

ORDINANCE NO. 1564

A CONTRACT FRANCHISE ORDINANCE GRANTED TO S & T COMMUNICATIONS INC., a Telecommunications local exchange service provider PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF GOODLAND, KANSAS.

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

SECTION 1. Pursuant to K.S.A. 2005 Supp. 12-2001, a contract franchise ordinance is hereby granted to S & T Communications, Inc., a telecommunications local exchange service provider providing local exchange service within the City of Goodland, Kansas ("City"), subject to the provisions contained hereafter. The initial term of this contract franchise ordinance shall be for a period of two (2) years beginning September 1, 2006, and ending August 31, 2008. Thereafter, this contract franchise ordinance will automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the contract franchise ordinance at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this contract franchise ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 2005 Supp. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the contract franchise ordinance. Compensation for said contract franchise ordinance shall be established pursuant to 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 inter-office 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) non-recurring 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, privateline 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.

"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 remittance period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to five percent (5%) of gross receipts. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to five percent (5%) of gross receipts; unless the City notifies S & T Communications Inc. 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 S & T Communications Inc. 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. Any in-

creased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) K.S.A. 2002 Supp. 12-2001. **SECTION 4:** The City shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance.

SECTION 5. As a condition of this contract franchise ordinance, S & T Communications, Inc., 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 S & T Communications' Inc. right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. S & T Communications Inc. shall also comply with all applicable laws, statutes and/or ordinances, subject to S & T Communications Inc. right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6: Nothing herein contained shall be construed as giving S & T Communications Inc. any exclusive privileges, nor shall it affect any prior or existing rights of S & T Communications Inc., to maintain a telecommunications system within the City.

SECTION 7: S & T Communications Inc., 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 8: The City agrees to provide S & T Communications Inc., with notification in the event that it annexes property into the corporate boundaries of the City that would require S & T Communications Inc., to collect and pay a franchise fee on which prior to the annexation of the property S & T Communications Inc., was not required to pay a franchise fee. The City agrees to provide S & T Communications Inc., with notification in the event the City rennumbers or renames any streets that would require S & T Communications Inc., to collect and pay a franchise fee for on which prior to the renumbering or renaming of the streets S & T Communications Inc., would not have been required to pay a franchise fee. The City agrees that in the event the City does not provide S & T Communications Inc., with notice of an annexation or renumbering and/or renaming of the streets, S & T Communications Inc., is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to S & T Communications Inc., of such.

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 S & T Communications shall be delivered by first class United States mail or by personal delivery to: General Manager S & T Communications Inc 320 Kansas Ave. Brewster, KS 67732

SECTION 10: 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 11: Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond S & T Communications Inc. or the City's control.

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 S & T Communications Inc. 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 S & T Communications Inc. 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 S & T Communications Inc. 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 S & T Communications Inc. waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or S & T Communications Inc. 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 S & T Communications Inc. 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. This ordinance shall take effect and be in force from and after its publication in the Goodland Star News, but not before sixty (60) days after its final passage all pursuant to K.S.A. 12-2001(b)(6). **PASSED AND APPROVED** by the Governing Body of the City of Goodland, Kansas, on this _____ day of _____, 2006.

Rick Billinger, Mayor
ATTEST:
Mary P. Volk, City Clerk
APPROVED AS TO FORM:
Jeffery Mason, City Attorney

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IN THE DISTRICT COURT OF SHERMAN COUNTY, KANSAS CIVIL DEPARTMENT
Bankwest Plaintiff,
vs.
Jose Moncada, et al. Defendants.
Case No. 06CV36
Court Number:
Pursuant to K.S.A. Chapter 60

Notice Of Sale
Under and by virtue of an Order of Sale issued to me by the Clerk of the District Court of Sherman County, Kansas, the undersigned Sheriff of Sherman County, Kansas, will offer for sale at public auction and sell to the highest bidder for cash in hand, at the Front Door of the Courthouse at Goodland, Sherman County, Kansas, on October 10, 2006, at 10:00 AM, the following real estate:

A tract of land in the Southeast Quarter (SE 1/4) of Section Seven (7), Township Eight (8) South, Range Thirty-nine (39) West of the Sixth Principal Meridian, Sherman County, Kansas, described as follows:

Commencing at a point which is 719.35 feet South and 33.0 feet West of the Northeast corner of said Southeast Quarter (SE 1/4) at a point on the West right-of-way line of Caldwell Avenue; thence South and parallel to the East line of said SE 1/4 a distance of 100 feet to the point of beginning; thence West and parallel to the South line of said SE 1/4 a distance of 185.50 feet; thence South and parallel to the East line of said SE 1/4 a distance of 100 feet; thence East and parallel to the South line of said SE 1/4 a distance of 164.00 feet; thence North and parallel to the East line of said SE 1/4 a distance of 100 feet to the point of beginning; ALSO KNOWN AS Lot Five (5) in Block One (1), Roeder Subdivision to the City of Goodland, Kansas;

PLUS A TRACT described as follows: Commencing at a point which is 719.35 feet South and 33.0 feet West of the Northeast (NE) corner of the Southeast Quarter SE 1/4 of Section Seven (7), Township Eight (8) South, Range Thirty-nine (39) West of the Sixth Principal Meridian, Sherman County, Kansas; thence South and parallel to the East line of said SE 1/4 a distance of 100 feet to the point of beginning; thence

West 27 feet; thence south 100 feet; thence East 27 feet; thence North 100 feet to the point of beginning;
PLUS A TRACT described as follows: Commencing at a point which is 719.25 feet South and 33.0 feet West of the Northeast (NE) corner of the Southeast Quarter (SE 1/4) of Section Seven (7), Township Eight (8) South, Range Thirty-nine (39) West of the Sixth Principal Meridian, Sherman County, Kansas; thence South and parallel to the East line of said SE 1/4 a distance of 100 feet; thence West and parallel to the South line of said SE 1/4 a distance of 165.50 feet to the point of beginning; thence South 100 feet; thence West 20 feet; thence North 100 feet; thence East 20 feet to the point of beginning;

PLUS A TRACT described as follows: Commencing at a point which is 719.35 feet South and 33.00 feet West of the Northeast (NE) corner of the Southeast Quarter (SE 1/4) of Section Seven (7) Township Eight (8) South, Range Thirty-nine (39) West of the Sixth Principal Meridian, Sherman County, Kansas, at a point on the West right-of-way line of Caldwell Avenue; thence West 185.50 feet; thence South 100 feet to the point of beginning; thence West and parallel to the South line of said SE 1/4 a distance of 164.00 feet; thence South and parallel to the East line of said SE 1/4 a distance of 100 feet; thence East and parallel to the South line of said SE 1/4 a distance of 164.00 feet; thence North and parallel to the East line of said SE 1/4 a distance of 100 feet to the point of beginning., commonly known as 1126 North Caldwell, Goodland, KS 67735 (the "Property")

to satisfy the judgment in the above-entitled case. The sale is to be made without appraisal and subject to the redemption period as provided by law, and further subject to the approval of the Court. For more information, visit www.Southlaw.com.

Kevin Butts, Sheriff
Sherman County, Kansas
SOUTH & ASSOCIATES, P.C.
Brian R. Hazel (KS #21804)
6363 College Boulevard,
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