

ORDINANCE NO. 04-68

AN ORDINANCE RELATING TO A TELEPHONE
AND COMMUNICATIONS FRANCHISE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOMERSET,
KENTUCKY, .

Section 1- There is hereby created a franchise to construct, erect, operate and maintain upon, through, along, under and over the streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways of the City of Somerset, Kentucky, a telephone and communication system embracing underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, electrical conductors and other apparatus, equipment and facilities necessary, essential, used or useful to and in the operation of a telephone and communication system subject to all provisions of this ordinance.

Section 2- The person, firm, or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall for brevity hereinafter be referred to as the "company" herein. The public streets, alleys, avenues, public roads, highways, bridges, viaducts, sidewalks and other public ways (as the same now exist and including all which may hereinafter be established or created) within the territorial limits of the City of Somerset, Kentucky, shall for brevity be hereinafter referred to as "streets." The underground conduits, manholes, telephone poles, cables, boxes, wires, fixtures, electrical conductors, and any other apparatus, equipment and facilities necessary, essential, used or useful to and in the operation of the telephone and communication system shall for brevity hereinafter be referred to as the "equipment and apparatus." The City of Somerset, Kentucky, shall for brevity be hereinafter referred to as the "city."

Section 3 – The company acquiring this franchise shall have the right and privilege of constructing, erecting, operating, and maintaining a telephone and communication system, equipment and apparatus, upon, through, along, under and over the streets within the corporate boundaries of the city as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to said city.

Section 4 – (1) No pavements, sidewalks, curbs, gutter, or other such street installations shall be disturbed and no excavation in any of the said streets will be made, except with the written permission of the city through a designated employee or official.

(2) When an emergency arises which requires immediate repair, the company may disturb or excavate a street without first obtaining written permission from the city, provided that the city is notified in writing of said repair within 5 days. This notification shall include at least the time, date, location, and extent of excavation or other work performed.

(3) When the company shall enter upon any street for the purpose of constructing, erecting, operating, maintaining, and/or removing equipment and apparatus, it shall prosecute the work at its own cost and expense with due diligence, and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the streets in reasonably the same condition as when it entered the same for said purpose or purposes. All such repairs shall be maintained by the company for one (1) year in as good condition as the remainder of said street. In the event the company fails, refuses, or neglects to comply with the above provisions, the city shall have the right, after notice in writing having first been given to the company, or any officer or agent representing it, to do said work or make said repairs, and the cost and expense thereof shall be paid to the city by the company within ten (10) days from the date on which an itemized bill is presented to the company.

(4) In the construction or reconstruction or maintenance or removal of any of said equipment and apparatus, the company shall have due regard for the rights of the city and others, and shall not interfere with, or in any way injure the property of the city or others, under, on, or above the ground. Said purchaser shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the city as to placing lights, danger signals, or warning signs and shall be liable for any and all damage that may arise by reason its failure or neglect to comply with such ordinances and laws. Work by the company hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets.

Section 5 – (1) Whenever the city or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street or shall construct, reconstruct, repair, maintain or alter any other municipal public works (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the company, when so ordered by the city, to change its equipment and apparatus in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such municipal public works so constructed, reconstructed or altered.

(2) The company shall be given access to street plans and specifications in the possession of the city.

Section 6 – Upon notice from the city that any street is about to be constructed, reconstructed, widened, altered, paved, or repaved by the city, the company shall make such extensions or changes in equipment and apparatus, ahead of any paving, as shall be reasonably expected during the following one-year period; provided that if company deems it unnecessary to make such an extension, it may refrain from doing so, but thereafter be precluded for a period of one year from disturbing the paving, for such purposes unless permission of the city is obtained.

Section 7 – The minimum clearance of wires and cables placed above the streets of the city, and also the placement of underground facilities, shall conform to the standards of the latest edition of the National Electrical Safety Code, National Bureau of Standards,

U.S. Department of Commerce. The city reserves the right to require, by ordinance, observation of greater standards of safety than those contained in the National Electrical Safety Code.

Section 8 – The company agrees by the acceptance of this franchise to indemnify, keep and save the city free and harmless from liability on account of injuries or damages to persons or property growing out of the construction, maintenance, repair, and operation of its telephone and communication system. In the event that suit shall be brought against the city either independently or jointly with the company on account thereof, the said company upon notice by the city shall defend the city in any such suit at the cost of the company and in the event of final judgment being obtained against the city either independently or jointly with the company, the company shall pay such judgment with all costs and hold the city harmless therefrom.

Section 9 – (1) The city, through its Council, Mayor, or through such assistants as it may employ or designate, may, at all reasonable times, have access to all or any of the property owned or used in part or in whole by the company in its operating and maintaining the telephone and communication system under this franchise. In like manner, the Council or its above-mentioned officer and assistants may at all reasonable times enter in or upon said property to inspect or examine it, and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the company reasonably necessary to the administration of this franchise.

Section 10 – The company shall maintain a state of the art telephone and communication system under this franchise. State of the art under this section shall mean that technology which represents the latest advancements in the telecommunications industry.

Section 11 – The franchise hereby created shall be of a set term of twenty (20) years from and after the date the same shall become effective, but is not exclusive, and the city reserves the right to sell similar franchises to others.

Section 12 – The company is hereby given the right to assign the franchise created by this ordinance to any person, firm or corporation able, ready, and willing to carry out the terms of this franchise, but shall, prior to such assignment, obtain consent from the city to such assignment, which consent shall not be unreasonably withheld.

Section 13 – It shall be the duty of the Mayor or his designated subordinate as soon as practicable after the passage of this ordinance to offer for sale said franchise and privilege. Said franchise and privilege shall be sold to the highest and best bidder at a time and place fixed by the Mayor after he has given due notice thereof by advertisement in at least one issue of a newspaper of general circulation within the territorial limits of the city. This advertisement shall appear not less than seven days nor more than twenty-one days before the date of bid opening.

Section 14 – Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Mayor or his

designated subordinate upon the date and at the time fixed by him in said advertisement for receiving same. Thereafter, the Mayor shall report and submit to the Council, at the time of its next regular meeting, said bids and proposals for its approval. The said Council reserves the right, for and in behalf of the city, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the Mayor shall be rejected by the Council, it may direct, by resolution or ordinance, said franchise and privilege to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Each bid shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to five percent of the fair estimated cost of the plant required to render the service, which check or cash shall be forfeited to the city in case the bid should be accepted and the bidder should fail, for thirty days after the confirmation of the sale, to pay the price and to give a good and sufficient bond in a sum equal to one-fourth of the fair estimated cost of the plant to be erected, conditioned that it shall be enforceable in case the purchaser should fail, within nine months, to establish and begin rendering the service in the manner set forth in this ordinance; but such deposit need not be made by a corporation or person already owning within the territorial limits of the city a plant and equipment sufficient to render the service required by this ordinance.

Section 15 – As consideration for the rights conferred by the granting of this franchise and to compensate the city for its superintendence of the franchise, the successful bidder shall pay to the city a percentage, not to exceed _____%, of the gross annual revenues received by the company during the term of the franchise from the provision of local exchange access telephone service to customers residing within the territorial limits of the city, upon the following conditions:

- (a) Such percentage of revenues shall be initially fixed by separate ordinance which shall state the city's acceptance of the company's bid. Changes in such percentage shall be made by Ordinance.
- (b) The company shall remit to the city, semi-annually, all amounts due under this franchise. The first such remittance shall be based upon revenues received by the company during the first six months following the effective date of the franchise as set forth in paragraph 17 hereof; and shall be paid within sixty days following such period. Thereafter, payments shall be made within sixty days after each subsequent six month period. The final payment shall be paid within sixty days following the expiration of this franchise.
- (c) "Local Exchange Access Telephone Service" is defined for these purposes as that portion of telephone service, other than telephone instruments, which permits a subscriber to access the normal serving local dial exchange and includes business and residence single and party line service, business key lines, and PBX trunks. For purposes of administration, if the company utilizes a combined rate covering both local exchange access and a telephone instrument, the gross revenues applicable to this section shall be computed by deducting from such

(d) As further consideration for the granting of this franchise, the company shall permit the city, at no charge, to utilize company pole space and conduit duct and/or raceway space when such space is vacant and/or available at the time of the request for space by the city. This space may be used for police and fire alarm systems, traffic control and traffic signal interconnection systems, and data processing interconnection systems.

(e) For purposes not included in Section 15 (d) above, and when space is not vacant and/or available for purposes set forth in Section 15 (d) above, the company shall provide to the city telephone and communications service and space in or on its equipment and apparatus on the most favorable terms extended to any commercial customer.

Section 17 – Bids offered for purchase of this franchise shall state the bidder’s acceptance of the conditions set forth in this ordinance. If any bid shall include an offer of payment over and above the terms of this franchise, then a certified check for said amount, payable to the city, shall be remitted with the bid. This amount shall be in addition to the provision for payments contained in Section 15 of the Ordinance which shall be considered as a condition of the franchise. Any check deposited by an unsuccessful bidder shall be returned.

Section 19 – The franchise created by this Ordinance shall become effective thirty days after the bid for it is accepted by the city, as set forth in an ordinance fixing the initial revenue percentage to be paid.

First reading July 26, 2004
Second reading August 9, 2004

J P Wiles
MAYOR

CLERK