

APPENDIX B - FRANCHISES

ORDINANCE NO. 346

AN ORDINANCE DEFINING THE MANNER AND PLACE OF CONSTRUCTION OF THE LINES OF SOUTHWESTERN BELL TELEPHONE COMPANY AND PROVIDING FOR AN ANNUAL PAYMENT TO BE MADE TO THE CITY OF ROELAND PARK, KANSAS.

Section 1. Southwestern Bell Telephone Company, its successors and assigns (herein referred to as "telephone company") shall continue to operate its telephone system and all business incidental to or connected with the conducting of a telephone business and system in the City of Roeland Park, State of Kansas (herein referred to as "city"). The plant construction and appurtenances used in or incident to the giving of telephone service and to the maintenance of a telephone business and system by the telephone company in the city shall remain as now 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, and the telephone company shall continue to exercise its right to place, remove, construct and reconstruct, extend and maintain its the 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. That for the period January 1, 1973 to December 31, 1973, inclusive, the telephone company shall pay the city on April 1, 1973, a sum equal to 1% percent of the gross revenues for local exchange telephone communication service rendered wholly within the corporate limits of the City of Roeland Park during the 12 months' period immediately preceding January 1, 1973, and annually thereafter on the 1st day of April for the same period beginning each January 1, 1974, 1975, 1976, 1977 a like sum based upon the gross revenues derived from local exchange telephone communication service during the 12 months immediately preceding the 1st day of January of the year for which such payment is made, being a term of five years ending December 31, 1977 and for successive terms of like duration, unless within four months prior to the expiration of the initial term or of the successive terms ending on each five year anniversary following the expiration of the initial term 60 days' written notice is given one party to the other of its intention to terminate the same at the expiration of the then current five year term; it being expressly understood that each five year term provides for five annual payments; the payments to be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which might be imposed by the city under authority conferred by law. This agreement may also be terminated forthwith by the telephone company if authority to collect the amounts of such payments from its customers within the city shall be removed, canceled, or withheld by legislative or regulatory act. The telephone company shall also have the

privilege of crediting such sums with any unpaid balance due the company for telephone service rendered or facilities furnished to the city.

Section 3. The telephone company on the request of any person 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 the telephone company may require such payment in advance. The telephone company shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

Section 4. Permission is hereby granted to the telephone company 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 the wires and cables of the telephone company, all the trimming to be done under the supervision and direction of any city official to whom the duties have been or may be delegated.

Section 5. Nothing in this ordinance shall be construed to require or permit any telephone, electric light, or power wire attachments by either the city or the telephone company on the poles of the other. If such attachments are desired by the city or the telephone company, then a separate non-contingent agreement shall be a prerequisite to such attachments.

Section 6. Nothing herein contained shall be construed as giving to the telephone company any exclusive privileges, nor shall it affect any prior or existing rights of the telephone company to maintain a telephone system within the city.
(03-15-72)

ORDINANCE NO. 491

AN ORDINANCE GRANTING A RENEWAL FRANCHISE TO TELECABLE OF OVERLAND PARK, INC., ITS SUCCESSORS, TRANSFEREES, AND ASSIGNS, FOR A TERM OF TWENTY YEARS, THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF ROELAND PARK, KANSAS, AND TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF SAID CITY FOR SUCH PURPOSES, AND PROVIDING FOR PAYMENT TO SAID CITY.

Section 1. Short Title. This ordinance shall be known as "The Cable Television Franchise Ordinance of the City of Roeland Park, Kansas" and may herein and hereafter be cited as' "Roeland Park Cable 'TV Franchise Ordinance.

Section 2. Definitions. The following terms, phrases, words and their abbreviations shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in the singular number shall include the plural number;

provided further that the word shall is to be construed as mandatory and not simply directive; provided further that the following definitions shall herein apply:

(a) City - shall mean the City of Roeland Park, Kansas, a municipal corporation, or its successors, and shall include when appropriate to the use of the term in context, the territorial boundaries of the city as now constituted or as shall hereafter exist;

(b) Governing Body - shall mean the present legislative body of the City of Roeland Park, Kansas, or any successor to the legislative powers of the present governing body;

(c) Franchise - means this agreement.

(d) Franchisee - shall mean Telecable of Overland Park, Inc., or its successors, transferees or assigns, which is granted the franchise, the terms and conditions of which are provided herein;

(e) Street - shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the City as provided by the laws of the State of Kansas and any subsequent amendments thereof;

(f) System or Cable Communications System or Cable Television System - shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in the city. The definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way.

(g) Subscriber - shall mean any person which receives from the franchisee herein named the services of the franchisee's cable television system;

(h) Person - shall mean any individual or association of individuals, or any firm, corporation, or other business organization;

(i) Gross Annual Subscriber Revenues - shall mean any and all compensation and other consideration derived directly by franchisee from subscribers' within the City for regularly furnished cable television service. Gross annual subscriber revenue shall include revenues derived from cable service, pay television service, installation, rental of television converters or other equipment, per-program and per-channel charges, or advertising revenues, but shall not include any taxes on services furnished by franchisee or imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the franchisee for such governmental unit.

In the event the franchisee shall receive any revenue from any advertisements disseminated to subscribers in Johnson County, Kansas, both within and without the City, gross annual subscriber revenues shall, with respect to such advertisements, include an amount derived by multiplying such advertising revenue by a fraction, the numerator of which is the number of subscribers in the city reached by such advertisement and the denominator of which is the total number of subscribers reached by such advertisement.

Section 3. Grant of Non-Exclusive Franchise. The City of Roeland Park, Kansas hereby grants unto the franchisee herein named a non-exclusive franchise to construct, erect, operate and maintain a cable television 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 streets, such poles, wires, cables conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a cable television system, and in addition, so to use, operate and provide for all or part of such facilities by service offerings obtained from any franchise or operating utility company providing service within the city.

The authority hereby granted to conduct a cable television system within the city, and to use and occupy the streets thereof does not and shall not be deemed an exclusive right or permission, and the city expressly reserves the right to grant other non-exclusive franchises to persons, firms, corporations or other business organizations, to construct, operate, and maintain other cable television systems within the city; but no such additional franchises shall in any way affect the rights or obligations of the franchisee herein named and set forth in this ordinance.

The rights herein granted to franchisee herein named shall extend to any area hereinafter annexed to the city and franchisee shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided

Section 4. Program Origination. The franchisee herein named shall transmit and distribute to its subscribers such electra-magnetic radiation as are now, and may hereafter, be authorized by the Federal Communications Commission or any other administrative agency of the United States, the several states, or political subdivisions thereof having jurisdiction to regulate such activity; provided that the franchisee may originate and distribute public service information regarding the weather, time, news of events that have or will occur within the franchisee's subscribers' service area, including such local community events that may be made available to its subscribers.

Section 5. Term of Franchise. This franchise ordinance extends and renews the existing franchise for a period of 20 years and the term of the renewal franchise herein granted shall commence upon expiration of the existing franchise and shall continue for a term of 20 years from the date; provided that the franchisee's acceptance of this renewal franchise shall be filed in the office of the city clerk of the city within 30 days from the effective date of this ordinance; provided further that franchisee's failure to timely file the acceptance as herein provided shall cause. The city's offer of franchise contained herein to be deemed revoked and without force and effect, whereupon this ordinance shall be deemed void and of no further force and effect.

Section 6. Franchise Payments. The franchisee herein named shall pay to the city during the term of the franchise a sum equal to five percent of the gross annual subscriber revenues, or the maximum cable television franchise fee permitted by federal law, whichever is less; provided that payment of the sum will be made semi-annually in the months of January and July.

Section 7. Audit and Reporting. Within 30 days after the expiration of the first 12 months of this franchise and within 30 days after each succeeding 12 month period during the balance of the term that this franchise shall be in force, the

franchisee named herein shall file in the office of the city clerk of the city, a financial statement prepared by a certified public accountant or person otherwise satisfactory to the city, showing the gross annual subscriber revenues of the franchisee during the preceding 12 months, the receipts to be determined as defined herein; provided that in the event the franchise is terminated or forfeited prior to the end of the 20 year term herein provided, the franchisee shall immediately submit to the office of the city clerk of the city a financial statement of the franchisee for the period that has elapsed since the end of the period covered by the last such financial statement; provided further that within 30 days following the termination or forfeiture of the franchise, the franchisee will pay the city a sum equal to the percentage of the gross annual subscriber revenues as have accrued to the franchisee for the aforementioned period; provided further that the city reserves the right to independently audit the franchisee's gross annual subscriber revenues from which its franchise payments are computed, and any discrepancy between the audit and that filed by the franchisee with the city clerk of the city which results in the city's receiving a lesser sum than that which is due and owing from the franchise will be determined and paid forthwith to the city; provided further that the city's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the city or an accord and satisfaction of any claim the city may have for additional sums owed by the franchisee as hereinbefore provided.

Section 8. Subscriber Rates. Rates for subscriber service shall be determined by franchisee and shall be uniform throughout the city for each type of service. Franchisee shall file with the city clerk a schedule of current rates in effect.

Subscriber rates for installation shall be determined by franchisee and shall be uniform, except where extraordinary installation procedures are required in order to establish service, in which case franchisee may charge the subscriber the actual cost of materials and labor plus 10%.

Where a subscriber's service is disconnected for non-payment of monies due, franchisee is authorized to collect a re-connection fee.

Section 9. Franchisee's Operating Regulations. The franchisee herein named shall have the authority to promulgate such rules, regulations and conditions governing the conduct of its business as shall be reasonably necessary to enable the franchisee to exercise its rights and to perform its obligations under this franchise ordinance and to assure an uninterrupted service to its subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this franchise ordinance.

With respect to extension of service to new areas within the city, the franchisee shall file in the office of the city clerk of the city the rules and regulations governing the franchisee's extension of service to such new areas; provided that if the governing body has not filed with the franchisee its written objection to any or all of said rules and regulations within 30 days after they are filed by franchisee, the rules and regulations shall be deemed approved. Franchisee may thereafter change such rules and regulations by filing such changes as hereinbefore provided, and the same shall be approved or rejected in like manner. In the event the governing body rejects the rules or any proposed change thereof, franchisee shall be entitled to a hearing before the governing body for consideration of the rules or changes within

10 days following the governing body's rejection of the same by a resolution adopted at a regular meeting of the governing body.

Section 10. Notice to Parties. Whenever, under the terms of this franchise ordinance, either party hereto 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 either by first class United States mail addressed to the office of the city clerk of the city or by personal delivery of the same to the person, or his duly authorized agent for receiving the same, and if the notice be addressed to the franchisee, the same shall be delivered by either first class United States mail addressed to an officer or the resident agent of the franchisee at the registered office of the franchisee or its resident agent, or by personally delivering the same to such person as hereinbefore provided, or such other person as the franchisee shall from time to time direct.

Section 11. Notice of Franchisee's Filings with Regulatory Agencies. The franchisee is hereby required to file in the office of the city clerk of the city copies of any and all petitions, applications, and Communications submitted or filed by the franchisee with the Federal Communications Commission, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter effecting the operation of a cable television system, so far as the same effects or will effect the franchisee's service or operation within the city.

Section 12. Franchisee's Duty to Comply with State and Federal Law. Notwithstanding any other provisions of this franchise ordinance to the contrary, the franchisee shall at all times comply with all laws and regulations of the United States and the several states and any political subdivision thereof, or any administrative agency thereof, having jurisdiction to regulate cable television systems; provided that franchisee's failure to comply with any law or regulation governing the operation of the cable television system may result in a forfeiture of the privileges conferred by the franchise ordinance when so determined by the governing body of the city as adopted by ordinance at one of its regular meetings.

Section 13. Location of Franchisee's Properties in the Public Way. The franchisee in the construction of any facilities to provide service to its subscribers shall use the existing poles and other properties of franchised public utility companies operating within the city, and the franchisee shall not construct, erect, or maintain any supporting poles or other properties within the public streets of the city for the permanent operation of its cable television system except upon the express consent and permission of the city given in writing; provided that the franchisee shall not be prohibited from relocating its facilities if the poles and other properties on or upon which the facilities attach and are affixed are relocated by the owners of the properties, nor shall the franchisee be prohibited from constructing, operating, and maintaining its facilities upon other poles and properties of the franchised public utility companies as may hereinafter be constructed, so long as such construction, operation, and maintenance is in compliance with the city's existing ordinances pertaining to construction of new utility and Communications lines; provided further that, wherever within the city all or any part of the properties

of the franchised public utility company with which the franchisee named herein has contracts for the use of the facilities, shall be located underground, it shall be the obligation of the franchisee to construct, operate, and maintain its properties within and under such locations; provided further that if existing properties of the franchised public utility companies with which the franchisee herein named has contracted, relocate the properties underground, the franchisee shall forthwith relocate its properties, formerly attached thereto, underground in such places; however, the city reserves the right to permit the franchisee to maintain its existing facilities above ground in the locations when the city shall so direct the same in writing to the franchisee.

Section 14. Relocation of Franchisee's Property. Whenever the city or a franchised public utility company operating within the city shall request of the franchisee the relocation or reinstallation of any of its properties along and within any of the streets of the city, the franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the properties shall be the exclusive obligation of the franchisee; provided that the franchisee shall upon request of any person holding a validly issued building or moving permit of the city, the request having been given in writing to the franchisee not less than 48 hours prior to the date upon which the person intends to exercise its rights under the permit, the franchisee shall thereupon temporarily raise, lower, or relocate its wires or other property as may be required for the person to exercise the rights of its permit, and the franchisee may require the person to make payment in advance for any expenses incurred by the franchisee pursuant to the person's request.

Section 15. Franchisee's Duty to Remove its Properties from the Public Way. Franchisee shall promptly remove from the public streets and other public ways where its properties are located, all or any part of its facilities so located, when franchisee ceases to use any part, or all, of its cable television system for a continuous period of 12 months or when the franchise is terminated or revoked pursuant to notice as provided elsewhere in this ordinance.

Provided that the franchisee shall be entitled to receive notice in writing from the city setting forth one or more of the occurrences hereinabove enumerated, or such other occurrence hereinbefore or hereinafter provided, and that the franchisee shall have 90 days from the date upon which the notice is received to remove the properties as hereinabove required.

Section 16. Authority of City to Require Removal of Franchisee's Properties from the Public Way. The city is hereby authorized to enforce the provisions of Section 15 of this franchise ordinance as hereinafter provided;

(a) That the city shall notify the franchisee in writing of any occurrence provided for in Section 15 hereof, for which the franchise may be terminated, forfeited, revoked, or declared void by the city, and that within 90 days following receipt of the notice, the franchisee shall remove from the public streets and all other public ways of the city upon, over, and under which its properties are located, those portions of the properties which are attached to utility poles and those portions of buried properties which come above ground in closures and pedestals, unless

otherwise authorized and permitted by the city. Franchisee shall not be required in any instance to remove buried cables.

(b) The city may declare abandoned any property of the franchisee remaining in place 90 days after notification as hereinabove provided, and the same shall be considered permanently abandoned property unless the city extends the time for removal for a period not to exceed an additional 30 days.

Section 17. Property Abandoned by the Franchisee. Any property abandoned by the franchisee as hereinabove or hereinafter provided shall become the property of the city and the franchisee agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to the city; provided that any notice given by the city as provided in Section 16 hereof, shall be deemed notice to any other persons claiming interest in the property of the franchisee, and the persons shall be subject to all the provisions hereinbefore provided in Sections 15 and 16 hereof.

Section 18. Standards for Construction of Franchisee's Facilities. The construction, operation, and maintenance of the properties and facilities of the franchisee's cable television system shall be in accord with good engineering practices and shall be in compliance with the National Electric Code and applicable laws, regulations and ordinances as such are from time to time amended and revised by the United States of America and the several states and any political subdivisions thereof or any administrative agency thereof having jurisdiction to regulate the construction of cable television systems. All transmissions and distribution structures, lines and equipment erected by the franchisee within the city shall be so located as to cause minimum interference with the proper use of streets, easements and swales, sidewalks, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the streets, easements and swales, sidewalks, alleys or other public ways and places. The franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of the city, so as to prevent the branches of such trees from coming into contact with the franchisee's properties.

The franchisee shall not construct or reconstruct any of its cable TV system located upon, over, under or within the public streets or public ways of the city without first having submitted in writing a description of its planned improvement to the director of public works of the city and having received a permit for such improvement from the director.

Section 19. Standards for Operating and Maintaining Franchisee's Cable Television System. Franchisee's cable television system shall be constructed, operated, and maintained in accordance with the highest accepted standards of the cable television industry to insure that the subscriber receives the highest quality of service; provided that the following enumerated criteria may be considered in determining franchisee is satisfactory compliance with the provisions of this section:

(1) That the system is installed and remains capable of using all-band equipment and of passing the entire VHF television and FM radio spectrum and that it shall have the further capability of converting UHF for the distribution to subscribers on the VHF band;

(2) That the system is capable of transmitting and passing the standard color television signals without the introduction of material degradation on color fidelity and intelligence; and

(3) That the system is designed and rated for 24-hour a day continuous operation;

(4) That the system provides a nominal signal level of 1,000 micro volts at the input terminals of each television receiver of any subscriber;

(5) That the system signal to noise ratio is not less than 30 decibels;

(6) That hum modulation of the picture signal is less than five percent at the subscriber's receiver;

(7) That the system uses components having a voltage standing wave ratio (VSWR) of 1.4 or less;

(8) That the system will and does produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's set is capable of producing a color picture) that is undistorted and free from ghost images and accompanied by proper sound, assuming standard production television sets in good repair, and in any event, the picture shall be as good as the state of the art allows;

(9) That the system transmits or distributes signals of adequate strength to produce good pictures with good sound at all television receivers of all subscribers, without causing cross-modulation in the cables or interfering with other electromagnetic radiation or the reception of other television or radio receivers in the area not connected to the system.

The franchisee agrees that the cable television system to be operated pursuant to this franchise shall be upgraded in terms of its channel capacity and shall no later than December 31, 1991, be capable of technical transmission of a minimum of 54 standard television channels to subscribers.

The franchisee will limit system failures to a minimum by locating and correcting malfunctions promptly but in no event longer than 24 hours after notice has been given, except the time shall be extended during such time as performance of this obligation is prevented by an Act of God or the same is otherwise made impossible because of circumstances over which the franchisee has no control; provided further that the franchisee will maintain and provide to its subscribers an office within the city, which shall be available to the subscribers during normal business hours of every day Monday through Friday inclusive, for the purpose of receiving complaints or requests for repairs, adjustments, or other service caused by some failure or malfunction of the system, and that the franchisee shall provide its subscribers with facilities for receiving requests and complaints for service at a time other than that herein provided.

Should franchisee find equipment or devices have been connected to franchisee's cable television system by any persons and that the equipment or devices are causing interference to the system or degradation of the quality of transmission received by subscribers, or impairing franchisee's ability to comply with any laws and regulations governing cable television transmissions, franchisee is hereby empowered immediately to disconnect the equipment or devices from the cable television system.

Section 20. Rights Reserved to the City. Without limitation upon the rights which the city might otherwise have, the city does hereby expressly reserve the following rights, powers and authorities:

(a) The right to exercise the governmental powers, now or hereafter, vested in or granted to the city;

(b) The right to grant additional cable television franchises within the city subject to the provisions of Section 3 hereof.

The city's failure to enforce and remedy any non-compliance by the franchisee of the terms and conditions of this franchise ordinance shall not constitute a waiver of the city's rights hereunder, and the franchisee shall continue to perform its obligations as herein provided.

Section 21. Conditions for Forfeiture of Franchise. In addition to all other rights and powers herein reserved or otherwise enjoyed by the city, the city reserves as an additional and separate remedy the right to revoke the franchise herein granted and all rights and privileges of the franchisee conferred hereunder, upon the occurrence of any of the following events:

(a) That franchisee fails to remedy within 30 days following the date upon which written notice is received of the franchisee's failure to comply with the provisions of this franchise ordinance whether the same be committed by act or omissions, the violation set forth in the notice;

(b) That any provisions of this franchise ordinance is adjudged by a court of competent jurisdiction to be invalid or unenforceable and the judicial act and declaration is deemed by the governing body of the city to constitute such a material consideration for the granting of the franchise as to cause the same to become null and void;

(c) Franchisee is adjudged a bankrupt, becomes insolvent, suffers a transfer of its properties pursuant to an action of its creditors upon an instrument or judicial declaration securing the creditor's interest in the properties, and thereafter the same be not redeemed by the franchisee within 30 days from the date of the transfer, or the franchisee is otherwise unable or unwilling to pay its debts and obligations as the same accrue;

(d) The franchisee commits an act of fraud or deceit against the city in obtaining the grant of the franchise herein conferred, or upon being granted the franchisee commits such an act against the city;

(e) Franchisee shall give to any person, firm, corporation or other business association, preference or advantage over some other person in assessing and levying its rates and charges, or in serving its subscribers, or in enforcing its rules and regulations, or in any other respect; provided that no revocation shall be effective unless, or until, the governing body of the city shall find at one of its regular meetings or such other special meeting as may be required, that a violation of the terms and conditions of the franchise ordinance as herein set forth, was committed or occurred by the franchisee; provided further that the revocation and repeal of this franchise ordinance shall become effective only upon the enactment of an ordinance by the governing body of the city adopted not sooner than a date 30 days following the date upon which the franchisee is notified of any alleged act or commission for which the franchise may be revoked, as herein provided.

Provided further that any allegation of violation of subparagraph (e) hereinabove by franchisee shall be given to franchisee in writing and that franchisee

shall have a period of 30 days in which to correct the allegation or provide sufficient information to the city so city could determine that no such violation in fact occurred, before city may proceed with the franchise revocation process provided herein.

Provided further that nothing herein contained in this section shall be construed to prevent the franchisee from offering its subscribers occasional temporary discounts and promotions for the purpose of attracting subscribers or persuading existing subscribers to order additional optional services, nor shall franchisee be prohibited by this section from offering discounts on its service to cable television employees.

Section 22. Service to Schools and Other Public Facilities. (a) Upon the request of any private, parochial or public elementary or secondary school or any college or university located in the city, the franchisee shall furnish a single service drop to such institution free of installation charge and monthly service charge for basic cable television services, except where the installation of the service drop involves extraordinary expense related to the difficulty of installation, in which case franchisee is authorized to charge such school, college or university those portions of the installation expense beyond the normal and routine.

(b)(1) Franchisee shall provide the public school districts located within the corporate limits of the city a channel, to be used jointly by such districts, upon which the districts may receive or transmit electromagnetic radiation, and

(2) Franchisee shall provide the city with a channel to be used jointly with other franchising authorities served by franchisee from its common head end, for receiving or transmitting electromagnetic radiation.

Should the city or any other franchise authority within Johnson County, Kansas, served by franchisee from a common head end site desire a second such governmental channel for joint use by the franchising authorities, franchisee agrees to provide the channel no later than December 31, 1991/ provided however that such second governmental channel's frequency may be specified by the franchisee and is not required to be in that portion of the VHF television spectrum commonly known as channels two through 13.

Section 23. Emergency Use of Franchisee's System. In the event of a civil disaster or other emergency which occurs within the city, the franchisee shall upon request of the mayor or designated representative, permit the city to transmit information over the cable television system advising the subscribers regarding the nature and extent of the disaster or emergency as may be required to protect the persons for their safety and welfare; provided that any such transmission shall be conducted by or with the assistance of franchisee's authorized personnel.

Section 24. Franchisee's Duty to Secure Liability Insurance. Franchisee shall concurrently with the filing of its acceptance of the franchise herein granted, file with the city clerk of the city evidence that the franchisee has contracted for, and has, liability insurance to protect the following enumerated risks in the sums hereinafter set forth:

That the franchisee shall further provide evidence of its having insured the city and its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever for loss or drainage from personal injury, death, or property damage occasioned by the operation of the franchisee's cable television

system, or alleged to so have been caused or occurred, for an amount not less than \$500,000 for the personal injury or death to any one person and \$5,000,000 for personal injury or death of two or more persons in any one occurrence, and \$300,000 for damages to property resulting from any one occurrence.

Section 25. Franchisee's Performance Bond. The franchisee shall at all times during the term of this franchise maintain in full force and effect, at franchisee's sole and exclusive expense, a corporate surety bond in a company, and in a form approved by the city attorney of the city, in an amount not less than \$50,000 renewable annually, and conditioned upon franchisee's faithful performance of the provisions, terms, and conditions of the franchise herein granted and conferred by this franchise ordinance; provided that in the event the city shall exercise its right to revoke the franchise of the franchisee as provided in Section 21 herein, then the city shall be entitled to recover under the terms of the bond the full amount of any loss occasioned the city by such act or occurrence as enumerated in Section 21 hereof.

Section 26. Franchisee Is Without Remedy Against the City. The franchisee shall have no remedy or recourse whatsoever against the city for any loss, cost, expense, or damage arising from any of the provisions or requirements of this franchise ordinance, or because of the enforcement thereof by the city, or for the failure of the city to have the authority to grant, all, or any part, of the franchise herein granted; provided that the franchisee expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the city to grant the franchise herein conferred upon the franchisee; provided further that the franchisee acknowledges by its acceptance of the franchise that it has not been induced to enter into this franchise upon any understanding, or promise; whether given verbally or in writing by or on behalf of the city, or by any other person concerning any term or condition of this franchise not expressed. herein; provided further that the franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

Section 27. Limitation upon Franchisee's Right to Transfer this Franchise. The franchisee shall not sell or transfer its plant or cable television system or any portion thereof, nor any right, title or interest in the same, nor shall the franchisee transfer any rights under this franchise to any other person without prior approval of the governing body of the city, as expressed by resolution adopted at one of its regular or special meetings; provided further that such approval shall not be unreasonably withheld.

Section 28. City's Right to Equal Treatment. In the event the franchisee is granted a cable television system franchise in any other political subdivision within Johnson County, Kansas, and the provisions of such franchise are more favorable to such political subdivision and the residents thereof than the provisions of the franchise hereby granted, then the city shall have the right to request franchisee to modify and amend the provisions of the franchise hereby granted to conform to any such more favorable provisions contained in the franchise of another political

subdivision of Johnson County, Kansas; provided that the franchisee may offer to the city evidence and statements distinguishing any such other franchise from the franchise hereby granted, or evidence of the existence of state or federal laws or rules preventing the franchisee from making the change requested by the city; provided further that, in the event the city shall request franchisee to amend and modify the franchise in the manner hereinabove provided and the city determines that the franchisee has not offered sufficient evidence and statements to justify its not conforming to the city's request, then, and in that event, either the city or the franchisee may refer the city's request for arbitration as provided in the laws of the State of Kansas then existing and the decision of arbitrator shall be binding and conclusory upon the parties, except that the arbitrator may not compel franchisee to be in non-compliance with any state or federal law or rules which take precedence over this ordinance; provided further that in the event the city's request is submitted for arbitration, the arbitrator may not consider, nor shall he effect, the then existing provisions of this franchise except as herein provided.

Section 29. Franchisee's Duty to Indemnify the City. At the time the franchisee files its acceptance of this franchise, franchisee thereby agrees to indemnify the city against any and all claims, demands, actions, suits and proceedings by other persons against any and all liability to such other persons by reason of liability for damages arising out of any failure by the franchisee to obtain consent from owner, authorized distributors and licensees of programs transmitted or distributed by the franchisee under its cable television system and against any loss, cost, expense or damages resulting therefrom and including reasonable attorneys fees incurred in the defense of any such action.

Section 30. New Developments. It shall be the policy of the city to amend reasonably this franchise ordinance upon application of franchisee when necessary to enable franchisee to take advantage of any developments in the field of transmission of television, radio signals, cable television or other forms of electromagnetic radiation.

Section 31. Rights of Individuals. (a) Franchisee shall not deny service or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, or sex. Franchisee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

(b) Franchisee shall adhere to the equal employment opportunity requirements of federal, state and local regulations as now existing and as amended from time to time.

(c) Franchisee shall not transmit any signals from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Any such authorization shall be revokable by the subscriber with no penalty. Provided, however, that the franchisee shall be entitled to conduct system wide or individually addressed electronic checks for the purpose of verifying system integrity, controlling two-way

return path transmission, or billing for per channel, per-event or other special services.

Section 32. Severability. That should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be thereby affected.

Section 33. Time is of the Essence. Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the franchisee, such time shall be deemed of the essence and any failure of the franchisee to perform within the time so specified shall be sufficient grounds for the city to revoke the franchise herein granted, subject to procedural requirements stated herein.
(05-04-87)

ORDINANCE NO. 590

AN ORDINANCE GRANTING KANSAS CITY POWER & LIGHT COMPANY, ITS GRANTEEES, SUCCESSORS AND ASSIGNS, THE RIGHT AND FRANCHISE TO CONSTRUCT AND MAINTAIN ALL WORKS AND PLANTS NECESSARY OR PROPER FOR SUPPLYING CONSUMERS WITH ELECTRIC OR OTHER ENERGY, GRANTING TO SAU COMPANY THE RIGHT TO USE THE STREETS, ALLEYS AND ALL OTHER PUBLIC PLACES, PRESCRIBING THE TERMS OF AND RELATING TO SUCH FRANCHISE, AND REPEALING INCONSISTENT ORDINANCES OR PART THEREOF.

Section 1. In consideration of the benefits to be derived by the city and the inhabitants thereof from the construction, operation and maintenance of an electric light and power transmission and distribution system and the supplying of electric energy to the public, there is hereby granted to the company and to its successors and assigns, for the term of 20 years from the effective date hereof, a franchise and authority to construct, operate and maintain in the existing and any future extended corporate limits of the city all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of supplying the city and outlying areas with electric or other energy in such forms as may be reasonably required for domestic, commercial, industrial, municipal and other purposes and to produce and supply such energy by manufacture, generation, purchase or otherwise, and to transmit and distribute same by means of underground or overhead lines or otherwise, and for any or all of the purposes it is authorized to (i) construct, install, replace and remove conduits or other underground facilities for the installation and protection of its underground wire and cables, (ii) place poles, lamp posts, guys, and anchors for its overhead wires, cables and street lights on all streets, alleys, avenues, bridges, parks, parking and other public places or thoroughfares, (iii) construct, erect and maintain all buildings, machinery and attachments of any and every kind for any and all of the purposes, and (iv) enter upon any and all of the public places within the corporate limits of the city as they now exist or may hereafter be opened, widened, extended, laid out and established, including any other territory hereafter added thereto or coming under its jurisdiction, and to trim trees upon and overhanging such places

and make such excavations thereon as may be appropriate for the construction, repair and renewal of its overhead and underground facilities and plants.

Section 2. Any pavements, sidewalks or curbing taken up or any and all excavations made shall be done under the supervision and direction of the governing body of the city under all necessary permits issued for the work, and shall be made and done in such manner as to give the least inconvenience to the inhabitants of the city and the public generally, and pavements, sidewalks, curbing and excavations shall be replaced and repaired in as good condition as before with all convenient speed, all at the expense of the company.

Section 3. During the continuance of the franchise, the company shall construct, maintain and operate its transmission and distribution system within the city and shall furnish electric energy to the city and its inhabitants in accordance with the terms of this franchise, the rates, charges, rules and regulations now on file with the State Corporation Commission of the State of Kansas, or such revision of rates, charges, rules and regulations as may be lawfully established from time to time in accordance with the laws of the State of Kansas. Nothing contained herein shall be construed as a guarantee upon the part of the company to furnish uninterrupted service, and interruptions due to acts of God, fire, strikes, civil or military authority, orders of court and other causes reasonably beyond the control of the company are specifically exempt from the terms of this section.

Section 4. The company shall, at all times, in the construction, maintenance and operation of its electric transmission, distribution and street lighting system, use all reasonable and proper precautions to avoid damage or injury to persons or property, and shall hold and save harmless the city from any and all damage, injury and expense caused by the sole negligence of the company, its successors and assigns.

Section 5. In consideration of the premises, the company agrees to pay to the city and the city agrees to accept as adequate compensation and consideration for the franchise hereby granted and in lieu of occupation, license, privilege and all other taxes and fees, five percent of the total gross receipts charged and collected solely from the sale of electric energy sold by the company to all consumers located in the present or future corporate boundaries of the city during the term of this franchise.

Any consideration hereunder shall be reported and paid to the city by the company on a semiannual basis on each March 31 and September 30 for the years in which this franchise remains in effect, reflecting such electric energy sold for the six months' period ending at the last meter reading preceding each February 28 and August 31, respectively. Such payments shall first be applied to the amount due to the company from the city for street lighting and traffic signal service billed for the applicable the six months period (the "SLTS Billing Amount") and by paying the remainder, if any, in cash to the city. If in any applicable the six months' period the SLTS Billings Amount exceeds the gross receipts amount due to the city, the company shall for such excess bill the city and the city shall pay the same in cash to the company.

The term "gross receipts", as used in this section shall not include (1) the electrical energy sold to the United States or the State of Kansas or to any agency or political subdivision thereof, (2) the electrical energy sold for other use which cannot be classified as domestic, commercial, or industrial, such as the electrical energy used by the public utilities, telephone, telegraph, and radio communication companies, railroads, pipe line companies, educational institutions not operating for profit, churches and charitable institutions, (3) the electric energy sold for resale, and (4) the amounts paid to the city pursuant to this section.

The percentage of gross receipts charged and collected from the sale of electric energy hereunder, as specified in this section, shall be subject to revision at the option of the city on January 1, 1994, and thereafter at two year intervals during the term hereof. The city shall notify the company in writing not later than 120 days prior to the effective date of any such revision.

Section 6. This franchise is granted pursuant to the provisions of K.S.A. 12-2001, and shall take effect and be in force as therein provided. All provisions of this ordinance shall be binding upon the company from and after the date of written acceptance hereof by the company and shall inure to the benefit of the company, its grantees and its successors and assigns.
(05-19-93)

ORDINANCE NO. 654

AN ORDINANCE, GRANTING TO WESTERN RESOURCES, INC., ITS SUCCESSORS AND ASSIGNS, A NATURAL GAS FRANCHISE, PRESCRIBING THE TERMS THEREOF, PROVIDING FOR A MONTHLY FRANCHISE PAYMENT TO BE MADE TO THE CITY OF ROELAND PARK, KANSAS, AND REPEALING ORDINANCE NO. 383.

Section 1. Franchise Granted. In consideration of the benefits to be derived by the City of Roeland Park, Kansas, and its inhabitants, there is hereby granted to Western Resources, Inc., hereinafter sometimes designated as "company," the company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, and also operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority for a period of five years, commencing on the effective date of this ordinance, with five three year automatic extensions thereafter not to exceed 20 years, provided however, that either party may terminate this ordinance after the initial five year period or an extension thereafter by giving at least one year prior written notice to the other party to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of the city, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing natural gas for all purposes to the city and its inhabitants, and through the city and beyond the limits thereof, to obtain the natural gas from any source available; and to do all things necessary or proper to carry on the business in the city.

Section 2. Consideration of Franchise. As further consideration for the granting of this franchise, and in lieu of any city occupation, license or revenue taxes, excluding special assessments, the company shall pay to the city during the term of this franchise five percent of its gross receipts from the sale of natural gas during the term of this franchise to all consumers within the present and future corporate limits of the city and within the service area of the company, except customers purchasing gas at company's large commercial or large industrial rates, and one percent of its gross receipts from the sale of gas during the term of this franchise to consumers within the corporate limits purchasing gas at company's large commercial or large industrial rates.

Gross receipts shall mean all cash and credit extended, other than that pursuant to the Cold Weather Rule or substitute rule of the Kansas Corporation Commission, from natural gas sold within the present or future corporate limits of the city. Gross receipts shall also include all fees and charges received by the company for transportation and delivery within its distribution system of natural gas purchased by non-residential consumers within the city from sources and suppliers other than the company. Gross receipts shall also include all fees and charges received by the company from any person or entity receiving natural gas from the company for the sale of natural gas for resale to consumers within the city.

Such payment as described heretofore shall be made monthly for the preceding monthly period.

The city or its authorized representative shall have access to and the right to examine, at reasonable times and with reasonable notice, all books, receipts, files, records and documents of the company necessary to verify that payments have been correctly computed and paid. If errors in the calculation of gross receipts are discovered, then repayment shall be made upon such corrected calculations, including interest as authorized by K.S.A. 16-201.

Section 3. Placement, Relocation and Excavation of Facilities. All mains, services, pipes and other equipment necessary to carry on the business of selling and distributing natural gas which shall be laid or installed under this franchise shall be located and laid so as not to unreasonably obstruct or interfere with any public or private drains, sewers, water pipe or other public improvements already installed. In addition, company shall, in doing work in connection with it's the gas mains, services, pipes or other equipment, avoid, so far as may be practicable, obstructing or interfering with the use of any highways, streets, avenues, alleys, roads, easements, or other public places of the city. Company shall, at its own expense and in a manner satisfactory to the duly authorized representatives of the city, replace disturbed paving or surface in as good condition as before the work was commenced. No new mains, services, pipes or other equipment shall be placed in any park of the city without the express written approval of the governing body of the city.

All gas mains, service pipes, fixtures, facilities and other appurtenances laid, constructed and maintained by the company shall be laid, constructed and maintained:

- (1) in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted by the natural gas industry;
- (2) in accordance with applicable design criteria and technical specifications as maintained by the city engineer;

(3) in accordance with applicable statutes of the State of Kansas and the rules and regulations of the Kansas Corporation Commission or any other state or federal agency having jurisdiction over the company.

The facilities of the company located in the highways, streets, avenues, alleys, roads, easements, or other public places shall be relocated by the company without expense to the city when such relocation is determined to be necessary by official action of the city council. It is the intent of this section for both the city and company to cooperate so that the need for facility relocation is minimized.

For the purpose of carrying into effect the privileges granted hereunder, the company is authorized to make necessary excavations in the highways, streets, avenues, alleys, roads, easements, or other public places with the city. Prior to all excavations of public property, other than excavations necessary for emergency repairs, the company or its agents shall first obtain the necessary permit from the director of public works or his or her designee. Permits for emergency excavations may be obtained upon completion of repairs. Permits shall be issued without charge.

The company:

- (1) shall limit all such excavations to the necessities of efficient operation;
- (2) shall not at any one time excavate more of any highway or public place than shall be reasonably necessary; and
- (3) shall not permit such an excavation to remain open longer than necessary for the purpose for which it was opened.

At all times, company shall perform work on public rights of way at such times that will allow for the least interference with the normal flow of traffic.

All excavation work shall be completed in accordance with the city's technical specifications and design criteria. The company shall.

- (1) be responsible for providing adequate traffic control;
- (2) refill all excavations and leave same in a mowable condition;
- (3) replace all excavated pavement with like material and leave same in as good condition as before the work was commenced;
- (4) perform all work on highways, streets, avenues, alleys, roads, easements, or other public rights of way under the inspection of a representative of the city if so requested and desired by the city;
- (5) repay the city for all expenses incurred in the repair or replacement of highways, streets, avenues, alleys, roads, easements, or other public rights of way in the event such work is done by the city after the failure of the company to perform same in a reasonable manner after reasonable notice.

Section 4. Service Practices. During the term of this franchise, the company shall furnish natural gas to the city and its inhabitants in accordance with the terms of this franchise, the rates, charges, rules and regulations on file with the Kansas Corporation Commission, or such revision of rates, charges, rules and regulations as may be lawfully established from time to time in accordance with the laws of the State of Kansas and the federal government.

Company shall, in accordance with various federal and state civil rights legislation, at all times during the term of the franchise furnish gas service to all persons without discrimination on the basis of race, ethnicity, color, religion, gender, national origin, age, marital status, medical condition or disability.

It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof; as the company sources and pipelines are reasonably capable of supplying.

Section 5. Sale or Assignment of Franchise Rights. Company shall not sell, assign or otherwise transfer its rights under this franchise without the prior written consent of the city, which consent shall not be unreasonably withheld.

Section 6. Indemnification. The company, its successors and assigns, in the construction, maintenance and operation of its natural gas system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the city from any and all damage, injury and expense caused by the negligence of the company, its successors and assigns, or its or their agents or servants.

Section 7. Action by Kansas Corporation Commission. Within 20 days from and after the passage and approval of this ordinance, company shall file the same with the Kansas Corporation Commission for the commission's approval. Should the Kansas Corporation Commission take any action with respect to this franchise ordinance which would or may preclude Western Resources, Inc. from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the Kansas Corporation Commission's ruling.

Section 8. Acceptance by the Company. After the approval of this ordinance by the Kansas Corporation Commission, company shall file with the city clerk, its unconditional written acceptance of this ordinance. The ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after the expiration of 60 days from its final passage, approval and publication as required by law, and acceptance by the company. This ordinance, when accepted as above provided shall constitute the entire agreement between the city and the company relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof or involved in negotiations pertaining thereto, whether oral or written.

ORDINANCE NO. 753

AN ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE L.P., A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF ROELAND PARK, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE. NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, KANSAS:

Section 1. DEFINITIONS. For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

(a) "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 served 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 processed by a telecommunications local exchange service provider or private line service arrangements.

(b) "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.

(c) "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(j), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

(d) "Access line remittance" - means the amount to be paid by Grantee to 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 Grantee within the City for each month in that calendar quarter.

(f) "City" - means the City of Roeland Park, Kansas.

(g) "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

(h) "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

(i) "Grantee" - means Southwestern Bell Telephone, L.P., a telecommunications local exchange service provider providing local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

(j) "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification / busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, re-connection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues,

including, but not limited to, revenues from extended area service, the sale or 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 Grantee 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 within the City.

(k) "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.

(l) "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.

(m) "Telecommunication 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 2. GRANT OF CONTRACT FRANCHISE.

(1) There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

(2) The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

(a) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(b) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

(c) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

(3) As a condition of this grant, Grantee 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 FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

(4) Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee 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.

(5) This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

Section 3. USE OF PUBLIC RIGHT-OF-WAY.

(1) Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

(2) Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, Chapter 13, Article 2 of the City's Code and amendments thereto.

(3) Grantee shall participate in the Kansas One Call utility location program.

Section 4. COMPENSATION TO THE CITY.

(1) In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee in the sum of \$1.20 per Access Line per month for each residential service Access Line served by Grantee for local exchange service within the City limits of the City and a franchise fee in the sum of \$2.00 per Access Line per month for each commercial service Access Line served by Grantee for local exchange service within the City limits of the City. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this

Contract franchise shall continue to be based on a sum equal to \$1.20 per Access Line per month for each residential service Access Line and \$2.00 per Access Line per month for commercial service Access Line, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to a Gross Receipts fee in the following calendar year; provided, such Gross Receipts fee shall not exceed 5% of Gross Receipts. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

(2) Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

(3) Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

(4) Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.

(5) No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

(6) The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

(7) Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

(8) The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

(9) Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

Section 5. INDEMNITY AND HOLD HARMLESS.

(a) It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

(b) Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

(c) The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(d) Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

Section 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.

(1) During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

(a) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

(b) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

(2) As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars (\$1,000,000) per occurrence and two million dollars (2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

(3) Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

(4) Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

Section 7. REVOCATION AND TERMINATION. In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this

Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

Section 8. RESERVATION OF RIGHTS.

(1) The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

(2) In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

(3) In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

(4) In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise), and/or rulings.

Section 9. FAILURE TO ENFORCE. The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

Section 10. TERM AND TERMINATION DATE.

(1) This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise and ending on December 31, 2006. Thereafter, this Contract franchise will automatically renew for up to eight additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

(2) Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

(3) If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

(4) Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

(5) In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

Section 11. POINT OF CONTACT AND NOTICE. Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:
The City of Roeland Park, Kansas
4600 W. 51st Street
Roeland Park, Kansas 66205
Attn: Anthony J. Pluta, City Clerk

Grantee:
Southwestern Bell Telephone L.P.
Chris Carroll
Director of External Affairs
8900 Indian Creek Parkway, Suite 120

(913) 722-3713 fax
(913) 676-1504 fax

Overland Park, Kansas 66210

or to replacement addresses that may be later designed in writing.

Section 12. TRANSFER AND ASSIGNMENT. This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon notice to the City.

Section 13. CONFIDENTIALITY. Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

Section 14. ACCEPTANCE OF TERMS. Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

Section 15. PAYMENT OF COSTS. In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

Section 16. SEVERABILITY. If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

Section 17. FORCE MAJEURE. Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

Section 18. REPEAL. Grantee's prior franchise ordinance, as adopted by City Ordinance No. 678 is hereby repealed.
(07-07-04)