

ORDINANCE NO. 243

AN ORDINANCE WHEREBY THE CITY OF MAGNOLIA, TEXAS, AND SOUTHWESTERN BELL TELEPHONE COMPANY AGREE TO AMEND ORDINANCE NO. 174 TO PROVIDE FOR A LONGER TERM AND TO ADD TERMINATION AND OTHER PROVISIONS AS A RESULT OF THE CHANGES MADE BY THE PUBLIC UTILITY REGULATORY ACT OF 1995, 74TH LEG., R.S. CH, 231, TEX. SESS. LAW SERV. 2017 (VERNON) (TO BE CODIFIED AS TEX. REV. CIV. STAT. ANN. ART. 1446C-O).

WHEREAS, the City of Magnolia, hereinafter referred to as the "CITY", adopted and approved Ordinance No. 174 on July 14, 1992, which was accepted by Southwestern Bell Telephone Company, hereinafter referred to as the "TELEPHONE COMPANY" on August 3, 1992; and

WHEREAS, TELEPHONE COMPANY and the CITY desire to extend the term of Ordinance No. 174 as provided in this Ordinance; and

WHEREAS, it is to the mutual advantage of both the CITY and the TELEPHONE COMPANY that the term of Ordinance No. 174 be extended; and

WHEREAS, it is recognized by the parties that provisions set forth in Ordinance No. 174 may create legal issues with respect to the CITY's compliance with Section 3.2555 of the Public Utility Regulatory Act of 1995 effective September 1, 1995, hereinafter referred to as the "Revised PURA"; the parties agree and intend that this amendment to Ordinance No. 174 constitutes an interim arrangement to accommodate the needs of the parties, pending clarification of the interpretation and application of the Revised PURA.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF MAGNOLIA, TEXAS, THAT:

Section 1. Section 4 of Ordinance No. 174 entitled TERM is hereby amended to read as follows:

This ordinance shall be in force and in effect from October 1, 1997, through September 30, 1998, unless earlier terminated pursuant to Section 16, provided that at the expiration of this initial period, such term shall be automatically extended for successive periods of one (1) year, unless written notice of intent to terminate this agreement is given by either party not less than ninety (90) days prior to the termination of the then current period. When such notice is given this agreement shall terminate at the expiration of the then current period.

Section 2. Section 16 of Ordinance No. 174 entitled **FUTURE CONTINGENCY** is hereby amended to add the designation "(a)" before the existing paragraph of that Section and to add paragraphs (b), (c) and (d) as set forth below:


(b) Both parties agree that the extension of this Ordinance is an interim arrangement and is not intended to be used, and will not be cited or referred to by either party, as evidence of what is in compliance with the requirements of Section 3.2555 of the Revised PURA. TELEPHONE COMPANY and CITY both hereby reserve all arguments and/or positions as to the appropriate interpretation and application required by the Revised PURA.

(c) The CITY agrees to provide written notice to the TELEPHONE COMPANY of an original application or an agreement thereto, for a consent, franchise or permit with the CITY for use of the RIGHTS-OF-WAY in the CITY for the provision of any telecommunications service within ten (10) days from receipt of such application.

(d) Further, notwithstanding anything contained in this Ordinance to the contrary, both CITY and TELEPHONE COMPANY agree that either CITY or TELEPHONE COMPANY may terminate this Ordinance upon a minimum of thirty (30) days notice to the other party on or after the date that (1) any entity applies for an original of, or an amendment to, a consent, franchise or permit with the CITY for use of the RIGHTS-OF-WAY in the CITY for the provision of any telecommunications service; or (2) any entity with an existing consent, franchise, or permit for use of the RIGHTS-OF-WAY in the CITY files an application with the Public Utility Commission of Texas for a certificate of operating authority or a service provider certificate of operating authority which includes any geographic area which is wholly or partially within the corporate limits of the CITY.

Section 3. The TELEPHONE COMPANY shall have thirty (30) days from and after the passage and approval of this Ordinance to file its written acceptance hereof with the City Secretary, and upon such acceptance being filed, this Ordinance shall take effect and be in force as of October 1, 1997.

Passed and approved hereof this 12 day of Aug, A.D., 1997.



Mayor,
City of Magnolia, Texas

ATTEST:

Mary McQuery
City Secretary

I, MARY MCQUERY, City Secretary
of the City of Magnolia, Texas, do hereby certify that the
foregoing is a true and correct copy of Ordinance Number
243, finally passed and approved by the Board of
Aldermen of Magnolia, Texas, at a regular meeting held on the
12th day of AUGUST, 1997.

Mary McQuery
City Secretary

ACCEPTANCE

WHEREAS, the City of Magnolia, Texas did on the 12th day of August, 1997, enact Ordinance Number 243 entitled:

AN ORDINANCE WHEREBY THE CITY OF MAGNOLIA, TEXAS, AND SOUTHWESTERN BELL TELEPHONE COMPANY AGREE TO AMEND ORDINANCE NO. 174 TO PROVIDE FOR A LONGER TERM AND TO ADD TERMINATION AND OTHER PROVISIONS AS A RESULT OF THE CHANGES MADE BY THE PUBLIC UTILITY REGULATORY ACT OF 1995, 74TH LEG., R.S. CH, 231, TEX. SESS. LAW SERV. 2017 (VERNON) (TO BE CODIFIED AS TEX. REV. CIV. STAT. ANN. ART. 1446C-O).

and **WHEREAS**, said Ordinance was on the 12th day of August, 1997, duly approved by the Mayor of said City and the Seal of said City was thereto affixed and attested by the City Secretary:

NOW, THEREFORE, in compliance with the terms of said Ordinance as enacted, approved and attested, the Southwestern Bell Telephone Company hereby accepts said Ordinance and files this its written acceptance with the City Secretary of the City of Magnolia, Texas in her Office.

Date this 2nd day of September, 1997.

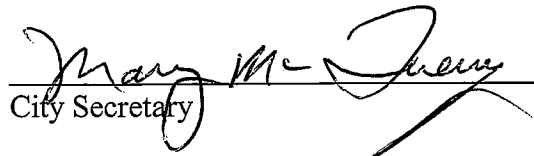
**SOUTHWESTERN BELL TELEPHONE
COMPANY**



President-Texas



Acceptance filed in the office of the City Secretary of the City of Magnolia, Texas this 15 day of September, 1997.


City Secretary

Jamie Benson
Manager-
Municipal Relations

Southwestern Bell Telephone
One Bell Plaza, Room 3020
P.O. Box 655521
Dallas, Texas 75265-5521
Phone 214 464-6166
Fax 214 464-5838



September 9, 1997

The Honorable John Bramlett
Mayor, City of Magnolia
501 Magnolia
Magnolia, Texas 77355

Dear Mayor Bramlett:

Attached are two originals of Southwestern Bell Telephone Company's signed acceptance of amending Ordinance Number 243 which was passed by the City of Magnolia on August 12, 1997 to provide for a longer term and becomes effective on October 1, 1997.

After the filing date has been noted by the City Secretary, **one original** countersigned acceptance document should be returned to me for filing with Southwestern Bell Telephone's official records. A self-addressed envelope is also attached for your convenience.

Please feel free to contact me if there are any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jamie Benson".

Attachments

CC: Becky Poe