

St. Louis City Ordinance 62717

FLOOR SUBSTITUTE

BOARD BILL NO. [92] 153

INTRODUCED BY ALDERMAN JOANNE WAYNE

An Ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment, authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis, to execute on behalf of the City of St. Louis, a contract with SOUTHWESTERN BELL TELEPHONE to install, manage, maintain, and operate Public Pay Coin Telephones at Lambert St. Louis International Airport for a term of five years beginning May 1, 1992 and ending April 30, 1997 under the terms and conditions in said contract which are set forth in Section One hereof; and containing an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Section One. The Director of Airports and the Comptroller of the City of St. Louis are hereof authorized and directed to execute on behalf of the City of St. Louis, a contract with Southwestern Bell Telephone to install, manage, maintain, and operate Public Pay Coin Telephones at Lambert-St. Louis International Airport to read substantially in terms as figures as follows:

AIRPORT NUMBER

LAMBERT ST. LOUIS INTERNATIONAL AIRPORT

CONCESSION AGREEMENT

Public Pay Coin Telephones

THIS AGREEMENT, made and entered into as of the day of , 1992, by and between the CITY OF ST. LOUIS, a municipal corporation of the State of Missouri ("City") and Southwestern Bell Telephone, a company of the State of Missouri (the "Concessionaire").

WITNESSETH, That:

WHEREAS, the City now owns, operates and maintains an international airport known as "Lambert St. Louis International Airport", located in the County of St. Louis, Missouri ("Airport"); and

WHEREAS, public pay telephone service at the Airport is essential for proper accommodation of the public; and

WHEREAS, Concessionaire is qualified to install, manage, maintain, and operate of this service;

NOW, THEREFORE, for and in consideration of the promises, and of the mutual covenants and agreements herein contained, and other valuable considerations, the City and Concessionaire agree as follows:

ARTICLE I DEFINITIONS

Section 101. Definitions. The following words, terms and phrases wherever used in this Agreement shall for the purpose of this Agreement have the following meaning:

"Agreement" shall mean this document and any amendment, thereto, duly approved by the City;

"Concessionaire" as stated in the Preamble hereof;

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be the Concessionaire's point of contact with the Airport on all issues related to this Agreement;

"City" as stated in the preamble hereof;

"Director" shall mean the Director of Airports of the City of St. Louis or his designee and incorporates the granting of approvals requirements of "Section 1315" hereof;

"Premises" shall mean a location or locations described in Section 201 that has or have been designated by the Director for placement of Concessionaires telephone stations;

"Gross Revenue" shall mean the total local, Intra LATA and Inter LATA revenue from all sources and all types of calls (e.g. operator assist, direct dial and credit card) with no deductions or setoffs from use of all of the public pay telephones installed under this Agreement.

"Disadvantaged Business Enterprise" or "DBE" shall mean a small business:
(a) which is at least 51% owned by one or more socially and economically

disadvantaged individuals, or, as in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or are lawfully admitted permanent residents) and who are rebuttably presumed to be Women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other individuals or groups found to be disadvantaged by the Small Business Administration pursuant to section 8 (a) of the Small Business Act, as amended.

ARTICLE II PREMISES

Section 201. Premises. City hereby grants to Concessionaire the right to install telephone units and enclosures (Stations) at the locations in the Lambert St. Louis International Airport Main Terminal, Concourses, East Terminal, and Garages to install related equipment at various locations as shown on Exhibit "B" attached hereto and made a part hereof (Premises). The rights granted in Section 202 hereof may be exercised only on the Concession Locations.

The City may require Concessionaire to remove specific telephones at Concessionaire's sole expense within 30 days of notice in writing from the Director of Airports. Such telephones may be relocated to specific locations that are designated by the Director of Airports.

In the event that circumstances dictate a need for additional pay telephone units, the Director of Airports may direct Concessionaire to install said pay telephones.

Section 202. Rights. City hereby grants to Concessionaire, subject to all the terms, covenants and conditions of this Agreement, the non exclusive concession rights for the sole purpose of installing, managing, maintaining and operating a Public Pay Coin Telephone service to the public in public areas of the Airport. This right may include the placement of FAX equipment for service to the public at the discretion of the Director of Airports. This right does not include areas of tenant leaseholds not open to the public.

If any service or commodity, other than those included above is offered for sale by Concessionaire, Concessionaire will cease and desist from any further sale thereof upon receipt of written notice from the Director of Airports.

It is the intention of the parties hereto in entering into this Agreement to provide the public using the Airport and tenants of the Airport with adequate, reliable, efficient and convenient public pay telephone service.

This Agreement grants no real or implied rights to any concession privileges on the Airport other than in the Premises.

Section 203. Access. The Concessionaire has the right of free access, ingress to and egress from the Premises for the Concessionaire's employees, provided that all FAA security regulations have been met.

ARTICLE III

TERM

Section 301. Term. The term of this Agreement shall begin on May 1, 1992 and will end on April 30, 1997 unless sooner terminated in accordance with other provisions of this Agreement.

Section 302. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement shall be necessary.

Concessionaire covenants and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Concession Locations in good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Concession Locations. Upon expiration and surrender of possession, Concessionaire will be permitted to remove its Stations. If Concessionaire fails to remove its stations within a reasonable time the Director may remove concession area stations at Concessionaires expense.

ARTICLE IV

FEES

Section 401. Concession Fee Payments Coin Calls. Concessionaire agrees to pay to the City, a Concession Fee for the right and privileges herein granted by the City. Concessionaire covenants to pay a monthly concession fee of 27.2 per cent of Concessionaire's monthly Gross Revenue from all installed pay telephone stations. Concession Fee accompanied by the monthly report, per Section 406 are due no later than the 20th day of the following month for which a fee and report are due. All concession fees and reports shall be sent to the Director of Airports, Properties Department, Lambert-St. Louis International Airport, P.O. Box 10212, St. Louis, Missouri, 63145.

Section 402. Rates. Rates charged for all telephone services at public telephones shall be in accordance with those already approved by the Public

Service Commission. Surcharges and rates shall be listed on Exhibit "C" and attached hereto. Said rates and surcharges shall be the accepted amounts at the time of contract execution. If the Public Service Commission approved new rates and surcharges then Concessionaire shall notify Airport within thirty (30) days after said approval. These new rates and surcharges then shall be a new Exhibit "C" and be attached hereto.

Section 403. Unpaid Rent and Fees. All unpaid rent and fee payments due the City hereunder shall bear a service charge of 1 1/2% per month if same is not paid and received by the City on or before the 30th of the month in which said payments are due, and the Concessionaire agrees that it shall pay and discharge all costs and expenses including attorneys' fees incurred or expended by the City in collection of said delinquent amounts due including services charges.

Section 404. Additional Fees, Charges and Rentals. Concessionaire shall pay additional fees, charges and rentals under the following conditions:

A. If the City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed to pay or reimburse the City for, and;

B. If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally a part of the basic fees, charges and rental, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be prima facie evidence against Concessionaire that the amount of such payment was necessary and reasonable.

Section 405. Prompt Payment of Taxes and Fees. Concessionaire covenants and agrees to pay promptly all lawful general taxes or payments in lieu of taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to

take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, assessments, fees and charges to become delinquent.

Section 406. Reports. Concessionaire shall provide the Airport in a form and detailed satisfactory to Director of Airports a monthly statement of Gross Revenue for the preceding month. Said monthly statement shall be due by the 20th day of the following month. Statements of Gross Revenue will be certified by a responsible manager of Concessionaire. Concessionaire will also report revenues from each station separately.

Within 90 days after the close of each contract year hereunder, Concessionaire will furnish to the Director of Airports a sworn statement certified by an independent Certified Public Accountant showing the total Gross Revenue collected at Airport by Concessionaire during the contract year. If as a result of such report Concessionaire has underpaid the Airport, Concessionaire shall send a payment therewith. If said report shows an overpayment then Airport shall reimburse Concessionaire therewith.

Within ninety (90) days following the conclusion of each anniversary date during the term of this Agreement and any extension thereof, Concessionaire shall file with the Director of Airports a report showing dollar amounts paid and received by DBE participants.

Section 407. Accounting Records. Concessionaire and its DBE Participant shall keep, throughout the entire term of this Agreement or any extension thereof, all books of account and records customarily used in this type of operation, and as from time to time may be required by City, in accordance with generally accepted accounting principals. Such books of accounts and records shall be retained and available for such period of time as provided herein unless otherwise approved by the City. The City at all times, throughout the term of this Agreement or any extension thereof and for up to three (3) years following termination, shall have the right to audit and examine during normal business hours all such records and books of account relating to the Concessionaire's operation hereunder, provided that the Concessionaire shall not be required to retain such books of account and records for more than three (3) years after the end of each year of this agreement.

If the books of account and records are kept at a location outside the City of St. Louis, Concessionaire shall arrange for them to be brought to a location convenient to the auditors for the city.

Section 408. Audit. City or its designated agent reserves the right to audit Concessionaire's, its sub-contractor's or others doing business under this agreement, or any extension thereof, books and records at any time for the purpose of verifying the Gross Receipts hereunder. If as a result of such audit(s) it is established that additional receipts are due the City, the Concessionaire shall pay such receipt to the City not later than fifteen (15) days after completion of such audit and written notice by the Director.

ARTICLE V

CONCESSIONAIRE'S OPERATIONS

Section 501. Occupancy of Premises. The Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

Section 502. Hours of Operation. The minimum hours of operation of the facilities for serving the public shall be 24 hours every day.

Section 503. Standards of Service. Concessionaire shall furnish high quality, prompt and efficient service, adequate to meet all reasonable demands therefor at the airport on a fair, equal and nondiscriminatory basis to all categories of users and shall charge fair, reasonable and nondiscriminatory prices as approved by the appropriate governmental authorities.

Concessionaire covenants that it shall take all reasonable measures in every proper manner to maintain, develop and increase the business conducted by it hereunder. Concessionaire shall not divert or cause or allow any business to be diverted from the Airport by referral or any other method.

The Concessionaire's personnel performing services hereunder shall be neat, clean and courteous. Concessionaire shall prohibit and restrain its agents, servants and employees from loud, noisy, boisterous or otherwise objectionable behavior. Upon objection from the Director of Airports concerning the conduct or appearance of any such persons, Concessionaire shall immediately take all steps necessary to remove the cause of the objection.

Section 504. Telephone Equipment. The Concessionaire shall use top quality telephone equipment described in "Exhibit A" at the locations listed in "Exhibit B" both of which are attached hereto.

Section 505. Onset of Service. The Concessionaire shall be solely liable and responsible for all costs and expenses pertaining to acquisition, removal,

replacement, installation, relocation and maintenance of the telephone enclosures, and carousel, telephone lines and of telephones as is necessary to provide service pursuant to this Agreement. The Concessionaire shall cooperate with companies providing pay telephone service prior to the effective date of this Agreement to assure that no more than ten (10) telephones in any one Concourse or the Terminal are out of service for more than three (3) days at a time, when previously existing equipment is replaced. Replacement schedule will be subject to the Director of Airports approval.

Section 506. Telephone Maintenance Checks. The Concessionaire shall check telephones for mechanical malfunctions no less frequently than every ten (10) days. In addition, each access line in the Airport shall be checked regularly by computer program for malfunctions. Reports of these checks shall be maintained for six months and submitted to the Director of Airports upon request. The Director of Airports may order the immediate removal of any equipment which does not meet reasonable standards.

Section 507. Other Facilities. The Airport shall have the right to require the concessionaire to place additional telephone equipment at Airport locations not contemplated at the time of execution of this Agreement in which event, all installation costs shall be paid by Concessionaire and all revenues therefrom shall be included in Gross Receipts.

ARTICLE VI IMPROVEMENTS AND ALTERATIONS

Section 601. Construction by Concessionaire. The Concessionaire takes the Premises "as is" and agrees, at the Concessionaire's sole cost and expense, to design, erect, install, construct, equip and furnish the improvements in the Premises in accordance with plans prepared by Concessionaire and approved by the Director subject to the requirements of this Article VI. The Concessionaire agrees that all such work shall be completed according to the Tenant Design Standards attached as "Exhibit D" and the schedule set out below.

- Submit a signed tenant construction or alteration application (TCA) including complete construction drawings and specifications as required by "Section 602" to the Airport Properties Department not more than ten (ten) days following notice of award of Bid by City.

- Submit the contractor's liability insurance certificates and performance and payment Bonds required by "Sections 603 and 604" to the Airport Properties Department prior to start of construction. Any deviation from this schedule

must be approved in writing by the Director. In the event the Concessionaire encounters material believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, or specifically identified with method of removal, handling or protection, Concessionaire shall immediately stop work in the affected area and report the condition to the Director in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Director and the concessionaire if in fact the material is asbestos or PCB and has not be rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the Director and the Concessionaire. The concessionaire shall not be required to perform without consent any work relating to asbestos or PCB.

Section 602. Preparation of Plans and Specifications. The Concessionaire shall submit detailed drawings, plans and specifications for improving and equipping the Premises. Concessionaire will begin work on proposed construction only after it has received the written approval of its plans and specifications from the Director.

Section 603. Contractor's Liability Insurance. In any contract appertaining to improving and equipping the Premises, Concessionaire shall require the contractor to cause St. Louis County, the City, its Board of Aldermen, Airport Commission and their respective officers, agents and employees, against and from all such claims and demands, a combined single limit of not less than \$1,000,000 for bodily injury and property damage and include the City as additional insured. Said insurance shall be in a form agreeable to the City, and certificates showing proof of coverage shall be delivered to the Director.

Section 604. Performance and Payment Bonds. Concessionaire shall require each of its contractors and suppliers of construction materials to furnish Performance and Payment Bonds in the full amount of any contract in a form acceptable to the City. The Payment Bond shall comply with the coverage requirements and conditions of Section 107.170 RSMo 1986 as amended. Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said Performance and Payment Bonds shall be used for the completion of said construction and the payment of laborers and material suppliers.

Section 605. Certificates of Completion. Upon the completion of the improvements hereunder, the Concessionaire shall submit to the Director of Airports a letter certifying completion, and a certified copy of any certificate or permit which may be required by any federal, state or local government or

agency in connection with the completion or occupancy thereof by Concessionaire.

Section 606. Signs. Concessionaire agrees that no signs or advertising displays shall be placed on, painted on or erected in any manner upon the areas of the Concession Locations exposed to the public without prior written approval of the Director of Airports and that such signs shall conform to reasonable standards established by said Director of Airports with respect to wording, type, size, design, color and location.

Section 607. Title to Improvements. All improvements installed by the Concessionaire shall become the property of the City upon termination of this Agreement, except that the City reserves the right and the Concessionaire agrees that the Director of Airports may require the Concessionaire to remove any or all improvements and structures and restore the Concession Locations to their original condition with the exception to normal wear. The Concessionaire agrees to bear all costs of such removals and restorations. Concessionaire phone equipment and enclosures listed in Exhibits and are not deemed as improvements.

Section 608. Mechanics' and Materialmen's Liens. The Concessionaire agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Concession Premises or any part or parcel thereof, or the improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

ARTICLE VII

USE OF CONCESSION AREAS

Section 701. Compliance with Laws and Regulations. Concessionaire shall comply with all Rules and Regulations established by the Director of Airports.

Concessionaire shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, city, local and other governmental authorities, now or hereafter applicable to the Concession Premises or to any adjoining public ways, as to the manner of use or the condition of the Concession Premises or of adjoining public ways.

Section 702. Repairs and Maintenance. Concessionaire will provide and pay for all repairs and maintenance of the Concession Locations, except the following which shall be the responsibility of the City:

A. The structural components of the building.

B. The utility system to, but not within, the Concession Locations except where the utility systems are owned or controlled by the utility companies.

C. The washing of the exterior of windows in the terminal building.

Concessionaire will provide and pay for all repairs and maintenance of the Concession Locations which includes keeping all its equipment, booths, shelves, and fixtures clean and in good repair.

Section 703. Right to Enter, Inspect and Make Repairs. The City and its authorized officers, employees, agents, contractors, subcontractors and other representative shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) enter upon and in the Concession Locations for the following purposes:

A. To inspect such premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.

B. To perform maintenance and make repairs in any case where Concessionaire is obligated, but has failed to do so, after the City has given Concessionaire notice so to do, in which event Concessionaire shall reimburse the City for the cost thereof plus a charge of 15% for overhead promptly upon demand.

C. To gain access to the mechanical, electrical, utility and structural systems of the Airport for the purpose of maintaining and repairing such systems.

Section 704. Utilities. Concessionaire will provide electrical and communications wiring to the Stations. City will provide electrical current. Concessionaire will provide and pay for all other utilities it requires.

Section 705. Security Plan and Facilities. Concessionaire hereby acknowledges that City is required by Federal Aviation Regulations, Part 107, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to air operations areas. City has met said requirements by developing a Master Security Program for the Airport, and Concessionaire covenants and agrees to be fully bound by and immediately responsive to the requirements of the Program in connection with Concessionaire's exercise of the privileges granted to Concessionaire hereunder. Concessionaire will reimburse City for all fines imposed upon City by the FAA resulting from Concessionaire's negligence or failure to act in relation to Part 107.

ARTICLE VIII

LOSS OF AND LIABILITIES PERTAINING TO CONCESSION PROPERTY

Section 801. Liability Insurance. Concessionaire, at its expense, at all times during the term hereof, shall cause the City and its Board of Aldermen, Airport Commission, officers, agents and employees and Concessionaire to be insured on an occurrence basis against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Concessionaire, its officers, agents, employees, and independent contractors pursuant to this Agreement both on the Premises and the Airport under the following types of coverage:

A. General Comprehensive

B. Automobile (all vehicles)

The minimum limits of coverage for the above classes of insurance shall equal a single limit of \$1,000,000 comprised of such primary and excess policies of insurance as concessionaire finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, the City shall be included as an additional insured. Such liability insurance coverage shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of concessionaire, its officers, agents, employees and independent contractors on the Airport. The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as an additional insured is not intended to, and shall not, make the City a partner or joint venturer with concessionaire in its operations hereunder.

The Concessionaire will maintain, and upon request furnish evidence to the City, adequate provisions for Worker's Compensation Insurance, Social Security and Unemployment Compensation at statutory limits and to the extent such provisions are applicable to the Concessionaire's operations hereunder.

Section 802. Property Insurance. Concessionaire will provide fire and related insurance coverages for all of its improvements and equipment existing or installed on the Concession Premises.

Section 803. Damage or Destruction of Terminal Building. The building in which the Concession Premises are located will be insured by the City under a policy of fire and extended coverage.

If the building is destroyed or damaged to such an extent as to be uneconomically repairable, the City may terminate this Agreement by written notice to the Concessionaire.

If the building is repairable the City will begin such repairs as soon as is practicable. Concession Fee payments on damaged telephones will cease as of the date of the damage. Concession Fee payments will continue to be due on undamaged telephones. The City will attempt to find temporary facilities during the repair and Concessionaire will pay Concession Fees for the temporary facilities.

Section 804. Evidence of Insurance. Certificates, or other evidence of insurance coverage required of Concessionaire in this Article, shall be delivered to the Director in form and content satisfactory to the City.

At least 15 days prior to the expiration of any such policy, Concessionaire shall submit to the Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Concessionaire shall within 15 days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with the Director, a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

All policies of insurance herein shall be in a form and in a company or companies approved by the City, and qualified to do insurance business in the State of Missouri. Each such policy shall provide that the policy may not be materially changed, altered or canceled by the insurer during its term without first giving 30 days notice to the Director.

Section 805. Indemnification. Concessionaire shall protect, defend, and hold St. Louis County, the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the leased premises or the acts or omissions of Permittee's officers, agents, employees, contractors,

subcontractors, licensees, or invitees regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the sole negligence of Lambert-St. Louis International Airport. The Airport Director or his designee shall give to Concessionaire reasonable notice of any such claims or actions. The Concessionaire shall also use counsel reasonably acceptable to the Airport Director or his designee in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this agreement.

Section 806. Adjustment of Claims. Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Concessionaire under this Agreement. Concessionaire agrees that all such claims, whether processed by Concessionaire or its insurer either directly or by means of an agent, will be handled by a Insurance Representative with a permanent office in the St. Louis metropolitan area.

Section 807. Occupancy of Premises. The Concessionaire agrees that it will not permit any act of omission or commission or condition to exist on the Premises which would increase the premium rate of insurance thereon or on the terminal or invalidate any such insurance.

ARTICLE IX

ASSIGNMENT AND SUBLETTING

Section 901. Assignment and Subletting. Concessionaire shall not assign this Agreement without first obtaining written approval of the Director of Airports and Airport Commission. At least 90 days prior to any contemplated assignment of this Agreement, Concessionaire shall submit a written request to the Director of Airports. No assignment shall be made or shall be effective unless Concessionaire shall not be in default on any of the other terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants and obligations contained in this Agreement.

Any such transfer or assignment without the consent of the City shall constitute a default on the part of the Concessionaire under this Agreement. No action or failure to act on the part of any officer, agent, or employee of the City shall constitute a waiver by the City of this provision of the Agreement.

In the event there is an assignment of this Agreement by operation of law, the City shall be entitled within 90 days after notice thereof given in writing to exercise the City's option hereby given to end the term on a date which shall

not be sooner than forty-five (45) days after the date of such determination by the City. An assignment by operation of law, as the term is used herein, shall include but not be limited to the vesting of the Concessionaire's right, title and interest in the Concessionaire's furnishings, removable fixtures, equipment, or the Concessionaire's interest in this Agreement, in a trustee in bankruptcy or in an assignee for the benefit of creditors or in a purchase thereof at a judicial sale or their involuntary or forced sale. It is the purpose of the foregoing provision to prevent the vesting in any such purchaser, referee, trustee, or assignee any rights, title or interest in the City premises or any of the removal fixtures, except subject to the City's right to end the term.

Concessionaire shall not subcontract the Concession Premises, except as is necessary to comply with the DBE participation goal in Article XII of this Agreement. At least 30 days prior to any contemplated sublet of this Agreement, the Concessionaire must submit in writing a request to the Director. This request must include a copy of the proposed subcontract. Any subcontract for space or granting of rights acquired hereunder shall be subject to the review and written approval of the Director. Such a contract, however, must require at a minimum:

- 1) Strict compliance with all provisions of this Agreement;
- 2) A provision that the subcontractor will use the Facilities solely for the purposes identified in this Agreement;
- 3) A provision ensuring that all concession services are available during the hours of operation required in Section 502 of this Agreement;
- 4) A provision providing for the assignment of the contracts to the City, without consent of the subcontractor upon the request of the City.

The parties understand and agree that the Concessionaire is responsible for the performance of its subcontractors under this Agreement. The Concessionaire agrees to initiate and take all corrected action should a subcontractor fail to comply with its contract with the Concessionaire or any provision of this Agreement. Alternative subcontractor(s) may be substituted on the same terms as the subcontractor it is replacing with the prior written approval of the Director.

Section 902. Concessionaire shall not sublet the concession Locations.

ARTICLE X

BONDS

Section 1001. Performance Bonds. The Concessionaire agrees to furnish to the City, and shall keep in full force and effect throughout the entire term or any extension thereof of this Agreement, a Performance Bond, in a form and drawn on such company as is acceptable to Director of Airports, in the amount of \$25,000.00. Concessionaire's failure to provide and maintain current, said Performance Bond, shall be grounds for automatic termination of this Agreement. Said Performance Bond may be drawn upon by Director if Concessionaire fails to perform any of its obligations under this Agreement. If the Director shall draw on Concessionaire's Bond, then Concessionaire shall have 15 days to replace said Bond in a form and drawn on such company as is acceptable to Director in the amount stated above before said failure to maintain said Performance Bond shall constitute a default by Concessionaire and be subject to automatic termination.

ARTICLE XI

TERMINATION OF CONCESSION AGREEMENT IN ENTIRETY

Section 1101. City's Right to Terminate. In addition to the provisions of "Section 1201", the City, acting by and through its Director of Airports, may declare this Agreement terminated in its entirety, upon the happening of any one or more of the following events:

A. If the fees, charges, or other money payments which the Concessionaire herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.

B. If, during the term of this Agreement, Concessionaire shall:

1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
3. Make a general assignment for the benefit of creditors;
4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
5. File an answer admitting the material allegations of a petition filed against any said assignee or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or

decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Concessionaire a bankrupt or insolvent, or approving a petition seeking a reorganization of Concessionaire, and such order, judgment or decree shall continue unstayed and in effect for any period of 90 consecutive days.

C. If Concessionaire shall have failed in the performance of any covenant or condition herein required to be performed by Concessionaire.

1. If at any one instance more than 10% of the telephone units are out of service, due to circumstances under Concessionaire's control for more than eight consecutive hours.

2. If the cumulative periods that telephone units are out of service during any consecutive 30 day period exceeds 10% of the total available service for that period. Total available service is computed by multiplying the number of telephone units authorized by 720 hours.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Concessionaire shall expire.

Failure of the City to take any authorized action upon default by Concessionaire of any of the terms, covenants or conditions required to be performed, kept and observed by the Concessionaire shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire. The acceptance of monies by the City from Concessionaire for any period or periods after a default by Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estopping of any right on the part of the City to terminate this Agreement for failure by Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

Section 1102. Concessionaire's Right to Terminate. Concessionaire, at its option, may declare this Agreement terminated in its entirety for the following causes:

A. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.

B. If the City shall have abandoned the Airport for a period of at least 30 days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by scheduled air carriers.

C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport or of the use of motor vehicles or airplanes by the general public, or a limitation of the supply of automobiles or of automobile fuel, supplies, or parts for general public use, and any of said events shall result in material interference with Concessionaire's normal business operations or substantial diminution of Concessionaire's gross revenue from the operation at the Airport, continuing for a period in excess of 60 days.

D. If the City shall have failed in the performance of any covenant or condition within the control of the City and herein required to be performed by the City.

Section 1103. Rights Cumulative. It is understood and agreed that the rights and remedies of the City and Concessionaire specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XII

Section 1201. Compliance.

A. The Concessionaire agrees as a condition hereunder to meet a minimum DBE participation goal of not less than 30% earned and incurred in the exercise of the concession rights granted in "Section 202". This goal remains in effect throughout the term of the Agreement. Credit toward the DBE goal will only be given for the use of DBE's certified by processes acceptable to the Director. The Concessionaire submitted at the time of Bid a DBE participation plan which detailed the methods(s) and percentage of DBE participation plan must be approved in writing by the Director before it may be implemented. If Concessionaire, in his DBE Participation Plan, stated a DBE percentage greater of the goal referred to above, then Concessionaire is required to achieve the DBE percentage in said plan. If Concessionaire's DBE Participation Plan is approved with less than a full DBE Participation goal, then Concessionaire shall continue in its good faith efforts to maximize participation of the DBE's throughout the term of this Agreement.

B. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of agreements as defined in 49 CFR 23.5. Consequently, this Agreement is subject to 49 CFR Part 23, as applicable.

The Concessionaire hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 23, 49 App. U.S.C.A. § 2210 (a) (17), on the ground of race, color, national origin or sex.

Concessionaire hereby assures that it will include the above clauses in all subcontracts and cause subcontractors to similarly include clauses in further subcontracts.

C. Substitutions of DBE's must be approved in writing by the Director. Substitution of a DBE will be allowed only when the DBE has failed to perform due to default of its subcontract. The Concessionaire shall immediately take steps to obtain a replacement certified DBE through good faith efforts. If a replacement DBE cannot be located, the Concessionaire must make good faith efforts to subcontract other rights to secure DBE participation. The Director will determine if the Concessionaire has made acceptable good faith efforts. The Concessionaire must immediately begin operations in place of a DBE that has failed to perform.

D. The Concessionaire shall operate its telephone concession in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 23, Participation by Minority Business Enterprise in Department of Transportation Program, and 49 App. U.S.C.A. § 2210 (a) (17), and as applicable and as said regulations promulgated. The Concessionaire shall also comply with any City of St. Louis executive order, resolution or ordinance enacted, now or in the future, to implement the foregoing federal regulations, as applicable. In the event of breach of any of the above covenants, the City shall have the right to terminate this Agreement.

Section 1202. Noncompliance. Concessionaire understands that any substantial deviation from "Section 1201", as determined by the City, may subject concessionaire to termination in accordance with the procedure established in "Section 1101".

ARTICLE XIII MISCELLANEOUS PROVISIONS

Section 1301. Notice. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to the Director of Airports, St. Louis Airport Authority, P.O. Box 10212, Lambert Station, St. Louis, MO 63145. All notices, demands, and requests by the City to Concessionaire shall be sent by certified mail, return receipt requested addressed to Area Manager, Public Communications Sales, Southwestern Bell Telephone, 6814 Southwest Avenue, St. Louis, Missouri, 63143.

The parties or either of them may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to Concessionaire or said Director.

Section 1302. Non Discrimination and Affirmative Action Program.

A. The Concessionaire hereto understands and agrees that the City in operation and use of Lambert St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21, Subtitle A of Title 49 of the Code of Federal Regulations. Concessionaire hereby agrees that his premises shall be posted to such effect as required by such regulation.

B. Concessionaire agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Concessionaire will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.

C. Concessionaire will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of the Concessionaire state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer". Concessionaire shall not make inquiry in connection with

prospective employment which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.

D. Concessionaire agrees that should it be determined by the Concessionaire or City that he will be unable to conform to his approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, he will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within 10 days of such determination, as to the steps to be taken by Concessionaire to achieve the provisions of his program.

E. Concessionaire will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

F. Concessionaire further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Concessionaire in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.

G. Concessionaire will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and the City reserves the right to take such action as the City of St. Louis and the United States Government may direct to enforce the above covenants.

H. The Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1303. No Personal Liability. No Alderman, County Commissioner, Airport Commissioner, Director, officer, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1304. Force Majeure. Neither the City nor Concessionaire shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, act of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Section 1305. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and assigns of the respective parties hereto.

Section 1306. Quiet Enjoyment. Subject to the provisions of the Agreement, the City covenants that Concessionaire on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1307. Operation and Maintenance of Airport. The City shall at all times operate the Airport properly and in a sound and economical manner; and the City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1308. Title to Site. The Locations from the date hereof until the termination of this Agreement shall be owned in fee simple title by the City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

Section 1309. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between the City and the United States, relative to the operation or maintenance of the

Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to the City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to Concessionaire herein.

Section 1310. Modifications for Granting FAA Funds. In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this document; Concessionaire agrees to consent to such reasonable amendments, modifications, revisions, supplements, deletions of any of the terms, conditions, or requirements of this Agreement, as may be reasonably required to enable the City to obtain said Federal Aviation Administration funds, provided that in no event shall such changes impair the right of Lessee hereunder.

Section 1311. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri.

Section 1312. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1313. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of all the parties hereto.

Section 1314. Previous Agreements. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations or conditions of any existing or prior agreement between Lessee and the City.

Section 1315. Withholding Required Approvals. Whenever the approval of the City, or the Director of Airports, or of Lessee is required herein, no such approval shall be unreasonably requested or withheld.

Section 1316. Waivers. No waiver of default by either party of any of the terms, covenants and conditions hereto to be performed, kept and observed by

the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

Section 1317. Invalid Provisions. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or Concessionaire in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 1318. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement on the day and year first above written.

Pursuant to City of St. Louis Ordinance approved .

THE CITY OF SAINT LOUIS

Director of Airports Date

APPROVED AS TO FORM ONLY COUNTERSIGNED

City Counselor, Date
City of St. Louis

Comptroller, Date
City of St. Louis

Register, Date
City of St. Louis

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on the day of , 1992.

Secretary, Date
Board of Estimate & Apportionment

SOUTHWESTERN BELL TELEPHONE

Title:

Date:

Section Two. This being an Ordinance necessary for the immediate preservation of the public safety and welfare, it is hereby declared to be an emergency measure within the meaning of Article IV, Sections 19 and 20 of the City Charter and shall become effective immediately upon its approval by the Mayor.

Legislative History				
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND
09/18/92	09/18/92	T&C		
2ND READING	FLOOR AMEND	FLOOR SUB	PERFECTN	PASSAGE
10/02/92			10/09/92	10/16/92
ORDINANCE	VETOED		VETO OVR	
62717				