

ORDINANCE NO. 421

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE RENEWAL TO THE WORLD COMPANY dba SUNFLOWER BROADBAND, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BASEHOR, KANSAS; AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE CABLE SYSTEM.

FINDINGS

Following the review of Grantee's renewal proposal and past performance, and after receiving the comments of interested parties at a public hearing, the City Council makes the following findings:

- A. Grantee has the technical, legal and financial ability to fulfill the obligations of this Ordinance;
- B. Grantee's plans for constructing, upgrading, and operating the Cable System meet or exceed the community's cable-related needs and interests, taking into account the costs; and
- C. Renewing Grantee's franchise under the terms and conditions of this Ordinance will serve the public interest.

**Section 1. Definitions.**

- 1. Definitions. When used in this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory. The word "may" is discretionary.
  - a. "Cable Service" means:
    - (1) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and
    - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
  - b. "Cable System" means a facility located within the City, consisting of a set of closed transmission paths and associated signal

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generation, reception, and control equipment that is designed to provide Cable Service to multiple subscribers within the City.

- c. "City" means the City of Basehor.
- d. "Council" means the governing body of City.
- e. "Facilities" shall mean any reception, processing, distribution or transmission component of a Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, poles, equipment, drains, surface location markers, appurtenances, and related facilities maintained by Grantee in the Streets.
- f. "FCC" means the Federal Communications Commission.
- g. "Franchise" shall mean the rights granted to Grantee under this Ordinance to construct and operate the Cable System and to provide Cable Services and other services as permitted by applicable law.
- h. "Grantee" means The World Company, dba Sunflower Broadband, and its permitted successors.
- i. "Gross Revenues" means all revenue derived from the operation of the Cable System to provide Cable Service in the City. The term Gross Revenues shall not include franchise fees, advertising revenues, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- j. "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.
- k. "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or later existing within the City.
- l. "Subscriber" means any Person who lawfully receives Cable Service.

## **Section 2. Grant of Authority.**

1. Grant of Nonexclusive Authority. City grants to Grantee the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, all Facilities necessary or desirable for the construction, maintenance, and operation of the Cable System. This Franchise shall be nonexclusive, and City may grant franchises to other Persons. Any additional franchises shall contain the same substantive terms and conditions as this Franchise.
2. Rules of Grantee. The Grantee shall have the authority to promulgate rules, regulations, terms and conditions governing its business and services as reasonably necessary to enable Grantee to exercise its rights and perform its obligation under this Ordinance.

## **Section 3. Franchise Term.**

The Franchise granted under this Ordinance commences upon approval by the City Council and acceptance by Grantee and shall continue for 15 years, unless renewed, revoked or terminated sooner. So long as Grantee remains in material compliance with the provisions of this Ordinance, Grantee, at its option, may extend the term for an additional five years by providing notice to City during the last 24 months of the initial term.

## **Section 4. Conditions of Street Occupancy.**

1. Location of Facilities. Grantee shall locate all Facilities so as to minimize interference with the use of the Streets and with the rights and reasonable convenience of adjacent property owners.
2. Construction Codes and Permits. Grantee shall obtain all necessary permits from City before commencing any construction, upgrade or extension of the Cable System, including the opening or disturbance of any Street.
3. Repair of Streets and Property. Grantee, at its expense, shall promptly restore any Street, public property, or private property damaged by Grantee during the construction, repair, maintenance or reconstruction of the Cable System.
4. Public Projects. After reasonable prior notice, Grantee, at its expense, shall relocate its Facilities as required by the City due to traffic conditions, public safety, street construction, or other public improvements by City.

5. Building Movement. Upon request of any Person holding a moving permit issued by City and after reasonable prior notice, Grantee shall temporarily move its Facilities to permit the moving of buildings. Grantee may require the requesting Person to pay all costs related to the temporary relocation of Facilities, and may require payment in advance.
6. Tree Trimming. Grantee may trim any trees in or overhanging the Streets, alleys, sidewalks, or public easements of City as necessary to protect Grantee's Facilities.
7. Undergrounding of Cable. In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its Facilities underground. In any area of City where one or more other public utilities are installed aerially, Grantee may construct and install its Facilities aerially.
8. Compliance with Construction Codes. Grantee shall install and maintain its Facilities in compliance with the applicable construction and safety codes in effect at the time of the installation of the applicable Facility.

#### **Section 5. Cable System Operations and Safety.**

1. Technical Standards. Grantee shall operate the Cable System in compliance with all applicable technical standards promulgated by the FCC.
2. Test Reports and Regulatory Filings. Upon request by City, Grantee shall provide City with copies of: (i) reports of any FCC required test of the Cable System; and (ii) any filings with regulatory authorities related to the operation of the Cable System within the City.
3. Safety Requirements. Grantee shall employ ordinary care and shall maintain in use commonly accepted methods and devices to reduce failures and accidents.

#### **Section 6. System upgrade.**

Grantee shall upgrade the current Cable System to a minimum capacity of 750 MHz and 75 analog or digital channels as provided in this Section.

1. System design. The upgraded Cable System shall utilize a hybrid fiber-coaxial architecture designed with the capability to transmit return signals upstream. Grantee may develop, construct and operate the upgraded Cable System to provide Cable Services and non-cable services such as cable modem services, telecommunications services, and other competitive services as permissible under applicable law. Grantee may

activate and offer such other services in response to consumer and business demand.

2. Upgrade timetable. Grantee shall complete the upgrade as follows:
  - a. In areas of the City not currently served by Grantee and where Grantee installs new Facilities, Grantee shall install upgraded Facilities underground as described in this Section.
  - b. The Grantee shall upgrade its Facilities serving the immediately surrounding commercial developments at the intersection of 158 Street and US 24/40 to provide Cable Modem services within 12 months of the effective date of this Ordinance.
  - c. In all subdivisions and areas of the City currently served by Grantee and where Grantee serves more than 50% of the occupied households, Grantee shall install upgraded Facilities as described in this Section within 24 months of the effective date of this Ordinance.
  - d. In areas of the City currently served by Grantee and where Grantee serves less than 50% of occupied households, Grantee shall install upgraded Facilities as described in this Section within 48 months of the effective date of this Ordinance.

#### **Section 7. Service Obligations and System Extension.**

1. Service to Subscribers. Grantee shall provide Cable Services without discrimination to all Persons who request such services and who comply with Grantee's terms and conditions of service. Grantee is not obligated to extend service to residences beyond 300 feet from Grantee's existing Facilities or 500 feet from Commercial Properties.
2. Extension of Cable System. Grantee shall extend its Facilities to areas of the City with an average 25 residences per additional mile of cable. Grantee, at its reasonable discretion, may extend its Facilities to areas of the City with less than an average of 25 residences per additional mile of cable.

#### **Section 8. Public, Educational and Governmental Access.**

1. Service to Public Buildings and Schools. Grantee shall provide a service drop and basic Cable Service to each City building, police station, fire station, and public and private school passed by the Cable System, with additional service drops to be provided at the cost of labor and material.

2. Channel Access for School District of Bashor-Linwood 458 and city channel. During the term of the Franchise granted under this Ordinance, Grantee shall continue to make available to the School District of Basehor-Linwood the existing channel access under mutually agreed upon terms and conditions.

### **Section 9. Customer Service and Rates.**

1. Subscriber Inquiries. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a 24 hour-a-day, seven days-a-week basis. Grantee shall investigate and promptly resolve customer complaints regarding quality of service or service outages.
2. Rates. Grantee shall maintain with the City Clerk a currently schedule of rates and services. Grantee shall provide the City and Subscribers with 30 days written notice of changes to Cable Services or rates.

### **Section 10. Franchise Fee.**

Grantee shall pay to City an annual franchisee fee in an amount equal to five percent (5%) of Gross Revenues. For each year, Grantee shall deliver the payment to City on or before January 31 of the following year. Following reasonable prior notice, City may inspect Grantee's books, records, and reports to verify franchise fee calculations and payments.

### **Section 11. Insurance and Indemnification**

1. Insurance. During the term of the Franchise granted under this Ordinance, Grantee shall maintain a comprehensive general liability insurance policy with the following minimum coverage limits:
  - a. One Million Dollars (\$1,000,000) for personal injury or death of any one Person;
  - b. Three Million Dollars (\$3,000,000) for personal injury or death of two or more Persons in any one occurrence;
  - c. One Million Dollars (\$1,000,000) for property damage to any one person; and
  - d. Three Million Dollars (\$3,000,000) for property damage resulting from any one act or occurrence.

Each policy of insurance shall contain a statement that the insurer will not cancel the policy or fail to renew the policy for any reason without first giving 30 days' advance written notice to City.

2. Indemnification. During the term of the Franchise granted under this Ordinance, Grantee shall indemnify and hold harmless City, its officers, agents and employees (“Indemnitees”) from and against any claims, liabilities, damages, losses, and expenses (including, without limitation, reasonable attorney fees), which may arise out of or be in any way connected with the construction, installation, operation, maintenance of the Cable System.

## **Section 12. Transfer of Franchise.**

Grantee shall not transfer or assign its rights granted under this Ordinance without obtaining the prior consent of City. City shall not unreasonably withhold or delay such consent. Consent of City shall not be required for the following: (i) the assignment of, or the granting of a security interest in, the Franchise or the Cable System for the purpose of securing indebtedness; or (ii) the assignment or transfer of the Franchise or the Cable System to an affiliate under common ownership or control with Grantee.

## **Section 13. Franchise Extension and Renewal.**

1. Extension. Beyond the term provided in Section 3, City and Grantee may extend by mutual agreement the term of the Franchise granted under this Ordinance, and the existing terms and conditions of this Ordinance shall govern the extended term.
2. Renewal. Any renewal of the Grantee’s Franchise shall be done in accordance with Section 546 of the federal Cable Act, 47 USC § 546, and applicable FCC regulations.

## **Section 14. Noncompliance - Penalties and Revocation.**

In case of material noncompliance with any provision of this Ordinance, City may terminate the Franchise granted under this Ordinance in accordance with the procedures in this section.

1. Notice of complaint. City shall provide Grantee with written notice describing with reasonable specificity the alleged noncompliance.
2. Opportunity to cure. Grantee shall have 60 days from receipt of written notice to cure the alleged noncompliance. If Grantee cures the alleged noncompliance within the 60-day period, the City shall provide Grantee with written notice withdrawing the complaint.
3. Public hearing. If Grantee fails to cure the alleged noncompliance within the 60-day cure period, or if Grantee provides City with written notice disputing the complaint, and the parties fail to otherwise resolve the

matter, the City shall schedule a public hearing on the alleged noncompliance. At the public hearing, Grantee may present testimony, cross-examine witnesses and deliver to City Council all evidence relevant to Grantee's defense. At the conclusion of the public hearing, the City Council may dismiss the complaint, defer action, order appropriate sanctions, or terminate the Franchise in accordance with this section.

4. Termination. The City Council may, after a duly noticed public hearing, terminate the Franchise for material and willful continuing noncompliance by Grantee. If Grantee contests the termination in a court of competent jurisdiction, Grantee may operate the Cable System in accordance with this Ordinance while the case is pending.
5. Force Majeure. Grantee's failure to comply with any provision of this Ordinance shall not constitute noncompliance when such failure is due to circumstances beyond Grantee's control, including, without limitation, acts of God, adverse weather, natural or man-made disaster, civil disturbance, war or insurrection, or shortage of supplies, material, or labor.
6. Removal of Facilities. Upon expiration or termination of the Franchise, Grantee has the right to remove its Facilities within a reasonable time, after such expiration or termination.

#### **Section 15. Notices.**

Notices under this Ordinance shall be in writing and shall be deemed given delivery by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To City:                      City of Basehor  
   Attn: City Clerk  
   P. O. Box 406  
   2620 N. 155<sup>th</sup> St.  
   Basehor, KS 66007

To Grantee:                      Sunflower Broadband  
   1 Riverfront Plaza  
   Suite 301  
   Lawrence, Kansas 66044  
   Attn: General Manager

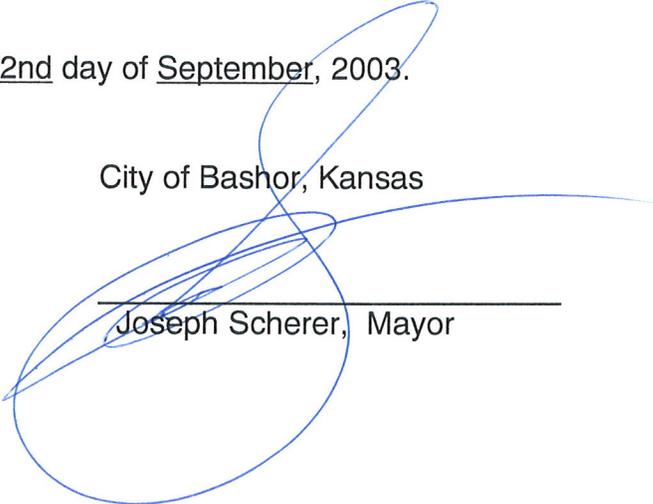
A party may designate other addresses for providing notice by providing notice in writing of such addresses.

**Section 16. Effective Date and Acceptance**

This Ordinance shall become effective upon publication of any required notice in the official City paper and after Grantee files a letter of acceptance with the City Clerk.

Passed and adopted this 22nd day of September, 2003.

City of Bashor, Kansas

  
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Joseph Scherer, Mayor



  
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Mary A. Mogle, CMC City Clerk