

ORDINANCE NO. 1025

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

Be it ordained by the governing body of the City of Smith Center, Kansas:

Section 1. Pursuant to K.S.A. 2002 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas), a telecommunications local exchange service provider providing local exchange service within the City of Smith Center, subject to the provisions contained hereafter. The initial term of this ordinance shall be for a period beginning October 1, 2019, and ending September 30, 2021; and successive terms of two (2) years unless written notice is given as defined in section 3 of this ordinance.

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

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

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

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

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

“Gross receipts” means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines; reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale of lease of unbundled network elements, nonregulated 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. Uncollectable and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

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

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

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

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

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

Section 3. Compensation made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to \$2.00 per access line. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to \$2.00 per access line; unless the City notifies AT&T Kansas prior to ninety days (90) before the end of the agreement period that it intends to increase or decrease the percentage of gross receipts. In the event City elects compensation based on an access line fee, nothing herein precludes City from switching back to a gross receipts fee provided City notifies AT&T Kansas prior to the end of the agreement period that it intends to elect a gross receipts fee. Beginning October 1, 2019, any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001.

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

Section 5. As a condition of this contract franchise ordinance, AT&T Kansas is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to AT&T Kansas' right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. AT&T Kansas shall also comply with all applicable laws, statutes and/or ordinances, subject to AT&T Kansas' right to challenge in good faith such laws, statutes and/or ordinances.

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

Section 7. Nothing herein contained shall be construed as giving AT&T Kansas any exclusive privileges, nor shall it affect any prior or existing rights of AT&T Kansas to maintain a telecommunications system within the City.

Section 8. AT&T Kansas shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

Section 9. Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the City shall be delivered to the City Clerk by first class United States mail or by personal delivery. Notice upon AT&T Kansas shall be delivered by first class United States mail or by personal delivery to:

Office of the President
Southwestern Bell Telephone Company d/b/a AT&T Kansas
220 SE 6th St., Room 500
Topeka, KS 66603

Section 10. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

Section 11. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond AT&T Kansas' or the City's control.

Section 12. AT&T Kansas has entered into this contract franchise ordinance as required by the City and K.S.A. 2002 Supp. 12-2001. If any clause, sentence, section, or provision of K.S.A. 2002 Supp. 12-2001, and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, either the City or AT&T Kansas may elect to terminate the entire contract franchise ordinance. In the event a court of competent jurisdiction invalidates K.S.A. 2002 Supp. 12-2001, and amendments thereto, if AT&T Kansas is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

Section 13. In entering into this contract franchise ordinance, neither the City's nor AT&T Kansas 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 ordinance, neither

the City nor AT&T Kansas waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or AT&T Kansas may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and AT&T Kansas entering into this contract franchise ordinance.

Section 14. This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise ordinance shall be effective until the ordinance granting the same has been adopted as provided by law.

Passed by the Council the 23rd day of September, 2019.

Approved by the Mayor the 23rd day of September, 2019.