

ORDINANCE NO. 1298

AN ORDINANCE GRANTING TO THE KANSAS CORPORATION OF RURAL TELEPHONE SERVICE COMPANY, INC., ITS SUBSIDIARIES (NAMELY NEX-TECH, INC.), SUCCESSORS, TRANSFEREES AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO ERECT, MAINTAIN AND OPERATE A COMMUNICATIONS SYSTEM WITHIN THE CITY OF PHILLIPSBURG, KANSAS, PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR PAYMENTS TO BE MADE TO THE CITY OF PHILLIPSBURG, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PHILLIPSBURG, PHILLIPS 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 Phillipsburg, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of Phillipsburg, Kansas, as they now or shall hereafter exist.
2. "Council" shall mean the present governing body of the City of Phillipsburg, 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 Phillipsburg, Kansas, pursuant to the ordinance passed by the City Council.
4. "Grantee" shall mean Rural Telephone Service Company, Inc., its subsidiaries, 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 local telephone service and for "Basic" cable service; provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the communications system; (ii) revenues from optional calling features; (iii) 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; (iv) any revenues derived from installation charges or (v) any premium cable channels or expanded cable services.
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 Phillipsburg, 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 Phillipsburg, which shall within their proper use

and meaning entitle the City of Phillipsburg 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 Phillipsburg and under the authority of the Franchise granted herein.
8. "Communications System" shall mean all equipment used to transport audio and video signals (voice, video, data, radio and cable television) to consumers including, but not limited to any cable, electronics, fiber optics or other types of necessary equipment.
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 used in operation of the Communications System.

ARTICLE II

Grant of Franchise

SECTION 1: General Grant. The City hereby grants to Grantee the 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 Phillipsburg, Kansas.

SECTION 2: Non-exclusivity. The authority given to Grantee in the above section 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 allow them to use the streets of the City within the same or other areas of the City as Grantee at any time; provided, however, that such other franchises do not interfere or create interference with Grantee's communications system already established and said other franchisees shall not be extended preferential treatment over Grantee.

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: Modifications. 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. It shall also be the policy of the City to amend this Franchise, upon application of Grantee, when necessary to enable Grantee to take advantage of any developments in the field of telecommunications which would afford it an opportunity to more effectively, efficiently or economically serve its customers, and to enable Grantee to conform to the Rules and Regulations of the Kansas Corporation Commission and the Federal Communications Commission as they may be amended from time to time.

SECTION 5: Provision of Service. The Grantee shall extend service upon request of any person within the city limits. This will include any future areas annexed that are adjacent to the existing city limits at the time this Franchise is entered.

ARTICLE III

Term

The term of this ordinance shall be for ten (10) years and successive terms of five (5) years unless written notice is given by either the City or the Grantee to the other, 180 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 Phillipsburg, 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 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. 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
5. 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 provides written notice to Grantee, and Grantee is given at least 30 days to cure any alleged breach of Article IV herein. If after the expiration of the time to cure, City Council believes Grantee has failed to cure, the City Council must adopt an ordinance setting forth the cause and reason for the revocation and the effective date thereof in order to effectuate any revocation. 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

Compensation

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 and One-Half Percent (3.5%) of the annual Gross Revenue from the operation of the business in said City. Such payments shall be made quarterly within thirty days of each calendar quarter. The City shall have the right to confirm revenues as applicable to this Section. The inspection of records will be performed in a manner that does not violate any of the obligations of confidentiality placed upon Grantee by State and Federal statutes and regulations. Records will be made available to an authorized City representative at the Grantee's corporate office upon reasonable notice and during regular business hours.

As additional consideration, Grantee shall make available to the City High Speed Data service (256k) for the primary city building and basic cable television service to that same building and the public schools free of charge. If, however, the City or schools request additional outlets for the use of internet or cable service, Grantee shall be reimbursed all installation costs, including, but not limited to, parts and labor.

The City acknowledges that this Article contains fair and adequate consideration for the grant of this Franchise.

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 Phillipsburg 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 Facilities. 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, and the Public Works Supervisor shall have approval over the locations within the city. If during the term of this franchise the City lawfully changes or alters any street, alley or other public way, the Grantee shall, upon reasonable notice from the City, remove, relay and relocate its poles, wires, cables and underground conduits, manholes or any other facilities to the extent necessary at its own expense. If public funds are available for defraying the cost of any of the foregoing, such funds shall be available to Grantee.

SECTION 3: Damage to Public Property. Whenever 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 Public Works Supervisor.

SECTION 4: Tree Trimming. 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 Grantee. All trimming shall be done under the supervision of the Public Works Supervisor at the expense of the Grantee.

SECTION 5: Facilities Upgrades/Changes. Grantee shall exercise its right to place, remove, construct and reconstruct, extend and maintain its plant and appurtenances as the business and purposes for which may from time to time require along, across, on, over, through, above and under any public right of way including, but not limited to, streets, avenues, alleys, bridges and the public grounds and places within the limits of the City.

SECTION 6: Emergency Override. The Grantee shall include within its system the capability for a remotely activated Emergency System whereby designated emergency personnel may introduce an audio message on cable television channels simultaneously. The City shall hold Grantee harmless from any claims arising out of the emergency use of its facilities by the City.

SECTION 7. Public Access.

- A. The Grantee shall provide access to one channel for public, educational and governmental (P.E.G.) access. Should the City decide to make use of said P.E.G. channel, the City shall designate a non-profit access management corporation to manage the use of the P.E.G. channel. The access corporation shall establish and enforce rules for the use of the P.E.G. channel to ensure non-discriminatory access to the channel and to promote the use and viewership of the channel consistent with the obligation to provide non-discriminatory access to similarly situated users. The Grantee may not exercise any editorial control over the content of the programming on the P.E.G. channel. The channel shall be available at no charge to users and to the access corporation.
- B. The Grantee shall allow the cable system to be used for the broadcasting of an annual telethon for the city. It shall be broadcast over the P.E.G. channel. The Grantee agrees to provide only the equipment necessary for the transmission and not for the actual production. The Grantee shall provide one service drop for the transmission of said broadcast at the site as designated by the telethon organizers.

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 Phillipsburg, 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

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its services under this Franchise and to assure an uninterrupted service to all of its customers. 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 communications system and to enable prompt correction at all times after notice of malfunction or failure, 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.

Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary action shall be paid by the person requesting the same, and Grantee shall have the authority to require advance payment. Grantee shall be given no less than forty-eight hours advance notice to arrange for such temporary wire changes.

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

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 prior notification to the City Council.

ARTICLE XIII

Grantee Without Recourse

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 XIV

Grantee's Rates and Regulations

Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the services it provides through its Communications System; provided, that such rates shall not be established on a discriminatory basis.

ARTICLE XV

Notices

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 certified mail to the Mayor & City Council c/o City Clerk, 945 Second St. Phillipsburg, KS 67661. If to the Grantee, it shall be delivered by certified mail to CEO/General Manager, 145 North Main, Lenora, Kansas 67645.

ARTICLE XVI

Miscellaneous Provisions

SECTION 1: Supercedes Prior Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance.

SECTION 2: Binding Effect. All provisions of this ordinance shall be binding upon Grantee and all successors, lessees and assigns of Grantee whether expressly stated herein or not.

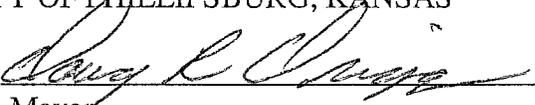
SECTION 3: Final Approval. This Ordinance shall be read in full at three regular meetings of the governing body. Immediately after the final passage, it shall be published in the official city newspaper, once a week for two (2) consecutive weeks. It shall not take effect and

be in force until after the expiration of sixty (60) days from the date of final passage, and acceptance by Grantee within sixty (60) days as provided in Article III.

SECTION 2: Costs. Grantee shall assume the cost of publication of this Ordinance. Grantee shall reimburse the City for these costs upon presentation of the publication costs.

PASSED AND ADOPTED by the Governing Body of the City of Phillipsburg, Kansas, on this 18th day of August, 2003.

CITY OF PHILLIPSBURG, KANSAS

By: 
Mayor

ATTEST:


City Clerk