

ORDINANCE No. 1271

AN ORDINANCE GRANTING A FRANCHISE TO COLUMBUS TELEPHONE COMPANY AND COLUMBUS DATACENTRIC, INC., THEIR SUCCESSORS, TRANSFEREES, AND ASSIGNS THE RIGHT TO OPERATE AND MAINTAIN ITS TELEPHONE/COMMUNICATIONS SYSTEM AND ALL BUSINESS CONNECTED WITH PROVIDING COMMUNICATIONS SERVICES WITHIN THE CORPORATE LIMITS OF THE CITY OF COLUMBUS, KANSAS, AND TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF SAID CITY FOR SUCH PURPOSES, AND PROVIDING FOR PAYMENT TO SAID CITY.

WHEREAS, Columbus Telephone Company ("CTC") and Columbus DataCentric, Inc. ("CDI") have requested that the City of Columbus, Kansas, grant a franchise for the continued operation of its telephone/communications system and all businesses connected with providing communications services ("Communications Services") within the City; and

WHEREAS, the City of Columbus, Kansas, a municipal corporation, duly organized and existing under the laws of the State of Kansas, has determined it is in the public interest to grant CTC and CDI a franchise to operate and maintain a Communications System to provide Communications Services in the City; and

WHEREAS, the City desires to grant a franchise to CTC and CDI.

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

SECTION 1. SHORT TITLE. This ordinance shall be known as "The CTC and CDI Communications Services Franchise Ordinance of the City of Columbus, Kansas" and may herein and hereafter be cited as such.

SECTION 2. DEFINITIONS. The following terms, phrases, words and their derivatives shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in the singular number shall include the plural number; provided further that the word "shall" is to be construed as mandatory and not simply directive; provided further that the following definitions shall herein apply:

A. "City" shall mean the City of Columbus, Kansas, a municipal corporation, or its successors, and shall include when appropriate the use of the term in context, the territorial boundaries of said City as now constituted or as shall hereafter exist.

B. "Governing Body" shall mean the present legislative body of the City of Columbus, Kansas, or any successor to the legislative powers of said present Governing Body.

C. "Franchise" means this ordinance.

D. "Franchisee" or "CTC and CDI" shall mean Columbus Telephone Company and Columbus DataCentric, Inc., respectively, or their successors, transferees or assigns, which are granted the franchise, the terms and conditions of which are provided herein.

E. "Street" shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the City as provided by the laws of the State of Kansas and any subsequent amendments thereof.

F. "Communications System" shall mean a system of plant and appurtenances, included but not limited to antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in the City.

G. "Customer" shall mean any person which receives from the Franchisee herein named the services of said Franchisee's Communications System.

H. "Person" shall mean any individual or association of individuals, or any firm, corporation, or other business organization.

I. "Gross Annual Customer Revenue" shall mean any and all compensation and other consideration derived directly by Franchisee from customers within said City for regularly furnished Communications Services. Gross Annual Customer Revenue shall include revenue derived from Communications Services provided by Franchisee, but shall not include any taxes on services furnished by Franchisee or imposed directly on any Customer or user by any city, state or other governmental unit and collected by the Franchisee for such governmental unit.

**SECTION 3. GRANT OF NON-EXCLUSIVE FRANCHISE.** The City of Columbus, Kansas hereby grants unto the Franchisee herein named a non-exclusive franchise to construct, erect, operate and maintain a Communications System within said City, and in so doing, to use the streets of said City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining, and retaining in, on, under, upon, or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a Communications System.

The authority hereby granted to operate and maintain a Communications System within said City, and to use and occupy the streets thereof does not and shall not be deemed an exclusive right or permission, and said City expressly reserves the right to grant other non-exclusive franchises to persons, firms, corporations or other business organizations, to construct, operate, and maintain other communications systems within said City; but no such additional franchises shall in any way affect the rights or obligations of the Franchisee herein named and set forth in this ordinance.

The rights herein granted to Franchisee herein named shall extend to any area hereafter annexed to the City and Franchisee shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

**SECTION 4. EXCAVATIONS.** Permission is hereby granted to CTC and CDI to make all necessary excavations in the public streets, roads, alleys, sidewalks or other public places, all in accordance with the ordinances applicable to such excavations by public utilities or others securing such permission.

**SECTION 5. TERM OF FRANCHISE.** This franchise ordinance shall have a term of commencing on the date of its adoption by the City and expiring on December 31, 2030; provided that said Franchisee's acceptance of this franchise shall be filed in the office of the City Clerk of said City within thirty (30) days from the effective date of this ordinance; provided further that Franchisee's failure to timely file said acceptance as herein provided shall cause the City's offer of franchise contained herein to be deemed revoked and without force and effect, whereupon this ordinance shall be deemed void and of no further force and effect; and provided further that the Franchisee and the City intend to renew this Franchise Agreement before or upon expiration, and agree to meet and confer in good faith in advance of the stated expiration date for the purpose of negotiating such a renewal.

**SECTION 6. FRANCHISE PAYMENTS.** The Franchisee herein named shall pay to the City during the term of said franchise a sum equal to five percent (5%) of the Gross Annual Customer Revenues received for Communications Services with payment of said sum to be made monthly.

**SECTION 7. AUDIT AND REPORTING.** Within thirty (30) days after the expiration of the first twelve (12) months of this franchise and within thirty (30) days after each succeeding twelve (12) month period during the balance of the term that this franchise shall be in force, the Franchisee named herein shall file in the office of the City Clerk of said City, a financial statement prepared by a certified public accountant or person otherwise satisfactory to said City, showing the Gross Annual Customer Revenues of said Franchisee during the preceding twelve (12) months, said receipts to be determined as defined herein; provided that said City reserves the right to independently audit said Franchisee's Gross Annual Customer Revenues from which its franchise payments are computed, and any discrepancy between said audit and that filed by the Franchisee with the City Clerk of said City which results in the City's receiving a lesser sum than that which is due and owing from said Franchisee will be determined and paid forthwith to said City; provided further that the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a result of liability from said City or an accord and satisfaction of any claim said City may have for additional sums owed by said Franchisee as hereinbefore provided.

**SECTION 8. CUSTOMER RATES.** The rates to be charged and exacted from the City of Columbus and its inhabitants for any regulated Communications Services furnished by the CTC and CDI shall be the rates as approved by the Corporation Commission of the State of Kansas, or other regulatory body having jurisdiction over the CTC's and CDI's rates and services, if any.

**SECTION 9. NOTICE TO PARTIES.** Whenever, under the terms of this franchise ordinance, either party hereto 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 either by first class United States mail addressed to the office of the City Clerk of said City or by personal delivery of the same to said person, or his duly authorized agent for receiving the same, and if said notice be addressed to said Franchisee, the

same shall be delivered by either first class United States mail addressed to an officer or the resident agent of said Franchisee at the registered office of said Franchisee or its resident agent, or by personally delivering the same to such person as hereinbefore provided, or such other person as said Franchisee shall from time to time direct.

**SECTION 10. FRANCHISEE'S DUTY TO COMPLY WITH STATE AND FEDERAL LAW.** Notwithstanding any other provisions of this franchise ordinance to the contrary, the Franchisee shall at all times comply with all laws and regulations of the United States and the several states and any political subdivision thereof including the City, or any administrative agency thereof, having jurisdiction to regulate Communications Services; provided that Franchisee's failure to comply with any law or regulation governing the operation of said Communications Services may result in a forfeiture of the privileges conferred by the franchise ordinance when so determined by the Governing Body of said City as adopted by ordinance at one of its regular meetings.

**SECTION 11. FRANCHISEE'S ACCESS TO THE PUBLIC WAY AND APPLICATION OF THE CITY'S RIGHT-OF-WAY ORDINANCE.** The City hereby grants to Franchisee access to the public streets and other public ways for purposes related to the planning, design, construction, operation, maintenance, and extension of Franchisee's Communications System, and Franchisee agrees to observe the terms of all applicable laws and statutes, rules, regulations, policies, resolutions and ordinance adopted by the City, relating to construction and use of the public right-of-way.

**SECTION 12. STANDARDS FOR CONSTRUCTION OF FRANCHISEE'S FACILITIES.** The construction, operation, and maintenance of the properties and facilities of said Franchisee's Communications System shall be in accord with good engineering practices. All transmissions and distribution structures, lines and equipment erected by the Franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, easements and swales, sidewalks, 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 said streets, easements and swales, sidewalks, alleys or other public ways and places. The Franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of said City, so as to prevent the branches of such trees from coming into contact with the Franchisee's properties.

**SECTION 13. STANDARDS FOR OPERATING AND MAINTAINING FRANCHISEE'S COMMUNICATIONS SYSTEM.** Franchisee's Communications System shall be construed, operated and maintained in accordance with the highest accepted standards of the communications industry to insure that the customer receives the highest quality of service.

**SECTION 14. NEW DEVELOPMENTS.** It shall be the policy of the City to amend reasonably this franchise ordinance upon application of Franchisee when necessary to enable Franchisee to take advantage of any developments in the field of Communications Services.

**SECTION 15. RIGHTS OF INDIVIDUALS.** Franchisee shall not deny service or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, or sex. Franchisee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby

incorporated and made part of this ordinance by reference.

**SECTION 16. SEVERABILITY.** That should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be thereby affected.

**SECTION 17. TIME IS OF THE ESSENCE.** Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the Franchisee, such time shall be deemed of the essence and any failure of the Franchisee to perform within the time so specified shall be sufficient grounds for said City to revoke the franchise herein granted, subject to procedural requirements stated herein.

PASSED by the Governing Body this 1<sup>st</sup> day of February, 2010.

APPROVED by the Mayor this 1<sup>st</sup> day of February, 2010.

Marie Deppe  
Mayor

ATTEST:

Jauice Blance #  
City Clerk

APPROVED AS TO FORM:

Barbara C. Wright  
City Attorney

**AFFIDAVIT OF ACCEPTANCE**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF CHEROKEE    )

I, Jim Dahmen, of lawful age, upon being duly sworn, state the following:

I am the Manager of CTC and CDI. I have read and hereby accept the terms of Ordinance No. #1271, passed by the Governing Body of the City of Columbus, Kansas.

Said ordinance, passed by the Governing Body on the 1<sup>st</sup> day of February, 2010, grants CTC and CDI a franchise to operate and maintain a Communications System in the City of Columbus, Kansas, and prescribes the terms of said franchise.

Pursuant to Section 5, CTC and CDI hereby submit their acceptance of the provisions, terms and conditions contained in Ordinance No. 1271.

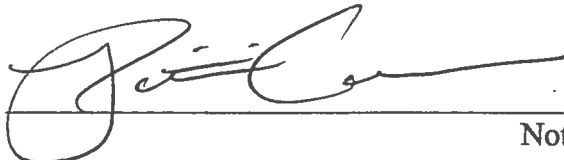
COLUMBUS TELEPHONE COMPANY (CTC)

By:   
Jim Dahmen

COLUMBUS DATACENTRIC, INC. (CDI)

By:   
Jim Dahmen

SUBSCRIBED AND SWORN to before me this 2nd day of February, 2010, by Jim Dahmen.

  
\_\_\_\_\_  
Notary Public

Appointment/Commission Expires:

