

**ORDINANCE # 886**

**AN ORDINANCE GRANTING TO THE KANSAS CORPORATION OF NEX-TECH, INC. AND ITS WHOLLY OWNED SUBSIDIARIES SUCCESSORS, TRANSFEREES AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO ERECT, MAINTAIN AND OPERATE A COMMUNICATIONS SYSTEM WITHIN THE CITY OF OBERLIN, KANSAS, PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR PAYMENTS TO BE MADE TO THE CITY OF OBERLIN, KANSAS.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OBERLIN, DECATUR COUNTY, KANSAS:**

**ARTICLE I**

Definitions

For the purpose of the grant of this franchise, the following terms shall have the meaning as described herein:

1. "City" shall mean the City of Oberlin, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of Oberlin, Kansas, as they now or shall hereafter exist.
2. "Council" shall mean the present governing body of the City of Oberlin, Kansas, or any successor to the legislative powers of the present City Council.
3. "Franchise" shall mean the permission, license or authority given hereunder to conduct and operate a communications system in the City of Oberlin, Kansas, pursuant to the ordinance passed by the City Council.
4. "Grantee" shall mean Nex-Tech, Inc., its wholly owned subsidiaries, successors, transferees or assigns of the Franchise granted herein.
5. "Gross Revenue" shall mean the monthly revenues received by Grantee for the basic service rates from subscribers of the Grantee's local telephone service provided, however, that such phrase shall not include: (i) revenues received from any advertising carried on the communications system; (ii) revenues from optional calling features; (iii) any taxes on communications service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency; or (iv) any revenues derived from installation charges.
6. "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, drive or other easement now or hereafter held by the City of Oberlin, Kansas, for the purpose of public travel and shall include such other easements or right-of-ways as shall be now

held or hereafter held by the City of Oberlin, which shall within their proper use and meaning entitle the City of Oberlin and its Grantee to use for the purpose of installing or transmitting communications transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a communications system.

7. "Property of Grantee" shall mean all property owned and installed or used by the Grantee in the conduct of its communications business in the City of Oberlin and under the authority of the Franchise granted herein.
8. "Communications System" shall mean all equipment used to transport audio and video signals (voice, video, data, radio and cable television) to consumers including, but not limited to any cable, electronics, fiber optics or other types of necessary equipment.
9. "Subscriber" shall mean any person or entity receiving for any purpose all or one of the services offered within the Grantee's communications system.
10. "Person" shall mean any individual or association of individuals, or any firm, corporation or other business entity.
11. "Facilities of Grantee" or "Communications Facilities" shall mean property of the Grantee used in operation of the Communications System.

## ARTICLE II

### Grant of Franchise

SECTION 1: General Grant. The City hereby grants to Grantee the right and privilege to construct, erect, operate and maintain a communications system within the City and in so doing to use the streets of the City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining and retaining in, on, under, upon or across any such street, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to a communications system within the City of Oberlin, Kansas.

SECTION 2: Conditions for Grant. Grantee must be authorized by the State of Kansas to provide telephone service within the boundaries of the state and shall provide the City with a copy of its State Certificate upon request.

SECTION 3: Non-exclusivity. The authority given to Grantee in the above section is not and shall not be deemed to be an exclusive right of permission. The City expressly reserves the right to grant similar non-exclusive franchises to other persons, firms or corporations and allow them to use the streets of the City within the same or other areas of the City as Grantee at any time; provided, however, that such other franchises do not interfere or create interference with Grantee's communications system already established and said other franchisees shall not be extended preferential treatment over Grantee.

SECTION 4: Notice concerning complaints. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of the initial subscription to the communications system.

SECTION 5: Modifications. Any modification of the provisions of the federal franchise standards resulting from an amendment of the standards by the Federal Communications Commission must be incorporated into this Franchise within one year of the adoption of the modification, or at the time of renewal, whichever occurs first. It shall also be the policy of the City to amend this Franchise, upon application of Grantee, when necessary to enable Grantee to take advantage of any developments in the field of telecommunications which would afford it an opportunity to more effectively, efficiently or economically serve its customers, and to enable Grantee to conform to the Rules and Regulations of the Kansas Corporation Commission and the Federal Communications Commission as they may be amended from time to time.

### ARTICLE III

#### Term

The term of this ordinance shall be for six (6) months and successive terms of five (5) years unless written notice is given by either the City or the Grantee to the other, 90 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.

### ARTICLE IV

#### Forfeiture

In addition to all other rights and powers reserved or pertaining to the City, the City reserves as an additional and as a separate and distinct remedy the right to revoke this Franchise and all rights and privileges of the Grantee hereunder for any of the following reasons:

1. Grantee fails after thirty (30) days prior written notice to comply with any of the provisions of the ordinance granting this Franchise or has, by act or omission, violated any term or condition thereof;
2. Any provision of such ordinance shall be finally adjudged by a court of law as invalid or unenforceable, and the City Council further finds that such provision constitutes at that time a consideration material to the continuance of the Franchise granted herein;
3. The Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt;
4. The Grantee attempts to or does practice any fraud or deceit in its conduct or relations with the City or subscribers, under this Franchise; or
5. The City condemns all of the Property of the Grantee within the City by lawful exercise of eminent domain.

## ARTICLE V

### Ordinance of Revocation

No revocation provided for in the previous paragraph except for reasons of condemnation, shall be effective unless or until the City Council provides written notice to Grantee, and Grantee is given at least 30 days to cure any alleged breach of Article IV herein. If after the expiration of the time to cure, City Council believes Grantee has failed to cure, the City Council must adopt an ordinance setting forth the cause and reason for the revocation and the effective date thereof in order to effectuate any revocation. Such ordinance shall not be adopted without thirty (30) days prior written notice thereof to the Grantee and an opportunity for the Grantee to be heard on the proposed adoption of said proposed ordinance. If the revocation as proposed in said ordinance depends upon a finding of fact, such finding of fact must be made by the City Council after a conclusive hearing is provided, if requested by the Grantee.

## ARTICLE VI

### Compensation

In consideration of the grant of the Franchise to the Grantee, the Grantee shall pay to the City, in arrears zero percent (0%) of the basic service rates from subscribers of the Grantee's local telephone service annual Gross Revenue from the operation of the business in said City. The franchise percentage is subject to change after the initial term of the agreement upon 90 days written notice from the City to the Grantee. Such payment shall be made in one (1) payment, on or before the first day of February of each year during the terms of this ordinance. The City agrees to accept this sum as full and fair compensation.

## ARTICLE VII

### Indemnification

The Grantee shall, concurrently with the filing of the acceptance of this Franchise, furnish to the City and file with the City Clerk a liability insurance policy in the amount of One Million Dollars (\$1,000,000) with a company approved by the City of Oberlin and in a form satisfactory to the City Attorney indemnifying and defending the City, its officers, boards, commissions, agents and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabilities to others and against any loss, costs, expense or damages resulting therefrom, arising out of the exercise or enjoyment of this Franchise.

## ARTICLE VIII

### Use and Installation

SECTION 1: Degree of Care. The Grantee or any persons, firm or corporation erecting, constructing or maintaining any of the property used by or for the Grantee shall at all times employ due care or the highest degree of care required by law under the facts and circumstances and shall maintain and install the property of the Grantee in accordance with commonly accepted methods and principals so as to prevent failures and accidents likely to damage, injure or create a public nuisance.

SECTION 2 Location of Facility. All communications facilities shall be located so as to cause minimum interference with the proper use of streets and the rights and reasonable convenience of property owners abutting the streets. In no event shall such facilities be located so as to substantially interfere with the usual public travel on any street of the City.

SECTION 3: Damage to Public Property. Whenever Grantee or any person on its behalf causes any injuries or damage to any public property or street by or because of the installation, maintenance or operation of the communications facilities, such injury or damage shall be immediately remedied in such fashion as directed by the City Superintendent.

SECTION 4: Tree Trimming. Grantee shall have authority to trim trees upon and over the streets of the City so as to prevent the branches of such trees from coming in contact with wires, cables and other facilities of Grantee. All trimming shall be done under the supervision of the City Superintendent at the expense of the Grantee.

SECTION 5: Facilities Upgrades/Changes. Grantee shall exercise its right to place, remove, construct and reconstruct, extend and maintain its plant and appurtenances as the business and purposes for which may from time to time require along, across, on, over, through, above and under any public right of way including, but not limited to, streets, avenues, alleys, bridges and the public grounds and places within the limits of the City.

## ARTICLE IX

### Removal and Abandonment of Property

If the Franchise is terminated or revoked, the Grantee shall promptly, upon ninety (90) days written notice, remove from the streets all its facilities other than that which the City of Oberlin, Kansas, may permit to be abandoned in place. In the event of such removal, the Grantee shall promptly return the street to the like or similar condition which it was in before the facilities were placed.

## ARTICLE X

### Operation and Maintenance

Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable Grantee to exercise its rights and perform its services under this Franchise and to assure an uninterrupted service to all of its customers. Grantee shall render efficient service, make repairs promptly and only interrupt

service for good cause for the shortest time possible. In order to limit failure and malfunctions of the communications system and to enable prompt correction at all times after notice of malfunction or failure, Grantee shall consistently maintain a listed telephone, which shall be operated to receive complaints, requests for repairs or adjustments because of malfunctions at any time of day Sunday through Saturday, including holidays.

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 action shall be paid by the person requesting the same, and Grantee shall have the authority to require advance payment. Grantee shall be given no less than forty-eight hours advance notice to arrange for such temporary wire changes.

## ARTICLE XI

### Compliance with the Law

Grantee shall, at all times during the term of this Franchise, be subject to all lawful exercises of the police power of the City and to such reasonable regulations as the City shall prescribe for the general conduct of persons providing communications service within the City.

## ARTICLE XII

### Sale or Lease of Franchise

The Franchise shall be deemed a privilege to be held in personal trust by the Grantee. It may not be sold, transferred, leased, assigned or disposed of in whole or in part either by force of voluntary sale, consolidation or otherwise without prior notification to the City Council.

## ARTICLE XIII

### Grantee Without Recourse

Grantee shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of any of the provisions or requirements of this Franchise or because of the enforcement thereof by the City, nor for the failure of the City to have the authority to grant all or any part of the Franchise.

## ARTICLE XIV

### Grantee's Rates and Regulations

Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the services it provides through its Communications System; provided, that such rates shall not be established on a discriminatory basis.

## ARTICLE XV

### Notices

Whenever, under the terms of this Franchise, either party shall be required or permitted to give notice to the other, such notice shall be in writing and if to be served upon the City it shall

be delivered by certified mail to the Mayor & City Council c/o City Clerk, #1 Morgan Drive, Oberlin, KS 67672. If to the Grantee, it shall be delivered by certified mail to Chief Financial Officer, 145 N. Main, Lenora, Kansas 67645.

**Bonds and other Surety.** Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Communications Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

## ARTICLE XVI

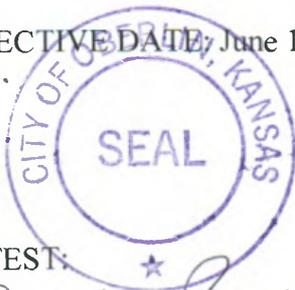
### Miscellaneous Provisions

SECTION 1: Binding Effect. All provisions of this ordinance shall be binding upon Grantee and all successors, lessees and assigns of Grantee whether expressly stated herein or not.

SECTION 2: Force Majeure. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

PASSED AND ADOPTED by the Governing Body of the City of Oberlin, Kansas, on this 16<sup>th</sup> day of June, 2016.

EFFECTIVE DATE: June 16, 2016.



ATTEST:

Sandy Blush

CITY OF OBERLIN, KANSAS

By:

Josh Vith