

public notice

ORDINANCE NO. 1497

A CONTRACT FRANCHISE ORDINANCE GRANTING TO SOUTHWESTERN BELL TELEPHONE COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE AND THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN AND EXTEND A TELECOMMUNICATIONS SYSTEM IN THE CITY OF GOODLAND, KANSAS, PRESCRIBING THE TERMS OF SAID GRANT AND RELATING THERETO; AND REPEALING ORDINANCE 1409 AND ALL OTHER ORDINANCES AND RESOLUTIONS AND PARTS THEREOF INCONSISTENT OR IN CONFLICT WITH THE TERMS HEREOF.

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

SECTION 1. Pursuant to K.S.A. 2002 Supp. 12-2001, a contract franchise ordinance is hereby granted to Southwestern Bell Telephone Company (SWBT), a telecommunications local exchange provider providing local exchange service within the City of Goodland, Kansas ("City"), subject to the provisions contained hereafter. The term of this ordinance shall be for a period beginning April 1, 2003 and ending March 31, 2006. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

SECTION 2. For the purposes 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 served by such simulated 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 telecommunication 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.

"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 year.

"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; (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 revenue, including, but not limited to, revenues from extended area service, the sale or 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. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

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

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

"Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunication 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 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 within forty-five (45) days after the last day of the remittal period. For the term of this contract franchise ordinance, said compensation shall be a sum equal to seventy-five cents (\$.75) per month per access line. Thereafter, compensation for

the term of this contract franchise ordinance shall continue to be based on a sum equal to (\$.75) per access line; unless the City notifies SBC prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the percentage of gross receipts for the following calendar year or that it intends to switch to an access line fee for the following calendar year. In the event City elects compensation based on an access line fee, nothing herein precludes City from switching back to a gross receipts fee provided City notifies SBC prior to ninety days (90) before the end of the calendar year that it intends to elect a gross receipts fee for the following calendar year. Beginning January 1, 2004, any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001.

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

SECTION 5. The Telephone Company shall correctly code all customers that are located within the corporate limits of the City, provided that the City shall give Telephone Company notice of boundary changes as provided below. Coding shall be updated to reflect annexation and other changes in City boundaries, and the associated changes in customers and access lines, within thirty (30) days of the date City provides Telephone Company written notice of the annexation or other changes in boundaries and a listing of addresses affected by such changes. Such notice shall be sent to:

Southwestern Bell Telephone Company
823 Quincy, Room 801
Topeka, Kansas 66612.

In the event of annexations, Telephone Company may request additional time in writing to recode customers, which request will not be unreasonably denied.

SECTION 6. The authority of SWBT to use and occupy 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. Nothing herein shall be construed to limit the authority of the City to require a competitive infrastructure provider to enter into a contract franchise ordinance.

SECTION 7. As a condition of this contract franchise ordinance, SWBT 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 SWBT's right to challenge in good faith such requirements as established by the FCC, KCC, or other City Ordinance. SWBT shall also comply with all applicable laws, statutes and/or ordinances, subject to SWBT's right to challenge in good faith such laws, statutes and /or ordinances.

SECTION 8. This contract franchise ordinance does not provide SWBT the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Upon SWBT's 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 SWBT. SWBT agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

SECTION 9. If requested by City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, SWBT shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of SWBT's failure to timely relocate or adjust its facilities shall be borne by SWBT.

SECTION 10. The City may require SWBT to repair all damage to a public right-of-way caused by the activities of SWBT, or of any agent, affiliate, employee, or subcontractor of SWBT, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way, to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If SWBT fails to make the repairs required by the City, the City may effect those repairs and charge SWBT the cost of those repairs. If the City incurs damages as a result of a violation of this section, then the City shall have a cause of action against SWBT for violation of this section, and may recover its damages, including reasonable attorney fees, if SWBT is found liable by a court of competent jurisdiction.

SECTION 11. Permission is hereby granted to SWBT to trim trees upon and overhanging streets, alleys, sidewalks and public places of said city so as to prevent the branches of such trees from coming in contact with SWBT's facilities, all the said trimming shall comply with all applicable laws, statutes and/or ordinances.

SECTION 12. Nothing herein contained shall be construed as giving SWBT any exclusive privileges, nor shall it affect any prior or existing rights of SWBT to maintain a telecommunications system within the City.

SECTION 13. SWBT shall collect and remit compensation as described in Section 3 on those access lines that have been resold or leased to another telecommunications local exchange service provider.

SECTION 14. 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 SWBT shall be delivered by first class mail or by personal delivery to:

Southwestern Bell Telephone Company
Area Manager - Municipal Affairs
220 E 6th Street, Room 505
Topeka, Kansas 66603

SECTION 15. Failure to Enforce. The failure of either party to enforce and remedy any non-compliance 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 16. SWBT shall hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability and cost including attorney fees, to the extent occasioned in any manner by SWBT's occupancy of rights-of-way. In the event a claim shall be made or an action instituted against the City growing out of such occupancy of the rights-of-way by facilities of SWBT, then upon notice by the

City to SWBT, SWBT will assume liability for the defense of such actions at the cost of the SWBT, subject to the option of the City to appear and defend, at its own cost, any such case.

SECTION 17. Upon expiration of this franchise, whether by lapse of time, by agreement between SWBT and the City, or by forfeiture thereof, SWBT shall have the right to remove from public property any all of its lines, pole, towers and other appurtenances and equipment used in its said business within a reasonable time after such expiration, but in such event, it shall be the duty of SWBT, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which said lines, poles, towers, other appurtenances and other equipment are removed to as good condition as the same were before said removal was effected.

SECTION 18. If any clause, sentence, or section of this ordinance shall be held to be invalid, it shall not affect the remaining provision of this ordinance.

SECTION 19. Force Majeure. Each and every provision hereof shall be subject to the acts of God, fires, strikes, riots, floods, war and other disasters beyond SWBT's or the City's control.

SECTION 20. Ordinance No. 1409 shall be canceled, annulled, repealed and set aside.

SECTION 21. This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise shall be effective until the ordinance granting the same has been adopted as provided by law.

SECTION 22. All of the regulations provided in this ordinance are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or City official or employee charged with enforcement of this ordinance, acting for the City in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties. Neither the City nor the Telephone Company by accepting this ordinance waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this ordinance, including seeking injunctive relief in a court of competent jurisdiction.

PASSED AND APPROVED by the Governing Body of the City of Goodland, Kansas, this 18th day of February, 2003.

By: Tom Rohr, Chairman of the City Commission of the City of Goodland

ATTEST:
By: Mary P. Volk City Clerk
ATTEST: SEAL

APPROVED AS TO FORM:
By: Perry Warren, City Attorney

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IN THE DISTRICT COURT OF SHERMAN COUNTY, KANSAS

IN THE MATTER OF THE ESTATE OF SARAH A. BOEHME, DECEASED
CASE NO. 03 P 05

NOTICE OF HEARING AND NOTICE TO CREDITORS

THE STATE OF KANSAS TO ALL PERSONS CONCERNED:

You are hereby notified that on February 7, 2003, a Petition was filed in this Court by William D. Boehme, Goodland, Kansas, a devisee and legatee named in the Last Will and Testament of Sarah A. Boehme, deceased, dated August 13, 1999, with codicil dated August 1, 2001, praying that the same be admitted to probate and record and that Letters Testamentary be granted to a suitable person.

You are required to file your written defenses thereto on or before the 11th day of March, 2003, at ten (10:00) o'clock A.M. of said day, in this Court, in the City of Goodland, in Sherman County, Kansas, at which time and place the cause will be heard. Should you fail, judgment and decree will be entered in due course upon the Petition.

All creditors are notified to exhibit their demands against the estate within four (4) months from the date of first publication of this Notice, as provided by law, and if their demands are not thus exhibited, they shall be forever barred.

WILLIAM D. BOEHME
Petitioner

Michael V. Foust
Attorney at Law
126 West 11th Street
P.O. Box 778
Goodland, Kansas 67735
(785) 899-5687
Attorney for Petitioner

Published in The Goodland Star-News on Fridays February 14, February 21 and February 28, 2003.

Abandoned Motor Vehicle
Notice of sale of abandoned motor vehicle in the possession of Marilyn I Bohl and/or Larry D Bohl. The herein described vehicle will be sold at public auction on February 22, 2003, at 10:00 a.m., to the highest bidder for cash, if the owner does not claim the same prior to time of sale and pay for removal, storage and publication costs incurred.
Description of vehicle:
Make Chevrolet, Model Pickup, Serial or identification number CKL149J155873, Year 1979, Vehicle is in storage at 6965 Highway 27.
Published in The Goodland Star-News, Goodland, Kansas, on Friday February 7, 14, 21, 2003

Temporary position, farm worker, from 4-1-2003 to 11-30-2003, 48 hours per week, 3/4 guaranteed, hourly wage \$8.24 (or AEWR) plus housing for workers beyond commuting area. Transportation and subsistence expenses to worksite provided/paid 50% completion of work contract. Tools and equipment are provided at no cost. Must have minimum of 3 months experience. Must have a class A CDL, must provide employer with current driver's abstract showing acceptable driving record. Duties include driving and operating farm machinery to plant, harvest, and store grain. Operate and repair farm machinery, basic literacy and math skills also required. Workers interested in the job should contact the COLBY JOB SERVICE located at 485 N Chick Avenue, Colby, Kan 67701-0984. Phone number 785-462-6862 and refer to Job Order #KS4107442.