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ORDINANCE NO. 710

A CONTRACT FRANCHISE ORDINANCE GRANTED TO SOUTHWESTERN BELL TELEPHONE, L.P., A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF WASHINGTON, KANSAS.

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

Section 1. Pursuant to K.S.A. 2005 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone L.P. d/b/a AT&T Kansas ("AT&T Kansas"), a telecommunications local exchange service provider providing local exchange service within the City of Washington, Kansas ("City"), subject to the provisions contained hereafter. The initial term of this contract franchise ordinance shall be for a period of two (2) years beginning September 1, 2007, and ending August 31, 2009. Thereafter, this contract franchise ordinance will automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the contract franchise ordinance at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this contract franchise ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 2005 Supp. 12-2001 (b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the contract franchise ordinance. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

Section 2. For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

"Access line" shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations serviced by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services process by a telecommunications local exchange service provider or private line service arrangements.

"Access line count" means the number of access lines serving consumers within the corporate boundaries of the city on the last day of each month.

“Telecommunications services” means providing the means of 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.

Section 3. Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to \$1.00 per access line. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to \$1.00 per access line; unless the City notifies AT&T Kansas prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year or that it intends to switch to an access line fee for the following calendar year. In the event City elects compensation based on an access line fee, nothing herein precludes City from switching back to a gross receipts fee provided City notifies AT&T Kansas prior to ninety (90) days before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year. Any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2005 Supp. 12-2001.

Section 4. The City shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance.

Section 5. As a condition of this contract franchise ordinance, AT&T Kansas is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to AT&T Kansas’ right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. AT&T Kansas shall also comply with all applicable laws, statutes and/or ordinances, subject to AT&T Kansas’ right to challenge in good faith such laws, statutes and/or ordinances.

Section 6. Nothing herein contained shall be construed as giving AT&T Kansas any exclusive privileges, nor shall it affect any prior or existing rights of AT&T Kansas to maintain a telecommunications system within the City.

Section 7. AT&T Kansas shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

Section 8. The City agrees to provide AT&T Kansas with notification in the event that it annexes property into the corporate boundaries of the City that would require AT&T Kansas to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property AT&T Kansas was not required to pay a franchise fee. The City agrees to provide AT&T Kansas with notification in the event the City renumbers or renames any streets that

would require AT&T Kansas to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets AT&T Kansas would not have been required to pay a franchise fee. The City agrees that in the event the City does not provide AT&T Kansas with notice of an annexation or renumbering and/or renaming of the streets, AT&T Kansas is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to AT&T Kansas of such.

Section 9. The City agrees that pursuant to K.S.A. 2005 Supp. 12-2001 (j)(1) and (2) that the franchise fee imposed under this contract franchise ordinance must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

Section 10. Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United State mail or by personal delivery. Notice upon AT&T Kansas shall be delivered by first class United States mail or by personal delivery to:

Southwestern Bell Telephone L.P.  
Cindy Zapletal  
Director-External Affairs  
1640 Fairchild Avenue, First Floor  
Manhattan, Kansas 66502

Section 11. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

Section 12. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond AT&T Kansas' or the City's control.

Section 13. AT&T Kansas has entered into this contract franchise ordinance as required by the City and K.S.A. 2005 Supp. 12-2001. If any clause, sentence, section, or provision of K.S.A. 2005 Supp. 12-2001, and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, either the City or AT&T Kansas may elect to terminate the entire contract franchise ordinance. In the event a court of competent jurisdiction invalidates K.S.A. 2005 Supp. 12-2001, and amendments thereto, if AT&T Kansas is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

Section 14. In entering into this contract franchise ordinance, neither the City's now AT&T Kansas present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the contract franchise ordinance, neither the City nor AT&T Kansas waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or AT&T Kansas may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this contract franchise ordinance or any present or future laws,

ordinances, and/or ruling which may be the basis for the City and AT&T Kansas entering into this contract franchise ordinance.

Section 15. The parties agree that in the event of a breach of this contract franchise ordinance by either party, the non breaching party has the right to terminate the contract franchise ordinance immediately. Prior to terminating the contract franchise ordinance, the non breaching party shall first serve a written notice upon the breaching party, setting forth in detail the nature of the breach, and the breaching party shall have thirty (30) days thereafter in which to cure the breach. If at the end of such thirty (30) day period the non breaching party deems that the breach has not been cured, the non breaching party may take action to terminate this contract franchise ordinance.

Section 16. This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise ordinance shall be effective until the ordinance granting the same has been adopted as provided by law.

Passed by the Council the 4<sup>th</sup> day of June, 2007.

Approved by the Mayor the 4<sup>th</sup> day of June, 2007.

SEAL

/s/ Harold J. Jones, Jr. Mayor

/s/ Denise M. Powell, city clerk

APPROVED AS TO FORM:  
/s/ Jason Brinegar, city attorney