

ORDINANCE NO. 445

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

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF KENSINGTON, SMITH COUNTY, KANSAS:

ARTICLE 1
DEFINITIONS

For the purpose of granting this Franchise, the following terms shall have the meaning as described herein:

1.1. City. "City" shall mean the City of Kensington, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the city limits of Kensington, Kansas, as they now or shall hereafter exist.

1.2. City Council. "City Council" shall mean the present governing body of the City or any successor to the legislative powers of the present City Council.

1.3. Franchise. "Franchise" shall mean the permission, license or authority given hereunder to conduct and operate a telecommunications system in the City, pursuant to this Ordinance passed by the City Council.

1.4. Grantee. "Grantee" shall mean Rural Telephone Service Company, Inc. dba Nex-Tech, its subsidiaries (namely Nex-Tech, LLC) successors, transferees or assigns of the Franchise granted herein.

1.5. Franchise Revenue. "Franchise Revenue" shall mean a flat monthly fee or a percentage of annual Franchise Revenue received by Grantee for basic service rates collected from subscribers of 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 imposed directly or indirectly on any subscriber by any governmental unit or agency, and collected by Grantee on behalf of such governmental unit or agency; (iv) any revenues derived from installation charges; or (v) revenues derived from Internet access.

1.6. Street. “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 for the purpose of public travel. It shall also include such other easements or right-of-ways as shall be now or hereafter held by the City, and which shall within their proper use and meaning entitle the City and Grantee to install or transmit telecommunications 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.

1.7. Property of Grantee. “Property of Grantee” shall mean all property owned and installed or used by Grantee in the conduct of its telecommunications business in the City and under the authority of the Franchise granted herein.

1.8. Telecommunications System. “Telecommunications System” shall mean all equipment used to transport voice communications.

1.9. Subscriber. “Subscriber” shall mean any person or entity receiving, for any purpose, one or more of the services offered within Grantee’s Telecommunications System.

1.10. Person. “Person” shall mean any individual or association of individuals, or any firm, corporation or other business entity.

1.11. Telecommunications Facilities. “Telecommunications Facilities” shall mean property of the Grantee used in operation of the Telecommunications System.

ARTICLE 2 GRANT OF FRANCHISE

2.1. 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.

2.2. Non-Exclusivity. The authority given to Grantee in Section 2.1 is not and shall not be deemed to be an exclusive right or permission. The City expressly reserves the right to grant similar non-exclusive franchises to other Persons 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.

2.3. Notice Concerning Complaints. Notice of the procedures for reporting and resolving complaints shall be given to each Subscriber at the time of the initial subscription to the Telecommunications System.

2.4. 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 (1) 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 telecommunications field which would afford Grantee an opportunity to more effectively, efficiently or economically serve its Subscribers, 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 3 TERM

The initial term of this Ordinance shall be for a period of one (1) year and shall automatically renew for successive one (1) year terms unless written notice of intent to terminate is given by either the City or Grantee, to the other, at least 30 days prior to expiration of the then current term.

ARTICLE 4 FORFEITURE

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional, 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:

- a. Grantee fails, after thirty (30) days prior written notice, to comply with any of the provisions of this Ordinance granting this Franchise or has, by act or omission, violated any term or condition thereof;
- b. Any provision of this Ordinance is adjudged by a court of law as invalid or unenforceable, and the City Council finds that such provision constitutes a consideration material to the continuance of the Franchise granted herein;
- c. Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;
- d. Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City or its Subscribers under this Franchise; or
- e. The City condemns all Property of Grantee within the City by lawful exercise of eminent domain.

ARTICLE 5
ORDINANCE OF REVOCATION

No revocation provided for in Article 4, except for reasons of condemnation as described in Article 4(e), shall be effective unless or until the City Council provides written notice to Grantee, and Grantee is given at least thirty (30) days to cure any alleged breach of Article 4 herein. If, upon 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 Grantee along with an opportunity for 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 Grantee.

ARTICLE 6
COMPENSATION

In accordance with the laws of the State of Kansas (§12-2001), the municipality is entitled to request a franchise fee from Nex-Tech based on access lines or percentage of gross revenues (as defined by Kansas statutes or otherwise agreed upon by both parties). The Municipality acknowledges this right and hereby waives such right along with any fee payment arrangement.

ARTICLE 7
INDEMNIFICATION

Grantee shall, concurrently with the filing of the acceptance of this Franchise, furnish to the City and file with the City Clerk proof of a liability insurance policy in the amount of One Million Dollars (\$1,000,000) with a company approved by the City and in a form satisfactory to the City Attorney. Such policy shall indemnify and defend the City, its officers, councils, 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, expenses or damages resulting there from or arising out of the exercise or enjoyment of this Franchise.

ARTICLE 8
USE AND INSTALLATION

8.1. Degree of Care. Grantee or any Persons erecting, constructing or maintaining any of the Property of 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 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.

8.2. 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 Telecommunications Facilities be located so as to substantially interfere with the usual public travel on any Street within the City.

8.3. 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 at Grantee's expense.

8.4. 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 Telecommunications Facilities. All trimming shall be done under the supervision of the City Superintendent at Grantee's expense.

8.5. 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-ways including, but not limited to, Streets, avenues, alleys, bridges and the public grounds and places within the limits of the City at Grantee's expense.

ARTICLE 9 REMOVAL AND ABANDONMENT OF PROPERTY

If this Franchise is terminated or revoked, Grantee shall remove from the Streets all of its Telecommunications Facilities other than those which the City may permit to be abandoned in place. In the event of such removal, Grantee shall return the Street to similar condition as it was in before the Telecommunications Facilities were placed.

ARTICLE 10 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 (48) hours advance notice to arrange for such temporary wire changes.

ARTICLE 11
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 12
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 13
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 14
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 made in writing, and delivered by certified mail, postage prepaid, return receipt requested, as follows:

If to the City:

Kensington City Clerk
101 S Main
Kensington, KS 66951
Phone:

If to Grantee:

Community Development/Legal Analyst
Nex-Tech
PO Box 158
Lenora, KS 67645

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 Supersedes 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 supersedes the previously adopted Ordinances.

15.2 Binding Effect. All provisions of this Ordinance shall be binding upon Grantee and all its subsidiaries, successors, transferees and assigns, whether expressly stated herein or not.

15.3 Assignment. City shall not sell, assign or transfer this Agreement or any part thereof without the prior written consent of Grantee; however, Grantee may, without the consent of City assign any or all of its rights and obligations under this Agreement to its parent, any subsidiary (of Grantee or its parent), or any affiliate (of Grantee or its parent) or to any successor in interest pursuant to a sale of stock or assets, merger, acquisition, or reorganization.

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

PASSED AND ADOPTED by the City Council of the City of Kensington, Kansas, on this 11th day of January, 2023.

EFFECTIVE DATE: 01/01/2023

CITY OF KENSINGTON, KANSAS

By: Max Kullman
Mayor

ATTEST:

Amber B. Hardacre
City Clerk

VIDEO SERVICE AGREEMENT

City of Kensington

Nex-Tech, LLC, a Kansas Limited Liability Company and wholly-owned subsidiary of Rural Telephone Service Co., Inc. (hereinafter referred to as "Nex-Tech"), was granted authorization by the State of Kansas, to provide video service in the City of Kensington, Kansas (hereinafter referred to as "Municipality"), as defined in Nex-Tech's Statewide Video Service Authorization (KCC Docket No. 07-NTHT-1054-VSA). Video services are provided in accordance with that authorization.

Nex-Tech acknowledges and agrees to comply with the Municipality's local right-of-way ordinance to the extent the ordinance is applicable to Nex-Tech and not contrary to state and federal laws and regulations. Nex-Tech hereby reserves the right to challenge the lawfulness or applicability of such ordinance to Nex-Tech. By entering into this Agreement, neither the Municipality's nor Nex-Tech's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into this Agreement, neither the Municipality nor Nex-Tech waives any rights, but instead expressly reserves all rights, remedies, and arguments the Municipality or Nex-Tech may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.

In accordance with the laws of the State of Kansas (§12-2024), the municipality is entitled to request a video service fee from Nex-Tech based on a percentage of gross revenues (as defined by Kansas statutes or otherwise agreed upon by both parties). This fee would be collected as a "pass-through" from subscribers. The Municipality acknowledges this right and hereby waives such right along with any fee payment arrangement.

Nex-Tech may be contacted by the Municipality, or its subscribers toll free at (877) 625-7872. Nex-Tech agrees to update this contact information with the Municipality within fifteen (15) calendar days in the event such contact information changes.

PASSED AND ADOPTED by the governing body of the Municipality, State of Kansas, this 5th day of December, 2022.

EFFECTIVE DATE: 01/01/2023

City of Kensington

By: Max Kuhlman

Printed Name: Max Kuhlmann

Title: Mayor

Attest: Amber B. Hudacre
Clerk