

**ORDINANCE NO. B-425**

**AN ORDINANCE GRANTING TO RURAL TELEPHONE SERVICE COMPANY, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO CONSTRUCT AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE CITY OF VICTORIA, KANSAS, PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR PAYMENTS TO BE MADE TO THE CITY OF VICTORIA, KANSAS.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF VICTORIA, ELLIS COUNTY, KANSAS:**

Section 1. Rural Telephone Service Company, Inc., a Kansas Corporation, its successors and assigns, (hereinafter referred to as "Telephone Company") shall operate a telecommunications system and all business incidental to or connected with conducting of a telecommunications business and system in the City of Victoria, State of Kansas (hereinafter referred to as "City"). The plant construction and appurtenances used in or incident to the giving of telephone service and to the business and system by the Telephone Company in the City shall be constructed subject to such changes as may be considered necessary by the City in the exercise of its inherent powers and by the Telephone Company in the conduct of its business. The Telephone Company shall exercise its right to place, remove, construct, and reconstruct, extend and maintain its plant and appurtenances as the business and purposes for which it is or may be incorporated may from time to time require along, across, on, over, through, above and under all the public streets, avenues, alleys, bridges and the public grounds and places within the limits of the City as the same from time to time may be established.

Section 2. In addition, the Telephone Company will provide technological upgrades to allow subscribers increased or enhanced features, as those features become economically available in the telecommunications industry:

- a. Provide equal access to permit customers to choose their own long-distance company;
- b. Search for ways to allow subscribers two-way interactive telecommunications services so they will have access to the information superhighway, including the possibility of installing such devices or boxes as may be necessary or become available to power the interactive system the Telephone Company installs, giving the Telephone Company's subscribers the ability to interactively, digitally move information from one location to another location via fiber optic cable; and,
- c. Such other and further technological upgrades and enhancements as will allow subscribers to merge televisions, telephones and computers, as that technology becomes economically available.

Section 3. The term of this ordinance shall be for ten (10) years.

Section 4. Failure of the Telephone Company to perform as outlined in Section 2 of this ordinance shall constitute grounds for immediate termination of this franchise ordinance. Before termination occurs for violation of Section 2, City shall first give written notice to the Telephone Company specifically identifying deficiencies the City contends constitute violations of this ordinance. Upon receipt of that written notice, the Telephone Company will have Thirty (30) days to rectify the defects or respond to the City's notice of termination, by delineating its excuse for or inability to furnish services identified in Section 2. If the Telephone Company responds by providing what it believes to be reasonable justification for non-performance of Section 2, and the City still does not agree with the reasons cited by the Telephone Company, then both parties agree that any controversy arising out of or relating to interpretation of this section shall be settled by arbitration in accordance with the rules of the American Arbitration Association.

Section 5. In consideration for rights and privileges herein granted, Grantee shall pay to the City, in arrears, Two Percent (2%) of the annual gross receipts from billings for local service rendered wholly within the corporate limits of the City. Such payment shall be made in one (1) payment, on or before the thirty-first (31st) day of January of each year during the terms of this ordinance. The City agrees to accept this sum as full and fair compensation, which sum shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

Section 6. The poles, wires, cables, conduits, pipes, and appliances erected or to be erected by the Telephone Company, either under or above ground, shall be erected, laid, placed or constructed in conformity with the rules, regulations and ordinances of the City of Victoria, Kansas, adopted by said City in the reasonable exercise of its police power. However, excavations by the Telephone Company in any of the streets, alleys, avenues, roads or public grounds within the corporate limits of said City shall be done in accordance with such rules, resolutions and ordinances now existing or to be enacted by the governing body and shall be under the direction and supervision of the City Superintendent or such other officials as may, from time to time, be designated by the governing body of the City. The Telephone Company will locate its facilities so as not to unnecessarily interfere with other facilities existing at the time of construction, and during construction, shall provide adequate traffic control. The Telephone Company, its successors and assigns, shall remove or relocate its conduits, lines, poles and any other telephone utility installations located in the streets, alleys, and public grounds of the City when necessary to make way for public improvements or other works of public nature. When required, such removal or relocation shall be at the expense of the Telephone Company, its successors and assigns and without cost to the City.

Section 7. The Telephone Company shall hold and save the City harmless from all costs and damage, expense or liability which may be occasioned solely by the Telephone Company's occupancy in the public streets, avenues, alleys, bridges and the public grounds and places within the limits of said City, and in the event any action shall be instituted against the City and the Telephone Company jointly or against the City separately arising out of injury or damage or both, occasioned solely by the Telephone Company's occupancy in the public streets, avenues, alleys, bridges and the public grounds and places within the limits of said City, then, upon notice by the City to the Telephone Company, the Telephone Company will assume liability for the defense of such action at the cost of the Telephone Company subject to the option of the City to appear and defend at its own costs, any such case.

Section 8. The Telephone Company, its successors and assigns, in the construction, maintenance and operation of its telephone system shall use all reasonable and proper precaution to avoid damage or injury to persons or property and shall hold and save harmless the City of Victoria, Kansas from any and all damages, injury, claims, causes of action or expenses caused by the Telephone Company, its successors and assigns or its or their agents or servants.

Section 9. Upon the expiration of the term stated in Section 3 above, or upon occurrence of the contingencies identified in Section 4, all rights of the Telephone Company granted under this ordinance shall terminate.

Section 10. This ordinance shall be governed by the franchise laws of the State of Kansas as are in effect at the time this ordinance is initially adopted, and as amended during the time the Telephone Company conducts its telecommunications business in the City.

Section 11. The franchise and all rights hereunder may not be assigned by the Grantee, without the written consent of the governing body of Victoria, and the successors and/or assigns shall succeed to all rights, duties, and liabilities of the Grantee hereunder.

Section 12. This ordinance shall be read in full at three regular meetings of the governing body. Immediately after the final passage, the ordinance shall be published in the official city newspaper, once a week for two (2) consecutive weeks. The ordinance shall not take effect and be in force until after the expiration of sixty (60) days from the date of its final passage, and further subject to the right of petition for submission of its adoption to a special election, all as provided by law, and acceptance by Telephone Company within sixty (60) days from date of its final passage.

Section 13. The Telephone Company shall assume the cost of publication of this franchise, as such publication is required by law. A bill for publication costs shall be presented to the Telephone Company by the City and the City shall be reimbursed at that time.

PASSED AND ADOPTED by the Governing body of the City of Victoria, County of Ellis, State of Kansas, this 17th day of January, 1999.

CITY OF VICTORIA, KANSAS

By: Allen P. Quely  
Mayor



Jessie Burkhardt  
City Clerk

[Signature]  
City Attorney