

declare an impasse and this Ordinance shall be terminated as of the date the impasse is declared. In the event this Ordinance is terminated under the provisions of this Section, and if the Telephone Company desires to continue to use the rights-of-way within the City for the purpose of its telecommunications business, the Telephone Company shall continue to pay compensation to the City according to the terms contained in Section 12 hereof, regardless of the Telephone Company's disagreement therewith, until a final judicial determination is reached. Such continuation of payment shall not constitute a waiver of any claim or defense of the Telephone Company. Funds collected and remitted after termination may be subject to refund by a court of competent jurisdiction upon final adjudication.

(b) In order to institute mediation, either party may, on written notice to the other party, initiate non-binding mediation before a single mediator affiliated with Judicial Arbitration and Mediation Service, Inc. ("JAMS") in Dallas County, Texas, or another mediation service mutually agreeable to the parties. The Mediator shall be selected by agreement of the parties within thirty (30) days after either 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 of the JAMS approved list; those two mediators will then select a third independent Mediator who will conduct the mediation session(s).

SECTION 12. 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, regulation and supervision of such use and occupancy, in consideration for all other agreements and promises made herein by 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 corporate 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 hereafter levied by the City in accordance with State law, 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 the sum of (a) \$500,000, and (b) the aggregate amount of Access Line Fees billed as described below.

The Telephone Company will bill an "Access Line Fee" to its customers residing within the corporate limits of the City. The initial Access Line Fee billed to each residential, single party (R1) access line (the "R1 Fee") shall be \$1.00 monthly. The R1 Fee shall then be divided by the current basic rate for R1 service in the City to determine the Billing Ratio. The Billing Ratio shall then be multiplied by the basic rate for each of the other classes of local exchange telephone service to determine the amount of the Access Line Fee that will be billed to all other local exchange access

lines within the City limits. For purposes of this Ordinance and calculation, "local exchange access lines" shall be defined as residence, single line business, multi-line business, Centrex, Centranet, key lines and PABX trunks or equivalent. In addition, the Company will pay Access Line Fees based on any non-land based technology that provides a basic unit of local telephone service within the City as long as other service providers are also required to make similar payments.

In addition to the Access Line Fee, the Telephone Company will collect a fee not to exceed \$.05 per access line per month, to recover the accelerated payment of \$500,000 made to the City in the first year of this Ordinance, as specified herein. The Telephone Company will collect the \$.05 per access line until the \$500,000 is recovered. Once the \$500,000 is recovered, the additional \$.05 fee will be discontinued.

For the second and subsequent years while this Ordinance remains in effect, the Access Line Fee 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. For the first seven years of this Ordinance, the Annual Fee for each year shall in no event be less than the Annual Fee for the previous year, provided, however, the \$500,000 paid in the first year as described above, shall be excluded from this calculation. Notwithstanding the foregoing, the City shall additionally have the option, at any time, to increase the Access Line Fee up to an aggregate of ten (10) cents during the first seven years of this Ordinance.

(b) The Annual Fee for each year shall be paid by wire transfer in four quarterly payments. The amount paid will equal the amount billed by the Telephone Company according to the method described above through the end of each calendar quarter. The payment due dates shall be February 28, May 31, August 31, and November 30, with the first payment under this Ordinance due on August 31, 1994. Within fifteen business days of each quarterly payment, the Telephone Company will provide the City with the most recent official access line report showing the number of access lines within the City limits. The report shall include the number of access lines by month for each class of local exchange telephone service. The Telephone Company shall certify the access line report to be accurate and agrees to provide an annual reconciliation of reported access lines that will tie to the year end Texas Public Utility Commission report on access lines. The City of Plano access line reconciliation report will be submitted to the City annually with the payment to the City by Telephone Company on May 31. Telephone Company shall semi-annually provide to the City a listing of access lines by service address ("Customer Service Address List"). The Customer Service Address List shall not include any customer names or telephone numbers. Telephone Company and City agree that the accuracy of the Customer Service Address List is vitally important to both parties. Whenever the City becomes aware of information that affects the accuracy of such list, City shall so inform the Telephone Company, and Telephone Company shall review such information and, upon verification, correct the Customer Service Address List. The City shall return the Customer Service Address List, access line reconciliation report, the certified access

line report, and any data taken from these reports in any form, to the Telephone Company within six (6) months from the date of receipt of the report. The City and the Telephone Company may mutually agree to extend the six (6) month period. The Telephone Company shall retain the Customer Service Address List, the access line reconciliation report, and the certified access line report for a period of three (3) years from their return to the Telephone Company by the City. Each quarter the Telephone Company shall prepare a payment work sheet using the form attached as Attachment A. Each year the Telephone Company shall prepare an annual payment work sheet to show the calculation of the true-up payment, if any, and the calculation of the Growth Factor as provided in Section 12(c).

(c) The Growth Factor shall correspond to the growth in the Consumer Price Index-Urban (CPI-U) for the DFW area of the United States as determined by the United States Department of Labor. For each succeeding year during the period of this Ordinance, the previous year's R1 Fee shall be allowed to grow at the same rate as the CPI-U. The Telephone Company will adjust its customer billing annually to account for the growth Factor as described above. When the Growth Factor calculation is completed, the Telephone Company will provide the City, for its review, the Growth Factor calculations supported by a copy of the Customer Impact Analysis showing the pro rata fee and the most recent number of access lines within the City limits for each class of service.

The City agrees to rely upon the growth process described above in determining each Annual Fee during the term of this Ordinance. Except as provided herein, the

City waives any right to audit or otherwise review any Telephone Company records. In the event the CPI-U is determined to be in error by the Department of Labor, the Growth Factor shall be recomputed to reflect any corrections so identified. The Annual Fee shall be recalculated using the corrected R1 Fee, and the recalculated Access Line Fees shall be used for all future calculations required by 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 Annual Fee shall be in lieu of the taxes, licenses, charges, rights-of-way permit or inspection fees, rentals, rights-of-way easements or corporate franchise taxes as described in Section 12(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 fees, rentals, rights-of-way easements or franchise taxes.

(e) In the event of an annexation or disannexation, the Annual Fee paid to the City in accordance with procedures described in Section 12(a) herein will be self-adjusting when the annexed telephone access lines are billed the Access Line Fee or the disannexed access lines cease being billed the pro rata fee. This adjustment shall be accomplished within sixty (60) days following receipt by the Telephone Company from the City of the maps of the affected area(s) showing the new boundaries of the City. The Telephone Company shall provide the City after each annexation and disannexation by the City lists of customer addresses and access lines affected by the

annexation or disannexation.

(f) The City understands that Telephone Company considers the Customer Service Address List, the certified access line report, and the access line reconciliation report to be proprietary, and that Telephone Company provides such information to the City solely for the purpose of verifying access line count. The City acknowledges that these reports are the sole property of the Telephone Company and are considered proprietary information. The City agrees not to use the Customer Service Address List, the certified access line report, or the access line reconciliation report for any purpose other than verifying access line count, nor to disclose this information to any third parties. If the City receives any request for the information pursuant to the Open Records Act, the City, within three business days after receipt of such request, shall notify the Telephone Company of the request for the information. At the request of the Telephone Company, the City will request an opinion from the Attorney General, pursuant to the Open Records Act, regarding the public availability of the information. The City shall assert every reasonable exception to public disclosure of the information, and every other exception which reasonably may include the information. If the Telephone Company notifies the City that it does not require the City to protect the information, the City may, at its option, either request such an Attorney General's opinion or provide the information to the public.

SECTION 13. ORDINANCE VIOLATIONS

The City Council shall have the option to declare this Ordinance terminated at

any time for failure of the Telephone Company to comply with any term, condition, or provision of this Ordinance, in accordance with the following procedures:

(a) If the Telephone Company continues to violate or fails to comply with the terms and provisions of this Ordinance for a period of thirty (30) days after the Telephone Company shall have been notified in writing by the City to cure such specific alleged violation or failure to comply, then the City may pursue the procedures set forth below to declare that the Telephone Company has terminated all rights and privileges consented to in this Ordinance; provided, however, that if the Telephone Company is alleged to be in violation of any provision of this Ordinance and if the Telephone Company commences efforts to cure such alleged violation(s) within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative efforts until such curative efforts are completed, then such alleged violation(s) shall cease to exist and this Ordinance shall not be declared to be terminated.

(b) Any such termination shall be declared only by a written decision of the City Council after an appropriate public proceeding before the City Council, which shall accord the Telephone Company the opportunity to be heard and to respond to any such notice of alleged violation or failure to comply. All notice requirements shall be met by providing the Telephone Company at least fifteen (15) days prior written notice

of any public hearing concerning the proposed termination of this Ordinance. In addition, fifteen (15) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public.

(c) The City Council, after full public hearing and upon finding a violation or failure to comply, may either declare this Ordinance terminated, or impose a lesser penalty than forfeiture of this Ordinance, including but not limited to a penalty of up to \$1,000 per day per violation, or excuse the violation or failure to comply upon a showing by the Telephone Company of mitigating circumstances or good cause for the violation or failure to comply.

(d) Neither the Telephone Company's acceptance of this Ordinance, Telephone Company's appearance before the City Council at any public hearing concerning any proposed termination of this Ordinance nor any action taken by the City Council as a result of any such public hearing, including a declaration of termination or a finding of a violation or failure to comply, shall be construed to waive or otherwise affect either party's right to seek a judicial determination of the rights and responsibilities of the parties under this Ordinance.

(e) The Telephone Company shall not be excused from complying with any of the terms and conditions of this Ordinance by any previous failure of the City to insist upon or to seek compliance with any such terms or conditions.

SECTION 14. NOTICE

For the purpose of this ordinance, notice to the City will be to:

City Manager
City of Plano
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:

City Attorney
City of Plano
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

Notice to the Telephone Company will be to:

District Manager
GTE Southwest Incorporated
2201 Avenue I
Plano, Texas 75074

With a copy to:

Area Manager - Municipal Affairs
GTE Southwest Incorporated
P.O. Box 1001
MC: TXD01214
San Angelo, Texas 76902-1001

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

SECTION 15. SUCCESSORS AND ASSIGNS

The rights, powers, limitations, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns, whether expressly so stated herein or not. This Ordinance shall not be assigned or transferred by the Telephone Company except with the approval of the governing body of the City expressed by ordinance and subject to all terms of such ordinance, and further provided that such approval by the City shall not be unreasonably withheld.

SECTION 16. CUMULATIVE

This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City, and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance. Notwithstanding the foregoing, no part or provision of the City of Plano Manual for Utility Location and Coordination, Ordinance No. 87-12-21, shall be repealed by any provision contained in this ordinance.

SECTION 17. PUBLIC PURPOSE

All of the regulations provided in this Ordinance are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or city official or employee charged with the enforcement of this Ordinance, acting for the City in the discharge of his duties, shall

not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties. Neither the City nor the Telephone Company by accepting this Ordinance waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Ordinance, including seeking injunctive relief in a court of competent jurisdiction. Such right to injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable through injunctive relief.

SECTION 18. 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 67-8-3 adopted August 14, 1967, as amended by Ordinance Number 70-2-1 adopted on February 9, 1970, as further amended by Ordinance Number 81-1-6 adopted on November 24, 1981, and renewed or extended from time to time thereafter, and its predecessor ordinances, if any (hereinafter collectively referred to as "Ordinance 67-8-3"). This full and complete release of claims for any matters under Ordinance 67-8-3 shall be for the benefit of GTE Southwest Incorporated; its parent; its affiliates; their directors, officers and employees; its 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 67-8-3. GTE Southwest, Incorporated, its parent, 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 directly or indirectly out of or connected with any matters under Ordinance 67-8-3.

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 release 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 or which could be asserted against the other.

SECTION 19. SEVERABILITY

If any section, sentence, clause, of this Ordinance is for any reason held to be illegal, ultra vires or unconstitutional, such invalidity shall not affect the validity of the remaining portions of this Ordinance.

SECTION 20. GOVERNING LAW; VENUE

(a) This Ordinance shall be construed under and in accordance with the laws

of the State of Texas and the City Charter and City Codes to the extent that such Charter and Codes are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Collin County, Texas. In the event that any legal proceeding is brought to enforce the terms of this Ordinance, the same shall be brought in Collin County, 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 21. FUTURE CONTINGENCIES

Notwithstanding anything contained in this Ordinance to the 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 authority exercising its jurisdiction to be excessive, unenforceable, void, unlawful, 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. Provisions of this Section shall be subject to the governing provisions in Section 20.

SECTION 22. FUTURE AMENDMENTS

This Ordinance may be amended at any time by the mutual agreement of the City and the Telephone Company. It is understood that the Telephone Company is currently in the process of negotiating similar ordinances with other cities throughout the state. It is understood and agreed that if an ordinance governing similar matters with another city in this state contains a provision which the City feels would be more advantageous to it than the terms hereof, the City may require that the portion of this Ordinance be amended to include the more favorable provision. For the purposes of this Section, the Telephone Company shall, on request of the City, provide the City a copy of any street use ordinance, franchise or similar agreement it enters into with any Texas city during the term of this Ordinance.

SECTION 23. 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 Ordinance must be brought to the attention of the other party, by written notice received no later than seven (7) 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 24. ACCEPTANCE OF AGREEMENT

The Telephone Company shall have thirty (30) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. Upon such written acceptance by the Telephone Company being filed with the City, this Ordinance shall take effect and be in force from and after the date of its acceptance, and shall effectuate and make binding the agreement provided by the terms hereof.

SECTION 25. EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER

The Telephone Company is an Equal Employment Opportunity employer and complies fully with the applicable federal and state laws concerning unlawful discrimination.

SECTION 26. PUBLIC MEETING

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

PASSED AND APPROVED ON FIRST READING this ___ day of _____, 19__.

James N. Muns, MAYOR

ATTEST:

Jackie Blakely, CITY SECRETARY

APPROVED AS TO FORM:

Gary F. Chatham, CITY ATTORNEY

FINALLY PASSED AND APPROVED ON SECOND READING this ___ day of ___
____, 19__.

James N. Muns, MAYOR

ATTEST:

Jackie Blakely, CITY SECRETARY

APPROVED AS TO FORM:

Gary F. Chatham, CITY ATTORNEY

ACCEPTANCE

WHEREAS, the City Council of the City of Plano, Texas, did on the ___ day of _____, 19__, enact an Ordinance entitled:

AN ORDINANCE WHEREBY THE CITY OF PLANO, TEXAS, AND GTE SOUTHWEST INCORPORATED AGREE THAT, FOR THE PURPOSE OF OPERATING ITS TELECOMMUNICATIONS BUSINESS, THE TELEPHONE COMPANY SHALL OCCUPY THE CITY STREETS, ALLEYS, HIGHWAYS, PUBLIC THOROUGHFARES, PUBLIC UTILITY EASEMENTS, AND PUBLIC WAYS OF THE CITY, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, FOR THE PURPOSE OF MAINTAINING AND OPERATING ITS FACILITIES NEEDED AND NECESSARY TO PROVIDE SERVICE TO ITS CUSTOMERS IN PLANO, TEXAS; 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; PROVIDING FOR A TERM; PROVIDING FOR FUTURE CONTINGENCIES; PROVIDING FOR A LIMITATIONS PERIOD; PROVIDING FOR CUMULATIVE EFFECT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR METHOD OF ACCEPTANCE.

WHEREAS, said Ordinance was on the ___ day of _____, 19__ 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 Plano, Texas, in his or her office.

Dated this ___ day of _____, A.D. 19__.

GTE SOUTHWEST, INCORPORATED

By: _____

Vice President

ATTEST:

Secretary

CO-1

FINAL
September 29, 1994

FRANCHISE AGREEMENT

This Franchise Agreement made and entered into as of the 1st day of January, 1995, by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, hereinafter called the "City" and BELLSOUTH TELECOMMUNICATIONS, INC. d/b/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a corporation, hereinafter called the "Company" or "Southern Bell."

WITNESSETH THAT:

For and in consideration of the mutual promises and covenants herein conveyed it is hereby agreed by and between the parties hereto as follows:

Section 1. Purpose

The City hereby grants to the Company, its successors and assigns, a franchise to construct, operate and maintain its facilities used in or incidental to the provision of telecommunications services upon, along, over and under the public rights-of-way in the City as its telecommunications business may from time to time require, and after obtaining appropriate permits from the City and complying with all City ordinances and regulations. This Agreement, and the rights granted hereunder, shall not be exclusive, and the City reserves the right to grant a similar use of the public rights-of-way to any person or any corporation duly authorized by the City to occupy public right-of-way during the period of this Agreement as long as such grants of authority do not prevent Southern Bell from using and enjoying its rights granted herein. This Agreement shall cover all public rights-of-way within the territory embraced within the City limits of the City of Atlanta as they now exist or as they may hereafter be extended. Provided that in the event of an extension of the City limits this Agreement shall take the place of and supersede all franchises or similar agreements entered into by said Company in such territory so taken. The terms of this franchise shall govern in the City and in newly annexed areas upon the effective date of any annexation. It is the responsibility of the City to give the Company 60 days

prior notice of the effective date and other information regarding the area to be annexed.

Section 2. Definitions.

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

- (a) City: The City of Atlanta, Georgia.
- (b) Company: BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company.
- (c) emergency: a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.
- (d) facilities: all duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures and appurtenances and all associated transmission media.
- (e) rights-of-way: all present and future streets, avenues, highways and public roads in the City, as defined in the Georgia Code, as such may be amended from time to time, including those alleys which are part of the rights-of-way and excluding railroads rights-of-way, parks, and airport property, within the city limits of the City.
- (f) telecommunications: All services provided over transmission media by Southern Bell as a telephone company.
- (g) transmission media: all 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.
- (h) use: any 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.

Section 3. Term.

This Franchise Agreement shall supersede all franchises heretofore granted by the City to the Company and its predecessors and shall remain in effect from and after January 1, 1995 and expiring at midnight on December 31, 1999. Provided, however, that this franchise may be extended for three additional five year terms upon the mutual agreement of both parties.

Section 4. Additional Authority Required.

Nothing in this Agreement grants the Company the right to operate or to provide cable television service in the City unless and until the Company makes application for and is granted a cable television franchise by the City, or other appropriate governmental authority. However, nothing in this agreement shall be construed to prevent the Company from carrying cable television signals across public rights-of-way for a cable television operator who has a current franchise agreement with the City or other appropriate governmental authority. Nothing in this agreement shall be construed to limit the City's authority to impose a franchise fee, tax, or other assessment of any kind on any person or entity with respect to video programming service or other communications service provided by such person over the transmission media of the Company for which charges are assessed to subscribers in the City of Atlanta. Nor shall anything in this agreement be construed as consent by the Company or its affiliates to the imposition of any such fees, taxes or assessments.

Section 5. General Conditions of Use.

(a) The work of erecting and constructing facilities of the Company shall be done under the regulation of the City and subject to the police power of the City and the City's ordinances. All use of the public rights-of-way by the Company shall interfere as little as reasonably practicable with the use of the rights-of-way by others.

(b) The Company shall replace and properly relay and repair the surface, base, and landscape treatment of any public sidewalk or right-of-way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of Company's facilities within a reasonable time after completion of the work in accordance with existing standards of the City in effect at the time of the work. Company shall give to the City twenty-four (24) hours notice prior to undertaking any repair, replacement, or extension of its service on public rights-of-way which require a City permit. Upon failure of the Company to perform any such repair or replacement work, after ten days' notice in writing shall have been given by the City's Department of Public Works to the Company, the City may repair such portion of the public right-of-way as may have been disturbed by the Company, its contractors or agents, and upon receipt of a bill from the City, the Company will promptly reimburse the City for the costs so incurred. Notwithstanding the foregoing, if the City determines that the failure of the Company to properly repair or restore the public right-of-way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts. The Company shall promptly reimburse the City for all costs incurred by the City. Should the City reasonably determine, within three years for the surface or base, and within one year for landscape treatment, from the date of any restoration performed by the Company, that such surface, base, or landscape treatment requires additional restoration work to meet existing standards of the City, the Company shall perform such additional restoration work to the reasonable satisfaction of the City.

(c) Except in an emergency, the Company shall not excavate any public right-of-way without first notifying the Department of Public Works of the City and obtaining a permit therefor as required by City ordinances. If approval is required, it shall be given if the proposed excavation is in compliance with the requirements of City ordinances. The Commissioner of the Department of Public Works or designee shall be notified as soon as practicable regarding work performed under emergency conditions, and the Company shall comply with any reasonable requirements of the City for the restoration of the public-rights-of-way. The failure of the

Company to request and obtain a permit from the City prior to excavation of any public right-of-way, except in an emergency, will subject the Company to a stop-work order from the City or enforcement action pursuant to the City's Code of Ordinances. Failure to act upon the permit within 90 days of issuance shall cause the permit to become invalid, and will require the Company to obtain another permit.

(d) In the pursuit of maintaining its telecommunications system, the Company, its contractors and agents, shall have the right to trim trees so as to prevent the branches of such trees from coming in contact with the wires, cables or other facilities of the Company or from preventing access to Company facilities. Should the Company, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours, the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Company shall promptly reimburse the City for all costs incurred.

Section 6. Use of Company Facilities by the City and Third Parties.

(a) The company will provide conduit and pole space to the City where such are available in the public right-of-way for the City's own governmental purposes under terms, and conditions set forth in a separate pole use and occupancy agreement, provided that the fees required by such agreement are subject to concession as provided in Section 9 below and provided that these facilities are not used by the City to bypass the use of the Company's services in connecting the City to other providers of telecommunications services.

(b) The Company is not authorized to license or lease to any person or entity the right to occupy or use the public rights-of-way for the conduct of any private business unless such person or entity has obtained a franchise or right-of-way agreement from the City for such use.

(c) The Company will comply with requirements in the City's Code of Ordinances concerning the use of its poles and conduits in the public rights-of-way by other persons for similar purposes; subject to the reservation of rights contained in Section 14.