

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**REPLY COMMENTS OF THE CITY OF GREENSBORO, NORTH CAROLINA**

The City of Greensboro, North Carolina (the “City”) files these reply comments in the above-captioned proceeding. Verizon claims that localities engage in various practices that impede providers’ access to rights of way, among them discriminatory treatment.<sup>1</sup> Specifically, on page 22 of Verizon’s Comments, the company states:

...Greensboro, North Carolina has discriminatory fees. The ILEC does not pay for use of public rights-of-way for its local exchange networks, but competitive LECs must pay \$1.75 per linear foot. Although the fee structure is not discriminatory on its face, in practice, the ILEC pays no fees because it does not have a franchise for its local network, despite the city’s Telecommunications Ordinance that states that no carrier may occupy public rights of way without having a franchise. In 2011, Verizon attempted to work with the city to establish equal treatment before it deployed facilities. Verizon was unsuccessful and ultimately decided to route its facilities around Greensboro right-of-way to provide service to a customer.<sup>2</sup> (citation omitted)

Verizon is incorrect. The incumbent does have a franchise, and that franchise provides for compensation. The compensation may be different than that sought from Verizon, but the

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<sup>1</sup> *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of Verizon and Verizon Wireless (July 18, 2011) (“Verizon’s Comments”).

<sup>2</sup> *Id* at 22.

compensation is neither prohibitory or effectively prohibitory (as Verizon's own filing admits), nor is it discriminatory within the meaning of Section 253(c).

## **I. THE CITY HAS FACILITATED, NOT IMPEDED BROADBAND DEPLOYMENT**

The City of Greensboro, North Carolina ("City") was founded in 1808 as the geographic center of Guilford County. Today, it has a population of approximately 270,000 residents, and has grown to be part of a thriving metropolitan area called the Piedmont Triad, which includes three major cities (Greensboro, High Point, and Winston-Salem) and more than a million people. Greensboro evolved from a small center of government, to an early 1900s textile and transportation hub, and today is home to a variety of businesses, from Lorillard Tobacco Company to RF Micro Devices.<sup>3</sup>

The City recognizes the importance of good communications to a thriving community, and has made investments and won multiple awards for a broad range of activities undertaken to promote and enhance the quality of life in its community.<sup>4</sup> For example:

- Public Technology Institute (PTI) designated the City of Greensboro as a Citizen-Engaged Community for 2010-2012. The recognition is for the City's implementation of "best practices" of multi-channel (Web, civic media, Interactive Voice Response, 311 / call agents) public access to government services and information. Highlighted were the City's use of Citizen Relationship / Records Management (CRM), its Contact Center, Web portal technology, telephony systems, Interactive Voice Response, and mobile communications infrastructure to advance new standards for citizen participation and government performance reporting.

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<sup>3</sup> For more information about the City, see <http://www.greensboro-nc.gov/>.

<sup>4</sup> For lists of awards see generally, <http://www.greensboro-nc.gov/index.aspx?page=141> (last accessed September 28, 2011); and Channel 13, <http://www.greensboro-nc.gov/index.aspx?page=2008> (last accessed September 28, 2011).

- Channel 13, the City’s government channel, received the 2010 Savvy Silver Circle Award (its eighth Savvy award) for the program Voices of a City, a show which highlights people who have made Greensboro great and who have made positive contributions to the City’s character. The Savvy Awards competition recognizes outstanding local government achievements in communications, public-sector marketing, and citizen-government relationships.
- The City operates more than two dozen hot spots for wireless (Wi-Fi) Internet connections, including all Greensboro Public Library locations, numerous City parks, government recreation facilities, and fire stations.<sup>5</sup>

The City not only recognizes the value of communications and broadband infrastructure as a means of interacting with and among its citizens, it has taken active steps to encourage private sector deployment. Historically, the City was served only by Southern Bell Telephone and Telegraph Company (the ILEC) under a sixty year franchise first granted by the City in 1903, and renewed for another sixty year term in 1963 (expiring in 2023).<sup>6</sup> In 1995, the City adopted the Greensboro Telecommunications Chapter of its municipal code (codified as Chapter 28.1).<sup>7</sup> Section 28.1-2 declares the purpose as follows:

The city finds that the development of telecommunications has the potential of having great benefit and impact upon the city. Because of the complex and rapidly changing technology associated with telecommunications, the city further finds that the public convenience, safety and general welfare can best be served by exercising licensing and regulatory powers which are vested in the city or such persons as the city shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible

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<sup>5</sup> For a complete list of City-provided WiFi sites, see <http://www.greensboro-nc.gov/index.aspx?page=2357> (last accessed September 28, 2011).

<sup>6</sup> A copy of the renewal franchise is attached hereto as Exhibit A.

<sup>7</sup> See Chapter 28.1 of the Greensboro Municipal Code, available online at: <http://library.municode.com/index.aspx?clientId=10736&stateId=33&stateName=North%20Carolina>

public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

Section 28.1-9 requires that any entity desiring to occupy or use the streets and public rights of way of the City to operate a telecommunications system must obtain a franchise. Section 28.1-18 requires franchisees to pay annual franchise fees in the amount of one dollar and seventy-five cents (\$1.75) per linear foot of the public right of way, whether aerial or underground, for the installed telecommunications system.

Since 1995, the City has issued eleven (11) telecommunications system franchises under Chapter 28.1. These telecommunications franchisees include: Qwest; PF.NET; Level 3/Williams Communications; BTI/ITC Delta Com; Elantic Telecom (Dominion); AT&T /Longhaul; Telcove (Adelphia/KMC); Duke Net Communications; and Time Warner Telecom. While some providers have gone out of business or have sold their assets as a result of industry consolidation, there remain numerous active franchised providers, in addition to the ILEC, Bell South (now AT&T). Ten other companies have encroachment agreements to place telecommunications facilities in the right of way, and they also pay \$1.75 per linear foot annually. These include: American Express, Bennett College, Colonial Pipeline, General Dynamics, Gentry Air, IT Corp/Sears (Shaw Envirn.), Moses Cone, RF Micro Devices, VF Corporation, and Volvo Truck North America.

## **II. THE CITY DID NOT IMPERMISSIBLY DISCRIMINATE AGAINST VERIZON**

Verizon claims Greensboro's fees are "discriminatory" because competitive LECs must pay \$1.75 per linear foot for their telecommunications franchises, and "the ILEC pays no fees because it does not have a franchise for its local network, despite the city's Telecommunications Ordinance that states that no carrier may occupy public rights of way without having a

franchise.”<sup>8</sup> Verizon is correct that the Greensboro Telecommunications Chapter requires payment of a \$1.75 per linear foot franchise fee for telecommunications systems, but is wrong when it states that the ILEC has no franchise. As noted above, the ILEC (Bell South, now AT&T) does have a franchise.

Not surprisingly, given that the ILEC’s franchise predated the Greensboro Telecommunications Chapter by more than 30 years, the financial terms of the two franchises are different. The ILEC franchise requires the incumbent to dedicate space on its poles and conduits for City uses at no charge throughout the City. That does not mean, however, that the per foot charges imposed on other franchisees are “discriminatory” in the legal sense or otherwise unlawful. As a preliminary matter, Verizon essentially admits that the City’s charges were not prohibitory under Section 253(a); Verizon says it tried to get the same fee deal (“equal treatment”) as the ILEC, and was unable to do so, so it “decided to route its facilities around Greensboro right-of-way to provide service to a customer.”<sup>9</sup> Ultimately, Verizon *was* able to provide service to the customer. The fact that multiple providers have been able to compete effectively in the marketplace also indicates that the differences are neither prohibitory or effectively prohibitory.

But even if there were a prohibition or effective prohibition, the City’s fees would be protected from preemption by Section 253(c). That section permits the City “to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.” There is no question the compensation is publicly disclosed by the City. The annual charge of \$1.75 per linear foot is

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<sup>8</sup> Verizon’s Comments at 22.

<sup>9</sup> *Id.*

found in Section 28.1-18, as noted above. The ILEC's franchise requires compensation of a different sort, but it is clearly stated in Section 3 of the franchise.

The question then, is whether a difference in charges is itself a discrimination. It is not. *In re Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements*, 15 FCC Rcd. 16,720 at 23 (July 13, 2000) (it is not unlawful discrimination to “differentiate among users so long as there is a valid reason for doing so.”); *see also Competitive Telecommunications Ass'n v. F.C.C.*, 998 F.2d 1058, 1064 (D.C. Cir. 1993).

The City differentiates among users based on the time of entry and source of rights – the historic franchise rights of the incumbent, and the franchise rights available to providers franchised under Chapter 28.1. Like it or not, Verizon sought its franchise after 1995, and is obviously subject to the Greensboro Telecommunications Chapter. Thus, this boils down to a complaint about grandfathering. Grandfathering – as Verizon surely knows having defended and benefited from it in states where it is the ILEC – has been recognized as a nondiscriminatory, reasonable means of protecting reliance property interests, *City of New Orleans v. Dukes*, 427 U.S. 297 (1976); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 308-309 (2000) (Scalia, J., concurring).

Indeed, no provider has an absolute right to identical treatment to the ILEC – the legislative history of Section 253(c) is clear on this point. Congress specifically considered a “parity amendment” that would have, if it had been adopted, required parity in compensation charged to all telecommunications providers, including ILECs.<sup>10</sup> That text was ultimately rejected in favor of the safe harbor, “nondiscriminatory basis” language that permits differentiation for valid reasons. *TCG New York, Inc. v. City of White Plains*, 305 F. 3d 67, 80

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<sup>10</sup> H.B. 1555, 104th Cong. §243(e) (1995).

(2d Cir. 2002) (“ The statute does not require precise parity of treatment. An earlier draft of the bill that ultimately became § 253 included a provision that would have forbidden local governments from imposing any fee that ‘distinguishes between or among providers of telecommunications services.’ H.R. 1555, 104th Cong. § 243(e) (1995). Both the elimination of that provision and the language of the enacted version of § 253 strongly support the conclusion that franchise fees need not be equal.”).

Nor could Congress preempt the 1995 ordinance consistent with the Fifth Amendment. The principle under which preemption would be permitted would be this: if the City leased property in 1963 (or 1903 or 1863) at one price, it must lease property for that same price to lessors in 2011. But requiring one to lease facilities based on the terms of the last century, and regardless of increases in the value of property, is a quintessential taking. *Cf. Eastern Enterprise v. Apfel*, 524 U.S. 498 (1998) (finding that federal law compelling an employer “to bear the expense of lifetime health benefits for miners *based on its activities decades before those benefits were promised*...effects an unconstitutional taking.”). Moreover, it is bad policy; in competitive markets, competitors routinely seek to gain advantages over others by taking on the risk of entering the market early, or by obtaining necessary assets when prices are low because the value of a product is unknown. If the Commission wishes to encourage companies to enter underserved or unserved markets, it should *allow* communities to award those who enter early, and who help develop community infrastructure.

Thus, Verizon is wrong to claim that the City impermissibly discriminated against it by refusing to give the company “parity treatment” with the ILEC.

### **III. THE CITY SUPPORTS THE NATIONAL ASSOCIATIONS' COMMENTS OPPOSING FEDERAL REGULATION OF LOCAL RIGHTS OF WAY AND WIRELESS SITING**

The City is concerned that federal regulation in this area may hamper cities from experimenting with different models and approaches to spur broadband deployments. Giving localities broad flexibility to try new arrangements – and to abandon them if they do not work – may be critical to the development of successful deployment and adoption strategies. An inflexible federal rule will stifle local innovation.

Nor is mandatory federal regulation of these local matters what our federal system envisions. Thus, the City strongly supports the National Associations<sup>11</sup> legal arguments showing that the Commission lacks authority to regulate in this area, and in their call for the Commission to defer in these local deployment matters to the experts – the local governments – and to focus Commission efforts on other areas more appropriate for national policy action such as broadband literacy, barriers to broadband adoption, and broadband deployment in rural areas, to name a few.

### **CONCLUSION**

The City urges the Commission to conclude that right-of-way and facility management processes and charges are not impeding broadband deployment. There is no evidence that the City's policies have prevented any company from providing broadband service in Greensboro. In fact, the City has welcomed and been very responsive to new technologies and new broadband

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<sup>11</sup> *In the Matter of Acceleration of Broadband Deployment Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, MB WC Docket No. 11-59, Comments of the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the International Municipal Lawyers Association, the National Association of Telecommunications Officers and Advisors, the Government Finance Officers Association, the American Public Works Association, and the International City/County Management Association (July 18, 2011).

deployments. There are many reasons to believe that federal regulations would prove costly and disruptive to our community, and stifle our efforts to develop innovative and flexible processes.

September 30, 2011

Respectfully submitted,

A handwritten signature in black ink that reads "Thomas C. Pollard". The signature is written in a cursive style with a horizontal line underneath the name.

Thomas C. Pollard  
Interim City Attorney  
City of Greensboro  
300 West Washington Street  
Greensboro, NC 27401  
Thomas.Pollard@greensboro-nc.gov

51095.00002\6964731.4

# **EXHIBIT A**



38-168  
5-6-63

20-156

F-1  
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AN ORDINANCE GRANTING FRANCHISE RENEWAL TO SOUTHERN BELL  
TELEPHONE AND TELEGRAPH COMPANY

WHEREAS, the Southern Bell Telephone and Telegraph Company desires to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating lines of telephone and telegraph thereon and thereunder;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

Section 1. That permission be and the same is hereby granted to the Southern Bell Telephone and Telegraph Company to construct, maintain and operate lines of telephone and telegraph, including the necessary poles, conduits, cables, fixtures and electrical conductors upon, along, under and over the public roads, streets and highways of the City of Greensboro, as its business may from time to time require, for a period of sixty (60) years, provided that all poles shall be neat and symmetrical.

Section 2. That the work of erecting poles and constructing underground conduits under this ordinance shall be done subject to the supervision of the City, and the Company shall replace or properly relay and repair any sidewalk or street that may be displaced by reason of such work, and upon failure of the Company so to do, after twenty days' notice in writing shall have been given by the City to the Company, the City may repair such portion of the sidewalk or street that may have been disturbed by the Company, and collect the cost so incurred from the Company.

Section 3. That in consideration of the rights and privileges herein granted, the Company, when requested by the City, will designate and provide without cost to the City (1) on each pole owned and used by the Company hereunder and during its ownership and use thereof, either (a) space for a fixture for, or (b) space for a crossarm for, wires of the police and fire alarm signalling system of the City, and (2) in each underground conduit owned and used by the Company hereunder and during its ownership and use thereof, one duct for the cables of the police and fire alarm signalling system of the City; provided, however, that no use shall be made by the City of said space on such poles or of said duct which will result in interfering with or impairing the operation or use of the Company's property or service, or which will endanger, damage or injure the person or property of the public or employees of the Company or City.

Section 4. That the Company shall indemnify the City against, and assume all liabilities for, damages which may arise or accrue to the City for any injury to persons or property from the doing of any work herein authorized, or the neglect of the Company or any of its employees to comply with any ordinance regulating the use of the streets of the City, and the acceptance by the Company of this ordinance shall be an agreement by it to pay to the City any sum of money for which the City may become liable from or by reason of such injury.

Section 5. That the Company shall file with the City Clerk of the City its acceptance of this ordinance within sixty days from the date when it shall take effect.

Section 6. Nothing in this ordinance shall be construed to grant to the said Southern Bell Telephone and Telegraph Company an exclusive right, and the City Council hereby reserves the right to grant a like consent to any other company, person or persons for like purposes.

Section 7. Nothing in this ordinance shall be construed as a surrender by the City of its right or power to pass ordinances regulating the use of its streets.

Section 8. This ordinance shall be in force from and after the date of its passage.

The foregoing ordinance was adopted by the City Council of the City of Greensboro on the 7<sup>th</sup> day of May, 1963 and will become effective ~~immediately upon~~ <sup>from after date</sup> its ~~passage~~. This the 6<sup>th</sup> day <sup>of its passage</sup> of May, 1963.

ROSEL N. BURCH  
City Clerk

Approved as to form  
and legality

J. L. W.  
City Attorney

70

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

PUBLISHER'S AFFIDAVIT

AN ORDINANCE GRANTING  
FRANCHISE RENEWAL TO  
SOUTHERN BELL TELE-  
PHONE AND TELEGRAPH  
COMPANY

WHEREAS, the Southern Bell Telephone and Telegraph Company desires to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating lines of telephone and telegraph thereon and thereunder; NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

Section 1. That permission be and the same is hereby granted to the Southern Bell Telephone and Telegraph Company to construct, maintain and operate lines of telephone and telegraph, including the necessary poles, conduits, cables, fixtures and electrical conductors upon, along, under and over the public roads, streets and highways of the City of Greensboro, as its business may from time to time require, for a period of sixty (60) years, provided that all poles shall be neat and symmetrical.

Section 2. That the work of erecting poles and constructing underground conduits under this ordinance shall be done subject to the supervision of the City, and the Company shall replace or properly relay and repair any sidewalk or street that may be displaced by reason of such work, and upon failure of the Company so to do, after twenty days notice in writing shall have been given by the City to the Company, the City may repair such portion of the sidewalk or street that may have been disturbed by the Company, and collect the cost so incurred from the Company.

Section 3. That in consideration of the rights and privileges herein granted, the Company, when requested by the City, will designate and provide without cost to the City (1) on each pole owned and used by the Company hereunder and during its ownership and use thereof, either (a) space for a fixture for, or (b) space for a crossarm for, wires of the police and fire alarm signalling system of the City, and (2) in each underground conduit owned and used by the Company hereunder and during its ownership and use thereof, one duct for the signalling system of the City, provided, however that no work be made by the City on such poles or of such conduits which will result in the impairment of the service, or damage or injury to the property of the City.

.....Rounce J. Hanna.....  
of lawful age, being duly sworn according to law, doth depose  
and say that he is Editor..... of .....  
.....The Greensboro Times.....

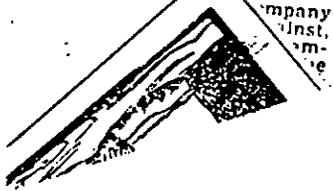
a newspaper published in the City of Greensboro and County of Guilford and State of North Carolina, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, for the period of .....One Issue....., commencing on the .....14th..... day of .....May....., 19.....63, and that the said newspaper in which such notice was published, was, at the time of each and every such publication, a newspaper meeting all the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

..... to before me, this 9th

..... May ..... 19 63

..... J. Hales .....  
Notary Public  
My Commission expires November 20, 1964

..... [Signature] .....  
Affiant



# SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

HURT BUILDING ATLANTA, GEORGIA

AREA CODE 404  
529-8611

J. S. STONE  
VICE PRESIDENT

TO THE CITY CLERK OF THE  
CITY OF GREENSBORO, NORTH CAROLINA:

Pursuant to Section 5 of an ordinance adopted by the  
City Council of the City of Greensboro, North Carolina, on the  
6th day of May, 1963, entitled:

"AN ORDINANCE GRANTING FRANCHISE RIGHTS TO  
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY"

the Southern Bell Telephone and Telegraph Company hereby files  
with the said City of Greensboro, North Carolina, its acceptance  
of said ordinance.

EXECUTED this the 24th day of May, 1963.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

  
Vice President



CITY OF GREENSBORO  
NORTH CAROLINA

24 April 1963

*Boyer*  
OFFICE OF  
CITY ATTORNEY

MEMO TO: City Manager  
FROM: City Attorney  
SUBJECT: Southern Bell Telephone and Telegraph Company franchise

On 25 May 1963, the sixty-year franchise of Greensboro to Southern Bell Telephone and Telegraph Company will expire. The original franchise provides for permission of Southern Bell to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating a telegraph thereon and thereunder. However, the installation and construction of poles and underground conduits is subject to the supervision of the City, and it is further provided that Southern Bell shall bear all expense incidental to the installation of such utilities.

granted by the  
Telegraph Company  
with Southern  
for the purpose  
of erecting  
to the approval  
that Southern  
and location

The working relations over the years between the City and Southern Bell have been satisfactory, amicable, cooperative and profitable.

of the City and  
ative and profit-

Accordingly, it is recommended that the franchise be renewed on essentially the same basis as the original franchise for a term not exceeding sixty years as authorized and provided in Section 91, of the Charter of the City of Greensboro. However, it is specifically provided that the granting of this franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any other person, firm or corporation.

franchise be re-  
franchise for a term  
Chapter 5,  
However, it is  
shall not be  
ilar franchise to

Respectfully submitted,

*James L. Wane*  
City Attorney

JLW:s



Parcel No.	Established Value
40-12	\$5,000.00
40-13	1,100.00
40-14	4,900.00

AND, WHEREAS, in the opinion of the City Council, the best interest of the City will be served by accepting the proposal of the Redevelopment Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the sale of the above mentioned properties to the Redevelopment Commission of Greensboro at the established values as set out above is hereby authorized.

(Signed) Roger Matthews

Mr. Tom E. Brown appeared before the Council and protested the adoption of an ordinance granting a renewal of the franchise with Southern Bell Telephone & Telegraph Company for a period of sixty years, stating that he felt that the Telephone Company should pay a tax for this franchise. Mr. Brown was advised that the contract did not have anything to do with this--that legislative action would be necessary before the City could levy a tax on the Telephone Company. The following ordinance was then introduced and Councilman Lewis moved its adoption. The motion was seconded by Councilman Folk, and the ordinance was adopted on the following roll call vote: Ayes: Falkener, Folk, Lewis, Matthews, Millikan, Schenck, and Trotter. Noes: None.

AN ORDINANCE GRANTING FRANCHISE RENEWAL TO SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

20-156

WHEREAS, the Southern Bell Telephone and Telegraph Company desires to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating lines of telephone and telegraph thereon and thereunder;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

Section 1. That permission be and the same is hereby granted to the Southern Bell Telephone and Telegraph Company to construct, maintain and operate lines of telephone and telegraph, including the necessary poles, conduits, cables fixtures and electrical conductors upon, along, under and over the public roads, streets and highways of the City of Greensboro, as its business may from time to time require, for a period of sixty (60) years, provided that all poles shall be neat and symmetrical.

Section 2. That the work of erecting poles and constructing underground conduits under this ordinance shall be done subject to the supervision of the City, and the Company shall replace or properly relay and repair any sidewalk or street that may be displaced by reason of such work, and upon failure of the Company so to do, after twenty days' notice in writing shall have been given by the City to the Company, the City may repair such portion of the sidewalk or street that may have been disturbed by the Company, and collect the cost so incurred from the Company.

Section 3. That in consideration of the rights and privileges herein granted, the Company, when requested by the City, will designate and provide without cost to the City (1) on each pole owned and used by the Company hereunder and during its ownership and use thereof, either (a) space for a fixture for, or (b) space for a crossarm for, wires of the police and fire alarm signalling system of the City, and (2) in each underground conduit owned and used by the Company hereunder and during its ownership and use thereof, one duct for the cables of the police and fire alarm signalling system of the City; provided, however, that no use shall be made by the City of said space on such poles or of said duct which will result in interfering with or impairing the operation or use of the Company's property or service, or which will endanger, damage or injure the person or property of the public or employees of the Company or City.

Section 4. That the Company shall indemnify the City against, and assume all liabilities for, damages which may arise or accrue to the City for any injury to persons or property from the doing of any work herein authorized, or the neglect of the Company or any of its employees to comply with any ordinance regulating the use of the streets of the City, and the acceptance by the Company of this ordinance shall be an agreement by it to pay to the City any sum of money for which the City may become liable from or by reason of such injury.

Section 5. That the Company shall file with the City Clerk of the City of Greensboro its acceptance of this ordinance within sixty days from the date when it shall take effect.

Section 6. Nothing in this ordinance shall be construed to grant to the said Southern Bell Telephone and Telegraph Company an exclusive right, and the City Council hereby reserves the right to grant a like consent to any other company, person or persons for like purposes.

Section 7. Nothing in this ordinance shall be construed as a surrender by the City of its right or power to pass ordinances regulating the use of its streets.

Section 8. This ordinance shall be in force from and after the date of its passage.

(Signed) Elbert F. Lewis

(For original signed copy of the above ordinance, see Exhibit Book No. 20, Exhibit No. 156, which is hereby referred to and made a part of these minutes.)

Upon motion of Councilman Folk, seconded by Councilman Millikan, a proposed resolution authorizing the immediate condemnation of land owned by the T.L. Parsons Estate on Edgeworth and Bellemeade Streets was ordered continued to the May 20 meeting of the Council.

Upon motion of Councilman Millikan, seconded by Councilman Trotter, the Council denied the application submitted by Claude Smith for a permit to make repairs to a building at 3700 High Point Road, which is within the right of way for the extension of Holden Road.

The following resolution was introduced and Councilman Millikan moved its adoption. The motion was seconded by Councilman Trotter, and the resolution was adopted on the following roll call vote: Ayes: Falkener, Folk, Lewis, Matthews, Millikan, Schenck, and Trotter. Noes: None.

4543

RESOLUTION APPROVING APPRAISAL AND AUTHORIZING THE PURCHASE OF PROPERTY OF CLAUDE SMITH AT 3700 HIGH POINT ROAD FOR STREET PURPOSES

4543

WHEREAS, the property belonging to Claude Smith and located at 3700 High Point Road is in the right of way of the proposed Holden Road; and

WHEREAS, the property has been appraised at a value of \$19,750.00, which appraisal, in the opinion of the City Council, is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the appraisal of the hereinabove mentioned property in the amount of \$19,750.00 is hereby accepted, and the purchase of the property in accordance with the appraisal is authorized, payment be made from Account No. 7231.77. (Signed) Roy C. Millikan

The following resolution was introduced and Councilman Trotter moved that it be adopted. The motion was seconded by Councilman Falkener, and the resolution was adopted on the following roll call vote: Ayes: Falkener, Folk, Lewis, Matthews, Millikan, Schenck, and Trotter. Noes: None.

4544

RESOLUTION ACCEPTING RIGHT OF WAY FROM SWIFT AND COMPANY AND AUTHORIZING EXECUTION OF AGREEMENT IN REGARD THERETO

4544

WHEREAS, Swift and Company has agreed to grant the City a right of way for a sanitary sewer outfall without cost to the City across its property fronting on Randolph Avenue provided that it be given two free connections to the sewer main; and

WHEREAS, it is deemed in the best interest of the City to accept such right of way pursuant to the terms and conditions contained therein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the acceptance by the City of the right of way hereinabove mentioned is hereby authorized, and the Mayor and City Clerk are hereby authorized to execute on behalf of City of Greensboro the aforementioned right-of-way agreement.

(Signed) W. L. Trotter, Jr.

# **EXHIBIT A**

38-168  
5-6-63

20-156

F-1

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**AN ORDINANCE GRANTING FRANCHISE RENEWAL TO SOUTHERN BELL  
TELEPHONE AND TELEGRAPH COMPANY**

WHEREAS, the Southern Bell Telephone and Telegraph Company desires to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating lines of telephone and telegraph thereon and thereunder;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

Section 1. That permission be and the same is hereby granted to the Southern Bell Telephone and Telegraph Company to construct, maintain and operate lines of telephone and telegraph, including the necessary poles, conduits, cables, fixtures and electrical conductors upon, along, under and over the public roads, streets and highways of the City of Greensboro, as its business may from time to time require, for a period of sixty (60) years, provided that all poles shall be neat and symmetrical.

Section 2. That the work of erecting poles and constructing underground conduits under this ordinance shall be done subject to the supervision of the City, and the Company shall replace or properly relay and repair any sidewalk or street that may be displaced by reason of such work, and upon failure of the Company so to do, after twenty days' notice in writing shall have been given by the City to the Company, the City may repair such portion of the sidewalk or street that may have been disturbed by the Company, and collect the cost so incurred from the Company.

Section 3. That in consideration of the rights and privileges herein granted, the Company, when requested by the City, will designate and provide without cost to the City (1) on each pole owned and used by the Company hereunder and during its ownership and use thereof, either (a) space for a fixture for, or (b) space for a crossarm for, wires of the police and fire alarm signalling system of the City, and (2) in each underground conduit owned and used by the Company hereunder and during its ownership and use thereof, one duct for the cables of the police and fire alarm signalling system of the City; provided, however, that no use shall be made by the City of said space on such poles or of said duct which will result in interfering with or impairing the operation or use of the Company's property or service, or which will endanger, damage or injure the person or property of the public or employees of the Company or City.

Section 4. That the Company shall indemnify the City against, and assume all liabilities for, damages which may arise or accrue to the City for any injury to persons or property from the doing of any work herein authorized, or the neglect of the Company or any of its employees to comply with any ordinance regulating the use of the streets of the City, and the acceptance by the Company of this ordinance shall be an agreement by it to pay to the City any sum of money for which the City may become liable from or by reason of such injury.

Section 5. That the Company shall file with the City Clerk of the City its acceptance of this ordinance within sixty days from the date when it shall take effect.

Section 6. Nothing in this ordinance shall be construed to grant to the said Southern Bell Telephone and Telegraph Company an exclusive right, and the City Council hereby reserves the right to grant a like consent to any other company, person or persons for like purposes.

Section 7. Nothing in this ordinance shall be construed as a surrender by the City of its right or power to pass ordinances regulating the use of its streets.

Section 8. This ordinance shall be in force from and after the date of its passage.

The foregoing ordinance was adopted by the City Council of the City of Greensboro on the 7<sup>th</sup> day of May, 1963 and will become effective ~~immediately upon~~ <sup>from after date</sup> its ~~passage~~. This the 6<sup>th</sup> day <sup>of its passage</sup> of May, 1963.

Approved as to form  
and legality

J. L. W.  
City Attorney

ROSEL N. BURCH  
City Clerk

70

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

PUBLISHER'S AFFIDAVIT

AN ORDINANCE GRANTING  
FRANCHISE RENEWAL TO  
SOUTHERN BELL TELE-  
PHONE AND TELEGRAPH  
COMPANY

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.....Rounce J. Hanna.....

of lawful age, being duly sworn according to law, doth depose and say that he is Editor..... of .....

.....The Greensboro Times.....

a newspaper published in the City of Greensboro and County of Guilford and State of North Carolina, and that the notice, of which the annexed printed slip is a true copy, has been published in said newspaper, successively, for the period of .....One Issue....., commencing on the

.....14th..... day of .....May....., 19.....63, and that the said newspaper in which such notice was published, was, at the time of each and every such publication, a newspaper meeting all the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

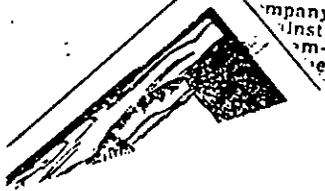
..... to before me, this 9th .....

..... May ....., 19 63 .....

..... J. Hales .....  
Notary Public

My Commission expires November 20, 1964

.....  
Affiant



# SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

HURT BUILDING ATLANTA, GEORGIA

AREA CODE 404  
529-8611

J. S. STONE  
VICE PRESIDENT

TO THE CITY CLERK OF THE  
CITY OF GREENSBORO, NORTH CAROLINA:

Pursuant to Section 5 of an ordinance adopted by the  
City Council of the City of Greensboro, North Carolina, on the  
6th day of May, 1963, entitled:

"AN ORDINANCE GRANTING FRANCHISE RIGHTS TO  
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY"

the Southern Bell Telephone and Telegraph Company hereby files  
with the said City of Greensboro, North Carolina, its acceptance  
of said ordinance.

EXECUTED this the 24th day of May, 1963.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

  
Vice President



CITY OF GREENSBORO  
NORTH CAROLINA

24 April 1963

*Boyer*  
OFFICE OF  
CITY ATTORNEY

MEMO TO: City Manager  
FROM: City Attorney  
SUBJECT: Southern Bell Telephone and Telegraph Company franchise

On 25 May 1963, the sixty-year franchise of Greensboro to Southern Bell Telephone and Telegraph Company will expire. The original franchise provides for permission of the City of Greensboro to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating a telegraph thereon and thereunder. However, the installation and construction of poles and underground conduits is subject to the supervision of the City, and it is further provided that Southern Bell shall bear all expense incidental to the installation of such utilities.

franchise granted by the Southern Bell Telephone and Telegraph Company for the purpose of erecting, constructing, maintaining and operating a telegraph thereon and thereunder. However, the installation and construction of poles and underground conduits is subject to the approval and supervision of the City, and it is further provided that Southern Bell shall bear all expense incidental to the installation of such utilities.

The working relations over the years between the City and Southern Bell have been satisfactory, amicable, cooperative and profitable.

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Accordingly, it is recommended that the franchise be renewed on essentially the same basis as the original franchise for a term not exceeding sixty years as authorized and provided in Section 91, of the Charter of the City of Greensboro. However, it is specifically provided that the granting of this franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any other person, firm or corporation.

franchise be renewed on essentially the same basis as the original franchise for a term not exceeding sixty years as authorized and provided in Chapter 5, Section 91, of the Charter of the City of Greensboro. However, it is specifically provided that the granting of this franchise shall not be exclusive and the City reserves the right to grant a similar franchise to any other person, firm or corporation.

Respectfully submitted,

*James L. Wane*  
City Attorney

JLW:s



Parcel No.	Established Value
40-12	\$5,000.00
40-13	1,100.00
40-14	4,900.00

AND, WHEREAS, in the opinion of the City Council, the best interest of the City will be served by accepting the proposal of the Redevelopment Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the sale of the above mentioned properties to the Redevelopment Commission of Greensboro at the established values as set out above is hereby authorized.

(Signed) Roger Matthews

Mr. Tom E. Brown appeared before the Council and protested the adoption of an ordinance granting a renewal of the franchise with Southern Bell Telephone & Telegraph Company for a period of sixty years, stating that he felt that the Telephone Company should pay a tax for this franchise. Mr. Brown was advised that the contract did not have anything to do with this--that legislative action would be necessary before the City could levy a tax on the Telephone Company. The following ordinance was then introduced and Councilman Lewis moved its adoption. The motion was seconded by Councilman Folk, and the ordinance was adopted on the following roll call vote: Ayes: Falkener, Folk, Lewis, Matthews, Millikan, Schenck, and Trotter. Noes: None.

AN ORDINANCE GRANTING FRANCHISE RENEWAL TO SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

20-156

WHEREAS, the Southern Bell Telephone and Telegraph Company desires to use the public streets of the City of Greensboro for the purpose of erecting, constructing, maintaining and operating lines of telephone and telegraph thereon and thereunder;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

Section 1. That permission be and the same is hereby granted to the Southern Bell Telephone and Telegraph Company to construct, maintain and operate lines of telephone and telegraph, including the necessary poles, conduits, cables fixtures and electrical conductors upon, along, under and over the public roads, streets and highways of the City of Greensboro, as its business may from time to time require, for a period of sixty (60) years, provided that all poles shall be neat and symmetrical.

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Section 3. That in consideration of the rights and privileges herein granted, the Company, when requested by the City, will designate and provide without cost to the City (1) on each pole owned and used by the Company hereunder and during its ownership and use thereof, either (a) space for a fixture for, or (b) space for a crossarm for, wires of the police and fire alarm signalling system of the City, and (2) in each underground conduit owned and used by the Company hereunder and during its ownership and use thereof, one duct for the cables of the police and fire alarm signalling system of the City; provided, however, that no use shall be made by the City of said space on such poles or of said duct which will result in interfering with or impairing the operation or use of the Company's property or service, or which will endanger, damage or injure the person or property of the public or employees of the Company or City.

Section 4. That the Company shall indemnify the City against, and assume all liabilities for, damages which may arise or accrue to the City for any injury to persons or property from the doing of any work herein authorized, or the neglect of the Company or any of its employees to comply with any ordinance regulating the use of the streets of the City, and the acceptance by the Company of this ordinance shall be an agreement by it to pay to the City any sum of money for which the City may become liable from or by reason of such injury.

Section 5. That the Company shall file with the City Clerk of the City of Greensboro its acceptance of this ordinance within sixty days from the date when it shall take effect.

Section 6. Nothing in this ordinance shall be construed to grant to the said Southern Bell Telephone and Telegraph Company an exclusive right, and the City Council hereby reserves the right to grant a like consent to any other company, person or persons for like purposes.

Section 7. Nothing in this ordinance shall be construed as a surrender by the City of its right or power to pass ordinances regulating the use of its streets.

Section 8. This ordinance shall be in force from and after the date of its passage.

(Signed) Elbert F. Lewis

(For original signed copy of the above ordinance, see Exhibit Book No. 20, Exhibit No. 156, which is hereby referred to and made a part of these minutes.)

Upon motion of Councilman Folk, seconded by Councilman Millikan, a proposed resolution authorizing the immediate condemnation of land owned by the T.L. Parsons Estate on Edgeworth and Bellemeade Streets was ordered continued to the May 20 meeting of the Council.

Upon motion of Councilman Millikan, seconded by Councilman Trotter, the Council denied the application submitted by Claude Smith for a permit to make repairs to a building at 3700 High Point Road, which is within the right of way for the extension of Holden Road.

The following resolution was introduced and Councilman Millikan moved its adoption. The motion was seconded by Councilman Trotter, and the resolution was adopted on the following roll call vote: Ayes: Falkener, Folk, Lewis, Matthews, Millikan, Schenck, and Trotter. Noes: None.

4543

RESOLUTION APPROVING APPRAISAL AND AUTHORIZING THE PURCHASE OF PROPERTY OF CLAUDE SMITH AT 3700 HIGH POINT ROAD FOR STREET PURPOSES

4543

WHEREAS, the property belonging to Claude Smith and located at 3700 High Point Road is in the right of way of the proposed Holden Road; and

WHEREAS, the property has been appraised at a value of \$19,750.00, which appraisal, in the opinion of the City Council, is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the appraisal of the hereinabove mentioned property in the amount of \$19,750.00 is hereby accepted, and the purchase of the property in accordance with the appraisal is authorized, payment be made from Account No. 7231.77. (Signed) Roy C. Millikan

The following resolution was introduced and Councilman Trotter moved that it be adopted. The motion was seconded by Councilman Falkener, and the resolution was adopted on the following roll call vote: Ayes: Falkener, Folk, Lewis, Matthews, Millikan, Schenck, and Trotter. Noes: None.

4544

RESOLUTION ACCEPTING RIGHT OF WAY FROM SWIFT AND COMPANY AND AUTHORIZING EXECUTION OF AGREEMENT IN REGARD THERETO

4544

WHEREAS, Swift and Company has agreed to grant the City a right of way for a sanitary sewer outfall without cost to the City across its property fronting on Randolph Avenue provided that it be given two free connections to the sewer main; and

WHEREAS, it is deemed in the best interest of the City to accept such right of way pursuant to the terms and conditions contained therein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENSBORO:

That the acceptance by the City of the right of way hereinabove mentioned is hereby authorized, and the Mayor and City Clerk are hereby authorized to execute on behalf of City of Greensboro the aforementioned right-of-way agreement.

(Signed) W. L. Trotter, Jr.