

*Ordinance #536*

AN ORDINANCE GRANTING TO THE ILLINOIS CONSOLIDATED TELEPHONE COMPANY, ITS LESSEES,  
SUCCESSORS AND ASSIGNS, CERTAIN RIGHTS IN THE

City of Nokomis, Montgomery County, Illinois

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NOKOMIS  
MONTGOMERY COUNTY, ILLINOIS

as follows:

SECTION 1. That the ILLINOIS CONSOLIDATED TELEPHONE COMPANY, its lessees, successors and assigns, are hereby granted the right to construct, erect, renew, maintain and operate in, upon, along, across, under and over the streets, alleys and public ways of the said City of Nokomis (hereinafter for convenience called the Municipality), lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment, and to use the same for the transmission of sounds and signals by means of electricity, and especially for the conduct of a general telephone business.

SECTION 2. The location and height above or the depth below the public thoroughfares of the existing lines of poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures and equipment of said Company within the Municipality are hereby approved, and the same shall be maintained and operated under and subject to the provisions of this ordinance. Any change in or extension of any of said poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "structures"), or the construction of any additional structures, in, upon, along, across, under or over the streets, alleys and public ways of the Municipality shall be made under the direction of the Commissioner of Streets and Public Improvements of the Municipality, or such officer as may be designated from time to time by the governing body of the Municipality for that purpose, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefor. The height above public thoroughfares of all aerial wires and cables hereafter constructed shall conform to the requirements of the Illinois Commerce Commission or other regulatory body having jurisdiction thereof. All structures hereafter installed shall be so placed, and all work in connection with such installation shall be so performed as not to interfere unreasonably with ordinary travel on the highways and streets of the Municipality or with any municipal water or sewer pipes then in place, and in case of bringing to grade or change of grade, or change of width of any street or alley, said Company, provided it is notified thereof in writing at least thirty (30) days prior to the commencement thereof, shall change its structures so as to conform thereto, except where such change of grade or the width of any street or alley is made in connection with the rearrangement, separation or alteration of railroad crossings or is incident to any such rearrangement, separation or alteration. The tops of all vaults constructed by said Company within the Municipality shall present an even surface with the pavement at the point where laid, and, subject to the exception contained in the last preceding sentence, shall be lowered or raised by said Company to conform to the top of paving or improvement as required by the governing body of the Municipality whenever the grade of the street or alley in which any such vault is located may be at any time hereafter lowered or raised.

SECTION 3. Said Company, after doing any excavating, shall leave the surface of the ground in a neatly graded condition. All sidewalks, parkways or pavements disturbed by said Company shall be restored by it to as good condition as before said sidewalk, parkway or pavement was disturbed by it, and in the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise requires repairing, because of such disturbance by the Company, then said Company, as soon as climatic conditions will permit, shall, promptly, upon receipt of notice from the Municipality so to do, cause such sidewalk, parkway or pavement to be repaired or restored to as good condition as before said sidewalk, parkway or pavement was disturbed by said Company. Said Company shall keep all structures which it shall construct by virtue of this ordinance, in a reasonably safe condition at all times, and shall maintain such barriers and danger signals during the construction, repair or renewal work performed hereunder as will reasonably avoid damage to life, limb and property.

SECTION 4. The said Company shall, at its own expense, defend all suits that may be brought against the Municipality on account of or in connection with the violation by the Company of any of the obligations hereby imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of any of the structures constructed by it under or by virtue of this ordinance, and shall save and keep harmless the Municipality from any and all damages, judgments, costs and expenses of every kind, that may arise by reason thereof; provided, that notice in writing shall be immediately given to said Company of any claim or suit against the Municipality which, by the terms hereof, the said Company shall be obligated to defend, or against which the Company has hereby agreed to save and keep harmless the Municipality and provided further that the Municipality shall furnish to said Company all information in its possession relating to said claim or suit, and cooperate with said Company in the defense of said claim or suit. The governing body of the Municipality may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Company or its attorneys, and the Company shall not be required to reimburse the Municipality for expenses incurred by it in case of the election so to assist.

SECTION 5. In consideration of the foregoing grant, while said Company is using any pole or poles erected or maintained hereunder, it will permit the Municipality the use of sufficient space for carrying the Municipality's police and fire alarm signal wires by means of one crossarm to be placed, in accordance with the Company's specifications, by the Municipality at its expense, at the top of the space available for the use of the Company on any of said poles, it being understood that the poles upon which space is permitted the Municipality shall be considered, for the purpose of this agreement, as personal property; provided that such wires shall be so placed and maintained by the Municipality that the use of the same will not interfere with the operation and maintenance of the Company's equipment or its use of said poles, and provided further that a thirty (30) inch climbing space shall be maintained between the pole pins on poles jointly used with another public utility. All such police and fire alarm signal wires shall be attached and maintained under the direction and supervision of said Company's authorized representatives, and only upon the following conditions: No such police and fire alarm signal wires shall be attached to any of said poles of said Company if such wires shall carry a voltage of more than four hundred (400) volts, nor if the transmitted power exceeds one hundred fifty (150) watts, nor if, in any part of the circuit of such wire, it is supported upon a pole on which there is any wire carrying a constant potential alternating current exceeding five thousand (5,000) volts between conductors, or twenty-five hundred (2,500) volts normally to ground, or a constant potential direct current exceeding seven hundred fifty (750) volts to ground or a constant current series arc or incandescent light circuit, carrying in excess of seven and five-tenths (7.5) amperes. In case any such police and fire alarm signal wire in any part of its circuit is supported upon a pole on which there is any wire used for the supply of electrical energy for lighting, heating or power purposes, carrying a constant potential alternating current of five thousand (5,000) volts or less between conductors, or twenty-five hundred (2,500) volts or less normally to ground, or twenty-five hundred (2,500) volts or less normally to ground, or a direct current circuit of seven hundred fifty (750) volts or less to ground, or a constant current series arc or incandescent light circuit carrying seven and five-tenths (7.5) amperes or less, then such police or fire alarm signal wire shall be attached to such pole at a point not less than four (4) feet below such wire used for the supply of electrical energy. The Municipality shall, at its own expense, defend all claims, demands or suits on account of any injury to life, limb or property that may result by reason of or in connection with the presence, use, maintenance, erection or removal of the Municipality's police and fire alarm signal wires and their appurtenances pursuant hereto, and hereby agrees to save and keep harmless said Company from any and all damages, judgments, costs and expenses of any kind which may arise by reason thereof.

SECTION 6. So long as said Company exercises and enjoys the rights granted to it hereunder, it will furnish to the Municipality, free of charge, eight (8) individual line business telephones for business of the Municipality only. Said telephones shall be installed in such places within the Municipality as the governing body thereof shall from time to time direct by resolution. Application therefor shall be made by the Municipality on the Company's usual form. The Company, without charge and when directed by resolution of the governing body of the Municipality, shall change the location of any of said telephones, provided that not more than one such change of location in any one year of any telephone furnished hereunder shall be made by said Company without expense to the Municipality. In lieu of all or some of said individual line business telephones, the governing body of the Municipality may elect, by resolution, to have any other local flat rate business exchange service or facilities from time to time offered by the Company to its subscribers in the telephone exchange in which the Municipality is located, to the extent that the aggregate value of all telephone service and facilities so furnished hereunder, based upon the Company's lawful charges from time to time in effect therefor to said subscribers, does not exceed the value, on the same basis, of said individual line business telephones. "Local flat rate exchange service," as used in this section, shall not be construed to include any extended area service available to subscribers under an optional schedule. No liability shall attach to the Company with respect to the furnishing of said service or facilities, or on account of any failure or interruption of said service or facilities, except that the Company will restore such service and facilities promptly upon receipt of notice of such interruption or failure.

SECTION 7. The Company after five (5) days' written notice from the governing body of the Municipality to do so, shall remove or raise or lower its structures temporarily to permit the moving of a building or any other object along a highway, provided the benefited party or parties shall agree to pay the Company an amount equal to the actual cost of effecting such temporary changes in its structures; and provided further that, pending the determination of such actual cost, the benefited party or parties shall have deposited with the Company an amount equal to the cost as estimated by the Company. Should any amount of such deposit remain unexpended, after deducting the actual cost involved, said amount shall be returned to the party making the deposit.

SECTION 8. In case said Company shall fail or neglect to comply with any or all of the provisions of this ordinance (unless by order of the Illinois Commerce Commission or of any other body, board, commission or court of competent jurisdiction, said Company is otherwise directed, or unless the compliance by said Company with such provision is prohibited or adjudged unlawful by an order of the Illinois Commerce Commission or by an order of any other body, board, commission or court of competent jurisdiction), the Municipality reserves the right to repeal this ordinance or rescind this contract, and forfeit the rights hereby created or sought to be created, provided that no such repeal, rescission or forfeiture shall exist or be claimed because of such failure or neglect, until written notice of such failure or neglect so claimed shall have been given to said Company, and a reasonable opportunity afforded it to comply with the provisions hereof or to prove that such compliance already exists. In the event that said Illinois Commerce Commission or any other body, board, commission or court of competent jurisdiction shall adjudge any provision or provisions hereof invalid or illegal, or direct a change by the Company in any matter or thing herein contained, such invalidity or illegality or change shall in no way affect the remaining provisions of this ordinance, or their validity or legality, and this ordinance in all other respects shall continue in full force and effect, as if said provision or provisions had not been so adjudged invalid or illegal or such change directed.

SECTION 9. So long as the Company exercises the rights granted to it hereunder and so long as the Municipality shall receive the considerations there-fore as recited in Sections 5, 6 and 13 hereof, the Municipality will not, by ordinance or otherwise, vacate any street, alley or public way in which the Company has its structures installed without reserving the easement rights of the Company in and to the street, alley or public way to be vacated.

SECTION 10. All grants, franchises, rights, licenses and privileges heretofore made or granted by the Municipality by ordinance or otherwise to said Company and all rights of said Company under grants, franchises, rights, licenses and privileges made by the Municipality to others from which said Company may have purchased any part of its poles, lines, equipment or plant, are hereby revoked and repealed, it being the intention that this ordinance shall contain all grants, franchises, rights, licenses and privileges of said Company, and all obligations of said Company in connection therewith.

SECTION 11. Whenever the word "Company" or the words "Illinois Consolidated Telephone Company" are used in this ordinance, they shall be construed to mean the Illinois Consolidated Telephone Company, its lessees, successors and assigns, and this ordinance shall be binding upon and inure to the benefit of the said Company, its lessees, successors and assigns.

SECTION 12. This ordinance shall be in full force and effect thirty (30) days from the time of its passage by the Council of the Municipality and upon the filing with the Clerk thereof, by the Illinois Consolidated Telephone Company, of its written and unconditional acceptance of all the provisions of this ordinance, executed by its proper officers thereunto duly authorized, under the corporate seal of said Company, and attested by its Secretary or Assistant Secretary; provided, however, that if within thirty (30) days of the date of the passage of this ordinance by the Council of the Municipality there be filed a petition, signed by the electors of said Municipality equal in number to at least ten percentum of the entire vote cast for all candidates for Mayor at the last election in which such officer was voted for, protesting against the passage of said ordinance, the effective date of this ordinance shall be suspended until such time as the question of the adoption of this ordinance shall be submitted to the electors of the Municipality at a general or special election, called for that purpose, and until a majority of the qualified electors voting on the adoption of this ordinance shall vote in favor thereof.

SECTION 13. Under the terms and conditions stipulated in Section 6, hereof, the Company will furnish eight (8) individual line business telephones during the first five year period of this ordinance. A redetermination of the number of tele-phones to be furnished by the Company shall be made as of the first day of the second and each succeeding five year period hereof and for each two hundred fifty (250) main line telephones in excess of one thousand (1,000) served by the Company and located within the Municipality, one (1) additional telephone shall be furnished when such service is required.

PASSED this 16<sup>th</sup> day of November A.D. 1964

Frederick Morgan  
City Clerk

APPROVED this 16<sup>th</sup> day of November A.D. 1964

A. A. H. [Signature]  
Mayor

Mattoon, Illinois  
November 19, 1964

To the Mayor and the City  
Council of the City of Nokomis,  
Illinois

Gentlemen:

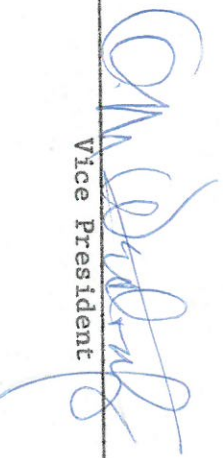
The ILLINOIS CONSOLIDATED TELEPHONE COMPANY hereby presents this, its written and unconditional acceptance of the provisions of a certain ordinance passed by the City Council of the City of Nokomis, Montgomery County, Illinois on the 16th day of November, A.D., 1964, and approved by the Mayor thereof on the 16th day of November, A.D., 1964, entitled "An Ordinance granting to the ILLINOIS CONSOLIDATED TELEPHONE COMPANY, its lessees, successors and assigns, certain rights in the City of Nokomis, Montgomery County, Illinois," and hereby, in compliance with the terms of said ordinance, files this acceptance with the Clerk of said City.

Yours very truly

ATTEST:

ILLINOIS CONSOLIDATED TELEPHONE COMPANY

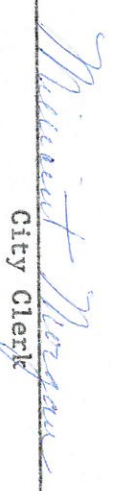
  
Secretary

By   
Vice President

STATE OF ILLINOIS     )  
COUNTY OF MONTGOMERY     )  
CITY OF NOKOMIS     )

I, Muriel Morgan, City Clerk of the City of Nokomis, Montgomery County, Illinois, do hereby certify that I am the keeper of the records, papers, entries, ordinances and documents of said City, and that the above and foregoing is a true, correct and complete copy of a certain document filed in my office on the 16<sup>th</sup> day of November, A.D., 1964.

IN WITNESS WHEREOF, I have hereunto set my hand as City Clerk of said City, and have hereunto affixed the seal of said City, this 24 day of November, A.D., 1964.

  
City Clerk

STATE OF ILLINOIS )  
COUNTY OF MONTGOMERY )  
CITY OF NOKOMIS )

I, MILICENT MORGAN, City Clerk of the City of Nokomis, Montgomery County, Illinois, do hereby certify that the above and foregoing is a true, correct and complete copy of a certain ordinance passed by the Council of said City of Nokomis on the 16th day of November A.D., 1964, and signed by the Clerk thereof on the 16th day of November A.D., 1964, entitled, "An Ordinance granting to the ILLINOIS CONSOLIDATED TELEPHONE COMPANY, its lessees, successors and assigns, certain rights in the City of Nokomis, Montgomery County, Illinois," and I do further certify that no petition signed by any of the electors of said Municipality protesting against the passage of said ordinance, has been presented, and that the time for presenting such petition has elapsed; and that all the foregoing appears in the records of said City of Nokomis, Montgomery County, Illinois, of which I am the keeper.

IN WITNESS WHEREOF, I have hereunto set my hand as City Clerk of said City of Nokomis and have hereunto affixed the seal of said City, this 17th day of November A.D., 1964.

Milicent Morgan  
City Clerk