

ORDINANCE NO. 2151

A CONTRACT FRANCHISE ORDINANCE GRANTED TO SOUTHWESTERN BELL TELEPHONE, L.P., A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF CLAY CENTER.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CLAY CENTER, KANSAS:

SECTION 1. Pursuant to K.S.A. 2002 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone L.P. d/b/a SBC Kansas (“SBC Kansas”), a telecommunications local exchange service provider providing local exchange service within the City of Clay Center (“City”), subject to the provisions contained hereafter. The initial term of this ordinance shall be for a period beginning November 1, 2003, and ending October 31, 2008. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

The provisions hereof shall be automatically extended to successive five (5) year terms, unless, prior to six (6) months before the expiration of the initial five (5) year term or of the successive terms, ending on each five (5) year anniversary, written notice given by one party to the other of its intention to terminate the same, at the expiration of the then current five (5) year term. The automatic renewal provisions herein shall be limited to three, five (5) year renewals. In no event shall this contract be automatically renewed for a period which would extend beyond October 31, 2023.

SECTION 2. For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

“*Access line*” shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations serviced by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer’s premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services process by a telecommunications local exchange service provider or private line service arrangements.

“*Access line count*” means the number of access lines serving consumers within the corporate boundaries of the city on the last day of each month.

“*Access line fee*” means a fee determined by a city, up to a maximum as set out in K.S.A. 2002 Supp. 12-2001 and amendments thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

“*Access line remittance*” means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.

“*Gross receipts*” means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, re-connection of service and charge

for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale of lease of unbundled network elements, non-regulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

“Local exchange service” means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

“Provider” shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

“Public right-of-way” means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

“Telecommunications local exchange service provider” means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an inter-exchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

“Telecommunications services” means providing the means of transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

SECTION 3. Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to five percent (5%) of gross receipts. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to five percent (5%) of gross receipts; unless the City notifies SBC Kansas prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year or that it intends to switch to an access line fee for the following calendar year. In the event City elects compensation based on an access line fee, nothing herein precludes City from switching back to a gross receipts fee provided City notifies SBC Kansas prior to ninety days (90) before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year. Beginning January 1, 2004, any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001.

SECTION 4: The city shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance.

SECTION 5. As a condition of this contract franchise ordinance, SBC Kansas is required to obtain and is

responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to SBC Kansas' right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. SBC Kansas shall also comply with all applicable laws, statutes and/or ordinances, subject to SBC Kansas' right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6: This contract franchise ordinance does not provide SBC Kansas the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon SBC Kansas' request for a franchise to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City, the City agrees to timely negotiate such franchise in good faith with SBC Kansas. SBC Kansas agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

SECTION 7: If requested by City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, SBC Kansas shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of SBC Kansas' failure to timely relocate or adjust its facilities shall be borne by SBC Kansas.

SECTION 8: Nothing in this Ordinance shall be construed to require or permit any telephone, electric light, or power wire attachments by either City or SBC Kansas on the poles of the other. If such attachments are desired by City or SBC Kansas, then a separate non-contingent agreement shall be prerequisite to such attachments.

SECTION 9: SBC Kansas, on the request of any applicant, shall remove or raise or lower its wires, temporarily, to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires, shall be paid by the party or parties requesting the same, and SBC Kansas will require such payment in advance, unless otherwise waived by SBC Kansas. SBC Kansas shall be given not less than fifteen (15) days written notice, from the applicant, detailing the time and location of the moving operations, and not less than twenty-four (24) hours advance notice, from the applicant, advising of the actual operation.

SECTION 10: Permission is hereby granted to SBC Kansas 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 in contact with SBC Kansas facilities, all the said trimming shall comply with all applicable laws, statutes and/or ordinances. SBC Kansas shall notify the City at least 48 hours prior to the time they want to perform said trimming in conjunction with any new or existing construction. However, in the event said trimming is necessary in order for SBC Kansas to perform repair or response work (including but not limited to service outages, installation, and cable repair) SBC Kansas may perform said repair or response work without providing notification to the City.

SECTION 11: Nothing herein contained shall be construed as giving SBC Kansas any exclusive privileges, nor shall it affect any prior or existing rights of SBC Kansas to maintain a telecommunications system within the City.

SECTION 12: SBC Kansas shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 13: Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon SBC Kansas shall be delivered by first class United States mail or by personal delivery to:

Southwestern Bell Telephone L.P.
Barb Schmidlein Shipman
Director-External Affairs
220 E. 6th Street, Room 505

Topeka, Kansas 66603

SECTION 14: Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 15: Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond SBC Kansas' or the City's control.

SECTION 16: This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise shall be effective until the ordinance granting the same has been adopted as provided by law.

SECTION 17: Said Telephone Company shall have sixty (60) days from, and after its passage and approval, to file its written acceptance of this Ordinance, with the City Clerk, and upon said acceptance being filed, this Ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the Mayor.

Passed by the Council and Approved by the Mayor the 7th day of October, 2003.

Donald D. Reed, Mayor

ATTEST:

APPROVED AS TO FORM:

Calvin Wohler
City Clerk

Michael W. Ryan
City Attorney

(Seal)