

ORDINANCE NO. 8-1999

AN ORDINANCE WHEREBY THE CITY OF ABILENE, TEXAS, AND SOUTHWESTERN BELL TELEPHONE COMPANY AGREE TO THE EXTENSION OF ORDINANCE NOS. 34-1991 AND 55-1998, WHEREBY SOUTHWESTERN BELL WILL CONTINUE TO OPERATE ITS NON-EXCLUSIVE TELECOMMUNICATIONS BUSINESS WITHIN THE CITY OF ABILENE AS CONTAINED HEREIN; PROVIDING A TERM; AN EFFECTIVE DATE; AND CALLING A PUBLIC HEARING.

WHEREAS, Southwestern Bell Telephone Company (hereinafter referred to as the "TELEPHONE COMPANY") is now and has been engaged in the telecommunications business in the State of Texas and in furtherance thereof, has erected and maintained certain items of its physical plant in the City of Abilene, Texas (hereinafter referred to as the "CITY") for many years pursuant to such rights as have been granted it by and under the laws of the State of Texas, and subject to the reasonable exercise of the police powers granted by and under said laws to the CITY; and

WHEREAS, it is to the mutual advantage of both the CITY and the TELEPHONE COMPANY that an agreement should be entered into between the TELEPHONE COMPANY and the CITY establishing the conditions under which the TELEPHONE COMPANY shall maintain and construct its physical plant in the CITY in the future; and

WHEREAS, on November 7, 1991, the City passed Ordinance No. 34-1991, governing the TELEPHONE COMPANY's use and occupancy of the public Rights-of-Way in the CITY and establishing compensation for that use and occupancy; and

WHEREAS, the initial term of Ordinance No. 34-1991 was for seven years from the effective date of that ordinance;

WHEREAS, Section 4 of Ordinance No. 34-1991 permits the parties to extend the term of the Ordinance at the expiration of the initial period by mutual written agreement;

WHEREAS, on November 5, 1998, the City passed Ordinance No. 55-1998, extending the initial term of Ordinance No. 34-1991 for an additional four (4) months;

WHEREAS, Section 2 of Ordinance No. 55-1998 permits the parties to extend the term of the Ordinance at the expiration of the initial period and additional period by mutual written agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, THAT:**

Section 1: Subject to the terms, conditions, and provisions of this Ordinance and of the City of Abilene Ordinances Nos. 34-1991 and 55-1998, which said Ordinances are hereby incorporated herein by reference and which shall be a part hereof for all intents and purposes as if said Ordinance Nos. 34-1991 and 55-1998 were copied herein in their entireties, the CITY does hereby grant to the TELEPHONE COMPANY the NON-EXCLUSIVE right and privilege to USE the public RIGHTS-OF-WAY in the CITY for the operation of a telecommunications system subject to the restrictions set forth herein. The TELEPHONE COMPANY may USE such RIGHTS-OF-WAY for its telecommunications FACILITIES. The TELEPHONE COMPANY's FACILITIES and TRANSMISSION MEDIA used in or incident to the provision of telecommunications service and to the maintenance of a telecommunications business by the TELEPHONE COMPANY in the CITY shall remain as now constructed, subject to such changes as under the conditions prescribed in this Ordinance may be considered necessary to the public health and safety by the CITY in the exercise of its lawful police powers and such changes and extensions as may be considered necessary by the TELEPHONE COMPANY in the pursuit of its telecommunications business. The terms of this Ordinance shall apply throughout the CITY, and to all operations of the TELEPHONE COMPANY within the CITY, and shall include all operations and FACILITIES used in whole or in part in the provision of telecommunications services in newly annexed areas upon the effective date of any annexation.

Section 2: This Ordinance shall continue for a period of three (3) months from the effective date hereof; provided that at the expiration of this period, such term may be extended by mutual written agreement of the CITY and TELEPHONE COMPANY.

Section 3:

- (a) As compensation for the USE, occupancy, oversight, supervision and regulation of the CITY's RIGHTS-OF-WAY, and in lieu of and in full compensation for any lawful tax or license or charge or RIGHT-OF-WAY permit fee or inspection fee, whether charged to the TELEPHONE COMPANY or its contractor(s), or any RIGHT-OF-WAY easement or street or alley rental or franchise tax or other character of charge for USE and occupancy of the RIGHTS-OF-WAY within the CITY, except the usual and general ad valorem taxes, special assessments in accordance with State law or sales taxes now or hereafter levied by the CITY in accordance with State law, the CITY hereby imposes a Charge upon the Gross Receipts of the TELEPHONE COMPANY. The amount of the Charge for the term of this Ordinance shall be \$223,990.50. This amount is equivalent to a three-month proration of the previous annual Charge of \$895,962.00.
- (b) The Charge for the term of this Ordinance shall be paid in one installment on June 30, 1999.
- (c) Such payment shall not relieve the TELEPHONE COMPANY from paying all applicable municipally-owned utility service charges. Should the CITY not have the legal power to agree that the payment of the foregoing Charge shall be in lieu of the taxes, licenses,

charges, RIGHTS-OF-WAY permit fees or inspection fees, rentals, RIGHTS-OF-WAY easements or franchise taxes aforesaid, then the CITY agrees that it will apply so much of such payment as may be necessary to the satisfaction of the TELEPHONE COMPANY's obligation, if any, to pay any such taxes, licenses, charges, RIGHTS-OF-WAY permit fees or inspection fees, rentals, RIGHTS-OF-WAY easements or franchise taxes.

Section 4: All requirements concerning supervision by CITY of location of TELEPHONE COMPANY FACILITIES; attachments to poles and space in ducts; general conditions, construction, alteration and maintenance; temporary rearrangement of aerial wires; tree trimming; indemnity; administration of ordinance; assignment of ordinance; mutual releases; repeal of conflicting ordinances and agreements; future contingency; and governing law remain in force and as specified in Ordinance Nos. 34-1991 and 55-1998.

Section 5: The CITY shall deliver a properly certified copy of this Ordinance to the TELEPHONE COMPANY within three (3) working days of its final passage. The City Council of Abilene agrees to this Ordinance; if and only if the TELEPHONE COMPANY files its written acceptance of this Ordinance within thirty (30) days after its final passage and approval by the City Council. After acceptance by the TELEPHONE COMPANY and final passage by the City Council, the terms and provisions hereof shall be binding upon the CITY and the TELEPHONE COMPANY, their successors and assigns.

Section 6: The City Secretary shall cause notice of this Ordinance to be published at least one time within twenty (20) days after final passage in the official newspaper of the City.

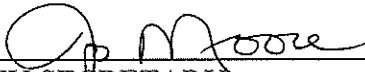
PASSED ON FIRST READING this 25 day of February, 1999.


After said passage on first reading, a notice of time and place, where and when, said Ordinance would be given a public hearing and considered for second and final passage was published in the Abilene Reporter News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 7 day of March, 1999. After an opportunity for the public to be heard, said Ordinance was passed on second and final reading by the affirmative vote of five (5) Council members.

This Ordinance shall become effective thirty (30) days after its passage on second and final reading.

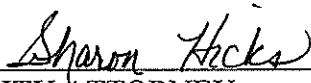
PASSED ON SECOND AND FINAL READING this 11 day of March, 1999.

ATTEST:

  
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CITY SECRETARY

  
\_\_\_\_\_  
MAYOR

APPROVED:

  
\_\_\_\_\_  
CITY ATTORNEY