

(d) Any transmission media shall be so located on the facilities as to be safe and not to interfere unnecessarily with the use of the rights-of-way by others, including persons or entities authorized to use the facilities. Any use of the public rights-of-way by third parties shall not prevent Southern Bell from using and enjoying its rights granted herein.

Section 7. Relocation of Facilities: Undergrounding.

(a) The City reserves the right to lay, and permit to be laid, sewer, gas, water, electric, storm drainage, telecommunications, and other pipelines or cables or conduits, and to do and permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the City in, across, along, over or under any right-of-way occupied by the Company, and to change any curb or sidewalk or the grade of any street. The City, its contractors and subcontractors shall be requested to call the Utilities Protection Center prior to excavation, except in cases of emergency, in accordance with applicable law in order to avoid damages to Company facilities.

(b) The City expressly reserves the right to change the grade, install, relocate, or widen the City streets, sidewalks, bikeways, alleys public thoroughfares, highways and public ways and places within the present limits of the City and within said limits as same may from time to time be extended, and the Company shall relocate, at its own expense, its poles, wires, cables, anchors, manholes, conduits, and other facilities and appurtenances in order to accommodate the installation, relocation, widening or changing of the grade of any public streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places, including if necessary relocating such poles, wires, cables, anchors, manholes, conduits or other facilities or appurtenances to a sufficient distance from the edge of the pavement to permit a reasonable work area for machinery and individuals engaged in installing, relocating, widening, or changing the grade of any City streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public ways and places. This is applicable only where such alteration or

abandonment is reasonably undertaken in the furtherance of a public purpose.

(c) Upon notice in writing from the City that changes in the public rights-of-way are required pursuant to the City's police power in such a manner as will necessitate the relocation of its facilities in the public right-of-way, the Company shall relocate the same at no expense to the City, except as otherwise provided in Section 7(d) of this Agreement, so as to permit the construction of such improvements when ordered; and, should the company fail to comply with such notice, the facilities may be relocated by the City and the cost thereof recovered from the Company.

(d) Nothing in this section shall be construed so as to deprive the Company, relocated from a location in which it owns a property interest, of compensation for such property interest, including cost of relocation.

Section 8. Annual Fee

(a) In consideration for the rights and privileges herein granted, the Company hereby agrees to pay the City each year during the term of this Agreement an Annual Fee. The Annual Fee shall be three percent (3%) of the Company's recurring local service revenues, and 3% of the additional revenue defined in paragraph 8(b), from services provided and billed to subscribers within the City limits. These services will remain in the base whether or not they are regulated or deregulated. Future revenues from services not currently provided which are recurring local service revenues shall be included as provided in this paragraph without further amendment of this Agreement.

(b) In addition, the Company shall also pay to the City a sum equal to three percent (3%) of the revenues received by the Company for the following services provided and billed to subscribers within the City:

1. Local Directory Assistance
2. Local Coin Message Charges
3. Paging
4. Local Messages

All payments of this additional compensation shall be made in accordance with the provisions for payment of the Annual Fee, as described in Section 8(e), below.

(c) The Annual Fee payment shall be made in monthly payments on the 15th day of each month for the second previous month during the term of this Agreement. The sum of the monthly payments is the Annual Fee for the year. With the payment for the month of December each year, the Company shall additionally provide the City with a report showing the applicable revenues by category.

(d) The acceptance of any statement or payment shall not estop the City or the Company from asserting that the amount paid is not the amount due or from recovering any deficit or overpayment by any lawful proceeding.

(e) The payment of the Annual Fee by the Company shall be in lieu of business licenses, permit fees for work in the public rights-of-way, registration fees, special taxes on poles or conduits and any other fees sought to be assessed on the Company's use of the public rights-of-way under this Agreement, but shall not be in lieu of ad valorem taxes (except for credit provided by State law). There shall be no deduction allowed for ad valorem taxes against the Annual Fee.

Section 9. Additional Concessions.

In addition to the fees set forth in Section 8 hereof, the Company shall provide the City the following:

(a) The company shall furnish the City with all other additional telephone lines connected with its Atlanta exchange, and other services, and local exchange

service as the City may require, at a discount of forty-five (45%) per cent, from its regular schedule of rates.

(b) One hundred (100%) per cent concession on the occupancy fee for one duct throughout the Company duct system, where available, and pole attachments contracted for use of the City for its own internal governmental purposes as referenced in Section 6 above.

Section 10. Indemnification.

The Company shall save and keep harmless the City from any and all liability by reason of damage or injury on account of negligence of the Company in the installation, maintenance, and repair of its facilities in public right-of-way, provided the Company is notified in writing of such claim against the City and shall have been given ample opportunity to defend same.

Section 11. Assignment.

Without the prior consent of the City, the Company may assign, sell, or otherwise dispose of the entirety of the rights and privileges granted by this agreement to a single company, firm, or individual, provided that its assignment, sale or disposition of less than its entire rights and privileges granted herein, or the assignment, sale or disposition of its rights and privileges to more than one assignee, grantee, or buyer, shall be subject to the prior written consent of the City to ensure that the City's rights under this franchise agreement are maintained.

Section 12. Enforcement Provisions.

(a) Notwithstanding any other provisions of this franchise, the City and the Company shall have the option to bring suit for specific performance, injunction, or damages at any time for failure of the Company or the City to comply with any terms, conditions, or provisions of this Agreement and the City may, in its discretion, bring an appropriate enforcement action if the Company should fail to comply with any provisions of any ordinances of the City regulating the

use by the Company of the streets, alleys, highways, thoroughfares or public ways of the City.

(b) The Company or the City shall not be excused from complying with any of the terms and conditions of this Agreement because of any failure of the City or the Company upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

Section 13 Notice.

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

Chief Financial Officer
City of Atlanta
68 Mitchell Street, SW
Suite 11100
Atlanta, Georgia 30335-0312

With a copy to:

City Attorney
City of Atlanta
68 Mitchell Street, SW
Suite 4100
Atlanta, Georgia 30335-0312

Notice to the Company will be to:

Assistant Comptroller
BellSouth Telecommunications, Inc.
Room 1923
1155 Peachtree Street
Atlanta, GA 30309-3610

With a copy to:

General Counsel - Georgia
BellSouth Telecommunications, Inc.
Room 376
125 Perimeter Center West
Atlanta, Georgia 30346

Notice will be effective upon delivery by hand-delivery or first class mail at the above addresses until the City or the Company notifies the other, in writing, of a change in the address.

Section 14 Public Purpose: Reservation of Rights.

(a) All of the regulations provided in this Agreement 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 Agreement, 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.

(b) Neither the City nor the Company by accepting this Agreement waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Agreement, 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. The Company does not, by this Agreement, forfeit any legal rights it may have to challenge any ordinance of the City or the application thereof.

The execution of this Agreement shall not estop either party from asserting any rights in law or equity it may have, following the termination, reopening or expiration of this Agreement, or in the negotiation of any future agreement or fee arrangement between the parties on the same

subject matter.

Section 15. Inspection and Retention of Records

The City shall have the right to review or audit the Company's books and records upon reasonable advance notice, such required notice not to exceed 120 days subject to extensions requested by the company upon reasonable grounds, during normal business hours on company premises in accordance with regularly accepted accounting and audit standards regarding any amounts which may be paid under this Agreement. These records shall be maintained for a period of five (5) years. This right to audit shall include the right to review the Company's performance under this franchise and compliance with the terms and conditions hereof. This right includes the right to review and audit all books and records of revenue earned from all services provided by the Company inside the City. The City shall give written notice to the Company of any additional amount claimed to be due to the City as a result of the City's review. The additional amount due the City, if any, shall be paid within thirty (30) days following determination by the City that such amount is due and payable subject to review and agreement by the company. No Company records may be duplicated or taken from the Company's premises without the express written consent from the Company audit manager, which consent shall not be unreasonably withheld. The City shall maintain the confidentiality of the information disclosed in these records to the extent allowed by law and use the information solely for the purposes of verifying the Company's compliance with this Agreement. In the event the City intends to release any information in response to an open records request or otherwise in accordance with applicable law, the Company shall receive reasonable notice from the City in writing not less than 3 days prior to any release.

Section 16. Reporting.

The Company and the City shall agree on the format and content of monthly and annual

reports of franchise fee payments which shall be sufficient to allow the City monitor and reconcile payments due the City under the terms of this agreement.

Section 17. Plan, Design, Construction and Installation of Company Facilities.

On a regular basis, at least annually, the Company will furnish the City with its forecast for planned construction, repair and replacement inside the City, together with such additional information, maps, or exhibits, as the Company deems appropriate relating to projects planned and the geographic location within the City. The City and Company shall additionally hold such meetings and exchange such information as they deem necessary with a view towards coordinating their respective activities in these areas. It is recognized that, notwithstanding the foregoing, the Company and the City each retains absolute discretion over the timing and other aspects of their proposed projects.

Section 18. Severability.

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Agreement is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase term, provision, condition, covenant and portion of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Venue.

This Agreement shall be construed under and in accordance with the laws of the State of Georgia, and all obligations of the parties hereunder are performable in Fulton County, Georgia. In the event that any legal proceeding is brought to enforce the terms of this Agreement, the same

shall be brought in Fulton County, Georgia.

Section 20

The City and the Company agree to attempt in good faith to resolve any dispute arising out of or relating to this franchise agreement promptly prior to seeking relief from any court having jurisdiction over the matter.

Section 21. Entire Agreement.

This Agreement shall constitute the entire Agreement between the City and the Company and may not be modified or amended other than by a written instrument executed by both parties.

This Agreement has been authorized by the Mayor and City Council of the City of Atlanta and by proper corporate authority of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company and is executed in four duplicate originals as of the day and year first above written.

c

4/15/96

PUBLISHED IN THE DAILY REPORTER ON

4-26-96

ORDINANCE NO. 43-128

AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND A TELECOMMUNICATION SYSTEM IN THE CITY OF WICHITA, KANSAS, PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO; AND REPEALING ORDINANCE No. 40-649 AND ALL OTHER ORDINANCES AND RESOLUTIONS AND PARTS THEREOF INCONSISTENT OR IN CONFLICT WITH THE TERMS HEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. **Definitions.** For purposes of this ordinance, the following words and phrases shall have the meanings given herein:

"Access lines" - shall mean the following billed main lines and trunks, whether provided on a retail or wholesale basis: residential lines; business lines; ISDN lines (channels); PBX trunks; Centrex or Centrex-like stations; simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement; where stations are served by simulated exchange access lines provided by a central office based switching arrangement and the stations served are not used by a single customer of the provider of such arrangement, each station shall constitute an access line; and pay phone lines. "Access line" shall include wireless telecommunications services subject to 47 C.F.R. Part 24. "Access line" shall not include the following: wireless telecommunications services subject to 47 C.F.R. Part 22; unbundled loop facilities; and special access services.

"City" - The City of Wichita, Kansas.

"Facilities" - Telephone and telecommunication lines, conduits, wires, cables, pipes, poles, towers, vaults, and appliances, either under or above ground.

"Public improvement" - Any existing or contemplated public facility, building, or capital improvement project, including without limitation streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvement, and public projects.

"Public project" - Any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

"Right-of-way" - Present and future streets, alleys, rights-of-way, and public easements, including easements dedicated in plats of the City of Wichita, Kansas.

"Street right-of-way" - The entire width between property lines of land, property or an interest therein of every way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular traffic, including street, avenue, boulevard, highway, expressway, alley or any other public way for vehicular travel by whatever name.

"Telephone Company" - Southwestern Bell Telephone Company, its successors and assigns.

"Telecommunications" - The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications service" - The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

SECTION 2. Grant.

(a) There is hereby granted to Telephone Company the right, privilege and franchise to construct, maintain, extend, and operate its facilities, in, through and along the right-of-way for the purpose of supplying telecommunication service to the City and the inhabitants thereof for the full term of this franchise subject to the terms and conditions herein set forth. Nothing in this franchise is intended to preclude the City from seeking, or authorize the City to seek, a franchise from any subsidiary, affiliate, or third party providing telecommunications services.

(b) This franchise does not provide the Telephone Company the right to provide "Cable Service" to City and inhabitants thereof. For purposes of this ordinance, "Cable Service" is defined as the one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service; but "Cable Service" does not include point to point, point to multi-point, and switched video services that Telephone Company has historically offered or other similar services that Telephone Company may in the future offer. Nothing in this franchise is intended to

preclude the City from seeking, or authorize the City to seek, a franchise from any subsidiary, affiliate, or third party providing "Cable Services." Telephone Company and City agree that nothing in this franchise is intended to authorize the City to seek from Telephone Company nor to require Telephone Company to obtain a franchise to offer "Open Video Systems" as that term is used in section 653 of the Telecommunications Act of 1996 (codified at 47 U.S.C. 573). Telephone Company and City further agree, however, that this ordinance does not authorize Telephone Company to offer "Open Video Systems" without paying the fee on the gross revenues of the system operator for the provision of cable service in lieu of a franchise fee, pursuant to and in the manner described in 47 U.S.C. 573(c)(2)(b) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. 573.

(c) Upon written request from Telephone Company, the City agrees to begin negotiations in good faith with Telephone Company within thirty (30) days to provide Telephone Company a franchise to provide "Cable Service" to the City and inhabitants thereof on terms no more burdensome than the franchise(s) granted to other providers of "Cable Service" with the City."

SECTION 3. Use of Right-of-Way. In the use of right-of-way under this franchise, the Telephone Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Telephone Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, beautification, and other requirements on the use of the right-of-way and shall comply with the following:

(a) The Telephone Company's use of right-of-way shall in all matters be subordinate to the City's use of the right-of-way for any public purpose. The Telephone Company shall coordinate the placement of its facilities in a manner which minimizes adverse impact on public improvements, as reasonably determined by the City. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement.

(b) All earth, materials, sidewalks, paving, crossings, utilities, public improvements, or improvements of any kind injured or removed by the Telephone Company in its activities under this franchise shall be fully repaired or replaced promptly by the Telephone Company at its sole expense and to the reasonable satisfaction of the City or owner thereof.

(c) All facilities constructed, replaced, or relocated in the right-of-way after the date hereof shall be placed underground unless otherwise agreed to by the City. Where

there are obstructions in the right-of-way such as trees, shrubs, other utilities, commercial signs, man-made

structures, or other like obstructions which make the cost of such underground burial unreasonable, the Telephone Company may request waiver of this requirement, in which event the City will not unreasonably withhold consent. Any vaults, boxes, pedestals, and similar facilities placed above ground in street right-of-way shall be located behind the sidewalk where feasible. Underground facilities shall be placed in appropriate size and type of rigid conduit under paving and under proposed paving as set forth in the Year 2000 Transportation Plan as on file with the Metropolitan Area Planning Commission except where otherwise agreed by the City and the Telephone Company. Where reasonable and appropriate and where adequate public right-of-way exists, the Telephone Company will place above-ground facilities underground in conjunction with City capital improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible. By way of illustration and not limitation, Telephone Company may establish that such placement is not economically feasible by showing that the present value of the future maintenance savings of such placement does not exceed all of the costs associated with such placement.

(d) The Telephone Company shall keep and maintain accurate records and as-built drawings depicting accurate horizontal and vertical location of all facilities constructed, reconstructed, or relocated in the street right-of-way after the date hereof and provide location information regarding specific future project locations to the City upon request. Where such information is available electronically, upon request from the City, Telephone Company agrees to provide such information in an electronic format. (City agrees to use information only to locate utility facilities in connection with municipal projects and further agrees not to disclose such information to anyone other than City employees requiring such information to locate utility facilities in connection with municipal projects, except as required by law. Telephone Company and City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of the Telephone Company and agree that pursuant to K.S.A. 45-221(12), (18), as amended, such information does not constitute public records subject to K.S.A. 45-218, as amended. In the event that City is required by law to disclose such information, City shall provide the Telephone Company seven (7) days advance notice of its intended disclosure of such information and shall take such action as may be reasonably required to cooperate with the Telephone Company to safeguard such information. The Telephone Company agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of the Telephone Company, or of the City at

the written request of the Telephone Company, in seeking to safeguard the confidentiality of information provided by Telephone Company to City under this section. In the event such information is required by force of law to be publicly disclosed, the Telephone Company shall have no further obligation under this section to provide the City with such information.) Such facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change. All points of facilities shall be horizontally located from street centerline, or section or quarter section lines or corners. Vertical locations or all points of facilities shall consist of elevations in either City datum or United States Geological Survey datum.

(e) The Telephone Company shall notify the City not less than three (3) working days in advance (such notice to be adequate for timely notice on the governing body agenda under City procedures) of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Telephone Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. Such signing shall be in conformance with the latest edition of the Federal Highway Administration's Standards and Guideline for Work Zone Traffic Control, unless otherwise agreed to by the City.

(f) The Telephone Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its facilities located within right-of-way when requested by the City or its authorized agents for a public project. Such location and identification shall be at the sole expense of the Telephone Company without expense to the City, its employees, agents, or authorized contractors. The Telephone Company shall designate and maintain a local agent, familiar with the facilities, who is responsible for satisfying information needs of the City and other users of the right-of-way.

(g) The Telephone Company shall promptly remove, relocate, or adjust any facilities located in right-of-way if reasonably necessary and directed by the City for a public project. Such removal, relocation, or adjustment for a particular public project shall be performed by the Telephone Company once at its sole expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City pertaining to such. If additional removal, relocation, or adjustment is the result of the inaccurate or mistaken

information of the Telephone Company, the Telephone Company shall be responsible for such at its sole expense.

(h) It shall be the responsibility of the Telephone Company to take adequate measures to protect and defend its facilities in the right-of-way from harm or damage. If the Telephone Company fails to accurately or timely locate facilities when requested, it has no claim for costs or damages against the City and its authorized contractors unless such party is solely responsible for the harm or damage by its negligence or intentional conduct. Telephone Company shall be responsible to the City and its agents, representatives, and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of the Telephone Company to perform any of its obligations under this agreement unless the damaged party is solely responsible for the harm or damage by its negligence or intentionally caused harm. However, the City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Telephone Company facilities.

(i) The Telephone Company, on the request of any applicant, shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the Telephone Company may require such payment in advance. The Telephone Company shall be given not less than fifteen (15) days' written notice from the applicant detailing the time and location of the moving operations, and not less than twenty-four (24) hours' advance notice from the applicant advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.

(j) Permission is hereby granted to the Telephone Company to trim trees upon and overhanging streets, alleys, sidewalks and public places of said City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Telephone Company, all of said trimming to be done under the supervision and direction of any City officials to whom said duties have been or may be designated.

(k) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the facilities in the right-of-way shall be in accordance with applicable present and future federal, state, and City law and regulation, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as

may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this ordinance may be additional to or stricter than such minimum standards.

(l) The Telephone Company will not allow a subsidiary, affiliate, or a third party providing a wireless communications system to acquire rights to occupy the right-of-way under this Agreement. To the extent this provision is deemed inapplicable to third parties, it also shall be deemed inapplicable to subsidiaries and affiliates of Telephone Company. Nothing in this subsection shall prevent Telephone Company from providing Telecommunications Services to any third party, subsidiary or affiliate even though such services may involve the Telephone Company facilities in the Right-of-way within the City limits.

(m) The City encourages the conservation of right-of-way by the sharing of space by all utilities. To the extent required by Federal or State law, the Telephone Company shall permit any other franchised entity by appropriate contract or agreement negotiated by the parties to use any and all facilities constructed or erected by the Telephone Company. All said agreements and installations shall be subject to all existing and future ordinances and regulations of the City.

SECTION 4. Indemnity and Hold Harmless. The Telephone Company shall hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including attorney fees, to the extent occasioned in any manner by the Telephone Company's occupancy of right-of-way, except to the extent otherwise specified in paragraph 3(h). In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the right-of-way by facilities of the Telephone Company, then upon notice by the City to the Telephone Company, the Telephone Company will assume liability for the defense of such actions at the cost of the Telephone Company, subject to the option of the City to appear and defend, at its own cost, any such case.

SECTION 5. Regulation of Rates and Service. The rates to be charged and exacted from the City of Wichita and its inhabitants, and the rules and regulations with reference to the character and quality and standards of service to be furnished by said Telephone Company shall be under the jurisdiction and control of such regulatory body, municipal or otherwise, as may from time to time during the term of this ordinance be vested by law with authority and jurisdiction thereover; PROVIDED, that if at any time there shall be no such regulatory body vested by law with the exclusive jurisdiction of the rates, regulations and quality and standards of service to be supplied by said Telephone Company, and if by the law the jurisdiction thereover shall be optional, with the sole discretion in the City, then the right and power to fix and determine rates and to prescribe standards and quality of service shall be vested in the Governing Body of the City of Wichita, Kansas.

PROVIDED, FURTHER, that nothing herein contained shall be construed as waiving the rights of either the City or the Telephone Company to review in the courts, in such manner as is now or may hereafter be provided by law, the findings or order of said regulatory body.

SECTION 6. **Payments and Charges.** The payments herein provided shall be in lieu of all other licenses, taxes, charges, fees or impositions, except that the usual general property taxes and special ad valorem property taxes, and any charges for pavement cuts or other charges based on restoring premises to their same condition, or charges made for privileges which are not in any way connected with telephone business, as such, will be imposed on the Telephone Company, and are not covered by the payments herein. The Telephone Company shall have the privilege of crediting such sums payable hereunder with any unpaid balance due said Telephone Company for telephone service rendered or facilities furnished to said City; PROVIDED, that said balance due is liquidated and uncontested.

SECTION 7. **Compensation to City**

(a) In consideration of the franchise granted to Telephone Company by City, Telephone Company agrees to pay to City during the term of this ordinance a sum of One Dollar and Eighty-one Cents (\$1.81) per month for each access line served by Telephone Company for local service within the city limits of City. The number of access lines as of month end shall be used to calculate payments due City for the following month. The payment to City for amounts owed for such month shall be made within thirty (30) days of the last day of such month

(b) If during the term of this ordinance any entity provides local telecommunications service in City and provides compensation to City at an amount less than One Dollar and Eighty-One Cents (\$1.81) per month for each access line served by such entity for local service within the city limits of City or provides no compensation to City for each such access line, this ordinance shall require compensation no greater than such amounts, if any, during such time remaining of the term of this ordinance that the lesser compensation, if any, is paid by such other entity.

(c) The parties agree that if federal law or state law is enacted setting forth a maximum allowable level of compensation for franchise rights and if such maximum allowable level is less than the level of compensation required by this ordinance, this ordinance shall require Telephone Company to pay the reduced level required by law for the remainder of the term of this ordinance.

(d) If during the term of this ordinance, Telephone Company believes that it is entitled to reduction in compensation pursuant to subsections (b) and (c) above, Telephone Company agrees to notify City in writing and agrees

that it will continue to pay City at a rate of One Dollar and Eighty-one Cents (\$1.81) per month for each access line served by Telephone Company for local service within the city limits of City until sixty (60) days following such notice to City.

SECTION 8. Attachment to Poles. Nothing in this ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or the Telephone Company on the poles of the other. If such attachments are desired by the City or the Telephone Company, then a separate non-contingent agreement shall be prerequisite to such attachments.

SECTION 9. Forfeiture of Franchise. In case of failure on the part of Southwestern Bell Telephone, its successors and assigns, to comply with any of the provisions of this ordinance, or if Southwestern Bell Telephone, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, Southwestern Bell Telephone, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City of Wichita shall carry out the following proceedings. Before the City of Wichita proceeds to forfeit said franchise, as in this section prescribed, it shall first serve a written notice upon the manager of Southwestern Bell Telephone at its principal office in the City of Wichita, and upon the trustee or trustees in any deed of trust securing bonds of Southwestern Bell Telephone of record in Sedgwick County, Kansas, by mailing notice to such trustee or trustees to the address designated in such trust deed, setting forth in detail in such notice the neglect or failure complained of, and Southwestern Bell Telephone shall have ninety days thereafter in which to comply with the conditions of this franchise. If at the end of such ninety-day period the City of Wichita deems that the conditions of such franchise have not been complied with by Southwestern Bell Telephone and that such franchise is subject to cancellation by reason thereof, the City of Wichita, in order to terminate such franchise, shall enact an ordinance setting out the grounds upon which said franchise or agreement is to be canceled or terminated. If within thirty days after the effective date of said ordinance Southwestern Bell Telephone shall not have instituted an action, either in the District Court of Sedgwick County, Kansas, or some other court of competent jurisdiction to determine whether or not Southwestern Bell Telephone has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty-day period Southwestern Bell Telephone does institute an action, as above provided, to determine whether or not Southwestern Bell Telephone has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event, in case the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall terminate thirty days after such final judgment is rendered. PROVIDED, however, that the failure of Southwestern Bell

Telephone to comply with any of the provisions of this ordinance or the doing or causing to be done by Southwestern Bell Telephone of anything prohibited by or in violation of the terms of this ordinance shall not be a ground for the forfeiture thereof when such act or omission on the part of Southwestern Bell Telephone is due to any cause or delay beyond the control of Southwestern Bell Telephone, its successors and assigns, or to bona fide legal proceedings.

SECTION 10. Rights and Duties of Grantee Upon Expiration of Franchise. Upon expiration of this franchise, whether by lapse of time, by agreement between Southwestern Bell Telephone and the City of Wichita, or by forfeiture thereof, Southwestern Bell Telephone shall have the right to remove from public property any and all of its lines, poles, towers and other appurtenances and equipment used in its said business within a reasonable time after such expiration, but in such event, it shall be the duty of Southwestern Bell Telephone, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which said lines, poles, towers, other appurtenances and other equipment are removed to as good condition as the same were before said removal was effected.

SECTION 11. Term and Termination Date. The term of this franchise shall be three (3) years from the effective date of this ordinance. The Telephone Company at its option shall have the right to extend this franchise upon the same terms and conditions for a subsequent term of three (3) years, by providing written notice to City of its desire to extend the franchise not later than one hundred and eighty (180) days prior to the expiration of the initial term, provided, however, that if by operation of subsection (b) of section 7, Telephone Company is required to pay a lesser amount or no compensation to City at the time that Telephone Company provides such written notice, City may reject the additional term by providing written notice to Telephone Company within ninety (90) days of receipt of Telephone Company's written notice to City of its desire to extend the franchise. The additional term shall be deemed a continuation of this franchise and not as a new franchise or amendment.

SECTION 12. Acceptance of Terms by Southwestern Bell Telephone. The Telephone Company shall have sixty (60) days after the final passage and approval of this ordinance to file with the City Clerk of the City of Wichita its acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted the ordinance and acceptance shall constitute a contract between the City of Wichita and Southwestern Bell Telephone subject to the provisions of the laws of the state of Kansas.

SECTION 13. Right to Assign. This franchise shall be assignable only in accordance with the laws of the state of Kansas, as the same may exist at the time when any assignment is made.

SECTION 14. Participation in Utility Location Coordination Council. Southwestern Bell Telephone shall remain a member of and participate in the Utility Location and Coordination Council established by Sections 2.12.1093 through 2.12.1097 of the Code of the City of Wichita, Kansas, and any amendment thereto and shall participate in joint funding with other utilities.

SECTION 15. Conditions of Franchise. This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to Acts of God, fires, strikes, riots, floods, war and other causes beyond Southwestern Bell Telephone's control. This franchise shall not be exclusive.

SECTION 16. Invalidity of Ordinance. If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall not affect the remaining provisions of this ordinance.

SECTION 17. Ordinance no. 40-649 and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, shall be canceled, annulled, repealed and set aside; PROVIDED, that this ordinance shall not take effect or become in force until it shall have been read in full at three regular weekly meetings of the governing body of the City of Wichita nor until and immediately after its final passage it shall be published in the official city paper once each week for two consecutive weeks, and such ordinance shall not take effect or be in force until and after the expiration of sixty days from the date of its final passage, nor if, pending the final passage and taking effect of said ordinance, an election shall be called as provided by law, in which event said ordinance shall not take effect or become in force until the same shall have been duly approved by the electorate. The Telephone Company shall have sixty days from and after its passage and approval to file its written acceptance of this ordinance with the City Clerk.

PASSED AND APPROVED by the City Council of the City of Wichita,
Kansas, this 11th day of April, 1996.



Bob Knight, Mayor

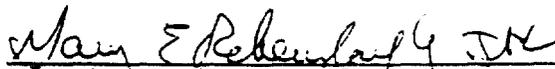
ATTEST:



Pat Burnett, Deputy City
Clerk



Approved as to Form:



Gary E. Rebenstorff, Director of
Law