

ORDINANCE NO. 481

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF KANSAS A NON-EXCLUSIVE FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF WATHENA, COUNTY OF DONIPHAN, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WATHENA, KANSAS, AS FOLLOWS:

United Telephone Company of Kansas, Grantee, a corporation organized under the laws of the State of Kansas, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other public places of the City of Wathena, Grantor; and to construct, lay, maintain, and repair such cable as Grantee, its successors and assigns, may require, under those streets, avenues, boulevards, alleys, and other public places for the purpose of such business under the following terms and restrictions:

1. This non-exclusive grant shall be effective in accordance with Section 13, below and shall continue for a term of 3 years from its effective date, and for successive terms of like duration unless written notice is given by either the Grantor or the Grantee to the other 120 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.

2. Grantee, its successors and assigns, shall conduct telephone business in

such a manner as shall be to the benefit of the City and its inhabitants, rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

3. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such streets, avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public improvements and, if such be injured, Grantee shall repair any damages caused to the satisfaction of the Mayor of the City and, in default thereof, the City may repair such damage and charge the cost to Grantee.

4. The poles of Grantee, its successors and assigns, shall be placed and erected in such a manner so as not to interfere unreasonably with the orderly conduct of the business and rights of any other public service corporation having a right or franchise to operate its business in the City.

5. Grantee shall remove, raise, or adjust its aerial plant, after forty-eight (48) hours notice by a properly authorized city official, for the purpose of permitting the moving of houses or other structures along the streets of the City. The person or persons for whose benefit such telephone plant is removed, raised, or adjusted, however, shall first secure proper permission from the City for the movement and agree to pay Grantee for its related costs and damages. If desired, an advance deposit from the mover may be required by Grantee.

6. Permission is hereby granted to Grantee to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming into contact with Grantee's wires and cables. All such trimming will be done under the supervision and direction of any City official to

whom such duties have been or may be delegated.

7. In consideration for rights and privileges herein granted, Grantee shall pay to the City, \$100.00. Such payment shall be made on or before the 1st day of March of each year during the term of this ordinance. The City agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

8. Nothing herein shall affect any prior or existing rights of Grantee to maintain a telephone company within the City.

9. The recovery of the charges from Grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the City. The obligation of Grantee to pay compensation under this Ordinance is contractual; the City makes no requirements as to the method Grantee uses to recover the payments.

10. The franchise and all rights hereunder may be assigned by the Grantee, as well as all succeeding Grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties, and liabilities of the Grantee hereunder.

11. In addition to all other rights and powers of the City as herein provided and as otherwise authorized and provided by law, the City reserves the right to terminate and cancel the franchise and all rights granted by this Ordinance and all rights and privileges of the Grantee hereunder upon the occurrence of any of the following events by the Grantee:

- a. Violates any provision of this Ordinance or any rule, order or determination of the City made pursuant to this Ordinance, except where such violation, is without fault of the Grantee.
- b. Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.
- c. Attempts to evade any of the provisions of this Ordinance or attempts any fraud or deceit upon the City.

Before the City terminates and cancels the authority granted to the Grantee hereunder, it shall notify the Grantee, in writing, of its intent to terminate the rights and privileges of the Grantee. Prior to such termination and cancellation, the Grantee shall be provided with a hearing before the City Council.

12. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

13. This ordinance shall be effective at the expiration of 65 days from the date of its final passage subject, however, to the condition that if a petition is presented to the Governing Body of the City of Wathena signed by not less than twenty percent (20%) of the qualified voters of the City of Wathena voting for the Mayor in the last public election, asking that the Governing Body submit the question of adoption of this franchise ordinance to a popular vote, the Mayor shall then issue a proclamation calling a special election for that purpose.

14. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting Grantee a franchise, or while the City and Grantee are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

15. If any portion of this ordinance for any reason is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.

16. This ordinance shall be published in the Wathena Times, official city newspaper, once a week for two (2) consecutive weeks.

Read three times and finally passed by the Governing Body of Wathena,
Kansas, this 7 day of Nov, 1995.

Michael H. ...
Mayor

ATTEST:

Laralee Miller
City Clerk