

ORDINANCE NO. B-459

AN ORDINANCE GRANTING TO NEX-TECH, INC., A SUBSIDIARY OF RURAL TELEPHONE SERVICE CO., INC., A KANSAS CORPORATION, ITS SUCCESSORS, TRANSFEREES AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO ERECT, MAINTAIN AND OPERATE A COMMUNICATIONS 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:

ARTICLE I

Definitions

For the purpose of the grant of this franchise, the following terms shall have the meaning as described herein:

1. "City" shall mean the City of Victoria, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of Victoria, Kansas, as they now or shall hereafter exist.
2. "Council" shall mean the present governing body of the City of Victoria, Kansas, or any successor to the legislative powers of the present City Council.
3. "Franchise" shall mean the permission, license or authority given hereunder to conduct and operate a communications system in the City of Victoria, Kansas.
4. "Grantee" shall mean Nex-Tech, Inc., a subsidiary of Rural Telephone Service Company, Inc., or its successors, transferees or assigns of the Franchise granted herein.
5. "Gross Revenue" shall mean the monthly revenues received by Grantee for the Basic service rates from subscribers of the Grantee's Cable Television service; provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the communications system; (ii) any taxes on communications service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency; or (iii) any revenues derived from installation charges.

6. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City of Victoria, Kansas, for the purpose of public travel and shall include such other easements or right-of-ways as shall be now held or hereafter held by the City of Victoria, which shall within their proper use and meaning entitle the City of Victoria and its Grantee to use for the purpose of installing or transmitting communications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a communications system.
7. "Property of Grantee" shall mean all property owned and installed or used by the Grantee in the conduct of its communications business in the City of Victoria and under the authority of the Franchise granted herein.
8. "Communications System" shall mean delivery and reception of audio and video signals, including but not limited to, video, data, radio and cable television.
9. "Subscriber" shall mean any person or entity receiving for any purpose all or one of the services offered within the Grantee's communications system.
10. "Person" shall mean any individual or association of individuals, or any firm, corporation or other business entity.
11. "Facilities of Grantee" or "Communications Facilities" shall mean property of the Grantee.

ARTICLE II

Grant of Franchise

SECTION 1: General Grant. The City hereby grants to the Grantee a non-exclusive right and privilege to construct, erect, operate and maintain a communications system within the City and in so doing to use the streets of the City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a communications system within the City of Victoria, Kansas.

SECTION 2: Non-exclusivity. The authority hereby granted to construct a cable television system in the City and to use and occupy the streets is not and shall not be deemed to be an exclusive right of permission. The City expressly reserves the right to grant similar non-exclusive franchises to other persons, firms, or corporations, and to use the streets of the City therefore within the same or other areas of the City at any time, provided, however, that such other franchises do not interfere or create interference with Grantee's system. The material

provisions of any other cable television agreement shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all equal protection under the law.

SECTION 3: Notice concerning complaints. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the communications system.

SECTION 4: Modification of franchise standards. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this Franchise within one year of the adoption of the modification, or at the time of renewal, whichever occurs first.

ARTICLE III

Term

The term of this ordinance shall be for fifteen (15) years and two successive terms of ten (10) years unless written notice is given by either the City or the Grantee to the other, 365 days or more prior to the expiration of the initial term or any successive term, of its intention to terminate the same at the expiration of the then current term.

The term of this ordinance shall commence on the first day of the first month following the date the Grantee hereunder accepts and agrees to abide with the terms and conditions of this Franchise by filing a written acceptance thereof with the City Clerk of the City of Victoria, Kansas. Acceptance shall be filed, if it is to be valid, within sixty (60) days from the effective date of the ordinance granting the Franchise. If such acceptance shall not be filed within the time aforesaid, then the ordinance granting this Franchise shall be deemed void and of no further force and effect, and the offer of Franchise contained in the ordinance will stand revoked.

ARTICLE IV

Forfeiture

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to revoke this Franchise and all rights and privileges of the Grantee hereunder in any of the following events or for any of the following reasons:

1. Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the ordinance granting this Franchise, or has, by act or omission, violated any term or condition thereof;

2. Any provision of such ordinance shall be finally adjudged by a court of law as invalid or unenforceable, and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the Franchise granted herein;
3. The Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;
4. All or part of Grantee's facilities are sold under an instrument to secure a debt and not redeemed by the Grantee within sixty (60) days from such sale;
5. The Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City or subscribers, under this Franchise; or
6. The City condemns all of the property of the Grantee within the City by lawful exercise of eminent domain.

ARTICLE V

Ordinance of Revocation

No revocation provided for in the previous paragraph except for reasons of condemnation, shall be effective unless or until the City Council adopts an ordinance setting forth the cause and reason for the revocation and the effective date thereof. Such ordinance shall not be adopted without thirty (30) days prior written notice thereof to the Grantee and an opportunity for the Grantee to be heard on the proposed adoption of said proposed ordinance. If the revocation as proposed in said ordinance depends upon a finding of fact, such finding of fact must be made by the City Council after a conclusive hearing is provided, if requested by the Grantee.

ARTICLE VI

Consideration

In consideration of the grant of the Franchise to the Grantee, the Grantee shall pay to the City, in arrears, an amount equal to three percent (3%) of the annual Gross Revenue from the operation of the business in said City. Such payment shall be made in one (1) payment, on or before the last day of February of each calendar year during the terms of this ordinance. The City agrees to accept this sum as full and fair compensation.

ARTICLE VII

Indemnification

The Grantee shall, concurrently with the filing of the acceptance of this Franchise, furnish to the City and file with the City Clerk a liability insurance policy in the amount of One Million Dollars (\$1,000,000) with a company approved by the City of Victoria and in a form satisfactory to the City Attorney indemnifying and defending the City, its officers, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others and against any loss, costs, expense or damages resulting therefrom, arising out of the exercise or enjoyment of this Franchise.

ARTICLE VIII

Use and Installation

SECTION 1: Degree of Care. The Grantee or any persons, firm or corporation erecting, constructing or maintaining any of the property used by or for the Grantee shall at all times employ due care or the highest degree of care required by law under the facts and circumstances and shall maintain and install the property of the Grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to damage, injure or create a public nuisance.

SECTION 2: Location of Facility. All communications facilities shall be located so as to cause minimum interference with the proper use of streets and the rights and reasonable convenience of property owners abutting the streets. In no event shall such facilities be located so as to substantially interfere with the usual public travel on any street of the City.

SECTION 3: Damage to Public Property. Whenever the Grantee or any person on its behalf causes any injuries or damage to any public property or street by or because of the installation, maintenance or operation of the communications facilities, such injury or damage shall be immediately remedied in such fashion as directed by the Mayor or his/her designee.

SECTION 4: Tree Trimming. The Grantee shall have authority to trim trees upon and over the streets of the City so as to prevent the branches of such trees from coming in contact with wires, cables and other facilities of the Grantee. All trimming shall be done under the supervision of the City Superintendent at the expense of the Grantee.

ARTICLE IX

Removal and Abandonment of Property

If the Franchise is terminated or revoked, the Grantee shall promptly, upon ninety (90) days written notice, remove from the streets all its facilities other than that which the City of

Victoria, Kansas, may permit to be abandoned in place. In the event of such removal, the Grantee shall promptly return the street to the like or similar condition which it was in before the facilities were placed.

ARTICLE X

Operation and Maintenance

The Grantee shall render efficient service, make repairs promptly, and only interrupt service for good cause for the shortest time possible.

In order to limit failure and malfunctions of the cable television system and to enable prompt correction at all times after notice of malfunction or failure, the Grantee shall consistently maintain a listed telephone, which shall be operated to receive complaints, requests for repairs or adjustments because of malfunctions at any time of day Sunday through Saturday, including holidays.

ARTICLE XI

Compliance with the Law

Grantee shall, at all times during the term of this Franchise, be subject to all lawful exercises of the police power of the City and to such reasonable regulations as the City shall prescribe for the general conduct of persons providing communications service within the City.

ARTICLE XII

Emergency Use

In the event of an emergency or disaster, the Grantee shall, at the request of the City, make available its facilities to the City for emergency use during the period of such emergency or disaster and shall provide such personnel to operate properly under the circumstances.

ARTICLE XIII

Books and Records

The Grantee shall file with the City Clerk's Office true and accurate maps or plats of all existing installation systems on the streets of the City.

ARTICLE XIV

Sale or Lease of Franchise

The Franchise shall be deemed a privilege to be held in personal trust by the Grantee. It may not be sold, transferred, leased, assigned or disposed of in whole or in part either by force of voluntary sale, consolidation or otherwise without consent of the City which will not be unreasonably withheld.

ARTICLE XV

Grantee Without Recourse

The Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of the Franchise.

ARTICLE XVI

Grantee's Rates and Regulations

The rates and charges of the Grantee for its services to any subscriber shall be fair and reasonable and no higher than necessary to meet all costs of service, assuming efficient and economical management, including a fair return on the fair value of the properties devoted to such service and such rates and charges shall not be unreasonable or discriminatory.

ARTICLE XVII

Notice

Whenever, under the terms of this Franchise, either party shall be required or permitted to give notice to the other, such notice shall be in writing, and if to be served upon the City, it shall be delivered by first class mail to the City of Victoria, P.O. Box 87, Victoria, Kansas 67671. If to the Grantee, it shall be delivered by first class mail to CEO/General Manager, 145 North Main, Lenora, Kansas 67645.

ARTICLE XVIII

Service to Public Facilities

The Grantee shall provide without charge one connection for cable television service to each elementary and high school, public and parochial, and to each public library and City office. Grantee will provide Basic and Expanded Basic cable television service to these connections without charge.

ARTICLE XVIV

That this ordinance shall take effect from and after its passage and publication in the official City newspaper.

PASSED AND ADOPTED by the Governing Body of the City of Victoria, Kansas, on this 18th day of November, 2002.

CITY OF VICTORIA, KANSAS

By: Jerry Brungardt
Mayor

ATTEST:

Mary Pfeifer
City Clerk