

ORDINANCE NO. 839

A CONTRACT FRANCHISE ORDINANCE GRANTED TO MADISON TELEPHONE LLC, DOING BUSINESS AS MT NETWORKS LLC, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE WITHIN THE CITY OF BURLINGTON, KS. THIS ORDINANCE REPLACES ORDINANCE 827.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BURLINGTON, KS:

SECTION 1. Pursuant to K.S.A. 12-2001, a contract franchise ordinance is hereby granted to Madison Telephone LLC, a telecommunications local exchange service provider providing underground local exchange service within the City of Burlington, subject to the provisions contained hereafter. The term of this ordinance shall be for a period of five (5) years from the effective date of this ordinance, and for successive terms of like duration unless written notice is give by either the Grantor or the Grantee to the other 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. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

SECTION 2. For purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

“Access line” shall mean all forms of telecommunications, wire and wireless communications, and electronic communications. These communications shall be retail billed to and collected from residential lines; business lines; ISDN lines; PBX trunks and stimulated 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 include interoffice transport or other transmission media that do not terminate at an end use customer’s premises, and may 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 include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, and 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. 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.

“Electronic Communication is the science and technology of transmitting information electronically by wires or radio signals with integrated encoding and decoding equipment.

“IPTV” means Internet protocol television, a system through which television services are delivered using the Internet Protocol suite over a packet-switched network such as a LAN or the Internet, instead of being delivered through traditional terrestrial, satellite signal, and cable television formats.

“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. For the purposed of this contract, the term 'local exchange service' shall include wire, wireless and electronic 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 carries 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 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 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.

“Wire Communication” is any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce.” (reference: 18 USCS § 2510)

“Wireless Communication” is the transfer of information between two or more points that are not connected by an electrical conductor; including but not limited to various types of fixed, mobile, and portable applications, including radios, two-way radios, cellular telephones, personal digital assistants, wireless networking, radio receivers, satellite television, broadcast television and cordless telephones.

SECTION 3. RIGHTS ASSIGNED: For the Term of this Ordinance, there is hereby granted by Grantor to Franchisee and its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, rights-of-ways, easements dedicated for compatible uses and other public places located within the boundaries of the City of Burlington, Kansas including subsequent additions thereto, towers, poles, lines, cable, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation of a System for the purpose of transmission and distribution of all forms of telecommunications, wire and wireless communications, and electronic communications services.

SECTION 4. Compensation made pursuant to the contract franchise ordinance shall be paid on a monthly basis without invoice or reminder from the City and paid within forty-five (45) days after the last day of the applicable month. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to three percent (3%) per access line. 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 three percent (3%) per access line. Beginning after publication on September 8, 2015, any increased access line fee shall be in compliance with the public notification procedures set forth in subsections (1) and (m) K.S.A. 2002 12-2001 and amendments thereto.

SECTION 5. 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 access line count records necessary to verify the correctness of the access line count.

SECTION 6. As a condition of this contract franchise ordinance, Madison Telephone LLC 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 Madison Telephone LLC’s Right to Challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. Madison Telephone LLC shall also comply with all applicable laws, statutes and/or ordinances, subject to Madison Telephone LLC’s right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 7. This contract franchise ordinance does not provide Madison Telephone LLC the right to provide cable service as a cable operator (as defined by 47 U.S. C. 522(5)) within the City, Upon Madison Telephone LLC'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 Madison Telephone LLC. Madison Telephone LLC 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 8. 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, Madison Telephone LLC 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. Madison Telephone LLC shall repair any damages caused to the satisfaction of the Mayor of the City ; and in default thereof, the City may repair such damage and charge the cost to Madison Telephone, LLC.

SECTION 9. Nothing herein contained shall be construed as giving Madison Telephone LLC any exclusive privileges, nor shall it affect any prior or existing rights of Madison Telephone LLC to maintain a telecommunication system within the City.

SECTION 10. Madison Telephone LLC shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunication local exchange service provider.

SECTION 11. 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 Madison Telephone LLC shall be delivered by first class United States mail or by personal delivery to:

Madison Telephone LLC
P.O. Box 337; 117 N. 3rd
Madison, KS 66860

SECTION 12. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance 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 13. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Madison Telephone LLC's or the City's control.

SECTION 14. 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 15. Passage and publication of this Ordinance 839, shall rescind Ordinance 827.

SECTION 16. This Ordinance 839 shall be effective upon publication in official newspaper of the City.

ADOPTED by the Governing Body and **APPROVED** by the Mayor of the City of Burlington, Kansas, this 2nd day of September, 2015.


Robert S. Luke, Mayor

(SEAL)

ATTEST: 
Regina R. Kewley, City Clerk

APPROVED AS TO FORM: 
Thomas F. Robrahn, City Attorney