

APPENDIX B - FRANCHISES

ORDINANCE NO. 958

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY L.P., FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A FIBER OPTIC TRANSMISSION SYSTEM IN, UNDER, OVER AND ACROSS THE STREETS AND PUBLIC WAYS IN THE CITY OF HIAWATHA; REGULATING THE CONSTRUCTION WORK IN THE CITY IN THIS REGARD, PRESCRIBING THE RELATIONSHIP AND RELATIVE RIGHTS BETWEEN SPRINT COMMUNICATIONS COMPANY L.P., AND OTHERS WITH RESPECT TO CONSTRUCTION IN THE CITY AND LOCATION OF FACILITIES; REQUIRING CERTAIN RECORDS AND REPORTS; PROVIDING FOR INSPECTIONS; PROVIDING THE RIGHTS AND RESPONSIBILITIES OF THE CITY COMMISSION; PROVIDING FOR ENFORCEMENT OF THE AGREEMENT; PROVIDING INDEMNITY OF THE CITY AND ITS EMPLOYEES; SETTING FORTH THE TERM OF THE AGREEMENT AND PRESCRIBING MISCELLANEOUS REQUIREMENTS FOR ADMINISTRATION OF THE AGREEMENT; PROVIDING FOR TERMINATION OF THE AGREEMENT, PROVIDING FOR A PENALTY; REQUIRING CONFORMITY WITH CONSTITUTION, STATUTES, CHARTER AND CITY CODE; LENGTH OF AGREEMENT TERMS; PROVIDING AN EFFECTIVE DATE; PROVIDING VENUE AND PROVIDING FOR A SEVERABILITY CLAUSE.

Section 1. Purpose. (a) The City and Licensee enter into this nonexclusive license agreement ("License") for the period commencing on the date of acceptance by Licensee of this ordinance and continuing for a period of three (3) years after acceptance by Licensee ("Primary Term").

(b) Under this License, Licensee may acquire, erect, construct, replace, reconstruct, maintain, use and operate in the City of Hiawatha, Kansas, hereafter sometimes referred to as "City," a fiber optic transmission system in, across, over or under the streets, highways, alleys and public ways of the City (hereinafter the "Right-of-Way"), including all necessary or desirable underground conduits, manholes and other structures and appurtenances (hereinafter the "Facility" or "Facilities") in connection with such transmission system (hereinafter the "System") for the purpose of providing any telecommunications services authorized by law, regulation or certification, subject to this License. This License does not authorize Licensee to operate or provide in the City an open video system ("OVS"), enhanced services related to OVS, advanced video gateways, other related non-programming OVS functions or similar types of services, gateways, platforms or functions, video common carriage services, "cable services," or "cable television services," as those terms may be defined from time to time under City ordinance, Kansas law, the Communications Act of 1934, as amended, the Cable Communications Policy Act of 1984 (47 U.S.C.A. 6 521, et seq., as amended) or recognized by the Federal Communications Commission or applicable rulings of the courts or FCC, or services regulated directly or indirectly by the Kansas Public Utility Commission (the "PUC") under the Kansas Public Utility Regulatory Act without first securing a franchise or other required authorization from the City.

Section 2. License Area. This License shall extend to all Rights-of-Way located in the City of Hiawatha.

Section 3. Construction Work - Regulation by City, Underground Conduit Use by City, Joint Use of Trench Space. (a) The work done by Licensee in connection with the construction, reconstruction, maintenance or repair of said System shall be subject to and governed by all pertinent laws, rules, regulations of the City of Hiawatha and the State of Kansas that are applicable to insuring the work done does not unduly inconvenience the public in the use of the surface of the Right-of-Way.

(b) All excavations and other construction in the Right-of-Way shall be so carried on as to interfere as little as practicable with the use of the Right-of-Way and with the use of private property, in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the policy and regulatory powers of the City necessary to provide for public safety or convenience.

Section 4. Construction and Maintenance Excavation. (a) The City shall have the power at any time to order and require Licensee to remove and abate any pole, wire, cable or other Facility that is imminently dangerous to life or property, and in case Licensee, after written notice, fails or refuses to comply, the City shall have the power to remove the same at the expense of Licensee, all without compensation or liability for damages to Licensee, except as due to the negligence or willful misconduct of City. Licensee shall promptly restore all Rights-of-Way excavated by Licensee to substantially the same condition as before such excavation to the reasonable satisfaction of the City. Prior to construction, Licensee shall submit engineering plans to the City for review and approval when such plans are for projects that involve significant amounts of both new buried cable and underground systems in public Rights-of-Way. Approval of such plans shall not be unreasonably delayed, withheld or conditioned by the City.

(b) Except in an emergency, Licensee shall not excavate any pavement in any Right-of-Way or significant amounts of any unpaved public Right-of-Way without first securing permission of the City, but such permission shall not be unreasonably delayed, withheld or conditioned if the proposed excavation is in accordance with the terms of this agreement. The City shall be notified as soon as practicable regarding work performed under emergency conditions.

Section 5. Work by Others, Construction by Abutting Owners, Alteration to Conform with Public Improvements. (a) The City reserves the right to lay, and permit to be laid, sewer, gas, water and other pipe lines or cables and conduits, as well as drainage pipes and channels and streets and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City, in, across, along, over or under any Right-of-Way occupied by Licensee, and to change any curb or sidewalk or the grade of any street and to maintain all City facilities provided that such work is for the municipal purposes of the City. In permitting such work to be done, the City shall not be liable to Licensee for any damage so caused, unless due to the negligence or willful misconduct of City, nor shall the City be liable to Licensee for any damages arising out of the performance by the City not willfully or negligently

occasioned; provided, however, nothing herein shall relieve any other person or corporation from liability for damage to Facilities or System of Licensee. Nothing herein shall relieve any person, of liability, including without limitation the City's contractors or subcontractors from liability for damage to Facilities or System of Company.

(b) Whenever by reason of changes in the grade or widening of a street or in the location or manner of constructing a water pipe, gas pipe, drainage channel, sewer, or other City-owned underground or aboveground Facilities, it is deemed necessary by the City to move, alter, change, adapt, or conform the underground or aboveground facilities of Licensee, Licensee shall make the alterations or changes, on alternative Right-of-Way provided by the City, if necessary, as soon as practicable when ordered in writing by the City without claim for reimbursement from the City.

(c) If the City requires Licensee to adapt or conform its Facilities, or in any way or manner to alter, relocate or change its property to enable any other corporation or person, except the City, to use, or to use with greater convenience, any right-of-way, street, alley, highway or public place, Licensee shall not be required to make any such changes until such other corporation or person shall have undertaken with solvent bond, to reimburse Licensee for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of Licensee's Facilities; provided, however, that the City shall never be liable for such reimbursement.

Section 6. Indemnity and Insurance. (a) Indemnity. As a condition hereof, Licensee agrees and is bound to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), or property damage, suffered by any person or persons, to the extent that may arise out of or be occasioned by Licensee's use, and maintenance of the Right-of-Way or Licensee's System within the Right-of-Way, from any act or omission of any representative, agent, customer and/or employee of Licensee, or by Licensee's breach of any of the terms or provisions of this license agreement, or by any negligent or strictly liable act of omission of Licensee, its officers, agents, employees or subcontractors in the use, and maintenance of the Right-of-Way or Licensee's installations and improvements within the licensed premises; except that the indemnity provided for in this paragraph shall not apply to any liability to the extent resulting from the negligence or fault of the City, its officers, agents, representatives, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the Licensee and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Kansas, and without waiving any defenses of the parties under Kansas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

City also agrees and is bound to defend, indemnify and hold the Licensee, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damage is sought, suffered by any person or persons, to the extent that may arise out of or be occasioned by any negligent or strictly liable act of omission of City, its officers, agents, employees or

subcontractors in the City's administration, or enforcement of this License, except as otherwise specifically provided to the contrary elsewhere in this License.

City or Licensee ("Indemnitee") must give the other party ("Indemnifying Party") written notice of the making of any claim or the commencement of any action, suit or other proceeding for which the indemnifying Party could be liable for indemnification under this License. In all instances in which Indemnifying Party is required under this license to indemnify the Indemnitee, such indemnification obligations shall be expressly conditioned upon Indemnitee having the right to investigate, compromise and defend against such claims. Indemnitee shall cooperate with Indemnifying Party in the defense of any litigation by furnishing such information and Indemnitee may request assistance in the disposition of such matter.

(b) Insurance. It is understood and agreed, and a condition hereof, that Licensee shall procure and keep in full force and effect commercial general liability insurance coverage issued by an insurance company authorized and approved by the State of Kansas, acceptable to the City and issued in the standard form approved by the State Board of Insurance. The insured provisions of this policy must name the City, its officers and employees as additional insured protecting the City against claims for damages to persons or property as a result of or arising out of the use, operation, and maintenance by Licensee of the Right-of-Way and Licensee's Facilities in connection therewith and located therein. The commercial general liability coverage must provide combined single limits of liability for bodily injury and property damage of not less than \$1,000,000 for each occurrence. The coverage must be on an "occurrence" basis and must include coverage for premises operations, independent contractors, products/completed operations, personal injury, contractual liability, and medical payments. This insurance shall also include coverage for underground, explosion, and collapse hazards.

(1) Each policy must include a cancellation provision in which the insurance company is required to notify Licensee and the City in writing not fewer than 30 days before canceling the insurance policy.

(2) Licensee shall carry said insurance at its expense and shall furnish the City proof of such insurance upon request. In the event said insurance should terminate during the license term hereof, or Licensee fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, City may in its sole discretion terminate this license, so long as Licensee has had written notice and a reasonable opportunity to cure.

Section 7. Administration of License. (a) The City Administrator or his designee is the principal City officer responsible for the administration of this agreement and shall review the operations of Licensee in the Right-of-Way under this License.

(b) It shall be the right of the governing body of the City at all times to keep fully informed as to all matters in connection with or affecting the construction, reconstruction, maintenance, operation and repair of Licensee's Facilities in the Right-of-Way and the recording and reporting by Licensee of all material changes to such Facilities.

Section 8. Records. (a) Licensee shall keep complete and accurate maps and records of its Facilities under this License. This requirement may include

records or maps, which are reasonably necessary for purposes of identifying, accounting for, and reporting changes in the System.

(b) The City may, at reasonable times and for reasonable purposes under this License, examine, verify or review the documents, maps, plans and other records of Licensee directly related to this License. The Licensee shall make the above records available to City for review at the 723 Oregon, Hiawatha, Kansas, within a reasonable time after demand by City Administrator or designee. The City agrees to keep any information provided to it by Licensee under this agreement as confidential and shall treat such confidential information as the City treats its own confidential and proprietary information; however, this shall not include records or maps which are reasonably necessary for purposes of identifying, accounting for, and reporting changes in the System for the reason many others use the Rights-of-Way.

(c) The City may, at any time, make inquiries pertaining to this License relating to the Licensee's operation of the System within the City. The Licensee shall respond to such inquiries on a timely basis.

(d) At the time of completion and any time Facilities have been changed, or upon request of the City, Licensee shall file with the Director of Public Works, or City Administrator or designee, a corrected list of Facilities located in the public right-of-way, and an up-to-date map of the System, showing all Facilities newly installed, expended and removed during previous year, as well as those which are currently in use.

(e) Copies of all petitions, applications, communications and reports submitted by the Licensee to the Federal Communications Commission or any other regulatory agency, in respect to any matters directly affecting the System located in whole or in part within the City pursuant to this license, shall be provided to the City upon request.

Section 9. Violations. Upon evidence being received by the City Administrator that violations of this License are occurring, or has occurred, he shall at once cause an investigation to be made. If the City Administrator finds that such a violation exists or has occurred, he/she shall take appropriate steps to secure compliance with the terms of this License. Such steps shall include the provision of a written notice to Licensee detailing the alleged violation and permitting Licensee a reasonable opportunity (no less than thirty days) to cure the violation.

Section 10. Assignment of Agreement. The rights granted by this ordinance inure to the benefit of Licensee. Licensee shall notify the City of any proposed transfer or assignment of these rights. The City shall have 180 days to act upon or deny said assignment or transfer. If the City fails to render a final decision in 180 days, said assignment or transfer shall be deemed approved. Any successor shall be required to fulfill all the obligations of this licensee; provided, however, that Licensee may assign this License to any of its subsidiaries, affiliates, or successor legal entities or any subsidiary, affiliate, or successor legal entity of Sprint Corporation without consent, but with notice to City.

Section 11. Acceptance of Ordinance. (a) Licensee shall, within thirty (30) days of the acceptance of this ordinance, file in the Office of City Clerk, a written instrument signed and acknowledged by a duly authorized officer.

(b) Upon filing of the acceptance, this ordinance shall become effective. In the event such acceptance is not filed within thirty (30) days this ordinance shall terminate and become null and void.

(c) As a further condition precedent to this ordinance becoming effective:

(1) Licensee shall send to the City Administrator or designee of the City of Hiawatha, Kansas, the name and address of the person Licensee designates to receive official notices from the City of Hiawatha.

(2) Licensee shall send to the City Administrator or designee of the City of Hiawatha, Kansas, as-builts, or maps certified by a licensed engineer accurately identifying the location and the length of the Facility. Notwithstanding, in the event that the Facility is not built, this condition shall be waived, and the Licensee shall send to City proposed drawings of the location and length of the Facility; and not later than ninety (90) days after the completion of the construction of the Facility, the Licensee shall send to the City Administrator or designee as-builts, or maps certified by a licensed engineer accurately identifying the location and the length of the Facility.

Section 12. Termination of Agreement and Removal of Facilities. (a) If Licensee fails to comply with the terms of this agreement, the City shall send two written notices to Licensee. Thirty (30) days after the second written notice of breach or default from the City, the City may order that this ordinance shall become null and void and send a written notice of termination from the City, and City may order the removal of any of Licensee's Facilities which are above the surface of the rights-of-way and if Licensee should refuse, City may remove such Facilities at Licensee's expense.

(b) It is further agreed that upon Licensee's failure to cure a default as set forth in subparagraph (a) above, the City shall reserve and have the absolute right to terminate this License. The City shall upon such determination become immediately entitled to possession of the Right-of-Way without giving any notice and without the necessity of legal proceedings to obtain possession thereof, that any rentals paid in advance shall be returned to Licensee in proportion to the unexpired rental period; and in any event upon termination or cancellation by City or Licensee, Licensee shall, unless otherwise agreed to by the City, remove any Facilities from the Right-of-Way at Licensee's expense. All work shall be done to the satisfaction of City.

Section 13. Conformity to Constitution, Statutes, Charter and City Code. This ordinance is passed subject to the provisions of the Constitution and the laws of the United States of America, the State of Kansas and the charter provisions of the City of Hiawatha and applicable sections of the Hiawatha City Code.

Section 14. Use of Premises. Licensee is prohibited from using the Rights-of-Way in any manner which violates any applicable Federal, State or local laws, regulations, rules and orders, regardless of when they become or became effective, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, and shall provide satisfactory evidence of compliance upon the request of the City. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Rights-of-Way due to Licensee's use and occupancy thereof, and not due to any pre-existing

condition, Licensee, at its expense, shall be obligated to clean up the affected Rights-of-Way to the satisfaction of the City and any other governmental body having jurisdiction there over. The City may, at its option, clean the affected Rights-of-Way. If the City elects to do so, Licensee shall promptly pay to the City the reasonable cost of such cleanup upon receipt of bills therefor. Licensee agrees that the indemnity provisions contained in Section 6.A. herein shall be fully applicable to the requirements of this paragraph, in the event of Licensee's breach of this paragraph or as a result of any such discharge, leakage, spillage, emission or pollution arising out of the Licensee's use of the licensed premises. Licensee must also obtain any and all necessary governmental licenses and permits necessary in order to use the Rights-of-Way and Facilities for Licensee's intended purpose.

Section 15. Effective Date. This ordinance shall take effect immediately from and after acceptance and filing in accordance with the provisions of Section 11 of this ordinance and after publication in the official city newspaper.

Section 16. Extent of Agreement. This ordinance embodies the complete agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this License, and except as otherwise provided in this License cannot be modified without written agreement of City and Licensee to be attached to and made a part of this License.

Section 17. Severability. That the terms and provisions of this ordinance shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause or phrase of this ordinance should be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause or phrase of this ordinance. If any material term or provision of this ordinance is so declared invalid, the parties shall promptly begin negotiations for a replacement.

Section 18. Venue. This License is performable in the State of Kansas and exclusive legal venue for any litigation arising under this License shall lie in Brown County, Kansas, and shall be governed by the laws of the State Kansas.

(03-13-06)

ORDINANCE NO. 972

AN ORDINANCE GRANTING A TELECOMMUNICATIONS CONTRACT FRANCHISE BETWEEN UNITED TELEPHONE COMPANY OF KANSAS D/B/A EMBARQ AND THE CITY OF HIAWATHA, COUNTY OF BROWN, STATE OF KANSAS AS ALLOWED BY K.S.A. 12-2001 AND REPEALING ORDINANCE NO. 919 AND ANY CONFLICT ORDINANCES.

Section 1. United Telephone Company of Kansas d/b/a Embarq, Grantee, a corporation organized under the laws of the State of Kansas, with a license to do business in the State of Kansas, and its successors and assigns, and the City of Hiawatha hereby enter into a Telecommunications Contract Franchise pursuant to K.S.A. 12-2001 and 17-1902. The Telecommunications Franchise Contract shall be effective as provided in Section 17 herein and shall continue for a term of five (5) years from its effective date, and for successive terms of like duration unless written notice is given by either Embarq or the City 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.

Section 2. Compensation for the Telecommunications Contract Franchise shall be established pursuant to K.S.A. 12-2001 (j). Pursuant to K.S.A. 12-2001 (j)(1), the City requires Embarq to collect and remit an access line fee of \$2.00 per month per access line. Any adjustment to the access line fee shall be accompanied by an ordinance amending this contract franchise, the City shall notify Embarq of the effective date of such ordinance, and Embarq shall have 90 days from the receipt of such notice or from the effective date of such ordinance, whichever is later, to implement the new fee. Embarq shall have 90 days from the effective date of this ordinance to implement the fee.

Section 3. The compensation shall be made on or before the 1st day of March of each year during the term of this ordinance. The City agrees the compensation pursuant to K.S.A. 12-2001 (j) shall be in lieu of an) general, or special license tax, occupation tax, or any other such tax for the term of this ordinance.

Section 4. For purposes of notice provided under this Telecommunications Contract Franchise, notice shall be provided to the following:

To Embarq: Randy Knox
9200 NW 119th Terrace
Kansas City, MO 64153

To City: City of Hiawatha
City Administrator
723 Oregon
Hiawatha, KS 66434
785-742-7417

Section 5. Nothing herein shall affect any prior or existing rights of Embarq to maintain a telecommunications company within the City.

Section 6. If this Telecommunications Contract Franchise expires and the City and Embarq are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance acknowledging a Telecommunications Contract Franchise, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

Section 7. This is a non-exclusive franchise contract ordinance in that the City of Hiawatha may grant similar franchise ordinances or contracts to any other communications company within the City of Hiawatha.

Section 8. Grantee, its successors and assigns, shall conduct telephone business in accordance with all applicable laws and administrative rules.

Section 9. All poles and overhead wires or cables erected in accordance with this K.S.A. 17-1902 and any ordinance enacted pursuant to the authority granted therein 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 pursuant to K.S.A. 17-1902 and any ordinance enacted pursuant to the authority granted therein 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 Administrator of the City and, in default thereof, the City may repair such damage and charge the cost to Grantee to the extent required by K.S.A. 17-1902.

(a) To the extent authorized under K.S.A. 17-1902 the City shall have the power at any time to order and require the Grantee, its successors and assigns to remove and abate any pole, wire, cable or other facility that is imminently dangerous to life or property and in case grantee, after written notice, fails or refuses to comply, the City shall have the power to remove the same at the expense of the Grantee, all without compensation or liability for damages to the Grantee, except as due to the negligence or willful misconduct of the Grantor. The Grantee shall promptly restore all rights of way excavated by Grantee to substantially the same condition as before said excavation to the reasonable satisfaction of the City including repairing any damage primarily caused by Grantee. Prior to construction, licensee shall submit engineering plans to the City for review and approval when such plans are for projects that involve significant amount of both new buried cable and underground systems or aerial systems, in public rights of way. Approval of such plans shall not be unreasonably delayed, withheld or conditioned by the City.

(b) Except in an emergency, Grantee shall not excavate any pavement in the right of way or significant amount of any unpaved public right of way without first securing permission of the city, but such permission shall not be unreasonably delayed, withheld or conditioned if the proposed excavation is in accordance with the terms of this agreement. The City shall be notified as soon as practical regarding work performed under emergency conditions.

Section 10. 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.

Section 11. Grantee shall remove, raise or adjust its aerial plant, after seventy-two (72) 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 telephone 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.

Section 12. 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 an)' City official to whom such duties have been or may be delegated.

Section 13. 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.

Section 14. 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.

Section 15. Ordinance No. 919 and all other ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

Section 16. If any portion of this ordinance for any reason is held to be invalid, such portion shall be considered severed from the remainder of this ordinance and the remainder shall be unaffected and continue in full force and effect.

(10-04-06)