

ORDINANCE NO. 50

AN ORDINANCE GOVERNING USE AND OCCUPANCY OF THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY FOR THE PROVISION OF TELECOMMUNICATIONS SERVICES, INCLUDING THE ESTABLISHMENT OF COMPENSATION FOR THAT USE AND OCCUPANCY.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF ANNETTA SOUTH, TEXAS, THAT:

SECTION 1.0 - PURPOSE

The purpose of this Ordinance is to:

- (a) Assist in the management of the Public Rights-Of-Way within the City;
- (b) Govern Telecommunications Service Providers' use and occupancy of the Public

Rights-Of-Way within the City;

- (c) Secure compensation from Telecommunications Service Providers for the use and occupancy of the Public Rights-Of-Way within the City in a non-discriminatory and competitively neutral manner.

SECTION 2.0 - DEFINITIONS

Whenever used in this Ordinance, the following terms, as well as their singulars, plurals and possessives, shall have the following definitions and meanings, unless the context of the sentence in which they are used indicates otherwise:

2.01 Access Line: (1) each switched transmission path of the transmission media within the Public Rights-Of-Way extended to the end-user customer's premises network interface

within the City that allows delivery of Telecommunications Service; (2) each loop provided as an unbundled network element to a Person pursuant to an Agreement under Section 252 of the Federal Telecommunications Act of 1996; and (3) each termination point of a non-switched telephone circuit consisting of Transmission Media connecting specific locations identified by, and provided to, the end user for the delivery of non-switched Telecommunications Service within the City.

2.02 Cable Service: “cable service” as defined in the “Cable Communications Policy Act of 1984”, as amended, 47 U.S.C. §532 *et seq.*

2.03 City: The City of Annetta South, Texas.

2.04 Direction of the City: all ordinances, laws, rules, resolutions, and regulations of the City that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.

2.05 Facilities: any and all of the duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures, plant, and appurtenances and all associated Transmission Media used for the provision of Telecommunications Service.

2.06 Line Fee: a monthly fee to be applied to each Access Line for the calculation of the total amount to be paid to the City as a Rights-Of-Way Fee.

2.07 Permit Holder: any Telecommunications Service Provider issued a Permit pursuant to the terms of this Ordinance.

2.08 Person: a natural person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

2.09 Public Utility: a Public Utility as that term is used in the Public Utility Regulatory Act of 1995, Tex. Utilities Code Ann. §11.004, including municipally owned and/or operated utilities.

2.10 Public Rights-Of-Way: the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

2.11 Rights-Of-Way Fee: the total amount paid to the City on a quarterly basis for the Use and Occupancy of the Rights-Of-Way.

2.12 Telecommunications Service: the transmittal of voice, data, image, graphics and other communications between or among points by wire, fiber optics, or other similar facilities, as well as the rental, lease, or furnishing of the facilities to accomplish such transmittal, but does not include transmissions for long distance purposes (interLATA and intraLATA) or any “wireless service” as defined by law.

2.13 Telecommunications Service Provider: any Person that supplies Telecommunications Service to others within the corporate limits of the City in exchange for money or other value.

2.14 Telecommunications Utility: “telecommunications utility” as used in the Public Utility Regulatory Act of 1995, Tex. Utilities Code Ann. §51.002(11).

2.15 Transmission Media: any and all of the cables, fibers, wires or other physical devices owned, maintained or placed by a Permit Holder to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice,

data or other purposes.

2.16 Use and Occupancy: a Permit Holder's acquisition, installation, construction, reconstruction, maintenance, repair, control, or operation of any Facilities within the Public Rights-Of-Way for any purpose whatsoever.

SECTION 3.0 - REQUIREMENT FOR PERMIT AND GRANTING CLAUSE

Any Person that owns, places, or maintains Facilities within the Public Rights-Of-Way shall first obtain a permit pursuant to the terms of this Ordinance. Subject to the restrictions set forth herein, the City under this Ordinance shall issue permits to Telecommunications Service Providers for the purpose of regulating the Use and Occupancy of the Public Rights-of-Way in the City for the provision of Access Lines. By acceptance of the permit, a Permit Holder acknowledges its legal obligation to abide by the reasonable terms of this Ordinance in its use of the Public Rights-of-Way in the provision of Access Lines within the City, including all operations and facilities and Transmission Media used in whole or in part in the provision of Access Lines in any newly annexed areas as specified in Subsection 5.03 of this Ordinance.

SECTION 4.0 - GENERAL TERMS OF THE ORDINANCE

4.01 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 as the City, in its sole discretion, may determine to be in the public interest.

4.02 A Permit Holder is not authorized to provide Cable Service as a cable operator in

the City under this Ordinance, but must first obtain a franchise from the City for that purpose, under such terms and conditions as may be required by law.

4.03 The initial term of each Permit issued under this Ordinance shall be one (1) year from the date of issuance. At the expiration of the initial permit period, the permit shall be automatically extended for successive periods of one (1) year, unless the City gives written notice of intent to terminate the permit to Permit Holder not less than ninety (90) days prior to the end of the then-current period or Permit Holder sends notice of its intent to terminate its obligations under the permit. When such notice is given, the Permit shall terminate at the expiration of the then-current period.

4.04 The rights granted by this Ordinance inure to the benefit of a Permit Holder licensed hereunder. The rights granted by the issuance of a permit shall not be assigned, transferred, or sold to another by a Permit Holder without the express written consent of the City. Any such consent by the City shall not be withheld unreasonably.

SECTION 5.0 - COMPENSATION

5.01 Rights-of-Way Fee: a Permit Holder shall pay to the City a Rights-of-Way Fee that is calculated as of month-end by applying the appropriate Line Fee to each Access Line owned, placed, or maintained by a Permit Holder that is activated for use by an end-user or for another Telecommunications Service Provider that uses a Permit Holder's services or Facilities for the provision of Telecommunications Service within the City. The Line Fee to be applied to each Access Line on a monthly basis shall be:

<u>Access Line</u>	<u>Monthly Fee per Access Line</u>
Residential.....	\$ <u>\$0.67</u>
Non-Residential.....	\$ <u>\$1.14</u>

5.02 Number of Access Lines: subject to City’s agreement not to disclose this information, each Permit Holder must provide annually, within a reasonable time after receipt of the City’s written request, a report showing the number of each type of Access Line owned or placed and maintained by a Permit Holder within the City that are activated for end-user customers and other Telecommunications Service Providers at month’s end for each of the preceding twelve (12) months. The City agrees that the report shall be used solely for the purpose of verifying the number of a Permit Holder’s Access Lines within the City that are activated for end-user customers and Telecommunications Service Providers. Upon written request, a Permit Holder shall verify the information in the report and, upon reasonable advance notice, produce to the City and permit inspection by the City of all non-customer-specific records and documents reasonably calculated to verify the information. For purposes of payment of fees for use of the Public Rights-Of-Way, lines terminating at customer’s premises that are billed as “Lifeline,” “Tel-Assistance,” or other service that is required to be similarly discounted pursuant to state or federal law or regulation for the purpose of advancing universal service to the economically disadvantaged shall not be included in the lines upon which the fee is calculated.

5.03 Annexation and Disannexation: within thirty (30) days following the date of the passage of any action effecting the annexation of any property to or the disannexation of any property from the City’s corporate boundaries, the City agrees to furnish each Permit Holder written notice of the action and an accurate map of the City’s corporate boundaries showing, if

available, street names and number details. For the purpose of compensating the City under this Ordinance, a Permit Holder shall start including or excluding Access Lines within the affected area in a Permit Holder's count of Access Lines (a) on the effective date designated by the Comptroller of Public Accounts—Texas for the imposition of State local sales and use taxes, or (b) thirty (30) days after the date on which a Permit Holder is notified by the City of the annexation or disannexation, whichever date is later.

5.04 Confidential Records: if a Permit Holder notifies the City of the confidential nature of any information, reports, documents, or writings, the City agrees to maintain the confidentiality of the information, reports, documents, and writings to the extent permitted by law. Upon receipt by the City of requests for a Permit Holder's confidential information, reports, documents, or writings, the City shall notify a Permit Holder of the request in writing by facsimile transmission. The City shall request and obtain an Attorney General's Opinion before disclosing any confidential information, reports, documents or writings and will furnish a Permit Holder with copies of Attorney General opinion requests it makes pertaining to a Permit Holder's confidential information, reports, documents or writings.

5.05 No Other Fees: the payments due hereunder shall be in lieu of any permit, license, approval, inspection, or other similar fees or charges, including, but not limited to, all general business license fees customarily assessed by the City for the use of the Public Rights-Of-Way against Persons operating businesses similar to that of a Permit Holder. Further, such Rights-Of-Way Fee shall constitute full compensation to the City for all of a Permit Holder's facilities located within the Public Rights-Of-Way, including interoffice-transport and other Transmission Media that do not terminate at an end-user customer's network interface device,

even though those types of lines are not used in the calculation of the Rights-Of-Way Fee.

5.06 Timing of Payment: a Permit Holder shall remit the Line Fee on a quarterly basis. The payment shall be due on the forty-fifth (45th) day following the close of each calendar quarter for which the payment is calculated.

5.07 Uncollectibles: a Permit Holder has a statutory right to pass through to its customers on a pro rata basis any compensation paid to the City for access to the Public Rights-Of-Way. Any other provision of this Ordinance notwithstanding, a Permit Holder shall not be obligated to pay the City for any Access Lines for which revenues remain uncollectible.

5.08 Facilities Provided to Other Telecommunications Service Providers: to the extent allowed by applicable state and federal law, any Telecommunications Service Providers that purchase unbundled network elements or other Facilities for the purpose of creating Telecommunications Service for sale to persons within the City shall pay to the City a Rights-Of-Way Fee that is calculated as of month-end by applying the appropriate Line Fee, as specified in Section 5.01 above, to each Access Line provided. Such direct payment to the City is necessary because it is only the Person creating the services that will be able to determine the number of Access Lines being provided, so that the Rights-Of-Way Fee imposed herein can be applied on a non-discriminatory basis to all Telecommunications Service Providers that sell Telecommunications Service within the City. Other provisions of this Ordinance notwithstanding, a Permit Holder shall not include in its monthly count of Access Lines any unbundled network elements or other Facilities provided to other Telecommunications Service Providers for the provision of Telecommunications Services, if the Telecommunications Service Provider that is providing the Telecommunications Services to end user customers has provided a

signed statement to a Permit Holder that the Telecommunications Service Provider is paying the Access Line fees applicable to those services directly to the City. If a Permit Holder provides a copy of the signed statement to the City, then a Permit Holder is absolved of all responsibility for the Line Fees payable on the Telecommunications Service, unbundled network elements, and other Facilities used in the provision of those Telecommunications Services within the City.

5.09 Fee Application to Leased Facilities: pursuant to Tex. Utilities Code §54.206, a Permit Holder may collect the Line Fee imposed by the City pursuant to this Ordinance through a pro rata charge to the customers in the boundaries of the City, including any other Persons who are leasing, reselling or otherwise using a Permit Holder's Access Lines to provide Telecommunications Service. With respect to any Person leasing, reselling, or otherwise using a Permit Holder's Access Lines, if a Permit Holder believes it does not have sufficient information to determine the appropriate rate to apply, then the higher Line Fee shall apply until such time as the Person using the Access Lines provides to a Permit Holder sufficient written information to determine the correct Line Fee. If a Person provides sufficient written information for the application of the Line Fee, a Permit Holder may bill the Person on the basis of the information provided. A Permit Holder shall provide to the City any information regarding the locations to which it is providing service or facilities for use by another Person for the provision of Telecommunications Service to end-user customers, so long as City first obtains written permission of such other Person for a Permit Holder to provide the information to the City. Any other provision of this Ordinance notwithstanding, however, a Permit Holder shall not be liable for underpayment of Line Fees resulting from a Permit Holder's reliance upon the written information provided by any Person that uses a Permit Holder's service or facilities for the

provision of Telecommunications Service to end-user customers.

SECTION 6.0 - CONSTRUCTION AND MAINTENANCE OF FACILITIES

6.01 The location and route of all Facilities and Transmission Media placed and constructed in the Public Rights-Of-Way shall be subject to the lawful, reasonable, non-discriminatory, and proper control and direction of the City.

6.02 Nothing contained in this Ordinance shall be construed to require or permit the attachment on or placement in a Permit Holder's Facilities of any electric light or power wires or communications facilities or other systems not owned by a Permit Holder. If the City desires to attach or place electric light or power wires, communications facilities or other similar systems or facilities in or on a Permit Holder's Facilities, then a further separate, noncontingent agreement with a Permit Holder shall be required. Nothing contained in this Ordinance shall obligate a Permit Holder to exercise or restrict a Permit Holder from exercising its right to enter voluntarily into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with any Person authorized to operate as a Public Utility or a Telecommunications Utility or authorized to offer Cable Service within the City.

6.03 The surface of the Public Rights-Of-Way disturbed by a Permit Holder 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. The Permit Holder shall endeavor to minimize disruptions to the efficient use of the Public Rights-Of-Way by pedestrian and vehicular traffic, and Public Rights-Of-Way shall not be blocked for a longer period than shall be reasonably necessary to execute all

construction, maintenance and/or repair work.

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

6.05 Permit Holders and their respective contractors and agents have the right, permission and license to trim trees upon and overhanging the Public Rights-Of-Way to prevent trees from coming in contact with a Permit Holder's Facilities and Transmission Media. When directed by the City, tree trimming shall be done under the supervision and direction of the City or under the supervision of the City's delegated representative.

SECTION 7.0 - RELOCATION AND REMOVAL OF FACILITIES

7.01 In accordance with Tex. Utilities Code Ann. §54.203(c), upon thirty (30) days notice by the City, Permit Holder shall begin relocation of its Facilities within the Public Rights-Of-Way at its own expense to permit the widening or straightening of streets. The notice by the City shall include a specification of the new location for a Permit Holder's Facilities along the Public Rights-Of-Way.

7.02 The City retains the right to move any Facilities within the Public Rights-Of-Way to cure or otherwise address a public health or safety emergency. The City shall cooperate to the extent possible with a Permit Holder in such instances to assure continuity of service and to afford to a Permit Holder the opportunity to make such relocation itself.

SECTION 8.0 - INDEMNIFICATION

8.01 A Permit Holder shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the Permit Holder, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Permit Holder, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in the Public Rights-of-Way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If a Permit Holder and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the City and Permit Holder and does not create or grant any rights, contractual or otherwise, to any other person or entity.

8.02 A Permit Holder or the City shall promptly advise the other in writing of any known claim or demand against the Permit Holder or the City related to or arising out of the Permit Holder's activities in the Public Rights-of-Way.

SECTION 9.0 - ADMINISTRATION OF ORDINANCE

9.01 The City may, at any time, make reasonable inquiries pertaining to the terms, conditions, rights and obligations of this Ordinance, and a Permit Holder shall respond to such inquiries on a timely basis.

9.02 Copies of petitions, applications, and reports submitted by a Permit Holder to the Federal Communications Commission or the Public Utility Commission of Texas shall be provided to the City upon specific request.

9.03 After reasonable notice to a Permit Holder, the City may establish, to the extent permitted by law, such reasonable and non-discriminatory rules and regulations as may be appropriate for the administration of this Ordinance and the construction of a Permit Holder's Facilities in the Public Rights-Of-Way, so long as those rules and regulations are competitively neutral.

SECTION 10.0 - GOVERNING LAW

This Ordinance shall be construed in accordance with the City Code in effect on the date of passage of this Ordinance to the extent that such Code is not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 11.0 - NON-DISCRIMINATION AND COMPETITIVE NEUTRALITY

The City hereby recognizes that it has the legal duty to obligate, on a going-forward basis, all Permit Holders to abide by the same terms and conditions imposed by this Ordinance,

including, but not limited to, the payment of the Line Fee, and to apply substantively same requirements governing their use and occupancy of the Public Rights-Of-Way.

SECTION 12.0 - PERMIT

Any Permit Holder that owns facilities already located within the Public Rights-Of-Way on the date this Ordinance is enacted is hereby granted a Permit hereunder; however, within thirty (30) days from the effective date of this Ordinance all such Permit Holders shall provide to the City a Notice of Pre-existing Facilities. All prospective Permit Holders shall file a Permit Application Form at least thirty (30) days before placing any facilities in the Public Rights-Of-Way. A Permit Application Form will not be accepted and a Permit granted unless the Applicant provides on that form the name and address of the person to whom notices hereunder are to be sent, the date on which the Applicant expects to begin providing service within the City, a 24-hour per day contact number for the Applicant, and the certificate number of the Applicant's certificate issued by the Public Utility Commission of Texas or a notarized statement from a principal or officer of the Applicant that no certification by the Public Utility Commission is required for the type of service to be offered by Applicant.

SECTION 13.0 - ISSUANCE AND EFFECTIVE DATE OF PERMIT

The City shall deliver a properly certified copy of this Ordinance to a Permit Holder, along with a Permit hereunder, within fourteen (14) days after receipt of the Notice of Pre-Existing Facilities or the Permit Application Form.

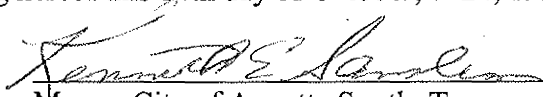
The effective date for any Permit shall be the date of issuance, however, the assessment of

the Line Fee shall not begin until the first day of the second month after the date of issuance of the Permit. Permit Holders with pre-existing facilities may continue the pre-existing compensation arrangement until the first day of the second month following the issuance of the Permit.

SECTION 14.0 - EFFECTIVE DATE OF ORDINANCE


This Ordinance shall take effect and be in force immediately upon final passage by the City.

Passed and approved following the reading hereof this 14th day of October, A.D., 1999.



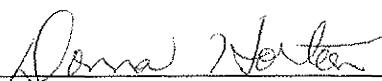
Mayor, City of Annetta South, Texas

ATTEST:



Donna Horton
City Secretary

I, Donna Horton, City Secretary of the City of Annetta South, Texas, do hereby certify that the foregoing is a true and correct copy of Ordinance Number 49, finally passed and approved by the Board of Aldermen of Annetta South, Texas, following the reading thereof at a regular meeting held on the 14th day of October, 1999.



Donna Horton
City Secretary