

ORDINANCE NO: 96-7

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF MISSOURI D/B/A UNITED TELEPHONE COMPANY OF SOUTHEASTERN KANSAS A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF GALENA, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALENA, KANSAS, AS FOLLOWS:

United Telephone Company of Missouri d/b/a United Telephone Company of Southeastern Kansas, Grantee, a corporation organized under the laws of the State of Missouri, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business, to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys and other public places of the City of Galena, Grantor, and to construct, lay, maintain and repair such cable as Grantee, its successors and assigns, may require, under those streets, avenues, boulevards, alleys, and other public places for the purpose of such business, under the following terms and restrictions:

1. This grant shall be effective in accordance with Section 17 below, and shall continue for a term of five (5) years from its effective date.

2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the City and its inhabitants, rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

3. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such street, avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public improvements and, if such are injured, Grantee shall repair any damages caused to the satisfaction of the Governing Body of the City

interfere with or obstruct such project, the City shall provide Grantee with at least 120 days advance written notice of same. That notice shall include, at a minimum, a description of the project sufficiently detailed to allow Grantee to determine the extent to which its plant might need to be altered, reset, or relocated. Within 60 days of receipt of such notice, Grantee shall advise the City of any objections or recommendations it may have with respect to the project. Grantee and the City agree to use their best efforts to minimize the amount of alteration, resetting, or relocation of Grantee's plant. Any necessary alteration, resetting, or relocation shall be undertaken at Grantee's expense; provided, however, that this provision applies only to those portions of Grantee's plant for which the sole basis for its location on the property is this ordinance. Where the City acquires additional property or right-of-way over any of the Grantee's existing plant, and thereafter requests alteration, resetting, or relocation, this provision applies but the alteration, resetting, or relocation shall be at the expense of the City.

10. Nothing herein shall affect any prior or existing rights of Grantee to maintain a telephone company within the City.

11. Grantee agrees to retain a collection point within the City for the payment of bills if reasonably possible during the term of this franchise.

12. The City shall have the right to audit periodically the Grantee's books and records with respect to compensation under this ordinance to verify that such compensation has been correctly computed and paid. The City agrees that such audits shall not be more frequent than once every three (3) years nor shall they cover either those periods already audited by the City or periods that precede the passage of this ordinance. If the accounting rendered to the City by Grantee is found to be incorrect, than payment shall be made on the corrected amount within 30 days of written notice of such; provided, however, if Grantee disputes the City's position with respect to such accounting, Grantee and the City will meet to discuss the matter within 30 days.

13. Grantee shall accurately code all customers and receipts for purposes of this ordinance. Such coding shall be updated to reflect annexation or other changes in city boundaries, all such changes or annexation shall be communicated by the City to Grantee in writing. Grantee agrees to make necessary coding changes within a reasonable time, not to exceed 90 days, after receipt of notice of changes or annexation from the City.

14. The franchise and all rights hereunder may be assigned by the Grantee,

and, in default thereof, the City may repair damage and charge the cost to Grantee.

4. The poles of Grantee, its successors and assigns, shall be placed and erected in such a manner so as not to interfere unreasonable with the orderly conduct of the business and rights of any other public service corporation having a right or franchise to operate its business in the City.

5. All work of locating and erecting poles or placing underground conduit under and by virtue of this ordinance shall be done with the cooperation of the Governing Body of the City or some other properly authorized person.

6. Grantee shall remove, raise, or adjust its aerial plant, after forty-eight (48) hours notice by a properly authorized city official, for the purpose of permitting the moving of houses or other structures along the streets of the City. The person or persons for whose benefit such telephone plant is removed, raised, or adjusted, however, shall first secure proper permission from the City for the movement and agree to pay Grantee for its related costs and damages. If desired, an advance deposit from the mover may be required by Grantee.

7. Permission is hereby granted to grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with Grantee's wires and cables. All such trimming will be done under the supervision and direction of any city official to whom such duties have been or may be delegated.

8. In consideration for rights and privileges herein granted, Grantee shall pay to the City, in arrears, four percent (4%) of the annual gross receipts from billings for local service rendered wholly within the corporate limits of the City. Said gross receipts are for the regular basic local exchange service rates to customers or subscribers for telephone service in the City, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Such payment shall be made in two installments on or before the 1st day of February and the 1st day of August each year during the term of this ordinance. The City agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

9. Whenever, because of public necessity or welfare, the City plans to engage in a public improvement construction project on any property owned by the City or dedicated wholly for public use, and a portion of Grantee's plant would

as well as all succeeding Grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties and liabilities of the Grantee hereunder.

15. The recovery of the charges from Grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the City. The obligation of Grantee to pay compensation under this ordinance is contractual; the City makes no requirements as to the method Grantee uses to recover the payments.

16. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

17. This ordinance shall be effective at the expiration of 65 days from the date of its final passage.

18. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting Grantee a franchise, or while the City and Grantee are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

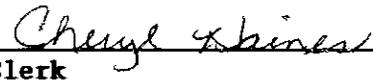
19. If any portion of this ordinance for any reason is held to be invalid, it shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.

Read three times and finally passed by the Governing Body of Galena, Kansas, this 3rd day of September, 1996.



Mayor

ATTEST:



City Clerk