

## **APPENDIX B - FRANCHISES**

### **ORDINANCE NO. 671**

AN ORDINANCE GRANTING TO THE GAS SERVICE COMPANY, A CORPORATION OPERATING A GAS DISTRIBUTION SYSTEM IN THE CITY OF OSBORNE, STATE OF KANSAS, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE A NATURAL GAS DISTRIBUTION PLANT AND SYSTEM IN SAID CITY AND VICINITY, AND REPEALING ORDINANCE NO. 514.

Section 1. That there is hereby granted to the Gas Service Company a corporation operating a gas distribution system in the City of Osborne, herein called the grantee, its successors and assigns, the right, privilege and franchise for a period of 20 years from the effective date hereof, to construct, maintain and operate in the present and future streets, alleys, bridges and public places in said city, its gas distribution system as now located, together with the right, privilege and franchise to acquire, construct, maintain and operate therein and thereon such additions and extensions thereto as may be necessary or desirable, all for the purpose of supplying natural gas for all purposes to the inhabitants of said city and consumers in the vicinity thereon.

Section 2. All rates established and charges made by grantee for gas distributed and sold hereunder shall be subject to valid and lawful orders of the State Corporation Commission of the State of Kansas or other competent authority having jurisdiction in the premises and the sale of gas to consumers shall be governed by the present operating rules, regulations and customers of grantee and such rules and regulations as may hereafter be prescribed and approved.

Section 3. That in consideration of and as compensation for the right, privilege, and franchise hereby granted, the grantee, its successors and assigns, shall furnish gas at such pressure and of such quality as shall be designated by lawful orders of the State Corporation Commission of said state, if such gas is reasonably procurable, shall furnish free of cost to each consumer a recognized standard meter or other instrument for measurement of gas sold or computation of consumer's bills and keep same in repair at its cost, which meter shall at all times be the property of the grantee but subject to inspection by said city; shall at all times save the city harmless from any and all damages when said city may be liable to pay that may arise from the construction, maintenance and operation of its plant system or any part thereof; shall limit all excavations of streets, alleys or public places to the necessities of efficient operation and shall not at any one time open or encumber more of any highway or public place than shall be reasonably necessary to enable grantee to proceed with advantage in laying or repairing mains or pipes and public place to remain open longer than necessary for the purpose for which it was opened; shall refill all excavations and replace all pavement with like material and leave same in as good condition as when altered or removed; shall perform all work on streets, alleys and public places under supervision of a representative of said city if so desired; and shall repay said city all expense to which it has been put in the repair or replacement of streets, highways or pavements in the event such work is done by said city after the neglect or refusal of grantee to perform same in reasonable time.

Section 4. As a further consideration for the rights, privilege and franchise hereby granted and in lieu of all occupation and license taxes, the grantee shall not later than February 1st and August 1st respectively in each year make a report to the governing body of the City of Osborne of its gross receipts from the sale of gas for all purposes within said city for the six months period ending at the last meter reading preceding December 31st and June 30th respectively; and at the time of making such report, pay into the city treasury a sum equal to five percent of said gross receipts from the sale of gas for domestic purposes, and one percent of its gross receipts from the sale of gas for industrial purposes, which shall have accrued subsequent to the effective date of this franchise. Industrial sales shall be considered as those made under special contracts providing for stand-by fuel and interruption of service at any time demands of domestic consumers may so require.  
(02-21-86)

### **ORDINANCE NO. 821**

AN ORDINANCE, GRANTING TO THE KANSAS POWER AND LIGHT COMPANY, (ALSO KNOWN AS KPL GAS SERVICE), A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NATURAL GAS FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS HEREOF.

Section 1. That in consideration of the benefits to be derived by the City of Osborne, Kansas, and its inhabitants, there is hereby granted to The Kansas Power and Light Company, a Kansas corporation, 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 20 years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of the city, for the placing and maintaining of pipelines and other equipment 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. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or revenue taxes, the company shall pay to the city during the term of this franchise five percent of its gross revenue from the sale of natural gas within the corporate limits of the city, such payment to be made monthly for the preceding monthly period.

Section 3. That all mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed.

Section 4. Company shall, in the doing of the work in connection with its gas mains, pipes and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare, and where company disturbs the surface of a street, alley, avenue or other public thoroughfare, it shall at its own expense and in a manner satisfactory to the duly authorized representatives of the city replace such paving or surface in substantially as good condition as before the work was commenced.

Section 5. 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 sources and the pipelines are reasonably capable of supplying.

Section 6. That 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 sole negligence of the company, its successors and assigns, or its or their agents or servants.

Section 7. That within 10 days from and after the passage and approval of this ordinance, company shall file the same with the State Corporation Commission for the Commission's approval.

Section 8. That within 60 days from and after the approval of this ordinance by the State Corporation Commission, company shall file with the city clerk of the city, 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 its passage, approval and publication as required by law, and acceptance by the company.

Section 9. That 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.

Section 10. This franchise is granted pursuant to the provisions of K.S.A. 12-824.

Section 11. That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

Section 12. Should the State Corporation Commission take any action with respect to this franchise ordinance, which could or may preclude The Kansas Power and Light Company from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the Corporation Commission's ruling.

(03-16-88)

**ORDINANCE NO. 835**

AN ORDINANCE AUTHORIZING AND DIRECTING THE COMBINATION OF THE CITY OF OSBORNE, KANSAS WATER UTILITY SYSTEM AND ELECTRIC UTILITY SYSTEM INTO THE CITY OF OSBORNE, KANSAS ELECTRIC AND WATER UTILITY SYSTEM.

Section 1. Pursuant to K.S.A. 12-801, the Electric Utility System and the Water Utility System of the City be and are hereby combined into one utility system of the City to be hereinafter known as the "City of Osborne, Kansas, Electric and Water Utility System."

Section 2. The revenues derived from the City's Electric and Water Utility System shall be used as permitted by law and determined by the Governing Body in a manner so as not to conflict with or breach any existing covenant contained in any ordinance, resolution or rule of the City regarding the use of funds in the City's Water Utility Fund or its Electric Utility Fund.  
(10-17-90)

**ORDINANCE NO. 904**

AN ORDINANCE GRANTING TO RISC COMMUNICATIONS, INC., dba Nex-Tech, A SUBSIDIARY OF RURAL TELEPHONE SERVICE COMPANY, INC., A KANSAS CORPORATION, ITS SUCCESSORS, TRANSFEREES AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO ERECT, MAINTAIN, AND OPERATE A CABLE TELEVISION SYSTEM IN, UNDER, OVER, ALONG, ACROSS AND UPON THE STREETS, LANES, AVENUES, ALLEYS, BRIDGES, HIGHWAYS, AND OTHER PUBLIC PLACES IN THE CITY OF OSBORNE FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION, BY CABLE, OF TELEVISION, RADIO, DATA AND MUSIC FOR SALE TO THE INHABITANTS OF SAID OR OTHER PURPOSES.

ARTICLE I

Definitions

For the purpose of the grant of this franchise, the following terms shall have the meaning as described herein:

(1) City - shall mean the City of Osborne, Kansas, and shall include when appropriate the context of the territorial boundaries of the City of Osborne, Kansas, as they now or shall hereafter exist.

(2) Council - shall mean the present governing body of the City of Osborne, Kansas, or any successor to the legislative powers of the present City Council.

(3) Franchise - shall mean the permission, license, franchise or authority given hereunder to conduct and operate a cable television system in the City of Osborne, Kansas.

(4) Grantee - shall mean RTSC Communications, Inc. dba Nex-Tech, a subsidiary of Rural Telephone Service Company, Inc., or its successors, transferees or assigns of the franchise granted herein.

(5) Gross Revenue - shall mean the monthly basic cable revenues received by grantee from subscribers of the cable system; provided, however, that such phrase shall not include:

(i) revenues received from any advertising carried on the cable system;

(ii) any taxes on communications service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the grantee on behalf of such governmental unit or agency;

(iii) revenues derived from services sold on a per-channel or per-view basis; or

(iv) any revenues derived from installation charges.

(6) Street - shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City of Osborne, Kansas, for the purpose of public travel and shall include such other easements or right-of-ways as shall be now held or hereafter held by the City of Osborne, which shall be within their proper use and meaning entitle the City of Osborne and its grantee to the use thereof for the purpose of installing or transmitting cable television transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

(7) Property of Grantee - shall mean all property owned and installed or used by the grantee in the conduct of its cable television business in the City of Osborne and under the authority of the franchise granted herein.

(8) Cable Television System - shall mean any system which operates for hire the service of receiving and amplifying programs broadcast by one or more television and/or radio stations, data services, music and any other programs originated by a cable television company or by any other party and distributing such programs by wire, cable, microwave, co-axial cable, or other means, whether such means are owned or leased, to persons who subscribe to such service.

(9) Subscriber - shall mean any person or entity receiving for any purpose the cable television service of the grantee herein.

(10) Person - shall mean any individual or association of individuals, or any firm, corporation or other business entity.

(11) Facilities of Grantee or Cable Television Facilities - shall mean property of the grantee.

## ARTICLE II

### Grant of Franchise

SECTION 1: General Grant. The City hereby grants to the grantee a non-exclusive right and privilege 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 street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a cable television system within the City of Osborne, Kansas.

SECTION 2: Non-exclusivity. The authority hereby granted to conduct a cable television system in the City and to use and to occupy the streets therefore is not and shall not be deemed to be an exclusive right of permission. The City expressly reserves the right to grant similar non-exclusive franchises to other persons, firms or corporations to conduct television systems and to use the streets of the City therefore within the same or other areas of the City at any time or under any period of time.

SECTION 3: Notice concerning complaints. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the cable system.

SECTION 4: Modification of franchise standards. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this franchise within one year of the adoption of the modification, or at the time of franchise renewal, whichever occurs first.

## ARTICLE III

### Term

The franchise herein granted shall be for a term of ten (10) years unless the same shall sooner expire by reason of other provisions.

The term of this franchise shall commence on the first day of the first month following the date the grantee hereunder accepts and agrees to abide with the terms and conditions of this franchise by filing a written acceptance thereof with the City Clerk of the City of Osborne, Kansas; which acceptance shall be filed, if it is to be valid, within sixty (60) days from the effective date of the ordinance granting the franchise. If such acceptance shall not be filed within the time aforesaid, then the ordinance granting this franchise shall be deemed void and of no further force and effect and the offer of franchise contained in the ordinance will stand revoked.

## ARTICLE IV

### Forfeiture

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to revoke this franchise and all rights and privileges of the grantee hereunder in any of the following events or for any of the following reasons:

(1) Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the ordinance granting this franchise or has, by act or omission, violated any term or condition thereof;

(2) Any provision of such ordinance shall be finally adjudged by a court of law as invalid or unenforceable and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the franchise granted herein;

(3) The grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged a bankrupt; or

(4) All or part of grantee's facilities should be sold under an instrument to secure a debt and are not redeemed by the grantee within sixty (60) days from such sale; or

(5) The grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City or subscribers, under this franchise; or

(6) The City condemns all of the property of the grantee within the City by lawful exercise of eminent domain.

## ARTICLE V

### Ordinance of Revocation

No revocation provided for in the previous paragraph except for reasons of condemnation shall be effective unless or until the City Council shall have adopted an ordinance setting forth the cause and reason for the revocation and the effective date thereof, which ordinance shall not be adopted without thirty (30) days prior notice thereof to the grantee and an opportunity for the grantee to be heard on the proposed adoption of said proposed ordinance, If the revocation as proposed in said ordinance depends upon a finding of fact, such finding of fact is made by the City Council after hearing provided for, if requested by the grantee, shall be conclusive.

## ARTICLE VI

### Consideration

In consideration of the grant of the franchise to the grantee, the grantee shall pay to the City, an amount equal to two percent (2%) of the gross revenue from the operation of the business in said City. Such payment shall be made quarterly in four (4) installments, within 30 days of the end of the quarter during the terms of this ordinance. The City agrees to accept this sum as full and fair compensation.

## ARTICLE VII

### Indemnification

SECTION 1: Liability Insurance. The grantee shall concurrently with the filing of the acceptance of this franchise furnish to the City and file with the City Clerk at all times during the existence of this franchise maintain in full force at its own cost and expense a liability insurance policy in the amount of One Million Dollars (\$1,000,000) with a company approved by the City of Osborne and in a form satisfactory to the City Attorney indemnifying and defending the City, its officers, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others including but not limited to any liability for damages by reason of, or arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be transmitted or to be distributed by the grantee, and against any loss, costs; expense or damages resulting therefrom, arising out of the exercise or enjoyment of its franchise, irrespective of the amount of comprehensive liability policy required hereunder.

SECTION 2: Comprehensive Liability Policy. The grantee shall also concurrently with the filing of its acceptance of this franchise furnish to the City and file with the City Clerk at all time during the term of this franchise maintain in full force and effect at its own costs and expense, a general comprehensive liability insurance policy indemnifying and defending the City, its officers, boards, commissions, agents and employees with a company approved by the City of Osborne and in a form satisfactory to the City Attorney, from and against all claims by any person whatsoever for loss, for damage, for personal injury, death or the franchise herein granted or alleged to so have been caused or occurred with the minimum liability limits of Five Hundred Thousand Dollars (\$500,000) for personal injury or death to any one person and One Million Dollars (\$1,000,000) for personal injury or death to two or more persons in any one occurrence and Five Hundred Thousand Dollars (\$500,000) for damages to property damage resulting from any one occurrence.

## ARTICLE VIII

### Use and Installation

SECTION 1: Degree of Care. The grantee or any persons, firm or corporation erecting, constructing or maintaining any of the property used by or for the grantee shall at all times employ due care or the highest degree of care required by law under the facts and circumstance and shall maintain and install the property of the grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to, or which may tend to cause damage, injury or nuisance to the public.

SECTION 2: Location of Facility. All cable television facilities shall be so located as to cause minimum interference with the proper use of streets, and so as to cause



minimum interference with rights and reasonable convenience of property owners abutting the streets, and in no event shall any of such facilities be located so as to substantially interfere with the usual public travel on any street of the City.

SECTION 3: Damage to Public Property. Whenever the grantee shall cause or any person on its behalf shall cause any injuries or damage to any public property or street by or because of the installation, maintenance or operation of the cable television facilities, such injury or damage shall be immediately remedied in such fashion as directed by the City Council.

SECTION 4: Tree Trimming. The grantee shall have authority to trim trees upon and over hang the streets of the City so as to prevent the branches of such trees from coming in contact with wires, cables, and other facilities of the grantee. All trimming shall be done under the supervision of the City Superintendent at the expense of the Grantee.

## ARTICLE IX

### Removal and Abandonment of Property

If the use of any part of the grantee's cable television system is discontinued for a period of six (6) months, or if such system has been installed in any street without complying with the requirements of grantee's franchise, or if the franchise is terminated or revoked, the grantee shall promptly, upon being given thirty (30) days notice, remove from the streets, alleyways, etc. all its facilities other than that which the City of Osborne, Kansas, may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street from which such facilities have been removed to a condition satisfactory to the Osborne City Council.

Any property of the grantee remaining in place ninety (90) days after the termination or revocation of this franchise shall be considered permanently abandoned and shall become the property of the City of Osborne, Kansas.

## ARTICLE X

### Operation and Maintenance

The grantee shall render efficient service, make repairs promptly and only interrupt service for good cause for the shortest time possible. In order to limit failures and malfunctions of the cable television system to a minimum, and that the same might be promptly corrected at all times after notice of malfunction or failure, the grantee shall consistently maintain a listed telephone, which telephone shall so be operated that complaints or requests for repairs or adjustments because of malfunctions can be received at any time of day Sunday through Saturday and holidays.

Failures or malfunctions of the system shall be corrected by the grantee within twenty-four (24) hours after notice of such failure or malfunction except or unless such

failure or malfunction shall be over a substantial portion of grantee's system and shall have been caused by storm, fire, lightning, explosion, civil commotion or other similar catastrophe.

## ARTICLE XI

### Program Presentation

All programs of broadcasting stations carried by the grantee shall be distributed or transmitted to the subscriber without material degradation of picture quality or sound and without significant variation between the quality of picture or sound transmitted or distributed by the grantee to the subscribers between the programs of one broadcasting station and another, so far as the same may be within the control of the grantee.

## ARTICLE XII

### Compliance with the Law

Grantee shall, at all times during the term of this franchise, be subject to all lawful exercises of the police power of the City and to such reasonable regulations as the City shall prescribe for the general conduct of persons providing cable television service within the City.

## ARTICLE XIII

### Emergency Use

In the event of an emergency or disaster, the grantee shall, at the request of the City, make available its facilities to the City for emergency use during the period of such emergency or disaster and shall provide such personnel to operate properly under the circumstances.

## ARTICLE XIV

### Books and Records

The grantee shall file with the City Clerk's Office true and accurate maps or plats of all existing or proposed installation systems on the streets of the City.

## ARTICLE XV

### Sale or Lease of Franchise

The franchise shall be deemed a privilege to be held in personal trust by the grantee. It may not be sold, transferred, leased, assigned or disposed of in whole or in

part either by force or voluntary sale, consolidation or otherwise without the prior consent of the City Council, expressed by resolution, and then only under such conditions as may therein be prescribed.

## ARTICLE XVI

### Grantee Without Recourse

The grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any of the provisions or requirements of this franchise or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of the franchise.

## ARTICLE XVII

### Basic Service Requirements

The service or system shall be designed with stereo sound, and with capability in the future for digital transmission, and shall carry, at a minimum, the following:

- (A) Three local area networks mutually agreed upon,
- (B) Two educational television channels,
- (C) One weather channel.

## ARTICLE XVIII

### Grantee's Rates and Regulations

The rates and charges of the grantee for its services to any subscriber shall be fair and reasonable and no higher than necessary to meet all costs of service, assuming efficient and economical management, including a fair return on the fair value of the properties devoted to such service and such rates and charges shall not be unreasonable or be discriminatory.

## ARTICLE XIX

### Notice

Whenever under the terms of this franchise either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served upon the City it shall be delivered by first class mail to the City of Osborne, 128 North 1st Street, Osborne, Kansas 67473, and if the grantee then by delivering first class mail to such officer at such address as the grantee shall from time to time direct.

## ARTICLE XX

### Service to Public Facilities

The grantee shall provide without charge one connection to each elementary, high school, public or parochial school, and to each public library and city office and to provide service to these connections without charge.  
(11-18-99)

### **ORDINANCE NO. 917**

AN ORDINANCE GRANTING RISC COMMUNICATIONS, INC., d/b/a Nex-Tech, A SUBSIDIARY OF RURAL TELEPHONE SERVICE CO., INC., A KANSAS CORPORATION, A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS AND OTHER PUBLIC PLACES IN THE CITY OF OSBORNE, COUNTY OF OSBORNE, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

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

SECTION 1. This grant shall be effective in accordance with Section 13 below and shall continue for a term of ten (10) years from its effective date and for one successive term of like duration unless written notice is given by either the Grantor or the Grantee to the other 120 days or more prior to the expiration of the initial term or one successive term of its intention to terminate the same at the expiration of the then current term. Grantee agrees to provide notice to Grantor of the expiration date of the franchise agreement 180 days prior to the expiration of the initial term or one successive term.

SECTION 2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the City and its inhabitants, and render good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

SECTION 3. All poles and overhead wires or cables erected in accordance with this ordinance shall be placed, whether on streets, avenues, boulevards, alleys, or other public places, so as not to interfere with ordinary travel on such streets,

avenues, boulevards, alleys, or other public places. All poles erected under this ordinance shall be located so as not to injure any drains, sewers, catch basins, or other like public improvements. If such are injured, Grantee shall repair any damages caused to the satisfaction of the Mayor of the City, or the City may repair such damage and charge the cost to Grantee.

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

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

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

SECTION 7. In consideration for rights and privileges herein granted. Grantee shall pay to the City in arrears 2% of the annual gross receipts from billings for local exchange service rendered wholly within the corporate limits of the City. Said gross receipts are for the regular basic local exchange services rates to customers or subscribers for telephone services in the City, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Such payment shall be made quarterly in four (4) installments, within 30 days of the end of the quarter during the terms of this ordinance. The City agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

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

SECTION 9. It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its telephone system in the City. The City shall notify the Grantee's representative in the City within 30 days after the presentation of any claim or demand either by suit or otherwise made against the City on account of any negligence as aforesaid on the part of the Grantee. The Grantee shall carry sufficient insurance against liability to property damage of not less than \$500,000 as to any one accident and not less than \$1,000,000 as to any one accident as it may relate to damage to

property and persons, and such insurance shall insure to the benefit of the City on all claims against the City arising from the negligence of the Grantee.

SECTION 10. The franchise and all rights hereunder may be assigned by the Grantee, as well as all succeeding Grantees, at their option, subject to the approval of the City, which approval shall not be unreasonably withheld. The successors and/or assigns shall succeed to all the rights, duties, and the liabilities of the Grantee hereunder.

SECTION 11. The recovery of the charges from Grantee's customers is subject to the jurisdiction of the regulatory and state authorities and not the City. The obligation of Grantee to pay compensation under this Ordinance is contractual. The City makes no requirements as to the method Grantee uses to recover the payment.

SECTION 12. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.  
(11-20-01)

## **ORDINANCE NO. 952**

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

### ARTICLE I

#### Definitions

For the purpose of the grant of this franchise, the following terms shall have the meaning as described herein:

(1) "City" - shall mean the City of Osborne, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of Osborne, Kansas, as they now or shall hereafter exist.

(2) "Council" - shall mean the present governing body of the City of Osborne, Kansas, or any successor to the legislative powers of the present City Council.

(3) "Franchise" - shall mean the permission, license or authority given hereunder to conduct and operate a telecommunications system in the City of Osborne, Kansas, pursuant to the ordinance passed by the City Council.

(4) "Grantee" - shall mean Rural Telephone Service Company, Inc., its subsidiaries, successors, transferees or assigns of the Franchise granted herein.

(5) "Franchise Revenue" - shall mean the monthly revenues received by Grantee for the basic service rates from subscribers of the Grantee's local telephone service; provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the telecommunications system; (ii) revenues from optional calling features; (iii) any taxes on telecommunications service which are

imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency; or (iv) any revenues derived from installation charges.

(6) "Street" - shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City of Osborne, Kansas, for the purpose of public travel and shall include such other easements or right-of-ways as shall be now held or hereafter held by the City of Osborne, which shall within their proper use and meaning entitle the City of Osborne and its Grantee to use for the purpose of installing or transmitting telecommunication transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a telecommunications system.

(7) "Property of Grantee" - shall mean all property owned and installed or used by the Grantee in the conduct of its telecommunications business in the City of Osborne and under the authority of the Franchise granted herein.

(8) "Telecommunications System" - shall mean all equipment used to transport voice communications.

(9) "Subscriber" - shall mean any person or entity receiving for any purpose all or one of the services offered within the Grantee's Telecommunications System.

(10) "Person" - shall mean any individual or association of individuals, or any firm, corporation or other business entity.

(11) "Facilities of Grantee" or "Telecommunications Facilities" - shall mean property of the Grantee used in operation of the Telecommunications System.

## ARTICLE II

### Grant of Franchise

SECTION 1: General Grant. The City hereby grants to Grantee the right and privilege to construct, erect, operate and maintain a Telecommunications System within the City and in so doing to use the streets of the City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a Telecommunications System within the City of Osborne, Kansas.

SECTION 2: Non-exclusivity. The authority given to Grantee in the above section is not and shall not be deemed to be an exclusive right of permission. The City expressly reserves the right to grant similar non-exclusive franchises to other persons, firms or corporations and allow them to use the streets of the City within the same or other areas of the City as Grantee at any time; provided, however, that such other franchises do not interfere or create interference with Grantee's Telecommunications System already established and said other franchisees shall not be extended preferential treatment over Grantee.

SECTION 3: Notice concerning complaints. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the Telecommunications System.

SECTION 4: Modifications. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this Franchise within one year of the adoption of the modification, or at the time of renewal, whichever occurs first. It shall also be the policy of the City to amend this Franchise, upon application of Grantee, when necessary to enable Grantee to take advantage of any developments in the field of telecommunications which would afford it an opportunity to more effectively, efficiently or economically serve its customers, and to enable Grantee to conform to the Rules and Regulations of the Kansas Corporation Commission and the Federal Communications Commission as they may be amended from time to time.

### ARTICLE III

#### Term

The term of this ordinance shall be for ten (10) years and successive terms of five (5) years unless written notice is given by either the City or the Grantee to the other, 365 days or more prior to the expiration of the initial term, or any successive term, of its intention to terminate the same at the expiration of the then current term.

### ARTICLE IV

#### Forfeiture

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to revoke this Franchise and all rights and privileges of the Grantee hereunder for any of the following reasons:

(1) Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the ordinance granting this Franchise or has, by act or omission, violated any term or condition thereof.

(2) Any provision of such ordinance shall be finally adjudged by a court of law as invalid or unenforceable, and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the Franchise granted herein;

(3) The Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;

(4) The Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City or subscribers, under this Franchise; or

(5) The City condemns all of the Property of the Grantee within the City by lawful exercise of eminent domain.

### ARTICLE V



### Ordinance of Revocation

No revocation provided for in the previous paragraph except for reasons of condemnation, shall be effective unless or until the City Council provides written notice to Grantee, and Grantee is given at least 30 days to cure any alleged breach of Article IV herein. If after the expiration of the time to cure, City Council believes Grantee has failed to cure, the City Council must adopt an ordinance setting forth the cause and reason for the revocation and the effective date thereof in order to effectuate any revocation. Such ordinance shall not be adopted without thirty (30) days prior written notice thereof to the Grantee and an opportunity for the Grantee to be heard on the proposed adoption of said proposed ordinance. If the revocation as proposed in said ordinance depends upon a finding of fact, such finding of fact must be made by the City Council after a conclusive hearing is provided, if requested by the Grantee.

### ARTICLE VI

#### Compensation

In consideration of the grant of the Franchise to the Grantee, the Grantee shall pay to the City, in arrears, an amount equal to one percent (1%) of the annual Franchise Revenue from the operation of the business in said City. This fee will be collected from the subscribers. Such payment shall be made in one (1) payment, on or before the first day of February of each year during the terms of this ordinance. The City agrees to accept this sum as full and fair compensation.

## ARTICLE VII

### Indemnification

The Grantee shall, concurrently with the filing of the acceptance of this Franchise, furnish to the City and file with the City Clerk a liability insurance policy in the amount of One Million Dollars (\$1,000,000) with a company approved by the City of Osborne and in a form satisfactory to the City Attorney indemnifying and defending the City, its officers, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others and against any loss, costs, expense or damages resulting there from, arising out of the exercise or enjoyment of this Franchise.

## ARTICLE VIII

### Use and Installation

SECTION 1: Degree of Care. The Grantee or any persons, firm or corporation erecting, constructing or maintaining any of the property used by or for the Grantee shall at all times employ due care or the highest degree of care required by law under the facts and circumstances and shall maintain and install the property of the Grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to damage, injure or create a public nuisance.

SECTION 2: Location of Facility. All telecommunications facilities shall be located so as to cause minimum interference with the proper use of streets and the rights and reasonable convenience of property owners abutting the streets. In no event shall such facilities be located so as to substantially interfere with the usual public travel on any street of the City.

SECTION 3: Damage to Public Property. Whenever Grantee or any person on its behalf causes any injuries or damage to any public property or street by or because of the installation, maintenance or operation of the telecommunications facilities, such injury or damage shall be immediately remedied in such fashion as directed by the City Superintendent.

SECTION 4: Tree Trimming. Grantee shall have authority to trim trees upon and over the streets of the City so as to prevent the branches of such trees from coming in contact with wires, cables and other facilities of Grantee. All trimming shall be done under the supervision of the City Superintendent at the expense of the Grantee.

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

## ARTICLE IX

## Removal and Abandonment of Property

If the Franchise is terminated or revoked, the Grantee shall promptly, upon ninety (90) days written notice, remove from the streets all its facilities other than that which the City of Osborne, Kansas, may permit to be abandoned in place. In the event of such removal, the Grantee shall promptly return the street to the like or similar condition which it was in before the facilities were placed.

## ARTICLE X

### Operation and Maintenance

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its services under this Franchise and to assure an uninterrupted service to all of its customers. Grantee shall render efficient service, make repairs promptly and only interrupt service for good cause for the shortest time possible. In order to limit failure and malfunctions of the Telecommunications System and to enable prompt correction at all times after notice of malfunction or failure, Grantee shall consistently maintain a listed telephone, which shall be operated to receive complaints, requests for repairs or adjustments because of malfunctions at any time of day Sunday through Saturday, including holidays.

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

## ARTICLE XI

### Compliance with the Law

Grantee shall, at all times during the term of this Franchise, be subject to all lawful exercises of the police power of the City and to such reasonable regulations as the City shall prescribe for the general conduct of persons providing telecommunications service within the City.

## ARTICLE XII

### Sale or Lease of Franchise

The Franchise shall be deemed a privilege to be held in personal trust by the Grantee. It may not be sold, transferred, leased, assigned or disposed of in whole or in

part either by force of voluntary sale, consolidation or otherwise without prior notification to the City Council.

## ARTICLE XIII

### Grantee Without Recourse

Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of the Franchise.

## ARTICLE XIV

### Grantee's Rates and Regulations

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

## ARTICLE XV

### Notices

Whenever, under the terms of this Franchise, either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served upon the City it shall be delivered by certified mail to the Mayor & City Council do City Clerk, 128 N 1st St., Osborne, KS 67473. If to the Grantee, it shall be delivered by certified mail to CEO/General Manager, 145 N. Main, Lenora, Kansas 67645.

## ARTICLE XVI

### Miscellaneous Provisions

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

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

SECTION 3: Final Approval. This Ordinance shall be read in full at three regular meetings of the governing body. Immediately after the final passage, it shall be published in the official city newspaper, once a week for two (2) consecutive weeks.

SECTION 4: Costs. Grantee shall assume the cost of publication of this Ordinance. Grantee shall reimburse the City for these costs upon presentation of the publication costs.  
(09-05-07)