

ORDINANCE NO. G-1120

AN ORDINANCE GRANTING TO UNITE PRIVATE NETWORKS, LLC A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS LOCAL EXCHANGE SYSTEM IN THE CITY OF JUNCTION CITY, KANSAS AND PRESCRIBING THE TERMS OF SUCH CONTRACT FRANCHISE

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

SECTION 1. FRANCHISE GRANTED

Pursuant to KSA 12-2001, a contract franchise ordinance is hereby granted to Unite Private Networks, LLC, a Delaware limited liability company with a license to do business in the State of Kansas, and its successors and assigns ("Grantee"), a telecommunications local exchange service provider, providing telecommunications local exchange service with the City of Junction City, Kansas ("City"). Grantee is hereby granted the right, in operating a telecommunications local exchange service, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telecommunications plant, and telecommunications apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telecommunications poles and manholes and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other Public right-of way of the City of Junction City, 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 right-of way for the purpose of such business under the terms and restrictions set out in this Ordinance.

SECTION 2. DEFINITIONS.

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

"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 assess 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 nonrecurring local exchange service revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale 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.

“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 non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

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

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

SECTION 3. TERM.

This grant shall be effective in accordance with Section 13, below and shall, from its effective date, continue for a term that is the lesser of ten (10) years or the duration of the term between Grantee and the Geary County School District, and for successive terms of one (1) year unless written notice is given by either the City or the Grantee to the other one hundred twenty (120) 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.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross receipts. To determine the franchise fee, Grantee shall calculate its Gross receipts and multiply such receipts by 5%.
- b. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12- 2001, and amendments thereto.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- h. Grantee shall remit a Gross receipts (franchise) fee to the City on those Access lines that have been resold to another telecommunications Local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.
- i. 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 payments. This franchise shall not be exclusive.

SECTION 5. USE OF PUBLIC RIGHT-OF-WAY

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of 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. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City's current and future ordinances for managing the use and occupancy of the Public Right-of-way, and amendments thereto.
- c. Grantee shall participate in the Kansas One Call utility location program.
- d. 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 and, if such be injured, Grantee shall repair any damages caused to the satisfaction of the City and, in default thereof, the City may repair such damage and charge the cost to Grantee.
- e. 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.
- f. 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 telecommunications 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.
- g. 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 6. INDEMNITY AND HOLD HARMLESS

Grantee, its successors and assigns, in the construction, maintenance and operation of its telecommunications system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property. Grantee, its successors and assigns, shall hold and save the City, its officers, employees, agents and authorized contractors harmless from any and against all claims, damages, expense, liability, and costs, including reasonable attorney fees, caused by the negligence, in whole or in part, of Company employees, agents, or servants, related to Grantee's occupancy of the Public right-of-way. In the event a claim shall be made or an action shall be instituted against the City arising out of Grantee's occupancy of the Public right-of-way, then upon notice by the City to Grantee, Grantee shall assume responsibility for the defense of such actions at the cost of Grantee, subject to the option of the City to appear and defend.

SECTION 7. ASSIGNABILITY

The franchise and all rights hereunder may be assigned by the Grantee, as well as all succeeding Grantees, at their option, and the successors and/or assigns shall succeed to all the rights, duties, and liabilities of the Grantee hereunder. Said assignments shall be made only under the Laws of the State of Kansas. Grantee shall give the City written notice of any assignment of this franchise and the rights granted hereunder no less than sixty (60) days prior to the effective date of any such assignment.

SECTION 8. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

If to City: City Clerk
 City of Junction City, Kansas
 700 North Jefferson
 Junction City, KS 66441

If to UPN: Unite Private Networks, LLC
Attn: Matthew Van Hoesen
950 West 92 Hwy, Suite 203
Kearney, MO 64060
(816) 903-9400

SECTION 9. PAYMENT OF COSTS.

In accordance with Kansas statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 10. ACCEPTANCE OF TERMS.

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the State of Kansas, and such contract shall be deemed effective on the date Grantee files acceptance with the City.

SECTION 11. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

SECTION 12. FORCE MAJEURE.

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

SECTION 13. EFFECTIVE DATE.

This ordinance shall take effect and be in force from and after the City receives acceptance as provided for in Section 10 above and after its publication in an official City newspaper.



Tyler Peter
Clerk

CITY OF JUNCTION CITY, KANSAS

Pat Sands
Mayor