

## **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. 1337**

AN ORDINANCE OF THE CITY OF WAKEENEY, KANSAS, ESTABLISHING FRANCHISE PAYMENTS, PURSUANT TO THE CITY OF WAKEENEY ORDINANCE NO. 1284, CONCERNING A COMMUNITY ANTENNA AND CLOSE CIRCUIT ELECTRONIC SYSTEM OPERATED BY KAYS, INC., IT SUCCESSORS, LESSEES, AND ASSIGNS.

Section 1. Pursuant to Section 11 of Ordinance No. 1284 of the City of WaKeeney, adopted by the governing body of the City of WaKeeney, Kansas, on July 19, 1988, the franchise payments to be paid by the Franchise, as defined in said ordinance, shall be for the remaining years in which said franchise is effective, unless sooner changed, a sum equal to two percent (2%) of the receipts on basic cable, three and five tenths percent (3.5%) of the receipts for non—basic cable television services, as defined by Subsection 1k of Ordinance No. 1284, but not including services offered by the Franchisee for data transmission, interactive video, and other services sold by Franchisee, and for all other services, including data transmission, interactive video, and like services sold by Franchisee, a sum equal to three and five tenths percent (3.5%) of the receipts for said services. All other provisions of Section 11 of Ordinance NO. 1284 shall continue in full force and effect.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.  
(09-03-96)

#### **ORDINANCE NO. 1374**

AN ORDINANCE OF THE CITY OF WAKEENEY, TREGO COUNTY, KANSAS, GRANTING TO EAGLE COMMUNICATIONS, INC., A KANSAS CORPORATION, ITS SUCCESSOR AND ASSIGNS, FOR A TERM OF SEVEN (7) YEARS, THE RIGHT, AUTHORITY, POWER AND FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS AND OTHER PUBLIC PLACES IN THE CITY OF WAKEENEY, KANSAS, TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINP4G, MANAGING AND OPERATING A TELECOMMUNICATIONS SYSTEM I14 THE CITY OF WAKEENEY.

Section 1. Eagle Communications, Inc., a Kansas Corporation, duly authorized to do business in the State of Kansas, and its successors, lessees, and assigns (hereinafter called the "Grantee"), is hereby granted, pursuant to K.S.A. 12-2001 et. seq. as amended from time to time hereinafter, in the operation of Grantee's telecommunication system, and its business and service incidental to or connected therewith, including, but not limited to, all telecommunications business, systems and/or service to be defined hereafter so as not to be in conflict or competition with what is commonly referred to as a telephone system and/or telecommunication services that require a Certificate of Convenience and Authority by the Kansas Corporation Commission. All telecommunication services, as heretofore defined, will be subject to or hereafter authorized by the Kansas Corporation Commission or the Federal Communications Commission (hereinafter called the "System"), within the City of WaKeeney, Kansas (hereinafter called the "City"), the franchise and right to use and occupy the streets and other public places within the corporate limits of the City, as the same now or may hereafter exist, for the Grantee's System, including, but not limited to, the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, sidewalks, alleys, avenues, parkways, lanes, bridges, utility and other easements, rights-of-way and other public places of the City, all towers, poles, cables, amplifiers, conduits, pole and wire fixtures, telecommunications plant and apparatus of whatsoever kind and nature and any and all other associated and related facilities owned, leased or otherwise used by the Grantee for the ownership and operation of the System within the City and environs thereof during the continuance of the franchise hereby granted (hereinafter called the "Franchise"), but expressly subject to the restrictions and conditions hereinafter set forth.

Section 2. This franchise is non-exclusive and shall take effect and be in force from and after the expiration of sixty (60) days from the date of its final passage by the Governing Body of the City and shall be for a term of seven (7) years from the effective date hereto and for successive terms of five (5) years unless written notice of termination is given by the City or the Grantee at least 365 days prior to the expiration of the then existing term thereof.

Section 3. The Grantee shall operate the system in such a manner as shall be to the benefit of the City and its inhabitants and in a manner in accordance with quality of services that are in conformance with the Federal Communications Commission rules, regulations, and proof of performance test provisions. Subject to those powers reserved and granted to the City pursuant to K.S.A. 12-2001 et. seq. and amendments thereof, 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 operate the System under this Franchise; and that the Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the telecommunications services provided for hereunder as authorized by the Kansas Corporation Commission and any other governmental agency charged by law with the power to regulate telecommunications public utilities.

Section 4. All newly constructed permanent wires, cables and fiber used in connection with the System in the City shall follow the electric utilities route. In the event the electric utility buries its cables, wires and appurtenances, the Grantees shall be required to construct its facilities underground. In the event the electric utility constructs its facilities overhead, Grantee shall be permitted to construct its facilities overhead to be placed on utility poles. Any and all such construction shall be located so as not to injure unnecessarily any drains, sewers, catch basins or other public improvements and, if such injured, the Grantee shall repair any damages so caused to the satisfaction of the City. 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 of the City.

Section 5. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any other agency empowered to issue the same, temporarily move, raise or lower its cables, wires and other plant to permit the moving of any such building or buildings. The expense of such moving of wires, cables and plant shall be paid by the person 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 of any such anticipated moving of a building or buildings.

Section 6. The Grantee shall have the authority to trim trees, shrubs and other vegetation located on any streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees, shrubs and vegetation from coming in contact with the wires, cables and plant of the Grantee, all trimming to be done under the supervision and direction of the City and at the expense of the Grantee.

Section 7. 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 further as compensation to the City for administration of this Franchise, and in lieu of all City occupation and license fees and taxes, the Grantee shall pay to the City, in arrears, an amount equal to three percent (3%) of the annual gross receipts derived from monthly telecommunications services (installation, one time charges and internet services are not included) rendered wholly within the corporate limits of the City. Payments shall be made semi-annually as follows: (i) for the period of January 1 through June 30 of each year, or part thereof, during the term of the Franchise, the payment shall be made no later than October 1 of the same year; (ii) for the period of July 1 through December 31 of each year, or part thereof, during the term of the Franchise, the payment shall be made no later than April 1 of the following year. In the event of the termination of the Franchise, payment of Franchise fees for the final reporting period shall be made on the applicable payment date above even though the Franchise is no longer in effect. All Franchise and copyright fees shall be itemized as separate charges and shall be charged back to Grantee's customers.

Section 8. It shall be the policy of the City to amend this Franchise upon application of the Grantee, when deemed advisable or necessary by the City, to

enable the Grantee to take advantage of any developments in the field of telecommunications systems and services which will afford the Grantee an opportunity to more effectively, efficiently or economically serve its customers, and to enable the Grantee to conform to the rules and regulation of any and all governmental agencies charged by law with regulation of telecommunications public utilities.

Section 9. Grantee shall maintain service personnel on call on a 24-hour, seven day a week basis to respond to customer service request calls. So long as Grantee has the majority of cable subscribers within Corporate limits of WaKeeney, it shall maintain an office having usual business hours Monday through Friday, staffed with personnel residing in the City of WaKeeney with the exception of the present part-time employee living outside the City. In addition, Grantee shall provide a drop box at a convenient location at its office.

Section 10. The Grantee shall hold and save the City harmless from all cost and damage, expense or liability which may be occasioned solely by the Grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said City, and in the event an action shall be instituted against the City and the Grantees jointly or against the City separately arising out of injury or damage or both, occasioned solely by the Grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said City, then upon notice by the City to the Grantee, the Grantee will assume liability for the defense of such action at the cost of the Grantee subject to the option of the City to appear and defend at its own costs, any such case.

Section 11. The Grantee, its successors and assigns, in the construction, maintenance and operation of its telecommunication system shall use all reasonable and proper precautions to avoid damage or injury to persons or property and shall hold and save harmless the City of WaKeeney, Kansas, from any and all damages, injury, claims, causes of action or expense caused by the Grantee, its successors and assigns, or its or their agents or servants.

Section 12. The City's failure to enforce and remedy any noncompliance by the Grantee of the terms and conditions of this Franchise Ordinance shall not constitute a waiver of the City's rights hereunder, and the Grantee shall continue to perform its obligation as herein provided.

Section 13. The Grantee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense or damage arising from any of the provisions or requirements of the Franchise Ordinance or because of the enforcement thereof by the City of any loss, cost, expense or damage arising from any of the provisions or requirements of the Franchise Ordinance, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant all, or any part, of the Franchise herein granted; provided that the Grantee expressly acknowledges that it accepted the Franchise herein granted in reliance upon its independent and personal investigation and understanding of the

power of authority of the City to grant the Franchise herein conferred upon the Grantee; provided further that the Grantee acknowledges by its acceptance of the Franchise that it has not been induced to enter into this Franchise upon any understanding or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Grantee acknowledges by the acceptance of this Franchise that is has carefully read the provisions, terms and conditions hereof.

Section 14. Nothing herein contained shall be construed as giving to the Grantee any exclusive privileges, nor shall this Franchise affect any prior or existing rights of the Grantee to maintain telecommunications service within the City.

Section 15. The Franchise and all rights hereunder may not be assigned by the Grantee, without the written consent of the governing body of the City of WaKeeney, which will not be unreasonably withheld, and the successors and/or assigns shall succeed to all rights, duties, and liabilities of the Grantee hereunder.

Section 16. If any portion of this Ordinance, for any reason whatsoever, 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.

Section 17. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance.

Section 18. 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, power, 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.  
(09-30-03)

## **ORDINANCE NO. 1377**

AN ORDINANCE GRANTING TO THE KANSAS CORPORATION OF RURAL TELEPHONE SERVICE COMPANY, INC., ITS SUBSIDIARIES (NAMELY NEXTECH, INC.), SUCCESSORS, TRANSFEREES AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO ERECT, MAINTAIN AND OPERATE A COMMUNICATIONS SYSTEM WITHIN THE CITY OF WAKEENEY, KANSAS, PRESCRIBING THE TERMS AND CONDITIONS THEREOF AND PROVIDING FOR PAYMENTS TO BE MADE TO THE CITY OF WAKEENEY, 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 Wakeeney, Kansas, and shall include, when appropriate, the context of the territorial boundaries of the City of Wakeeney, Kansas, as they now or shall hereafter exist.

2. “Council” - shall mean the present governing body of the City of Wakeeney, 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 Wakeeney, Kansas, pursuant to the ordinance passed by the City Council.

4. “Grantee” - shall mean Rural Telephone Service Company, Inc., its 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 and basic cable television 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 Wakeeney, 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 Wakeeney, which shall within their proper use and meaning entitle the City of Wakeeney 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 Wakeeney 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 Wakeeney, 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. In addition, the Telephone Company will maintain an office in the City for the duration of this franchise staffed with personnel residing in the City.

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 seven (7) years and successive terms of five (5) years unless written notice is given by either the City or the Grantee to the other, 365 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, an amount equal to three percent (3%) of the annual Gross Revenue from the operation of the business in said City. 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 Wakeeney 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 Wakeeney, 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, 408 Russell Ave., Wakeeney, KS 67672. If to the Grantee, it shall be delivered by certified mail to CEO/General Manager, 145 N. Main, Lenora, Kansas 67645.

## ARTICLE XVI

### Miscellaneous Provisions

Section 1. Supercedes Prior Ordinances. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance. This ordinance specifically supercedes the previously adopted ordinance of #1343 (effective June 3, 1997).

Section 2. 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 3. Final Approval. This Ordinance shall be read in full at three regular meetings of the governing body. Immediately after the final passage, it shall be published in the official city newspaper, once a week for two (2) consecutive weeks. It shall not take effect and be in force until after the expiration of sixty (60) days from the date of final passage.

Section 4. Costs. Grantee shall assume the cost of publication of this Ordinance. Grantee shall reimburse the City for these costs upon presentation of the publication costs.  
(11-05-04)

**ORDINANCE NO. 1390**  
(Amending Ordinance No. 1374)

AN ORDINANCE AMENDING ORDINANCE NO. 1374 OF THE CITY OF WAKEENEY, TREGO COUNTY, KANSAS, GRANTING TO EAGLE COMMUNICATIONS, INC., A KANSAS CORPORATION, ITS SUCCESSOR AND ASSIGNS, FOR A TERM OF SEVEN (7) YEARS, THE RIGHT, AUTHORITY, POWER AND FRANCHISE TO USE THE STREETS, AVENUES, BOULEVARDS, ALLEYS AND OTHER PUBLIC PLACES IN THE CITY OF WAKEENEY, KANSAS, TO CONDUCT THE BUSINESS OF CONSTRUCTING, INSTALLING, MAINTAINING, MANAGING AND OPERATING A TELECOMMUNICATIONS SYSTEM IN THE CITY OF WAKEENEY.

Section 1. Eagle Communications, Inc., a Kansas Corporation, duly authorized to do business in the State of Kansas, and its successors, lessees, and assigns (hereinafter called the "Grantee"), is hereby granted, pursuant to K.S.A. 12-2001 et, seq. as amended from time to time hereinafter, in the operation of Grantee's telecommunication system, and its business and service incidental to or connected therewith, including, but not limited to, all telecommunications business, systems and/or service to be defined hereafter (amended by deletion of the remaining sentence in Ordinance No. 1374). All telecommunication services, as hereto defined, will be subject to or hereafter authorized by the Kansas Corporation Commission or the Federal Communications Commission (hereafter called the "System"), within the City of WaKeeney, Kansas (hereafter called the "City"), the franchise and right to use and occupy the streets and other public places within the corporate limits of the City, as the same now may hereafter exist, for the Grantee's System, including, but not limited to, the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, sidewalks, alleys, avenues, parkways, lanes, bridges, utility and other easements, rights-of-way and other public places of the City, all towers, poles, cables, amplifiers, conduits, pole and wire fixtures, telecommunications plant and apparatus of whatsoever kind and nature and any and all other associated and related facilities owned, leased or otherwise used by the Grantee for the ownership

and operation of the System within the City and environs thereof during the continuance of the franchise hereby granted (hereinafter called the "Franchise"), but expressly subject to the restrictions and conditions hereinafter set forth.

Section 2. This amended Franchise is non-exclusive and shall take effect and be in force for the same term as Ordinance No. 1374, that is for a term of seven (7) years from the effective date of Ordinance No. 1374 (September, 2003) and for successive term of five (5) years unless written notice of termination is given by the City or the Grantee at least 365 days prior the expiration of their existing term thereof.

Section 3. The Grantee shall operate the system in such a manner as shall be to the benefit of the City and its inhabitants and in a manner in accordance with quality of services that are in conformance with the Federal Communications Commission rules, regulations, and proof of performance test provisions. Subject to those powers reserved and granted to the City pursuant to K.S.A. 12-2001 et. seq. and amendments thereof, the Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonable necessary to enable the Grantee to exercise its rights and operate the System under this Franchise and that the Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for the telecommunication services provided for hereunder as authorized by the Kansas Corporation Commission and any other governmental agency charged by law with the power to regulate telecommunications public utilities.

Section 4. All newly constructed permanent wires, cables and fiber used in connection with the System in the City shall follow the electric utilities route. In the event the electric utility buries its cables, wires and appurtenances, the Grantees shall be required to construct its facilities underground. In the event the electric utility constructs its facilities overhead, Grantee shall be permitted to construct its facilities overhead to be placed on utility poles. Any and all such construction shall be located so as not to injure unnecessarily any drains, sewers, catch basins or other public improvements and, if such injured, the Grantee shall repair any damages so caused to the satisfaction of the City. The City reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the Grantee and to reasonable designate where such facilities are to be placed within the public ways and places of the City.

Section 5. The Grantee shall, on the request of any person holding a building moving permit issued by the City or any other agency empowered to issue the same, temporarily move, raise or lower its cables, wires and other plant to permit the moving of any such building or buildings. The expense of such moving of wires, cables and plant shall be paid by the person 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 of any such anticipated moving of a building or buildings.

Section 6. The Grantee shall have the authority to trim trees, shrubs and other vegetation located on any streets, alleys, sidewalks and public places of the

City so as to prevent the branches of such trees, shrubs and vegetation from coming in contact with the wires, cables and plant of the Grantee, all trimming to be done under the supervision and direction of the City and at the expense of the Grantee.

Section 7. 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 further as compensation to the City for administration of this Franchise, and in lieu of all City occupation and license fees and taxes, the Grantee shall pay to the City, in arrears, an amount equal to three percent (3%) of the annual gross receipts derived from monthly telecommunications services (installation, one time charges and internet services are not included) rendered wholly within the corporate limits of the City. Payments shall be made semi-annually as follows: (i) for the period of January 1 through June 30 of each year, or part thereof, during the term of the Franchise, the payment shall be made no later than October 1 of the same year; (ii) for the period of July 1 through December 31 of each year, or part thereof, during the term of the Franchise, the payment shall be made no later than April 1 of the following year. In the event of the termination of the Franchise, payment of Franchise fees for the final reporting period shall be made on the applicable payment date above even though the Franchise is no longer in effect. All Franchise and copyright fees shall be itemized as separate charges and shall be charged back to Grantee's customers.

Section 8. It shall be the policy of the City to amend this Franchise upon application of the Grantee, when deemed advisable or necessary by the City, to enable the Grantee to take advantage of any developments in the field of telecommunications systems and services which will afford the Grantee an opportunity to more effectively, efficiently or economically serve its customers, and to enable the Grantee to conform to the rules and regulation of any and all governmental agencies charged by law with regulation of telecommunications public utilities.

Section 9. Grantee shall maintain service personnel on call on a 24-hour, seven day a week basis to respond to customer service request calls. So long as Grantee has the majority of cable subscribers within Corporate limits of WaKeeney, it shall maintain an office having usual business hours Monday through Friday, staffed with personnel residing in the City of WaKeeney with the exception of the present part-time employee living outside the City. In addition, Grantee shall provide a drop box at a convenient location at its office.

Section 10. The Grantee shall hold and save the City harmless from all costs and damage, expense or liability which may be occasioned solely by the Grantee's occupancy in the public streets, avenues, alleys, bridges, and public grounds and places within the limits of said City, and in the event an action shall instituted against the City and the Grantees jointly or against the City separately arising out of injury or damage to both, occasioned solely by the Grantee's occupancy in the public streets, avenues, alleys, bridges and public grounds and places within the limits of said City, then upon notice by the City to the Grantee, the Grantee will assume liability for the defense of such action at the cost of the

Grantee subject to the option of the City to appear and defend at its own costs, any such case.

Section 11. The Grantee, its successors and assigns, in the construction, maintenance and operation of its telecommunication system shall use all reasonable and proper precautions to avoid damage or injury to persons or property and shall hold and save harmless the City of WaKeeney, Kansas, from any and all damages, injury, claims, causes of action or expense caused by the Grantee, its successors and assigns, or its or their agents or servants.

Section 12. The City's failure to enforce and remedy any noncompliance by the Grantee of the terms and conditions of this Franchise Ordinance shall not constitute a waiver of the City's rights hereunder, and the Grantee shall continue to perform its obligation as herein provided.

Section 13. The Grantee shall have no remedy or recourse whatsoever against the City for any loss, costs, expense or damage arising from any of the provisions or requirements of the Franchise Ordinance or because of the enforcement thereof by the City of any loss, cost, expense or damage arising from any of the provisions or requirements of the Franchise Ordinance, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant all, or any part, of the Franchise herein granted; provided that the Grantee expressly acknowledges that it accepted the Franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of the City to grant the Franchise herein conferred upon the Grantee; provided further that the Grantee acknowledges by its acceptance of the Franchise that it has not been induced to enter into this Franchise upon any understanding or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Franchise not expressed herein; provided further that the Grantee acknowledges by the acceptance of this Franchise that it has carefully read the provisions, terms and conditions hereof.

Section 14. Nothing herein contained shall be construed as giving to the Grantee any exclusive privileges, nor shall this Franchise affect any prior or existing rights of the Grantee to maintain telecommunications service within the City.

Section 15. The Franchise and all rights hereunder may not be assigned by the Grantee, without the written consent of the governing body of the City of WaKeeney, which will not be unreasonably withheld, and the successors and/or assigns shall succeed to all rights, duties, and liabilities of the Grantee hereunder.

Section 16. If any portion of this Ordinance, for any reason whatsoever, 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.

Section 17. All Ordinance and parts of Ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance.

Section 18. 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, power, 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.  
(03-02-06)

### **ORDINANCE 1391**

AN ORDINANCE GRANTING TO MIDWEST 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 THEREOF.

KANSAS: BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WAKEENEY,

**Section 1.** That, in consideration of the benefits to be derived by the City of WaKeeney, Kansas, and its inhabitants, hereinafter called "City", there is hereby granted to Midwest Energy, Inc., hereinafter called "Grantee" or "Company", its successors and assigns, the right to use and occupy the streets, avenues, alleys other public places within the City of WaKeeney, Kansas, for the purpose of constructing, erecting, operating and maintaining electric transmission and distribution lines and all necessary facilities and appurtenances for use in the transmission, distribution and sale of electricity for all purposes to said City and its inhabitants for a period of twenty (20) years from the date of passage of this Ordinance through the 30<sup>th</sup> day of May, 2026.

**Section 2.** The Company is hereby given the right, under the supervision of the Governing Body of the City, and within the City limits, to trim and cut such trees and foliage as may be reasonably necessary to prevent the same from interfering with the safe and efficient operation and maintenance of its transmission lines, distribution system, street lighting equipment, and to establish reasonable rules and regulations for the conduct of its business.

**Section 3.** That, in consideration of the rights and privileges hereby granted, said Grantee hereby undertakes and agrees to use reasonable effort to maintain good adequate service to the City hereunder, but it is understood that the Company does not guarantee that the supply of electrical energy will at all times be continuous and it is agreed that temporary cessation of Company's service hereunder occasioned by fire, explosion, flood, strike, insurrection, mob violence,



governmental interference, breakdown or injury to machinery, or transmission or distribution lines or from other accidents or causes not reasonably within its control, shall not constitute a breach of this Ordinance or any obligation arising hereunder on the part of the Company; and, that Grantee shall not be liable to City or to any other person, firm or corporation for any damages resulting from such temporary cessation of service.

**Section 4.** That, in consideration of the rights and privileges hereby granted, said Grantee, its successors and assigns, shall locate its distribution lines in the streets, avenues, alleys and other public places in such manner as not to interfere with the use of said streets, avenues, alleys and public places. At times when City causes public improvements to be made to any of the streets, avenues, alleys or other public places within the City that are occupied by company's electric facilities, Company shall, at City request, relocate its electric facilities at Company's expense to conform to the City's planned improvement. If said Grantee is required to move, alter or rebuild any of its electric facilities not located on public right-of-way, the cost of moving, altering or rebuilding said facilities shall be borne by the requesting party. In the event City vacates or otherwise abandons City right-of-way on which Company facilities are located, or planned to be located, the Ordinance vacating or abandoning such City right-of-way shall provide City granted easement to Company.

**Section 5.** It is further agreed by the City and the Company, that the rates now in effect or such rates as may be approved by the proper governmental authority having jurisdiction over the Company, shall be deemed to be a reasonable schedule of maximum rates charged the City and its inhabitants for the service provided by the Company.

**Section 6.** Subject to any restriction placed on Company by regulatory authorities having jurisdiction over the Company in consideration of and as compensation for the granting of this franchise by the City of WaKeeney, Kansas, and in lieu of any licenses, fees and occupation or other revenue taxes, Company shall collect from consumers and pay to the City an amount equal to four percent (4%) of the gross revenue derived from the sales of electric power and energy within the corporate limits of said City, such payment to be made to the City monthly for the preceding monthly period.

If and when retail wheeling becomes an option, this ordinance may be opened so that a franchise tax may be collected on such electric energy that is being wheeled through Midwest Energy's local distribution system in the city limits of WaKeeney, Kansas. The option to reopen this provision of Section 6 will not effect the other terms of this ordinance.

The City shall have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of Company necessary to verify the correctness of said payments.

Notwithstanding anything to the contrary in this franchise, the fee provided for in this Section 6 shall not become effective within any area annexed by the City until 30 days after 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 7.** Without affecting the other terms of this Ordinance, as further consideration for the rights and privileges hereby granted Company and subject to any restrictions placed on Company by regulatory authorities having jurisdiction over Company, Company agrees that the City will have the option to open the provision of Section 6 relating to the percentage applied to gross receipts derived from applicable electric sales. Six (6) months prior to the end of each 5-year period that this Ordinance is in existence, the Company and the City may renegotiate the percentage to be paid to the City during the succeeding 5-year period. If the Company and the City cannot reach a mutual agreement on said percentage during such 6- month period, this Ordinance shall become null and void.

**Section 8.** That the Company, its successors and assigns, in the construction, maintenance and operation of its electric transmission, distribution and street lighting system, under the rights and privileges herein granted, shall exercise all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of WaKeeney, 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 9.** The Grantee shall maintain an office in the City of WaKeeney, Kansas at its present size for the duration of the franchise.

**Section 10.** It is further provided that should any section or sections of this Ordinance be held null and void, or void or illegal by any court having jurisdiction in a proper action, such decision by such court shall not affect any other part of this Ordinance not passed upon by such court.

**Section 11.** That all ordinances or parts of ordinances in conflict with or inconsistent with this Ordinance are hereby repealed.

**Section 12.** This franchise is granted pursuant to the provisions of Article 20, Chapter 12, Kansas Statutes Annotated.

**Section 13.** The ordinance shall take effect and be in force from and after its passage and publication in the Western Kansas World, the official city newspaper.  
(05-30-2006)

#### **ORDINANCE NO. 1392**

AN ORDINANCE GRANTING TO MIDWEST ENERGY, 1NC., 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 THEREOF.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WAKEENEY,

KANSAS:

**Section 1.** That, in consideration of the benefits to be derived by the City of WaKeeney, Kansas, and its inhabitants, hereinafter called "City", there is hereby granted to Midwest Energy, Inc., hereinafter called "Grantee" or "Company", its successors and assigns, the right to use and occupy the streets, avenues, alleys and other public places within the City of WaKeeney, Kansas, for the purpose of constructing, installing, maintaining and operating a natural gas transmission and distribution system including mains, pipes, conduits, services and other necessary structures and appurtenances, in, under, upon, over, across, and along the streets, alleys, bridges, and public grounds within the present and future corporate limits of the City of WaKeeney, Kansas, for the furnishing, transmission, distribution, and sale of natural gas, for heating, cooling, domestic, industrial and other purposes, and for transmitting natural gas into, through and beyond said City for a period of twenty (20) years from the date of passage of this Ordinance through the 30<sup>th</sup> day of May, 2026.

**Section 2.** All mains, pipes, conduits and services shall be installed and maintained so as to interfere as little as practicable with traffic over the streets, alleys, bridges and public places of said City.

When Grantee shall do any work of construction, repair or maintenance of said system in the course of which any pavements, curbing or gutter upon any street, alley, bridge or public place shall be excavated, Grantee shall properly protect excavations and shall promptly restore such street, alley, bridge or public place as far as practicable to as good condition as before such work was done.

**Section 3.** That, in consideration of the rights and privileges hereby granted, said Grantee hereby undertakes and agrees to use reasonable effort to maintain good and adequate service to the City hereunder, but it is understood that the Company does not guarantee that the supply of natural gas will at all times be continuous and it is agreed that temporary cessation of Company's service hereunder occasioned by fire, explosion, flood, strike, insurrection, mob violence, governmental interference, breakdown or injury to machinery, or transmission or distribution lines or from other accidents or causes not reasonably within its control, shall not constitute a breach of this Ordinance or any obligation arising hereunder on the part of the Company; and, that Grantee shall not be liable to City for any damages resulting from such temporary cessation of service.

**Section 4.** That, in consideration of the rights and privileges hereby granted, said Grantee, its successors and assigns, shall locate its transmission and distribution lines in the streets, avenues, alleys and other public places in such manner as not to interfere with the use of said streets, avenues, alleys and public places. At times when City causes public improvements to be made to any of the streets, avenues, alleys or other public places within the City that are occupied by Company's natural gas facilities, Company shall, at City request, relocate its natural gas

facilities at Company's expense to conform to the City's planned improvement. If said Grantee is required to move, alter or rebuild any of its natural gas facilities not located on public right-of-way, the cost of moving, altering or rebuilding said facilities shall be borne by the requesting party. In the event City vacates or otherwise abandons City right-of-way on which Company facilities are located, or planned to be located, the Ordinance vacating or abandoning such City right-of-way shall provide City granted easement to Company.

**Section 5.** It is further agreed by the City and the Company, that the rates now in effect or such rates as may be approved by the proper governmental authority having jurisdiction over the Company, shall be deemed to be a reasonable schedule of maximum rates charged the City and its inhabitants for the service provided by the Company.

**Section 6.** Subject to any restriction placed on Company by regulatory authorities having jurisdiction over the Company in consideration of and as compensation for the granting of this franchise by the City of WaKeeney, Kansas, and in lieu of any licenses, fees and occupation or other revenue taxes, Company shall collect from consumers and pay to the City an amount equal to four percent (4%) of the gross revenue derived from the sales of natural gas and of .04 cents per therm for gas transported to any customer within the corporate limits of said City. Payment shall be made to the City monthly for the preceding monthly period.

The City shall have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of Company necessary to verify the correctness of said payments.

Notwithstanding anything to the contrary in this franchise, the fee provided for in this Section 6 shall not become effective within any area annexed by the City until 30 days after 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 7.** Without affecting the other terms of this Ordinance, as further consideration for the rights and privileges hereby granted Company and subject to any restrictions placed on Company by regulatory authorities having jurisdiction over Company, Company agrees that the City will have the option to open the provision of Section 6 relating to the percentage applied to gross receipts derived from applicable natural gas sales. Six (6) months prior to the end of each 5-year period that this Ordinance is in existence, the Company and the City may renegotiate the percentage to be paid to the City during the succeeding 5-year period. If the Company and the City cannot reach a mutual agreement on said percentage during such 6-month period, this Ordinance shall become null and void.

**Section 8.** That the Company, its successors and assigns, in the construction, maintenance and operation of its natural gas transmission and distribution system,

under the rights and privileges herein granted, shall exercise all reasonable and proper precaution to avoid damage or injury to persons or property, and shall hold and save harmless the City of WaKeeney, 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 9.** The Grantee shall maintain an office in the City of WaKeeney, Kansas at its present size for the duration of the franchise.

**Section 10.** It is further provided that should any section or sections of this Ordinance be held null and void, or void or illegal by any court having jurisdiction in a proper action, such decision by such court shall not affect any other part of this Ordinance not passed upon by such court.

**Section 11.** That all ordinances or parts of ordinances in conflict with or inconsistent with this Ordinance are hereby repealed.

**Section 12.** This franchise is granted pursuant to the provisions of Article 20, Chapter 12, Kansas Statutes Annotated.

**Section 13.** The ordinance shall take effect and be in force from and after its passage and publication in the Western Kansas World, the official city newspaper.

FINAL ADOPTION AND Kansas, this 30 th day of May, 2006.  
(05-30-2006)