

(Published 4/5, 4/12, 4/19 2016)

ORDINANCE NO. 527

AN ORDINANCE, granting to Kansas Gas Service, a Division of ONE Gas, Inc., its successors and assigns, a natural gas 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 THE CITY OF CHEROKEE KANSAS:

SECTION 1. That in consideration of the benefits to be derived by the City of Cherokee, Kansas, ("City"), and its inhabitants, there is hereby granted to Kansas Gas Service, a Division of ONE Gas, Inc. ("Company"), said Company operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority for a period of ten (10) years from the effective date of this Ordinance, to occupy and use the several streets, avenues, alleys, bridges, parks, parking areas, 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 natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business.

SECTION 2. As further consideration for the granting of this franchise, and in lieu of any city occupation, license, or permit fees, or revenue taxes, the Company shall pay to the City during the term of this franchise, three percent (3%) of the gross cash receipts from the sale of natural gas and transportation services to all consumers within the corporate limits of the City, such payments to be made monthly for the preceding monthly period. Gross cash receipts shall not include revenues from certain miscellaneous charges and accounts including, but not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, and returned check charges as such terms are used in tariffs or in the natural gas industry.

Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in June, 2016. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 482 and amendments thereto.

SECTION 3. The payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees, except that the usual general property taxes and special ad valorem property assessments, sales, and excise taxes or charges made for privileges which are not connected with the natural gas business, will be imposed on the Company and are not covered by the payments herein. From and after the date hereof, however, the permit fees required of the Company by any ordinance presently in effect or hereafter adopted for a permit to

excavate in or adjacent to any street, alley, or other public place shall be deemed a part of the compensation paid in Section 2 and shall not be separately assessed or collected by the City; in no event, however, shall this provision be interpreted to waive the requirement of notice to the City and the procedural requirements of such ordinance.

SECTION 4. The use of Right of Way under this franchise by the Company shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Company shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation or policy proposed, adopted, or promulgated by the City and, further provided other than the items enumerated in Section 3 herein, that such rules, regulations or policies shall not require the payment of additional fees or additional costs for the use of the Right of Way. In any event, the Company is granted an offset for such fees and costs against the franchise fees required to be paid hereunder.

SECTION 5. All mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. Company shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parks, parking areas, and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, Company shall have the right to commence work without having first providing such form(s).

SECTION 6. Company shall, in doing the work in connection with its said gas mains, pipes, and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare. Company shall, without expense to the City, and in a manner satisfactory to the duly authorized representatives of the City, replace such paving or surface in substantially as good condition as before said work was commenced.

SECTION 7. It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the Company, by its acceptance of this franchise as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.

SECTION 8. Company, its successors and assigns, in the construction, maintenance, and operation of its natural gas 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 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 9. This franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Company, and publication in the official City newspaper. Company shall have sixty (60) days after the final passage and approval of this franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this franchise Ordinance and when so accepted, this franchise Ordinance and acceptance shall constitute a contract between the City and Company and said Contract shall be deemed effective on the date Company files acceptance with the City.

SECTION 10. This franchise Ordinance, when accepted as above provided, shall constitute the entire agreement between the City and the Company relating to this franchise and the same shall supercede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written, shall be binding upon the parties, including their successors and assigns, and shall not be amended or further obligations imposed without mutual consent of the parties hereto.

SECTION 11. I. Upon written request of either the City or the Company, the franchise shall be reopened and renegotiated at any time upon any of the following events:

- (a) Change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or Company, including, but not limited to, the scope of the grant to the Company or the compensation to be received by the City.
- (b) Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or Company, including, but not limited to, the scope of the grant to the Company or the compensation to be received by the City.
- (c) Any other material and unintended change or shift in the economic benefit to the City or the Company relied upon and anticipated upon entering into this franchise.

II. The compensation provision of this franchise shall be reopened and renegotiated at any time if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines, and use the public rights of way or public property of the City without paying a franchise fee or other payment substantially equivalent to the franchise fee established herein, which results in a material and unfair disadvantage to the Company. The use of right of provision of this franchise shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy through pipelines which use the public rights of way or public property of the City, and do not have requirements on the use of the public ways substantially equivalent to the requirements of this franchise, which results in a material and unfair disadvantage to the

Company. Upon any such event, the City shall have up to ninety (90) days after written request of the Company to restore competitive neutrality. Following notice to the City, Company may suspend collection and payment of the franchise fee to the City for the affected customers until the City resolves the competitive disadvantage. After the last above referred ninety (90) day period expires without resolution of the competitive disadvantage, the Company shall have no liability to the City for any uncollected franchise fees suspended as provided in the subsection.

SECTION 12. Notwithstanding anything to the contrary in this Ordinance, the fees provided for in Section 2 above shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date that the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

SECTION 13. The franchise is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

SECTION 14. Any and all ordinances or parts of ordinances in conflict with the terms hereof are hereby repealed or considered as having no effect as of the first cycle of the monthly billing cycle which begins in June, 2016.

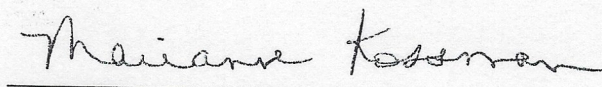
SECTION 15. Should the Kansas Corporation Commission take any action with respect to this franchise Ordinance and any amendment thereto which precludes Company from recovering from its customers any costs or fees provided for hereunder, the parties hereto shall renegotiate this franchise Ordinance in accordance with the Commission's ruling.

PASSED AND APPROVED this 12 day of May, 2016.


MAYOR

(SEAL)

ATTEST


City Clerk

ACCEPTANCE OF FRANCHISE ORDINANCE

To the Governing Body of the City of Cherokee, Crawford County, Kansas:

Kansas Gas Service, a division of ONE Gas, Inc., for itself, its successors and assigns, hereby accepts in writing the Ordinance and all rights and privileges therein granted, passed by the Governing Body of the City of Cherokee, Kansas, on the 12th day of May, 2016, designated as Ordinance No. 527, and entitled:

ORDINANCE, granting to Kansas Gas Service, a division of ONE Gas, Inc., its successors and assigns, a natural gas 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.

This acceptance is executed and filed as provided in Section 9 of said Franchise Ordinance No. 527 and said Company hereby agrees to all terms and conditions of said Ordinance.

Dated at Tulsa, Oklahoma, this 6 day of June, 2016

KANSAS GAS SERVICE,
A DIVISION OF ONE GAS, INC.

BY Caron A. Lawhorn

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

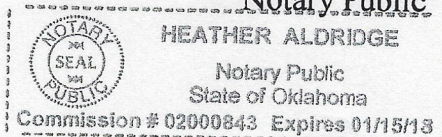
BE IT REMEMBERED, That on this 6th day of June, 2016, before me, the undersigned, a Notary Public, came Caron A. Lawhorn, Senior Vice-President of Kansas Gas Service, a Division of ONE Gas, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Oklahoma, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed as such officer the above and foregoing Acceptance on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

WITNESS my hand and seal the day and year last above written.

Heather Aldridge
Notary Public

My Appointment Expires:

1-15-2018



APPENDIX B - FRANCHISES

ORDINANCE NO. 316

AN ORDINANCE GRANTING THE FRANCHISE, PRIVILEGES AND RIGHTS TO THE CRAW-KAN TELEPHONE COOPERATIVE ASSOCIATION, INC., ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, RECONSTRUCT, ACQUIRE, OPERATE, AND MAINTAIN A TELEPHONE SYSTEM WITHIN THE CITY OF CHEROKEE, STATE OF KANSAS, AND TO FURNISH TELEPHONE SERVICE TO THE CITY OF CHEROKEE AND THE INHABITANTS THEREOF, AND TO USE THE STREETS, ROADS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE CITY OF CHEROKEE, AND TO TRANSMIT TELEPHONE SERVICE THROUGH THE CITY OF CHEROKEE FOR SERVICE TO PERSONS OUTSIDE AND BEYOND THE CITY OF CHEROKEE, AND TO PROVIDE FOR AN ANNUAL PAYMENT TO BE MADE TO THE CITY OF CHEROKEE.

The Craw-Kan Telephone Cooperative Association, Inc., (hereinafter called the Association), a corporation organized and existing under and by virtue of the laws of the State of Kansas, its successors and assigns, is hereby granted the franchise, privileges and rights, subject to the laws of Kansas applicable to the association:

(a) To construct or acquire, either or both, and thereafter to operate and maintain telephone facilities consisting of, without limitation, exchange, toll and trunk lines, conduits, cables, poles, and appurtenances necessary or desirable for the construction, operation and maintenance of the system, within the limits of the city, State of Kansas, (as the limits are presently constituted, or as they may in the future be extended) for the purpose of supplying telephone service therein and other places and for the transmission of telephone service through and beyond the city.

(b) To furnish telephone service for public and private use within the city and to transmit telephone service through and beyond the city.

(c) To construct, reconstruct, maintain and operate a telephone system and lines with all necessary appurtenances and fixtures, including without limitation, poles, wires, conduits, cables, circuits, switches, lines, anchors and anchor rods, on, over, along, upon, under or across the public streets, roads, alleys, or other public thoroughfares of the city, as they are presently laid out or may in the future be laid out.

(d) The telephone association shall make a report of gross income derived from all phone rentals on all phones served by the city exchange in the city limits on the first day of February and August, and for the six months period ending on December 31st and June 30th respectively, and at the time of reporting shall pay into the city treasury a sum equal to two percent of the gross revenue. This payment, equal to two percent of gross operating revenue shall continue semi-annually until such time as two percent of the revenue reaches \$150 per annum. This \$150 payment shall then continue to be paid until such time as 1½ % of gross operating revenue reaches \$150 per annum, the association shall then pay into the city treasury the sum of 1½ % of gross operating revenue with a minimum of \$150 per annum. The first report and payment shall be due February 1, 1955, and a like report and payment shall be due semi-annually thereafter for a period of 10 years,

ending with a report and payment due August 1, 1964, and for successive terms of like duration unless within four months prior to the expiration of the initial term, 60 days written notice is given by one party to the other of its intention to terminate the same at the expiration of the then current 10 year term. It is expressly understood that each one year term provides for two semi-annual payments, the payments to be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem or special improvement taxes) which might be imposed by the city under authority conferred by law. The telephone association shall have the privilege of crediting such sums with any unpaid balance due the association for telephone services rendered or facilities furnished to the city. The association will provide the city with one straight line phone at no charge. This phone to be located at a place to be agreed upon by both the city and the association.

(e) The telephone association on the request of any person shall remove or raise or lower its wires temporarily to permit the moving of houses, or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same, and the telephone association shall be given not less than 24 hours advance notice to arrange for such temporary wire changes. Provided that any wires of the telephone association being not strung in conformity with the laws of the State of Kansas shall raise, cut, move and restore the wires at its own expense.

(f) Permission is hereby granted to the telephone association to trim trees upon and overhanging the streets, alleys, sidewalks and public places in the city so as to prevent the branches of the trees from coming in contact with the wires and cables of the telephone association, all of the trimming to be done under the supervision and direction of any city official to which the duties have been or may be delegated, or the person or persons having an ownership in the trees.

This franchise is granted on the following terms and conditions:

First: The telephone facilities shall be constructed, operated and maintained in a proper workmanlike manner so as to afford all reasonable safeguards to the public.

Second: All poles, wires, anchors, anchor rods, and other appurtenances, which are located on, over, along, under or across the public streets, roads, alleys or other public thoroughfares of the city shall be so placed as not to interfere with traffic on the traveled portions of such thoroughfares; and the association, after the construction or reconstruction of the telephone lines, will restore to their original condition the streets, roads, alleys or other public thoroughfares on which such lines have been constructed insofar as this is practicable. All construction shall conform to the wire stringing rules of the State of Kansas.

Third: The association will comply with all reasonable rules and regulations of the city and with all ordinances now in effect or which may hereafter be passed insofar as they do not conflict with the terms or the purposes of the franchise herein granted.

Fourth: Nothing in this ordinance shall be construed to require or permit any telephone, electric light, or power wire attachments by either the city or the telephone association on the poles of the other. If such attachments are desired by the city or the telephone association, then a separate non-contingent agreement shall be prerequisite to such attachments.

Fifth: Nothing herein contained shall be construed as giving to the association any exclusive privileges.

Sixth: All other ordinances and agreements and parts of ordinances and agreement in conflict herewith are hereby repealed.
(12-30-54)

ORDINANCE NO. 365

AN ORDINANCE GRANTING TO THE GAS SERVICE COMPANY, A CORPORATION OPERATING A GAS DISTRIBUTION SYSTEM IN THE CITY OF CHEROKEE, STATE OF KANSAS, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO OPERATE A NATURAL GAS DISTRIBUTION PLANT AND SYSTEM IN THE CITY AND REPEALING ORDINANCE NO. 243.

Section 1. That there is hereby granted to the Gas Service Company, a corporation operating a gas distribution system in the City of Cherokee, herein called the grantee, its successors and assigns, the right, privilege and franchise for a period of 10 years from the effective date hereof, to construct, maintain and operate in the present and future streets, alleys, bridges and public places in the city, its gas distribution system as now located, together with the right, privilege and franchise to acquire, construct, maintain and operate therein, and thereon such additions and extensions thereto as may be necessary or desirable, fall for the purpose of supplying natural gas for all purposes to the inhabitants of the city.

Section 2. All rates established and charges made by grantee for gas distributed and sold hereunder shall be subject to valid and lawful orders of the State Corporation Commission of the State of Kansas or other competent authority having jurisdiction in the premises and the sale of gas to consumers shall be governed by the present operating rules, regulations and customs of grantee and such rules and regulations as may hereafter be prescribed and approved.

Section 3. That in consideration of and as compensation for the right, privilege and franchise hereby granted, the grantee, its successors and assigns, shall furnish gas at such pressure and of such quality as shall be designated by lawful orders of the State Corporation Commission of the state, if such gas is reasonably procurable, shall furnish free of cost to each consumer a recognized standard meter or other instrument for measurement of gas sold or computation of consumer's bills and keep same in repair at its cost, which meter shall be at all times be the property of the grantee but subject to inspection by the city; shall at all times save the city harmless from any and all damages which the city may be liable to pay that may arise from the construction, maintenance and operation of its plant system or any part thereof; shall limit all excavations of streets, alleys or public places to the necessities of efficient operation and shall not at any one time open or encumber more of any highway or public place than shall be reasonably necessary to enable grantee to proceed with advance in laying of repairing mains or poles and shall not permit such highway or public place to remain open longer than necessary for the purpose for which it was opened; shall refill all excavations and replace all pavement with like material and leave same in as good condition as

when altered or removed; shall perform all work on streets, alleys and public places under supervision of a representative of the city all expense to which it has been put in the repair or replacement of streets, highways or pavements in the event such work is done by the city after the neglect or refusal of grantee to perform same in reasonable time.

Section 4. As further consideration for the rights, privilege and franchise hereby granted and in lieu of all occupation and license taxes, the grantee shall not later than February 1st and August 1st respectively in each year make a report to the governing body of the city of its gross receipts from the sale of gas for all purposes within the city for the six months period ending at the last meter reading preceding December 31st and June 30th respectively; and at the time of making such report, pay into the city treasury a sum equal to two percent of the gross receipts from the sale of gas for domestic purposes, and one percent of its gross receipts from the sale of gas for industrial purposes, which shall have accrued, subsequent to the effective date of this franchise. Industrial sales shall be considered as those made under special contracts providing for stand-by fuel and interruption of service at any times demands of domestic consumers may so require.

(4-4-66)

ORDINANCE NO. 435

AN ORDINANCE GRANTING A FRANCHISE TO THE ELLIS ENGINEERING AND CONSTRUCTION, A COMMUNITY ANTENNA TELEVISION COMPANY, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATIONS AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM; AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS.

Section 1. Short Title. This ordinance shall be known and may be cited as the "City of Cherokee, Kansas, Community Antenna Television Company Franchise Ordinance.

Section 2. Definitions. For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

(1) City is the City of Cherokee, Kansas.

(2) Council is the city council of Cherokee, Kansas.

(3) Community Antenna Television System, hereinafter referred to as CATV System or system means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

(4) Person is any person, firm, partnership, association, corporation, company or organization of any kind.

(5) Grantee is Ellis Engineering and Construction or anyone who succeeds Ellis Engineering and Construction in accordance with the provisions of this franchise.

Section 3. Grant of Nonexclusive Authority. (a) There is hereby granted by the city to the grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the city of a CATV system for the interception, sale and distribution of television and radio signals.

(b) The right to use and occupy the streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the city reserves the right to grant a similar use of the streets, alleys, public ways and places, to any person at any time during the period of this franchise.

Section 4. Compliance with Applicable Laws and Ordinances. 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 provide.

Section 5. Territorial Area. Involved and System Construction and Extension.

(a) This franchise relates to the present territorial limits of the city and to any area henceforth added thereto during the term of this franchise.

(b) The grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may technically and may become technically and economically feasible.

(c) Whenever the grantee shall have received written requests for service from at least 15 subscribers within 400 cable meters (1300 cable feet) of its aerial trunk cable, or from at least 25 subscribers within 400 cable meters (1300 cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

(d) No person in the grantee's service area shall be arbitrarily refused service but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 cable feet) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscriber in more densely populated areas.

(e) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may

acquire CATV service for this development under the following conditions; but otherwise the grantee shall not be obligated to construct CATV system in such new development; developer shall perform all trenching and backfilling necessary for the providing of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the grantee's plans and specifications.

In addition to providing plans and specifications to the developer, the grantee shall inspect the facilities required hereunder, and certify to the city prior to final approval of the subdivision or development that the facilities required herein are properly installed. The city shall have the right to review, and require its approval of the maps and specifications provided by the grantee. The cost of that portion of an extension to a subdivision or development from the grantee's existing facilities in excess of 60 meters (200 feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by grantee.

Section 6. Liability and Indemnification. (a) The grantee shall pay and by its acceptance of this franchise the grantee specifically agrees that it will pay all damages and penalties which the city may legally be required to pay as a result of granting this franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this franchise.

(b) The grantee shall pay and by its acceptance of this franchise specifically agrees that it will pay all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the city attorney or his or her assistants or any employees of the city.

(c) The grantee shall maintain, and by its acceptance of this franchise specifically agrees that it will maintain throughout the terms of this franchise liability insurance insuring the city and the grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of:

(1) \$1,000,000 for bodily injury or death to any one person within the limit, however, or \$1,000,000 for bodily injury or death resulting from any one accident.

(2) \$1,000,000 for property damage resulting from any one accident;

(d) The insurance policy obtained by the grantee in compliance with this section must be approved by the city council and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the city clerk of Cherokee, Kansas, during the term of this franchise.

Section 7. Color TV. The facilities used by the grantee shall be capable of distributing color TV signals, and when the signals the grantee distributes are received in color they shall be distributed in color where technically feasible.

Section 8. Signal Quality Requirements. The grantee shall:

(1) Produce a picture, whether in black and white or in color that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows;

(2) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

(3) Limit failures to a minimum by locating and correcting malfunctions promptly, but in all events the problem shall be located within 24 hours after notice and corrected as soon thereafter as practicable.

(4) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

Section 9. Operation and Maintenance of System. (a) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) The grantee shall maintain a local office which shall be open during all usual business hours, have a listed telephone and a number so that the caller will not be charged for a long distance call and be so operated that complaints and requests for repairs or adjustments may be received at any time.

Section 10. Carriage of Signals. The grantee shall receive and distribute local television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the Federal Communications Commission. All FCC regulations shall be complied with regarding the carriage of the programming of any existing or future television broadcasting station which covers the city in its principal broadcasting area.

Section 11. Program Alteration. All programs of broadcasting stations carried by the grantee shall be carried in their entirety as received, with announcements and advertisements and without additions.

Section 12. Service to Schools. The grantee shall provide service to public school locations and teaching stations within the city for educational purposes upon request by the city and at no cost to it or to the public school system. The grantee may at its election provide similar services without cost to private schools, including parochial or other religious schools.

Section 13. Emergency Use of Facilities. In the case of any emergency or disaster; the grantee shall, upon request of the city council, make available its facilities to the city for emergency use during the emergency or disaster period.

Section 14. Other Business Activities. (a) Neither the grantee hereunder nor any shareholder of the grantee shall engage in the business of selling, repairing, or installing television receivers, radio receivers, or accessories for such receivers within

the city during the term of this franchise and the grantee shall not allow any of its shareholders to so engage in any such business.

(b) This franchise authorizes only the operation of a CATV system as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by law of the grantee.

Section 15. Safety Requirements. (a) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) The grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters, and in such manner that they will not interfere with any installations of the city or of a public utility serving the city.

(c) All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the city, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) The grantee shall maintain a force of one or more area agents or employees at all times and shall have sufficient employees to provide safe, adequate, and prompt service for its facilities.

Section 16. New Developments. It shall be the policy of the city liberally 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 more effectively, efficiently, or economically to serve its customers. Provided, however, that this section shall not be construed to require the city to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

Section 17. Conditions on Street Occupancy. (a) All transmissions and distribution structures, lines, and equipment erected by the grantee within the city shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the streets, alleys or other public ways and places.

(b) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the grantee shall at its own cost and expense and in a manner approved by the city replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(c) If at any time during the period of this franchise the city shall lawfully elect to alter or change the grade of any street, sidewalk, 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.

(d) Any poles or other fixture placed in any public way by the grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

(e) 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 or raising or lowering of wires shall be paid by the persons requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 48 hours advance notice to arrange, for such temporary wire changes.

(f) The grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and 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, except that at the option of the city such trimming maybe done by it or under its supervision and direction at the expense of the grantee.

(g) In areas where electric and telephone utilities are now underground, grantee's trunk line shall be underground. In such areas grantee shall provide underground subscriber drops, provided however, each such subscriber shall trench and backfill for such installation at the expense of the subscriber.

Section 18. Preferential or Discriminatory Practices Prohibited. The grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage.

Section 19. Removal of Facilities Upon Request. Upon termination of service to any subscriber, the grantee shall promptly remove all facilities and equipment from the premises of such subscriber upon his or her request.

Section 20. Transfer of Franchise. The grantee shall not transfer this franchise to another person without prior approval of the city by ordinance.

Section 21. Change of Control of Grantee. Prior approval of the city council shall be required where ownership or control of more than 30% of the right of control of grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 30% or more of such right of control, singularly or collectively. By its acceptance of this franchise, grantee specifically grants and agrees that any such acquisition occurring without prior approval of the city council shall constitute a violation of this franchise by the grantee.

Section 22. Filings and Communications with Regulatory Agencies. Copies of all petitions, applications and communications submitted by the grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise, shall also be submitted simultaneously to the city council.

Section 23. City Rights in Franchise. (a) The right is hereby reserved by the city or the city council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(b) The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the CATV operations of the grantee.

(c) The city shall have the right to supervise all construction or installation work performed subject to the provisions of this franchise such inspections as it shall find necessary to insure compliance with the terms of this franchise and other pertinent provisions of law.

(d) At the expiration of the term for which this franchise is granted, or upon its termination and cancellation, as provided for herein, the city shall have the right to require the grantee to remove at its own expense all portions of the CATV system from all public ways within the city.

(e) After the expiration of the term for which this franchise is granted, or after its termination and cancellation, as provided for herein, the city shall have the right to determine whether the grantee shall continue to operate and maintain the CATV system pending the decision of the city as to the future maintenance and operation of such system.

Section 24. Maps, Plats, and Reports. (a) The grantee shall file with the city clerk true and accurate maps or plats of all existing and proposed installations.

(b) The grantee shall keep on file with the city clerk a list of its shareholders and bondholders.

Section 25. Payment to the City. The grantee shall pay to the city annually an amount equal to 1.5% of the annual gross basic operating revenues taken in and received by it on all retail sales of television signals within the city during the years 1983, 1984, 1985 and 1986 and for the year 1987 and each year thereafter, the grantee shall pay to the city annually the amount equal to 1.5% of the annual gross basic operating revenues taken in and received by it on all retail sales of television signals within the city during the year for the use of the streets and other facilities of the city in the operation of the CATV system and for the municipal supervision thereof. This payment shall be, in addition to any other tax or payment owed to the city by the grantee. The payment herein provided for to be paid by the grantee unto the city within 30 days following the end of each year.

Section 26. Forfeiture of Franchise. (a) In addition to all other rights and powers pertaining to the city by virtue of this franchise or otherwise, the city reserves the right to terminate and cancel this franchise and all rights and privileges of the grantee hereunder in the event that the grantee:

(1) Violates any provision of this franchise or any rule, order, or determination of the city or city council made pursuant to this franchise, except where such violation, other than of Section 22 or subsection (2) below, is without fault or through excusable neglect;

(2) Becomes insolvent, unable or unwilling to pay its debts, adjudged a bankrupt;

(3) Attempts to evade any of the provisions of this franchise or practices any fraud or deceit upon the city; or

(4) Fails to complete construction under this franchise within 15 months of the effective date of the within ordinance.

(b) Such termination and cancellation shall be by ordinance duly adopted after 30 days' notice to the grantee and shall in no way effect any of the city's rights under this franchise or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the city

council or its representative shall be conclusive. Provided, however, that before this franchise may be terminated and canceled under this section, the grantee must be provided with an opportunity to be heard before the city council.

Section 27. City's' Right of Intervention. The grantee agrees not to oppose intervention by the city in any suit or proceeding to which the grantee is a party to protect the city's interest.

Section 28. Further Agreement and Waiver of Grantee. The grantee agrees to abide by all provisions of this franchise, and further agrees that it will not at any future time set up as against the city or the city council the claim that the provisions of this franchise are unreasonable, arbitrary, or void.

Section 29. Duration and Acceptance of Franchise. (a) 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 15 years, provided that within 30 days after the date of the passage of this ordinance the grantee shall file with the city clerk its unconditional acceptance of this franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths.

(b) Should the grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this franchise whatever.

(c) If the grantee satisfactorily completes and performs all duties or obligations required of it under the within franchise than the city will favorably review any subsequent application by the grantee for the granting of a new franchise to the grantee containing terms and conditions similar to those herein set forth.

Section 30. Erection, Removal, and Common User of Poles. (a) No poles or other wire-holding structures shall be erected by the grantee without prior approval of the city council with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the city council determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the city are available for use by the grantee but it does not make arrangements for such use, the city council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(c) Where the city or a public utility serving the city desires to make use of the poles or other wire-holding structures of the grantee but agreement therefor with the grantee cannot be reached, the city council may require the grantee to permit such use for such consideration and upon such terms as the council shall determine to be just and reasonable, if the council determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

Section 31. Number of Channels. The grantee's cable distribution system shall be capable of carrying at least 30 channels and shall include at least the following programming:

- (a) KOAM-TV Pittsburg, Kansas;
- (b) KTVJ-TV Joplin, Missouri;
- (c) KODE-TV Joplin, Missouri;
- (d) ESPN Sports Channel;
- (e) WTBS-TV Atlanta, Georgia;
- (f) CNN 24 hour News or a PBS Channel;
- (g) WGN-TV Chicago, Illinois;
- (h) CBN Christian Broadcasting Network,
- (i) NICKELODEON Children's Programming;

and shall also include either the Star Movie Channel or the Home Box Office.

Section 32. Rates. (a) The rates and charges for television and radio signals distributed hereunder shall be fair and reasonable and no higher than necessary to meet all costs of service (assuming efficient and economical management), including a fair return on the original cost, less depreciation, of the properties devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties).

(b) The city council shall have the power, authority, and right to cause the grantee's rates and charges to conform to the provisions of subsection (a) hereof, and for this purpose, it may deny increases or order reductions in such rates and charges when it determines that in the absence of such action on its part, the grantee's rates and charges or proposed increased rates and charges will not conform to subsection (a).

(c) By its acceptance of this franchise the grantee specifically grants and agrees that its rates and charges to its subscribers for television and radio signals shall be fair and reasonable and no higher than necessary to meet all its necessary costs of service (assuming efficient and economical management) including a fair return on the original cost, less depreciation of its properties devoted to such service (without regard to any subsequent sale or transfer price or cost of such properties).

(d) By its acceptance of this franchise the grantee further specifically grants and agrees that the city council shall have the power, authority, and right to cause the grantee's rates and charges to conform to the provisions of subsection (c) hereof, and for this purpose the council may deny increases or order reductions in such rates and charges when it determines that in the absence of such action on its part, the grantee's rates and charges or proposed increased rates and charges will not conform to subsection (c).

(e) However, no action shall be taken by the city council with respect to the grantee's rates under this section until the grantee has been given reasonable notice thereof and an opportunity to be heard by the council with regard thereto.

(f) The following rates and charges are hereby authorized for service under this franchise and shall not be changed by the grantee without prior approval by the city council:

(1) Initial tap-in and connection charges: — \$25.

(2) Monthly rates: Not to exceed — \$13 base, such as provided in Section 32 herein excluding WGN,-TV, Chicago, Illinois.

(g) The grantee shall receive no deposit, advance payment, or penalty from any subscriber or potential subscriber without approval of the council.

(h) The grantee shall receive no consideration whatsoever for or in connection with its service to its subscribers other than in accordance with this section.

(i) If in the future, the State of Kansas regulates the rates of the grantee for the service provided for in this franchise, this section shall be of no effect during such state regulation to the extent of any conflict therewith.

Section 33. Subscriber Refunds on Termination of Service. If any subscriber of the grantee of less than three years terminates service because of the grantee's failure to render service to such subscriber of a type and quality provided for herein, or if service to a subscriber of less than three years is terminated without good cause or because the grantee ceases to operate the CATV business authorized herein for any reason except expiration of this franchise, the grantee shall refund to such subscriber an amount equal to the initial tap-in and connection charges paid by him or her divided by 36 and multiplied by a number equal to 36 minus the number of months the subscriber has been on the system.

Section 34. Publication Costs. The grantee shall assume the cost of publication of this franchise as such publication is required by law and such is payable upon the grantee's filing of acceptance of this franchise.

Section 35. Separability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.
(10-12-83)

ORDINANCE NO. 437

AN ORDINANCE GRANTING TO THE KANSAS POWER AND LIGHT COMPANY, (ALSO KNOWN AS KPL GAS SERVICE), A KANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NATURAL GAS 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.

Section 1. In consideration of the benefits to be derived by the City of Cherokee, Kansas, and its inhabitants, there is hereby granted to The Kansas Power and Light Company, a Kansas corporation, hereinafter sometimes designated as company, the company being a corporation operating a system for the transmission of electric current between two or more incorporated cities in the State of Kansas, and also operating a system for the transmission and distribution of natural gas in the State of Kansas, the right, privilege, and authority to a period of 20 years from the 3rd day of June, 1986, to occupy and use the several streets, avenues, alleys, bridges, parks, parkings, and public places of the city, for the placing and maintaining of pipelines and other equipment necessary to carry on the

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

Section 10. This franchise is granted pursuant to the provisions of K.S.A. 12-824.

Section 11. That any and all ordinances or parts of ordinances in conflict with the terms hereof and hereby repealed.

Section 12. Should the State Corporation Commission take any action with respect to this franchise ordinance, which would or may preclude The Kansas Power and Light Company from recovering from its customers any cost provided for hereunder, the parties hereto shall renegotiate this ordinance in accordance with the Corporation Commission's ruling.

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