

## APPENDIX B - FRANCHISES

### FRANCHISES

NOTE: The franchise ordinances included herein are for information only. Each of them contains the substance as adopted by the governing body but enacting clauses, repealers and signatures have been omitted. Complete copies of each ordinance as adopted is on file in the office of the city clerk. Date of adoption of each franchise ordinance is shown in parentheses at the end of the text.

#### ORDINANCE NO. 97-4

AN ORDINANCE GRANTING UNITED TELEPHONE COMPANY OF EASTERN KANSAS D/B/A SPRINT A FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS, AND OTHER PUBLIC PLACES IN THE CITY OF MCLOUTH, STATE OF KANSAS, TO CONTINUE TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING, AND OPERATING A TELEPHONE SYSTEM WITH ALL NECESSARY POLES, WIRES, CABLES, FIXTURES, CONDUIT AND APPARATUS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MCLOUTH, KANSAS, AS FOLLOWS:

United Telephone Company of Eastern Kansas, d/b/a Sprint Grantee, a corporation organized under the laws of the State of Delaware, with a license to do business in the State of Kansas, and its successors and assigns, are hereby granted the right, in operating a telephone system, to construct, install, maintain, and repair all the necessary poles, wires, cables, pole and wire fixtures, telephone plant, and telephone apparatus of whatsoever nature for the purpose of conducting such business; to erect, maintain, and repair such telephone poles and string the same with wire and cable along, upon, across or below the streets, avenues, boulevards, alleys, and other public places of the City of McLouth, 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 places for the purpose of such business under the following terms and restrictions.

1. This grant shall be effective in accordance with Section 12, below and shall continue for a term of 5 years from its effective date, and for successive terms of like duration unless written notice is given 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.

2. Grantee, its successors and assigns, shall conduct telephone business in such a manner as shall be to the benefit of the City and its inhabitants, rendering good telephone service at reasonable rates as authorized by the Kansas Corporation Commission or any other state or local governmental agency charged by law with the power to regulate telephone public utilities.

3. 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 Mayor of the City and, in default thereof, the City may repair such damage and charge the cost to Grantee.

4. 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.

5. 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 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.

6. 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.

7. In consideration for rights and privileges herein granted, Grantee shall pay to the City, in arrears, \$400.00 of the annual gross receipts from billings for local exchange service rendered wholly within the corporate limits of the City. Said gross receipts are for the regular basic local exchange service rates to customers or subscribers for telephone services in the City, but does not include charges for special services, custom calling features, long distance calls, access charges, or any other charges not considered basic local exchange service. Such payment shall be made on or before the 1st day of March of each year during the term of this ordinance. The City agrees to accept those sums as full and fair compensation, which sums shall be in lieu of any general or special license tax, occupation tax, or any other such tax for the term of this ordinance.

8. Nothing herein shall affect any prior or existing rights of Grantee to maintain a telephone company within the City.

9. 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.

10. 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.

11. All ordinances and agreements or parts of ordinances and agreements in conflict with this ordinance are hereby repealed.

12. This ordinance shall be effective at the expiration of 65 days from the date of its final passage.

13. If this ordinance expires either prior to the effective date of a passed subsequent ordinance granting Grantee a franchise, or while the City and Grantee are engaged in good faith negotiations intended to result in the passage of such a subsequent ordinance, the terms of this ordinance shall apply until the effective date of the subsequent ordinance.

14. 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.

(10-07-97)

ORDINANCE NO. 2004-1

AN ORDINANCE, GRANTING TO WESTAR ENERGY, INC., A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE, PRESCRIBING THE TERMS THEREOF AND RELATING THERETO, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH OR IN CONFLICT WITH THE TERMS HEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF : MCLOUTH, KANSAS

SECTION 1. That in consideration of the benefits to be derived by the City of McLouth, Kansas, and its inhabitants, there is hereby granted to Westar Energy, Inc., a Kansas corporation, hereinafter sometimes designated as "Company," said Company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, into and through which it has built transmission lines, the right, privilege, and authority for a period of twenty (20) years from the effective date of this ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of said City, for the placing and maintaining of equipment and property necessary to carry on the business of selling and distributing electricity for all purposes to the City of McLouth, Kansas, and its inhabitants, and through said City and beyond the limits thereof; to obtain said electricity from any source available; and to do all things necessary or proper to carry on said business in the City of McLouth, Kansas .

SECTION 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or revenue taxes, the Company shall pay to the City during the term of this franchise five percent (5%) of its gross cash receipts from the sale of electric energy within the corporate limits of said City, such payment to be made monthly for the preceding monthly period. At the option of either the City or the Company, the rate of compensation provided herein may be renegotiated by written notice given to the other party within ninety days (90) prior to the fifth, tenth, or fifteenth anniversary of this franchise. Any change of the rate of compensation agreed upon by the parties shall be effective for the remainder of the term. Gross cash receipts shall not include other operating revenues received by the Company, which are not related to the "sale of electric energy". Other operating revenues include, but are not limited to, delayed payment charges, connection fees, disconnection and reconnection fees, collection fees and return check charges.

SECTION 3. That Company, its successors and assigns, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the City of McLouth, Kansas, from any and all damage, injury and expense caused by the negligence of said Company, its successors and assigns, or its or their agents or servants.

SECTION 4. After the approval of this ordinance by the City, Company shall file with the City Clerk of the City of McLouth, Kansas, its unconditional written acceptance of this ordinance. Said ordinance shall become effective and be in force and shall be and become a binding contract between the parties hereto, their successors and assigns, from and after the expiration of 60 days from its final passage, approval and publication as required by law, and acceptance by said Company.

SECTION 5. That this ordinance, when accepted as above provided, shall constitute the entire agreement between the City and Company relating to this franchise and the same shall supersede and cancel any prior understandings, agreements, or representations

regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written.

SECTION 6. This franchise is granted pursuant to the provisions of K.S.A. 12-2001.

SECTION 7. That any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed.

SECTION 8. The Company will file this ordinance with the State Corporation Commission of Kansas. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude Westar Energy, Inc., a Kansas corporation, from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the State Corporation Commission's ruling.

SECTION 9. A franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made, provided, however, that the franchise may be assigned by Company without action by the City to any creditworthy entity which succeeds to all or substantially all of the electric utility business of the Company. In the event of such assignment to a successor, Company shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned.

(03-02-04)

#### ORDINANCE NO. 2005-06

AN ORDINANCE OF THE CITY OF MCLOUTH, KANSAS, GRANTING TO GIANT COMMUNICATIONS, LLC, ITS SUCCESSORS, LESSEES AND ASSIGNS, FOR A TERM OF TWENTY (20) YEARS, THE NON-EXCLUSIVE RIGHT, AUTHORITY, POWER AND FRANCHISE TO ESTABLISH, CONSTRUCT, ACQUIRE, MAINTAIN AND OPERATE A CABLE TELEVISION SYSTEM WITHIN THE CITY OF MCLOUTH, TO RENDER, FURNISH AND SELL CABLE TELEVISION SERVICES THEREFROM WITHIN THE CITY OF MCLOUTH, AND ENVIRONS THEREOF, AND TO USE AND OCCUPY THE STREETS AND OTHER PUBLIC PLACES OF THE CITY OF MCLOUTH FOR SUCH CABLE TELEVISION SERVICES.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MCLOUTH, KANSAS:

Section 1. Authority. This franchise is granted under and by authority and in conformity with provisions of K.S.A. 12-2005, et seq., as amended, and shall not be considered as an exclusive franchise, right or privilege, and this franchise shall at all times be subject to the laws of the United States, the State of Kansas and the ordinances of the City of McLouth, Kansas.

Section 2. Grant. After a full, open and public hearing, upon prior notice and the opportunity to all interested parties to be heard, and after a review of the qualifications of Giant Communications, LLC and after determining that Giant Communications, LLC is legally qualified, of good moral character and reputation, adequately financed, and technically competent to provide cable television and related services (hereinafter "Cable Television Services or System") to the City of McLouth, Kansas (the "City") there is hereby granted to Giant Communications, LLC, a limited liability company duly authorized to do business in the State of Kansas (hereinafter called the "Grantee"), and to the Grantee's successors, lessees and assigns, for the full term of twenty (20) years from the date hereof, the nonexclusive right,

authority, power and franchise to establish, construct, acquire, maintain and operate a Cable Television System within the City to render, furnish and sell Cable Television Services from such system to the inhabitants of the City and its environs, and to use and occupy the streets and other public places within the corporate limits of the City as the same now exist or may hereafter exist for its Cable Television System, including the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, alleys, avenues, parkways, lanes, bridges, easements, rights of way, and other public places of the City, all towers, poles, cables, amplifiers, conduits, and other facilities owned, leased, or otherwise used by the Grantee for the furnishing of Cable Television Services within the City and environs thereof during the continuance of the franchise hereby granted. The Grantee acknowledges that the City, from time to time, may add additional land to the City limits by annexation to which Grantee is obligated to construct and provide service in an area where density of homes at least twenty (20) homes per strand mile.

Section 3. Excavations. Any pavements, sidewalks, or curbing taken up or any and all excavations made by the Grantee shall be done under the supervision and direction of the governing body of the City under permits issued for work by the proper officials of the City and shall be made and done in such manner as to give the least inconvenience to the inhabitants of the City and the public generally, and all such pavements, sidewalks, curbing, and excavations shall be replaced and repaired in as good condition as before, with all convenient speed, by and at the expense of the Grantee, which shall at all times make and keep full and complete plats, maps, and records showing the exact location of its facilities located within the public ways of the City. The Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrants or mains, and all such poles and other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

Section 4. Insurance. It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its Cable Television System in the City, and Grantee shall cause to be defended at its own expense all actions that may be commenced against the City by reason of the construction and/or operation of such system. The Grantee shall carry public liability and property damage insurance in the sum of \$500,000.00, combined single limits, with the City named as an additional insured, said insurance to be carried with an insurance company with a recognized national rating acceptable to the City.

Section 5. Rates. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to each and all of its subscribers. The Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for its Cable Television Services. Prior to increasing rates for services or adding or subtracting channels or changing the channel lineup, the Grantee shall notify the subscribers and the City as required by Federal Communications Commissions rules and regulations.

Section 6. Right of Reasonable Regulation. The City reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the Grantee and to reasonably designate where such facilities are to be placed within the public ways and places.

Section 7. Temporary Wire Movement. The 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 removal, and of raising or lowering of wires, shall be paid by the person or entity requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

Section 8. Trees. The Grantee shall have the authority to trim trees upon any streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, all trimming to be done under the supervision and direction of the City and at the expense of the Grantee. Grantee shall protect and save harmless the City from any and all claims for damage arising out of the trimming of trees as herein provided.

Section 9. Utility Poles. If the City is the owner of any utility poles, and in order to keep the number of utility poles to a minimum, the City hereby consents to the installation of Grantee's facilities on poles belonging to it except as hereinafter set out. Such installation shall be made in accordance with the National Electric Safety Code, the electric code of the City and such other safety requirements as may be applicable. Should the existing poles be inadequate to support Grantee's facilities, or if for any reason the manager of the City utility services deems it unsafe or if the facilities of Grantee will unduly interfere with the use of any pole or poles for an existing utility, the City shall have the right to refuse Grantee the right to install its facilities or any part of such facilities on any such pole or poles. As compensation for the use of said poles, Grantee will pay to the City the franchise fee hereinafter set forth in this Ordinance. The use of said poles by Grantee for the purposes authorized herein shall be subject to inspection by the City, and Grantee agrees that it will correct any deficiency or improper condition upon notice from the City of such condition. Grantee's use of said poles shall not vest in Grantee any ownership in the poles, and its relationship shall remain that of lessee.

Section 10. Grade Alteration. In the event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

Section 11. Regulations. The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

Section 12. Franchise Fee. In consideration for the rights, privileges and franchise hereby granted, and as compensation to the City for the use of its public ways and places by the Grantee, and in lieu of all occupation and license taxes, the Grantee shall, on or before the 31st day of July and the 31st day of January of each year in which this franchise is effective, pay to the City a sum equal to three percent (3%) of the gross subscriber revenues derived from cable television services within the then existing corporate limits of the City for the preceding six (6) month period ending on the 30th day of June and the 31st day of December, respectively. "Gross subscriber revenues" means revenues received from subscribers for basic, expanded and pay television services and any other changes made to subscribers, but shall exclude sales taxes, copyright and other fees passed on to subscribers. It shall not include advertising revenues or any other non-subscriber income of the system. Such franchise fee shall be paid on revenues as received, not billed.

Section 13. Maps. The Grantee shall provide a map to the City showing locations of all its facilities and that such map shall be updated annually on the anniversary of the franchise.

Section 14. Services. When existing distribution or trunk cable passes through the following locations, the Grantee shall provide service to said locations on the request of the City and at no cost to it or to the sites designated below:

- (a) Fire and Police Departments.
- (b) Public Schools and Administrative Buildings.
- (c) City Hall and Public Facilities.
- (d) Educational Institutions.

Section 15. Effective Time. This franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of twenty (20) years.

Section 16. Amendment. It shall be the policy of the City to amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently or economically serve its customers, and to enable the Grantee to conform to the rules and regulations of the Federal Communications Commission as they may be amended from time to time.

Section 17. Removal upon Termination. Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber.

Section 18. Effective Date. This Ordinance shall take effect from and after its passage, adoption and publication in the official City newspaper and the Grantee shall pay the expenses of such publication.

Section 19. Repealer. This ordinance and franchise supersedes, takes the place of and replaces Ordinance N. 330, dated January 4, 1983, and the cable television franchise therein granted.

Section 20. Severability. If any section, subsection, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. Any and all ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance.

Section 21. Successors in Interest. All provisions of this ordinance shall be binding upon the Grantee and all successors, lessees and assigns of the Grantee whether expressly stated herein or not, and all the rights, authorities, powers, grants, and privileges secured by this ordinance to the Grantee shall be held to inure to the benefit of the Grantee and all successors, lessees, and assigns of the Grantee.

(10-04-05)