 2 - ADDITIONAL AUTHORITY REQUIRED

The TELEPHONE COMPANY is not authorized to provide cable television service in the CITY under this Ordinance, but must first obtain a separate agreement from the CITY for that purpose, under such terms and conditions as may be required by law. This Section does not preclude the TELEPHONE COMPANY from providing its tariffed services to cable television companies.

SECTION 3 - 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.
- (b) USE: any TELEPHONE COMPANY acquisition, construction, reconstruction, maintenance or operation of any FACILITIES in, over, under, along, through or across the public RIGHTS-OF-WAY for any purpose whatsoever.
- (c) CITY: The City of Abilene, Texas.
- (d) RIGHTS-OF-WAY: all present and future streets, avenues, highways, alleys, bridges and public property, within the city limits of the CITY.
- (e) GOVERNED BY THE CITY OR CITY GOVERNANCE: all ordinances, laws, rules, regulations, and charter provisions of the CITY now in force or that may hereafter be passed and adopted which are not inconsistent with this Ordinance.
- (f) 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, data or other purposes.
- (g) NON-EXCLUSIVE: no rights agreed to in this Ordinance by the CITY shall be exclusive, and the CITY reserves the right to grant franchises, licenses, easements or permissions to use the public RIGHTS-OF-WAY within the CITY to any person or entity as the CITY, in its sole discretion, may determine to be in the public interest.
- (h) TELEPHONE COMPANY: Southwestern Bell Telephone Company.

SECTION 4 - TERM

This Ordinance shall continue for a period of seven (7) years from the effective date hereof; provided that at the expiration of the initial period, such term may be extended by mutual written agreement of the CITY and TELEPHONE COMPANY.

SECTION 5 - SUPERVISION BY CITY OF LOCATION OF TELEPHONE COMPANY FACILITIES

(a) The location and route of all FACILITIES to be placed and constructed by the TELEPHONE COMPANY in the construction and maintenance of its telecommunications system in the CITY shall be subject to the lawful, reasonable and proper control and CITY GOVERNANCE.

(b) The CITY shall have the power at any time to order and require the TELEPHONE COMPANY to remove any of its FACILITIES that are dangerous to life or property, and in case the TELEPHONE COMPANY, after reasonable notice to the Division Manager over outside plant engineering and construction, fails or refuses to act, then the CITY, at the direction of the City Engineer, shall have the power to remove or abate the same at the expense of the TELEPHONE COMPANY, all without compensation or liability for damages to the TELEPHONE COMPANY.

○ (c) The CITY reserves the right to lay, and permit to be laid, sewer, water, gas, and other pipe lines or cables and conduits, including telecommunications and cable television lines, and to do and permit to be done any underground and overhead work that may be deemed necessary or proper by the CITY, in, across, along, over, or under any RIGHT-OF-WAY or public place occupied by the TELEPHONE COMPANY, and to change the grade, install, relocate or widen the public streets, sidewalks, bikeways, alleys, and public grounds and places within the present limits of the CITY and within said limits as same may from time to time be extended. In performing or permitting such work to be done, the CITY shall not be liable to the TELEPHONE COMPANY for any damages related to such work, nor shall the CITY be liable to the TELEPHONE COMPANY for any damages not proximately caused by the CITY'S sole negligence, provided, however, nothing herein shall relieve any other person or corporation from liability for damage to FACILITIES of the TELEPHONE COMPANY.

○ (d) The TELEPHONE COMPANY may be required to place certain FACILITIES underground according to reasonable requirements that may be adopted from time to time by the Abilene City Council; provided, however, TELEPHONE COMPANY shall be given due notice and shall be entitled to a hearing before the Abilene City Council prior to the adoption of such requirements.

SECTION 6 - ATTACHMENTS TO POLES AND SPACE IN DUCTS

(a) The TELEPHONE COMPANY shall permit the City of Abilene to use without charge, solely for its own non-commercial telecommunications purposes, one duct in all of TELEPHONE COMPANY'S existing ducted FACILITIES within the CITY limits, with sufficient space for necessary joints and adequate space on all non-ducted FACILITIES now existing or hereafter constructed on or within the RIGHTS-OF-WAY for the CITY to attach transmission media for the CITY'S own non-commercial use. Where insufficient FACILITIES exist to accommodate the CITY, other existing FACILITIES may be substituted therefor with the concurrence of the CITY.

(b) If the TELEPHONE COMPANY shall hereafter extend its existing underground conduits, it shall provide one duct in each additional conduit for the CITY'S own purposes, as provided above. The TELEPHONE COMPANY shall cooperate with the CITY at all times by providing timely, complete and continuous information regarding the location of all conduit, along with such maps, plats, construction documents and drawings as may exist or be created from time to time.

(c) The CITY shall not use any FACILITIES which are provided for CITY'S use by the TELEPHONE COMPANY for power transmission purposes, nor use any circuits in such conduits or upon such poles to carry voltage in excess of one hundred and thirty (130) volts for signal purposes, nor otherwise use any

such circuits so as to unreasonably interfere with telecommunications or FACILITIES; provided, that TELEPHONE COMPANY shall not use high potential wires for power transmission in its FACILITIES, nor otherwise use the same so as to unreasonably interfere with the operation of the CITY'S communications or facilities. TELEPHONE COMPANY and CITY shall cooperate and coordinate their efforts to make the most efficient and economical USE of FACILITIES. To this end, the parties will make periodic assessments of their needs, including, but not limited to use of FACILITIES and exchange of same to meet requirements. The CITY shall keep TELEPHONE COMPANY aware of its needs and shall notify TELEPHONE COMPANY in writing when it utilizes TELEPHONE COMPANY FACILITIES.

(d) The CITY shall not sell, lease or otherwise make available its rights to use TELEPHONE COMPANY'S FACILITIES to any third party for commercial purposes. Such rights are provided solely for the non-commercial exclusive use by the CITY. However, this restriction shall not prevent the CITY from using the services of a third party commercial entity to manage or operate the CITY'S facilities on behalf of the CITY so long as no resale or other commercial use of such facilities shall occur.

(e) The TELEPHONE COMPANY is not authorized to license or lease to any person or entity the right to occupy or USE the CITY'S RIGHTS-OF-WAY for the conduct of any private business. The TELEPHONE COMPANY may be required to attach its TRANSMISSION MEDIA to facilities owned and maintained by any

person or entity franchised by the CITY or to permit the transmission media of any person or entity franchised by the CITY to be attached to the FACILITIES owned and maintained by the TELEPHONE COMPANY upon reasonable, non-discriminatory terms. The TELEPHONE COMPANY may require any such person or entity to furnish evidence of adequate insurance covering the TELEPHONE COMPANY and adequate bonds covering the performance of the person or entity attaching to the TELEPHONE COMPANY'S FACILITIES as a condition precedent to granting permission to any such person or entity to attach transmission media to TELEPHONE COMPANY'S FACILITIES; provided TELEPHONE COMPANY'S requirements for such insurance shall be reasonable, as determined by the CITY.

(f) Any such transmission media shall be so located on the FACILITIES as to be safe and not to interfere unnecessarily with the USE of the RIGHTS-OF-WAY by others, including persons or entities authorized to use the FACILITIES. The TELEPHONE COMPANY shall not be required to attach its TRANSMISSION MEDIA to the facilities of any other person or entity or to permit the transmission media of any other person or entity to be attached to TELEPHONE COMPANY'S FACILITIES if it can be shown satisfactorily to the CITY that the TELEPHONE COMPANY will be subjected to increased risks of interruption of service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design, and construction required by, or are not being maintained in accordance with industry standards or practice.

SECTION 7 - GENERAL CONDITIONS, CONSTRUCTION, ALTERATION AND MAINTENANCE

(a) Any work done in connection with the TELEPHONE COMPANY'S USE of the RIGHTS-OF-WAY shall be subject to the police power and CITY GOVERNANCE.

(b) All USE of the RIGHTS-OF-WAY shall interfere as little as reasonably practicable with the use of the RIGHTS-OF-WAY by others.

(c) In the event that the CITY authorizes abutting landowners to occupy space under the surface of any street, alley, highway, or public place, such grant to an abutting landowner shall be subject to the rights of the TELEPHONE COMPANY described herein.

(d) In the event that the CITY plans to close or abandon any RIGHT-OF-WAY which contains any existing TELEPHONE COMPANY FACILITIES, CITY shall, if requested by TELEPHONE COMPANY, (1) reserve a continuing right for the TELEPHONE COMPANY'S FACILITIES, (2) give notice of the date the Abilene City Council is to consider the closure or abandonment, and (3) make any subsequent conveyance of land involved in the closure or abandonment subject to the specific right of continued occupancy by TELEPHONE COMPANY.

(e) Except in an emergency, the TELEPHONE COMPANY shall not excavate any RIGHT-OF-WAY without first notifying the City Engineer, and, if approval is required it shall be given if the proposed excavation is in compliance with

the requirements of CITY GOVERNANCE. The City Engineer or his designee shall be notified as soon as practicable regarding work performed under emergency conditions, and the TELEPHONE COMPANY shall comply with any reasonable requirements of the CITY for the restoration of the RIGHTS-OF-WAY within the CITY.

(f) Whenever it shall be necessary to require TELEPHONE COMPANY to alter, change, adapt, or conform its FACILITIES within the RIGHT-OF-WAY, such alterations or changes shall be made promptly, with consideration given to the magnitude of such alterations or changes, without claim for reimbursement or damages against the CITY. If any such requirements impose a financial hardship upon the TELEPHONE COMPANY, the TELEPHONE COMPANY shall have the right to present alternative proposals to the CITY, and the CITY shall give due consideration to any such alternative proposals. It is understood and further provided, however, that the CITY shall not require TELEPHONE COMPANY to remove its FACILITIES entirely from such RIGHT-OF-WAY. If the CITY requires the TELEPHONE COMPANY to adapt or conform its FACILITIES to enable any other entity or person, except the CITY, to use, or to use with greater convenience, RIGHTS-OF-WAY or public property, TELEPHONE COMPANY shall not be required to make any such changes until such other entity or person shall reimburse or make arrangements satisfactory to TELEPHONE COMPANY to reimburse the TELEPHONE COMPANY for any loss and expense caused by or arising out of such change; provided, however, that the CITY shall never be liable for such reimbursement.

(g) For public improvement projects where, after notification that FACILITY relocation is required, the TELEPHONE COMPANY has not, prior to the beginning of construction by the CITY, relocated its affected FACILITIES within the RIGHTS-OF-WAY after being afforded a reasonable length of time to do so as determined by the City Engineer, giving consideration to the scope of the FACILITY relocation, and when such delays are not caused by actions of the CITY, the following procedure will be followed. The CITY shall provide the TELEPHONE COMPANY with reasonable notice of failure to act and request relocation. If the TELEPHONE COMPANY continues to delay, the City Engineer and the TELEPHONE COMPANY'S Division Manager over outside plant engineering and construction will jointly review the relocation request in an expeditious manner to establish a mutually acceptable completion date for the relocation. If the TELEPHONE COMPANY continues to delay or does not meet the revised completion date, the City Engineer shall provide not less than five (5) days written notice to the TELEPHONE COMPANY'S Division Manager over outside plant engineering and construction advising the TELEPHONE COMPANY of the CITY'S intent to effect the relocation of the affected FACILITIES. If after expiration of the written notice required by the preceding sentence, the TELEPHONE COMPANY continues to delay, the CITY shall have the right to effect relocation of the affected FACILITIES and the TELEPHONE COMPANY shall reimburse the CITY for all costs of such relocation. The CITY shall not be liable to the TELEPHONE COMPANY for any damage to such FACILITIES unless proximately caused by the CITY'S gross negligence, and shall not be liable in any event for any consequential damages relating to service interruptions.

Such relocation by the CITY will be performed only when the City Engineer determines that it is necessary to prevent disruption of a CITY project. Such relocation will be accomplished by means of temporary construction and in a manner which will not unreasonably disrupt telecommunications services. The CITY shall make every effort to coordinate with the TELEPHONE COMPANY prior to such necessary relocations and will not attempt to relocate such FACILITIES until the CITY has exhausted the foregoing procedures. The TELEPHONE COMPANY shall ultimately be responsible for the final permanent relocation of the TELEPHONE COMPANY'S FACILITIES.

(h) The surface of any public street, avenue, highway, alley or public place disturbed by the TELEPHONE COMPANY in the construction or maintenance of its telecommunications 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. Should the CITY reasonably determine, within one year from the date of such restoration, that such surface requires additional restoration work to place it in as good a condition as before the commencement of the work, the TELEPHONE COMPANY shall perform such additional restoration work to the reasonable satisfaction of the CITY. No public street, avenue, highway, alley or public place shall be encumbered for a longer period than shall be reasonably necessary to execute all work.

SECTION 8 - TEMPORARY REARRANGEMENT OF AERIAL WIRES

Upon request, the TELEPHONE COMPANY shall remove or raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the TELEPHONE COMPANY may require payment in advance. The TELEPHONE COMPANY shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary rearrangements.

SECTION 9 - TREE TRIMMING

The right, license, privilege and permission is hereby granted to the TELEPHONE COMPANY, its contractors and agents, to trim trees upon and overhanging the streets, avenues, highways, alleys, sidewalks and public places of the CITY so as to prevent the branches of such trees from coming in contact with the aerial wires, fiber or cables of the TELEPHONE COMPANY, and when so directed by the CITY, said trimming shall be done under the supervision and DIRECTION OF THE CITY or of any CITY official to whom said duties have been or may be delegated.

SECTION 10 - INDEMNITY

The TELEPHONE COMPANY shall indemnify and hold the CITY harmless from all costs, expenses (including 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 located within the public RIGHTS-OF-WAY 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 11 - ADMINISTRATION OF ORDINANCE

(a) The CITY may, at any time, make inquiries pertaining to this Ordinance and the TELEPHONE COMPANY shall respond to such inquiries on a timely basis.

(b) Copies of petitions, applications, communications and reports submitted by the TELEPHONE COMPANY to the Federal Communications Commission or the Public Utility Commission of Texas shall be provided to the CITY upon request.

(c) The CITY may establish, after reasonable notice, such rules and regulations as may be appropriate for the administration of this Ordinance

and the construction of the TELEPHONE COMPANY'S FACILITIES on CITY property to the extent permitted by law.

SECTION 12 - COMPENSATION TO THE CITY

(a) As compensation for the USE, occupancy, oversight, supervision and regulation of the CITY'S RIGHTS-OF-WAY, and in lieu of and in full compensation for any lawful tax or license or charge or 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 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 hereafter levied by the CITY in accordance with State law, the CITY hereby imposes a Charge upon the Gross Receipts (as hereinafter defined) of the TELEPHONE COMPANY. The amount of the Charge for the first year this Ordinance is in effect shall be \$600,000.00. For the second year the Charge shall be \$700,000.00 increased by the Growth Factor as set forth in paragraph 12(c), if applicable. For the third and subsequent years while this Ordinance remains in effect, the above Charge is subject to adjustment by application of the Growth Factor set out in paragraph 12(c). This adjustment for the Growth Factor will be made effective as of each anniversary date of this Ordinance. In no event shall the Charge for

subsequent years that this Ordinance is in effect be less than the above amount stated for the second year of this Ordinance, except as provided in the case of disannexation as set forth in paragraph 12(e), or as provided in Section 16 herein.

The TELEPHONE COMPANY will, according to tariff, bill such Charge to the customers billed the customer service charges included within the term "Gross Receipts," as defined herein. Gross Receipts, for purposes of this Charge, shall include only customer service charges which meet all four of the following conditions: (1) such charges are for TELEPHONE COMPANY services provided within the CITY; (2) such charges are billed through the TELEPHONE COMPANY'S Customer Records Information System ("CRIS"); (3) such charges are the recurring charges for the local exchange access rate element specified in the TELEPHONE COMPANY'S tariffs filed with the PUC; (4) such charges are subject to an interstate end user common line ("EUCL") charge as imposed by the Federal Communications Commission ("FCC").

The TELEPHONE COMPANY shall adjust its billings to customers to account for any undercollection or overcollection of the Charge due the CITY.

(b) The Charge for each year shall be paid in four (4) equal installments on April 30, July 31, October 31 and January 31 of the following year. In the event of any over or undercollection from customers at the expiration of this Ordinance, the TELEPHONE COMPANY may make a pro rata one-time credit or

charge to the customer billing for affected customers who are billed for a service included within Gross Receipts, as defined in paragraph 12(a). This will be accomplished within 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.

(c) The Growth Factor shall be calculated by dividing the TELEPHONE COMPANY'S revenues within the corporate limits of the CITY subject to the state telecommunications sales tax ("Sales Tax Revenues") applicable to services rendered within the corporate limits of the CITY for the twelve month period ending three (3) months prior to the next anniversary date of this Ordinance by the Sales Tax Revenues for the twelve month period ending three (3) months prior to either the initial effective date or the preceding anniversary date of this Ordinance as applicable. The Growth Factor calculated by the method set forth in the preceding sentence, if greater than one, shall be multiplied by the appropriate year's Charge as stated above. For the third and subsequent years of this Ordinance, the Growth Factor, if greater than one, shall be multiplied by the then current year's Charge to determine the Charge for the next year. The TELEPHONE COMPANY will adjust its customer billing to account for the Growth Factor calculated above.

Once the Growth Factor calculation is completed, the TELEPHONE COMPANY will provide the CITY with the Sales Tax Revenues upon which the Growth Factor calculation was based.

The CITY agrees to rely upon audits by the Texas Comptroller of Public Accounts of state telecommunications sales taxes as reported by the TELEPHONE COMPANY which are performed in compliance with Sections 151.023 and 151.027 of the Texas Tax Code Annotated (Vernon's 1982).

(d) Such payments 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 or franchise taxes aforesaid, 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 fees, 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 Charge shall be adjusted. To accomplish this adjustment, within thirty 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 Charge for the CITY will be adjusted to include the amount of the payment by the TELEPHONE COMPANY to the existing incorporated municipality being annexed. In the event that the annexed municipality had no ordinance imposing a Charge or in the event of a disannexation, then the adjustment to the Charge will be calculated using the effective date of the imposition of Local Sales Taxes as determined by the Texas Comptroller of Public Accounts. The adjustment shall be the percent increase/decrease in the TELEPHONE COMPANY'S Gross Receipts as defined herein for the CITY for the first calendar month following the Local Sales Tax effective date compared to the last month prior to such effective date. This adjustment to the Charge will be made on the first day of the second month following the Local Sales Tax effective date and the adjusted Charge shall be prorated from that date through the remainder of the payment year. The Charge as adjusted shall be used for all future calculations required by this Ordinance.

SECTION 13 - ASSIGNMENT OF ORDINANCE

This Ordinance and any rights or privileges hereunder shall not be assignable to any other entity without the express consent of the CITY. Such consent shall be evidenced by an ordinance which shall fully recite the terms and conditions, if any, upon which such consent is given.

SECTION 14 - MUTUAL RELEASES

The CITY hereby fully releases, discharges, settles and compromises any and all claims which the CITY has made or could have made arising out of or connected with Ordinance Number 132 adopted November 7, 1941, and renewed or extended from time to time thereafter, and its predecessor ordinances, if any, (hereinafter referred to collectively as "Ordinance 132"). This full and complete release of claims for any matters under Ordinance 132 shall be for the benefit of Southwestern Bell Telephone Company; its parent; its affiliates; their directors, officers and employees; successors and assigns; and includes any and all claims, actions, causes of action and controversies, presently known or unknown, arising directly or indirectly out of or connected with the TELEPHONE COMPANY'S obligations to the CITY pursuant to the provisions of Ordinance 132. Southwestern Bell Telephone Company, its parent, its affiliates, successors and assigns hereby fully release, discharge, settle and compromise any and all claims, actions, causes of

action or controversies heretofore made or which could have been made, known or unknown, against the CITY, its officers or its employees, arising out of or connected with any matters under Ordinance 132.

It is the intent of the CITY and the TELEPHONE COMPANY to enter into the foregoing mutual releases in order to reach a compromise that is acceptable to both the CITY and the TELEPHONE COMPANY. This Ordinance and the mutual releases set forth in this Section represent a compromise of each party's claims as well as each party's defenses, and is not intended to be and is not an admission of liability or vulnerability by either party to the other with respect to either the claims or the defenses asserted against the other.

SECTION 15 - REPEAL OF CONFLICTING ORDINANCES AND AGREEMENTS

Ordinance Number 132 adopted November 7, 1941, is hereby repealed; provided, however, such repeal shall take effect at 11:59 p.m. on the day immediately preceding the effective date specified in the Section of this Ordinance entitled "ACCEPTANCE OF AGREEMENT AND EFFECTIVE DATE". All other ordinances and agreements and parts of ordinances and agreements in conflict herewith are also repealed, which repeal shall take effect at the time and on the date specified in the preceding sentence.

SECTION 16 - FUTURE CONTINGENCY

Notwithstanding anything contained in this Ordinance to the contrary, in the event that (a) this Ordinance or any part hereof, (b) any tariff provision by which the TELEPHONE COMPANY seeks to collect the Charge imposed by this Ordinance, or (c) any procedure provided in this Ordinance, or (d) any compensation due the CITY under this Ordinance, becomes, or is declared or determined by a 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 CITY shall meet and negotiate 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 provided that 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 17 - GOVERNING LAW

(a) This Ordinance shall be construed in accordance with the CITY Charter and CITY Code(s) in effect on the date of passage of this Ordinance to the extent

that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

(b) This Ordinance shall be construed and deemed to have been drafted by the combined efforts of the CITY and the TELEPHONE COMPANY.

SECTION 18 - ACCEPTANCE OF AGREEMENT AND EFFECTIVE DATE

The CITY shall deliver a properly certified copy of this Ordinance to the TELEPHONE COMPANY within three (3) working days of its final passage. The City Council of Abilene agrees to this Ordinance; if and only if the TELEPHONE COMPANY files its written acceptance of this Ordinance within thirty (30) days after its final passage and approval by the City Council. After acceptance by the TELEPHONE COMPANY and final passage by the City Council, the terms and provisions hereof shall be binding upon the CITY and the TELEPHONE COMPANY, their successors and assigns.


PASSED ON FIRST READING this 31 day of October, 1991.

After said passage on first reading, a notice of time and place, where and when, said Ordinance would be given a public hearing and considered for second and final passage was published in the Abilene Reporter News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 3 day of November, 1991. After an opportunity for the public to be heard, said Ordinance was passed on second and final reading by the affirmative vote of five (5) Council members.

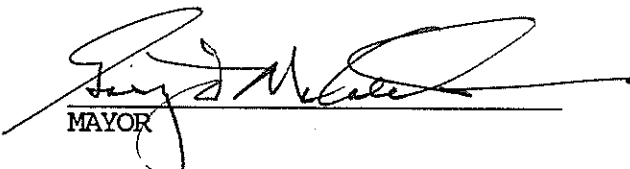
This Ordinance shall become effective thirty (30) days after its passage on second and final reading.

PASSED ON SECOND AND FINAL READING this 7 day of November, 1991.

ATTEST:



CITY SECRETARY



MAYOR

APPROVED:



CITY ATTORNEY