

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CENTRAL TELEPHONE COMPANY OF FLORIDA, A FLORIDA CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A TELEPHONE SYSTEM IN THE CITY OF BONIFAY, FLORIDA FOR A PERIOD OF FIFTEEN YEARS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR USE OF THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC PLACES OF THE CITY; PROVIDING THE CITY OF BONIFAY, FLORIDA REGULATIONS AND USE OF THE TELEPHONE SYSTEM; PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS; PROVIDING FOR THE EFFECTIVE DATE HERETO.

WHEREAS, the City deems it necessary, desirable and in the interest of the health, safety and welfare of its citizens to establish by ordinance a franchise for the provision of telephone service: and

WHEREAS, the Company has indicated to the City that it is willing to continue the installation and operation of such facilities under a franchise from the City:

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF BONIFAY, FLORIDA, AS FOLLOWS:

SECTION I. Short Title. This Ordinance shall be known and may be cited as the "Central Telephone Company of Florida Ordinance."

SECTION II. Definitions. For the purpose of this Ordinance, the following terms, phrases, words, and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "City" shall mean the City of Bonifay, Florida.
- B. "Company" shall mean the Central Telephone Company of Florida, a Florida Corporation, also known as "Centel", its lessees, its successors and assigns.
- C. "Persons" is any person, municipality, firm, partnership, association, corporation, company or organization of any kind.

SECTION III. Grant of Authority. There is hereby granted by the City to the Company, the right and privilege to construct, erect, operate, own and maintain, in, upon, along, across, above, over and under the streets, alleys, public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other telephone exchange and lines connected therewith, provided that all visible portions of same shall be neat and symmetrical.

A. Annexation or Contraction. The Company agrees that the franchise area is subject to expansion or reduction by annexation and contraction of municipal boundaries



Bonifay

and that the Company has no vested right in a specific geographical area, and that this franchise is awarded subject to the provisions of general or special laws of Florida now existing or hereinafter enacted.

B. Annexation. When an area annexed by the City is already being served by the Company, the Company will begin to collect all applicable franchise fees and utility taxes, if any, within sixty (60) days after receipt of written notification of such annexation by the City. Such written notice shall set forth the names and addresses of the residents in newly annexed areas. Any all annexed areas will be subject to all of the terms and conditions of this ordinance.

C. Non-exclusive Grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this franchise.

SECTION IV. Term of Franchise. The franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law and upon the filing of an acceptance by the Company of all the terms thereof with the City and shall continue in force and effect for a term of fifteen (15) years after the effective date of this franchise.

SECTION V. Periodic Review. The Company and the City agree to meet through their designated representatives at three-year intervals beginning with the third anniversary of the acceptance by the Company of the franchise granted herein, for the purpose of reviewing the provisions of the franchise against any material, technological or other pertinent changes, or including any statutory right of the municipality to increase its franchise fee which may have occurred since the granting of the franchise. In the event that any such change impairs the fundamental purpose of the franchise, the parties agree to negotiate in good faith an appropriate modification of the franchise.

SECTION VI. Payment to City. The permission and authority herein granted is upon the express condition that the Company, as consideration thereof, and as compensation for the use herein granted of streets, alleys, bridges, and other public places of the municipality, shall collect and pay into the municipal treasury a sum equal to the maximum franchise fee allowed by the laws of the State of Florida as set out in Florida Statutes S. 337.401 of its gross receipts on recurring local services revenues for services provided within the corporate limits of the municipality by the Company as established by the City and as may be amended from time to time with any changes in the fee being implemented by the Company within sixty (60) days after receipt of written notice by the Company of such changes.

Payment of fees collected shall be made to the City for each of the years that this franchise ordinance is in effect and shall be based on the receipts of the Company for the preceding fiscal month. Payment of fees collected shall be made monthly within thirty (30) days after the end of such fiscal month.

All accounts and records of the Company necessary to determine the correctness of any statement may be inspected by the City in accordance with Section XIV hereof or its duly authorized representatives during normal business hours, and the Company will



promptly and without delay furnish the City and its said representatives with any and all such information that the City or its said representatives may from time to time request or require; provided, however, that the Company shall have no obligation hereunder to furnish to the City any information other than that which is required to be filed with the Florida Public Service Commission and which will be made a matter of public record by the Florida Public Service Commission.

The franchise fee will be collected on recurring monthly charges for all local switched services regulated by the Florida Public Service Commission.

**SECTION VII. Forfeiture.** Any violation by the Company, its vendee, lessee or successor of the provisions of this franchise or any material portions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder to the City after receipt of written notice by the Company of such violation and continuation of such violation, without agreement of the City for a period of thirty (30) days thereafter.

**SECTION VII. City Rights in Franchise.**

A. **City Rules.** The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations by Ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Florida and the lawful regulations of any state agency possessing the power to regulate the activities of the Company.

B. **Use of System by the Company.**

1. The Company in its use and maintenance of such wires and fixtures, shall at all times comply with the rules and regulations of the City, so that there may be a minimum danger of contact or conflict between the wires and fixtures used by the Company. It is further agreed in order to avoid danger to life and property that the above privilege is granted on condition that no wires or fixtures of the Company shall be placed on poles carrying electric light or power wires without the consent of the City to the danger of contact with any conductor carrying a voltage greater than normal telephone voltage.

2. **Liability.** The grantee when working or supervising work shall be solely responsible for all damage to persons or property arising out of the construction or maintenance of said wires and fixtures authorized by this Section and shall save the City harmless from all liability created by the Company claims and demands whatsoever arising out of the attachment, maintenance, change or removal of said wires and fixtures to the poles of the Company..

C. **Supervision and Inspection.** The City shall have the right to inspect all construction and installation work performed subject to the provisions of this Ordinance and make such inspections as it shall find necessary to insure compliance with governing ordinances and the Southern States Building Code or any other applicable code. All inspections by the City shall be at the City's expense.



**SECTION IX.**      **Conditions of Street Occupancy.**

A. Use. All transmission and distribution structures, lines and equipment erected by the Company within the limits of the franchise shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Prior to any new construction the Company shall furnish the City a set of plans of the proposed project before construction is started.

B. Restoration. In case of any disturbance of pavement, sidewalk, driveways or other surfaces or damage to the City's structures and facilities caused by the Company's operations and activities, the Company shall return the disturbance or damaged structure and facilities to a condition equal to or better than the original condition.

C. Relocation. If at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, sidewalk, driveway, alley or other public way, or alter or move any structure or facility of the City, the Company upon reasonable notice by the City shall, remove or relocate its poles, wires, cables, underground conduits, manholes and other telephone fixtures at its own expense.

D. Placement of Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any gas lamp, electric light, water hydrant, water main, or sewage line and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line (or such other place designated by the City) and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and them in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

E. Temporary Removal of Wire for Building Moving. The Company shall on the request of any person holding a building permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given notice of not less than forty-eight (48) hours to arrange for such temporary wire changes.

F. Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, driveways and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company.

**SECTION X.**      **Compliance with Applicable Laws and Ordinances.**

A. The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

B. The rights and privileges granted to the Company by this ordinance shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of the City's streets and right-of-way and nothing in this ordinance shall be construed as a surrender by the City of its right and power to use and regulate the use of its streets and rights-of-way.



C. The franchise and rights herein granted are subject to the provisions of the existing laws of the State of Florida and those hereinafter enacted pertaining to the granting of franchises and to existing ordinances and provisions of the charter of the City and those hereinafter enacted pertaining to the granting of franchises.

D. This Ordinance shall not affect or invalidate any valid franchise right of the Company or the City under and by virtue of any valid franchise previously granted to the Company or its predecessors unless said rights are withdrawn herein by express terms or by direct and irreconcilable conflict.

**SECTION XI. Severability.** If any section, part of section, subsection, paragraph, sentence, clause, phrase or word is held by any court to be void or invalid or unconstitutional, it shall not affect the validity of the remaining portion of this Ordinance which shall remain in full force and effect; provided, however, that if the City reasonably finds that the invalidated provision is essential to the franchise, the City may declare the franchise to be terminated.

**SECTION XII. Publication Costs.** The Company shall assume the cost of publication of this Ordinance as such publication is required by law. A bill for reasonable publication costs shall be presented to the Company by the City.

**SECTION XIII. Records and Reports.** The City shall have access at all reasonable hours to all of the Company's plans, contracts, engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder, provided however, that such access shall be limited to the same records and reports which are provided to the Florida Public Service Commission and which are to be made a public record by the Florida Public Service Commission. The following records and reports shall be furnished to the City on written requests:

A. **Gross Revenue.** An annual summary report showing gross recurring local service revenues to which franchise fees apply.

B. **Accounting.** Monthly summary records showing the elements of monthly recurring service used to bill and collect applicable franchise fees. Such monthly summary records shall be kept and maintained in accordance with generally accepted accounting principles and as required by the Florida Public Service Commission. The detail used to prepare such monthly summary records shall, on written request of the City, be open for examination and audit by the City's Internal and External Auditors and their staffs during ordinary business hours.

C. **Annual Audit.** An annual audit statement attesting to the franchise fees that have been billed and collected in compliance with the ordinance.

D. **Other Telephone Companies.** On written request the Company will provide the City with a list of known certificated carriers who are accepting calls within the corporate limits of the City.

E. **Underground Installation Records.** The Company will make all records of its underground installation for inspection by the City at all times during ordinary business hours.

**SECTION XIV. Service Standards.** The Company shall maintain and operate its plant and system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Florida Public Service Commission of the State of Florida, or by other agencies of the State lawfully empowered to regulate the activities.



The Company, in connection with the operation of its telephone exchange in Bonifay, shall provide extended area service as ordered and approved by the Florida Public Service Commission. This service shall be subject to the operating standards as established by the Florida Public Service Commission.

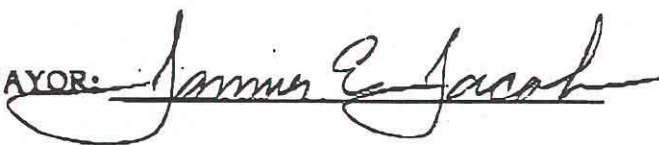
**SECTION XV. Preferential or Discriminatory Practices Prohibited.** The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rates schedules to which any customer coming within such classification would be entitled.

**SECTION XVI. CATV Prohibition.** The Company agrees that it will not provide distribution facilities for a CATV or pay television system to any person who does not have the necessary authority from the City to operate same.

**SECTION XVII. Complaints.** The Company shall use best efforts to promptly resolve all subscriber complaints. The Company shall maintain a copy of all complaints and indicate the disposition of each and shall maintain such other records as required by the Florida Public Service Commission. Such reports shall be available for inspection by the City, after reasonable notification, at all times during business hours specified herein.

**SECTION XVIII. When Effective.** This Ordinance shall take effect immediately upon approval by Council and signature by the Mayor, and shall supersede any other franchise ordinance currently in effect between the City and the Company, and shall be published as provided by law and upon filing of the Company's written acceptance of said ordinance with the Clerk of the City.

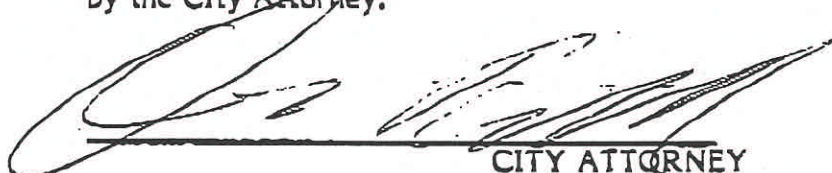
ADOPTED: 2/9/87

MAYOR: 

ATTEST:

  
City Clerk

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney.


  
CITY ATTORNEY

ACCEPTANCE OF FRANCHISE

KNOW ALL MEN BY THESE PRESENTS that Central Telephone Company of Florida, a Florida Corporation, hereby accepts the franchise which is City of Bonifay, Florida, Ordinance No. 228 on this 14<sup>th</sup> day of March, 1987.

CENTRAL TELEPHONE COMPANY OF FLORIDA

By

  
Vice President

ATTEST:

Barbara W. Bearden