

ORDINANCE NO. 116

AN ORDINANCE GRANTING A FRANCHISE TO CENTRAL TELEPHONE COMPANY OF FLORIDA, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO USE THE PUBLIC STREETS, LANES, ALLEYS AND OTHER PUBLIC PLACES OF THE TOWN OF CINCO BAYOU, FLORIDA FOR THE PURPOSE OF ERECTING, MAINTAINING AND OPERATING LINES OF A TELEPHONE SYSTEM THEREON AND THEREUNDER AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA:

Section I. TERM & TERMINATION. Permission and authority are hereby granted to Central Telephone Company of Florida, its successors and assigns, hereinafter called the Company, a corporation created and existing under and by virtue of the laws of the state, upon the terms and subject to the conditions of this ordinance, to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over public ways of the municipality for the purpose of providing telephone communication services to the residents of Cinco Bayou of a quality commensurate with the Public Service Commission regulations. This franchise herein granted is an exclusive franchise. The terms of the franchise is for a period of twenty (20) years from and after November 1, 1987 (and thereafter until terminated as hereinafter provided.) The Municipality reserves the right to terminate the franchise for breach of the terms of the franchise by the Company.

Section II. RELOCATION AT COMPANY EXPENSE. The Company agrees that in all cases (except as hereinafter expressly otherwise provided) where the municipality shall change the grade or width of any street, alley, or other public way, the Company will promptly and at its own expense, unless otherwise by ordinance provided, change or move its structures so as to conform thereto, and further agrees to restore any and all public rights-of-way disturbed by the Company, to their original condition. The Company further agrees that it will, in advance of any paving or repaving of any street, alley or other public way, and upon reasonable notice thereof, install and construct, at its own expense, all conduit, vaults and manholes reasonably necessary for its future use in said street, alley, or other public way, so as to prevent, so far as possible, the disturbance by the Company of any pavement. The Company further agrees that all work outlined in this section will conform to the Southern Standard Building and Electrical Codes (as applicable.)

Section III. RESTORATION AFTER CONSTRUCTION. When any opening is made or work done in, on or under any street, alley, viaduct, elevated roadway, bridge or other public way, for any purpose

whatsoever by the Company, said street, alley viaduct, elevated roadway, bridge or other public way shall be restored as promptly as possible to its original condition. Further, if required by the municipality, the Company will post a Blanket Permit Highway Bond in an amount mutually agreeable to the Company and the municipality.

Section IV. HOLD HARMLESS CLAUSE. The Company shall indemnify and save harmless the municipality from any and all damages, judgements, costs and expenses of every kind, which may arise or result by reason of or in consequence of the acts or neglect of the Company, its agents or servants to fully comply with the provisions of this ordinance, and will save and keep harmless the municipality from any and all damages, judgements, costs and expenses caused by, or incident to, or in any manner resulting from, the erection of such poles, the laying of such conduit, and the stringing, construction and operating of said cables, anchors, wires, and electrical conductors, vaults, laterals, fixtures and equipment, and maintenance thereof, provided prompt notice in writing of all claims for such damages, cost and expenses, and reasonable opportunity to defend against the same are given the Company by the municipality, together with all information thereon in its possession.

The Company agrees to carry liability insurance on all of its equipment, structures, hardware, etc., in the amount of at least \$1,000,000.00 per incident.

Section V. FRANCHISE FEE. The permission and authority herein granted is without the levy of a franchise fee. In so doing, the Town Council reserves the right to levy a franchise fee if determined necessary during periodic reviews as set forth in Section X.

Section VI. CHANGES IN FEES. Nothing contained in this ordinance shall be construed or taken as preventing the municipality whenever it shall be empowered by law to do so, from establishing, fixing, prescribing or regulating, any instruments, facilities or equipment, or regulating and controlling the plant, facilities, extensions, additions, betterments, equipment, appliances, services, rules, regulations, methods or practices.

Section VII. COLLECTION PROVISION. The Company hereby agrees to collect any and all franchise fees and may be required by this ordinance.

Section VIII. DEFAULT CLAUSE. In the event that the Company shall default in the observance or performance of any or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this ordinance, and if any such default or defaults shall continue for a period of six months (exclusive of all times during which the Company may be delayed

or interfered with, without its connivance, by unavoidable accidents, act of God or the public enemy, labor strikes or the orders or judgements of any commission or court entered in any suit or proceeding brought without its connivance) after written notice thereof to the Company from the municipality stating the alleged default on the part of the Company, then and in each and every such case the municipality in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the Company under this ordinance.

Section IX. ANNEXATION PROVISION. The Company hereby agrees to provide service to any and all areas that may be annexed by the Town of Cinco Bayou. Service to all annexed areas should be available within six months of notification that a specified area has been annexed and is ready for service. If an area annexed is already being served by the Company, the Company will begin to collect all applicable franchise fees (as provided herein), within 60 days of notification. Any and all annexed areas will fall under the same terms and conditions of this ordinance as the current areas now located within the Municipality. The Municipality agrees to notify the Company of the names and addresses of the residents in newly annexed areas, within 30 days of the date of the annexation.

Section X. PERIODIC REVIEW PROVISIONS. The Company and the Municipality agree to meet through their designated representatives at five year intervals beginning with the fifth anniversary of the acceptance by the Company of this franchise, for the purpose of reviewing the provisions of this franchise in light of any technological or other pertinent changes which may have occurred since the granting of this franchise. In the event of any such change which impairs the fundamental purpose of this franchise, the parties agree to negotiate in good faith an appropriate modification of the franchise.

Section XI. FORCE OF ORDINANCE. This ordinance shall be in full force and effect from and after its passage and adoption, upon receipt of the Company's unconditional written acceptance thereof by the Town Manager/Clerk within thirty days after approval of this ordinance.

Section XII. SEVERABILITY. If any word, sentence, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not effect the validity of the remaining portions thereof.

Section XIII. REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS. All ordinances and resolutions of the governing body in conflict herewith are hereby repealed.

Section XIV. EFFECTIVE DATE. This ordinance shall become effective immediately upon its passage and adoption and establishes an effective date for the franchise of November 1, 1987.

ADOPTED THIS 15 DAY OF SEPT.

Charles R. Laginess  
Mayor



ATTEST:

Ann B. Buelch  
Town Manager/Clerk

Central Telephone Company of Florida: Shogor



Central Telephone Company  
1313 Blair Stone Drive  
P. O. Box 2214  
Tallahassee, FL 32316  
Telephone 904 681 3100



October 13, 1987

Mr. Albert S. Borchik, Jr.  
Town Manager/Clerk  
35 Kelly Avenue (Cinco Bayou)  
Ft. Walton Beach, Florida 32548

Dear Mr. Borchik:

Enclosed is the signed and sealed copy of Cinco Bayou Ordinance No. 116 approved by Centel.

We appreciate your efforts and those of the Cinco Bayou Town Council in the development and adoption of this important ordinance.

Sincerely,

  
James Conoly

JC:ps

Enclosure