

RESOLUTION NO. 11/22/16-2

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A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF GARNETT OF AN AGREEMENT WITH VYVE BROADBAND A, LLC GOVERNING THE DELIVERY OF VIDEO SERVICES UNDER VYVE'S KANSAS VIDEO FRANCHISE AUTHORIZATION.  
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WHEREAS, Vyve Broadband A, LLC was granted authorization by the City of Garnett, Kansas, to provide video service within the City pursuant to Ordinance No. 3194, effective as of November 9, 1996; and,

WHEREAS, the franchise granted under said ordinance has expired and Vyve has filed an amendment to its Video Franchise Authorization issued by the Kansas Corporation Commission to include the City of Garnett, Kansas, effective November 8, 2016; and,

WHEREAS, the inclusion of the City of Garnett in said state franchise requires the parties to enter into an agreement, substantially in the form as attached hereto and marked "Exhibit A".

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARNETT, KANSAS, that the mayor and city clerk be and they are hereby authorized and directed to execute and deliver an agreement with Vyve Broadband A, LLC substantially in the form of the agreement attached to this resolution and marked, "Exhibit A".

BE IT FURTHER RESOLVED that the city manager is hereby authorized and directed, pursuant to K.S.A. 12-2024(b), to request Vyve Broadband A, LLC, as the video service provider, to calculate a Video Service Provider Fee of 5% of its gross revenues from customers served in the Garnett system (CUID KS0700) and pay the same to the City of Garnett, Kansas, on a quarterly basis, as provided by law.

ADOPTED this \_\_\_\_ day of November, 2016.

\_\_\_\_\_  
Greg A. Gwin, Mayor

\_\_\_\_\_  
Jody M. Cole, Commissioner

\_\_\_\_\_  
W. Gordon Blackie, Commissioner

ATTEST:

\_\_\_\_\_  
City Clerk

## AGREEMENT

This Agreement (this "Agreement") is dated this \_\_\_\_ day of November, 2016 by and between Vyve Broadband A, LLC (the "Company") and the City of Garnett, Kansas (the "City").

WHEREAS, the Company was granted authorization by the City to provide video service within the City pursuant to that certain Ordinance No. 3194, effective as of November 9, 1996 (the "City Franchise"); and

WHEREAS, the City Franchise will expire pursuant to its terms on November 8, 2016; and

WHEREAS, on October 28, 2016 the Company filed an amendment to its Video Franchise Authorization issued by the Kansas Corporation Commission (the "KCC") of the State of Kansas on May 29, 2013 (the "State Franchise") to include the City in its existing service area footprint commencing November 8, 2016; and

WHEREAS, Chapter 12, Article 2024(a) of the Kansas Statutes Annotated requires that a video service provider providing service in a municipality under a state-issued franchise enter into an agreement with such municipality containing the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Notice and Acknowledgement of State-Issued Franchise. The City hereby acknowledges and agrees that the Company's provision of video services in the City will be governed by the terms and conditions of the State Franchise, effective as of November 8, 2016.
2. Contact Information. The Company may be contacted by the City at the following telephone number: (914) 234-8300. The Company may be contacted by customers at the following telephone number: 1-855-FOR-VYVE. The Company agrees to update this contact information with the City within 15 calendar days in the event that such contact information changes.
3. Rights-of-Way. The Company acknowledges and agrees to comply with the City's local right-of-way ordinance to the extent the ordinance is applicable to the Company and not contrary to state and federal laws and regulations. The Company hereby reserves the right to challenge the lawfulness or applicability of such ordinance to the Company.
4. Reservation of Rights. By entering into this agreement, neither the municipality's nor the Company's present or future legal rights, positions, claims, assertions or

Exhibit

A  
p.1

arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into this Agreement, neither the City nor the Company waive any rights, but instead expressly reserve any and all rights, remedies and arguments the City or the Company may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.

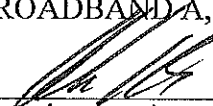
5. Filing with Clerk. The City hereby agrees to file this fully executed Agreement with the City Clerk and deliver a copy of the same to the Company.

6. Governing Law. This Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Kansas, without giving effect to any choice or conflict of law provision or rule thereof.

7. Counterparts. This Agreement may be executed in two counterparts, each of which as so executed shall be deemed to be an original but both of which together shall constitute one and the same instrument. A signature delivered by facsimile, email or other means of electronic delivery shall be acceptable as an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

VYVE BROADBAND A, LLC

By:   
Name: Andrew Kober  
Title: EVP + CFO

CITY OF GARNETT, KANSAS

By: \_\_\_\_\_  
Name:  
Title:

KANSAS CORPORATION COMMISSION  
TELECOMMUNICATIONS SECTION

**KANSAS VIDEO SERVICE AUTHORIZATION  
AMENDED, TERMINATION OR TRANSFER APPLICATION**

Date: October 28, 2016 Type of Application (Check one):  Amended  Termination  Transfer  
Applicant's Name: Vyve Broadband A, LLC d/b/a: \_\_\_\_\_  
Address 1: Four International Drive Phone: 914-234-8300  
Address 2: Suite 330  
City: Rye Brook State: New York Zip: 10573  
Federal Employer Identification Number (FEIN): 61-1698547  
Authorizing Docket: 13-BCAT-666-VSA Date: May 29, 2013

**For Amended Application:**

If applicable as an attachment, identify the municipalities and provide a legal description of the service area footprint(s) to be served using Section, Township and Range references. Include the attached description on a computer disc in ESRI compatible format (.E00, or .shp) with a defined projection file. Each footprint should clearly state the date by which the provider will pass 100% of the encompassed households. Multiple service areas may be included.

**For Termination Application:**

Effective date of Termination: \_\_\_\_\_

**For Transfer Application:**

*(A transfer application will require a companion Initial or Amended application from the receiving entity, as appropriate.)*

Name: \_\_\_\_\_ d/b/a: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address 1: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Federal Employer Identification Number (FEIN): \_\_\_\_\_  
Successor's Authorizing VSA docket: \_\_\_\_\_, Date: \_\_\_\_\_

Successor's serving area footprint changes?  Yes  No

If yes, the successor's VSA authorization must be amended detailing the changed footprint.

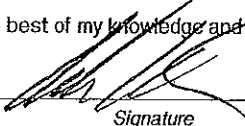
Effective date of Transfer: \_\_\_\_\_

**For All Applications:**

By submitting this application, the applicant agrees that it may not deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides. Initial indicating concurrence: AK

**Verification**

I, Andrew Kober, of lawful age, and being first duly sworn, now state: As an officer of the Applicant, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.



Signature

EVP & CFO

Title

Exhibit A  
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**ATTACHMENT (Amendment to Service Area Footprint Included in Applicant's State-Issued Video Service Authorization):**

Applicant wishes to include all areas within the unincorporated areas of Garnett (CUID KS0700), Kansas, as reflected on the map attached hereto, in its service area footprint, effective November 8, 2016. The legal description for the Garnett service area is described as paralleling the city limits of Garnett, Kansas in Anderson County and located within Township 20 South, Range 19 East, Sections 23, 24, 25 and 36 and Township 20 South, Range 19 East Sections 18, 19, 20, 28, 29, 30 & 31.

REV	DATE	DESCRIPTION	DWG	ENG

DRAWN BY:  
 CHECKED BY:  
 APPROVED BY:  
 PREPARED BY:



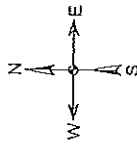
2601 NW Expressway, Suite 405W  
 Oklahoma City, Oklahoma 73112  
 Phone: (405) 843-9866  
 www.acrsok.com

PREPARED FOR:



Four International Drive  
 Suite 330  
 Rye Brook, NY 10573  
 vyvebroband.com

ORIENTATION - LOCATION KEY:



PROJECT TITLE:

PROJECT FILE NUMBER:

PROJECT ADDRESS:

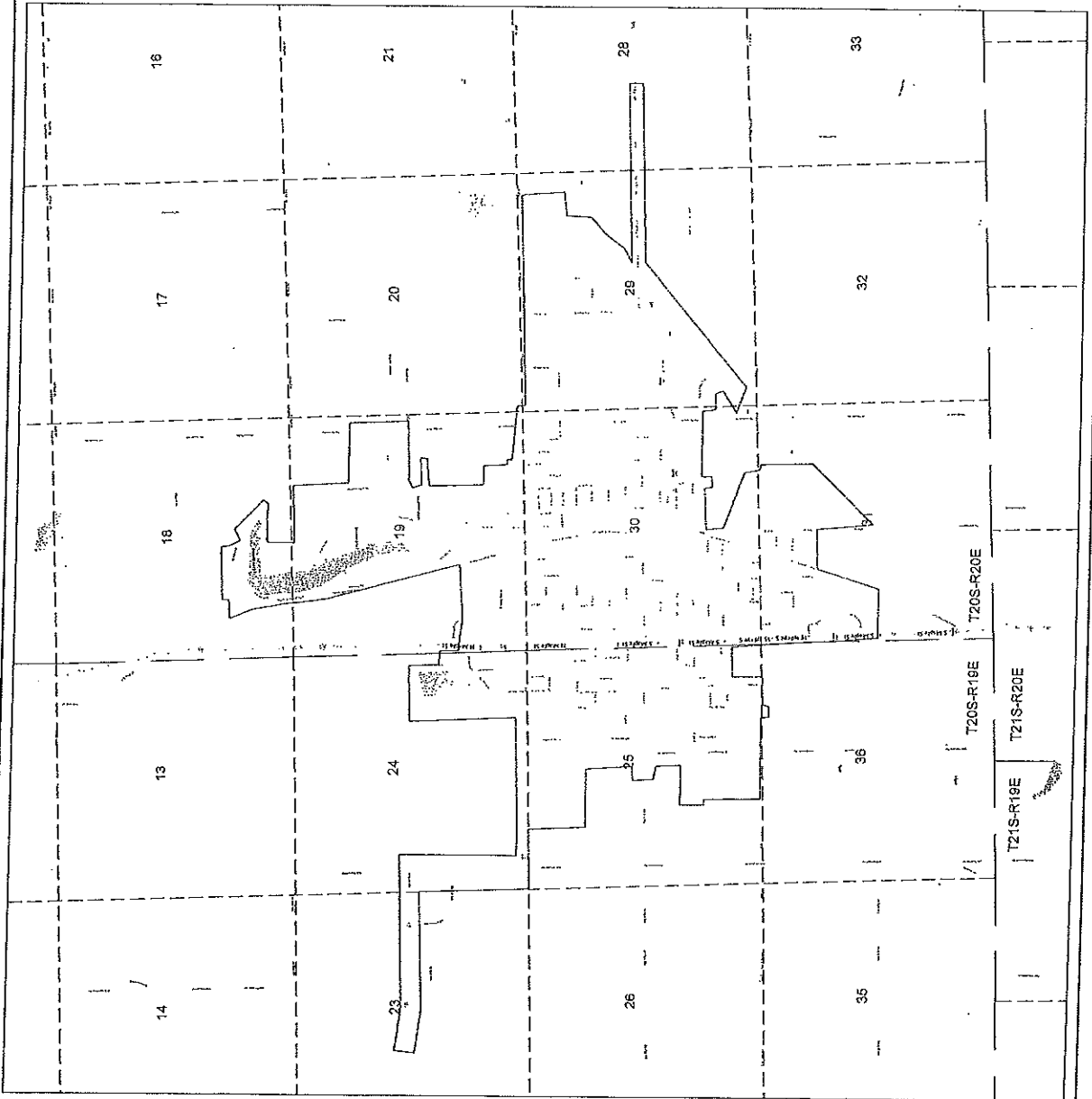
EXCHANGE:

ROUTE:

SCALE:

SEQ:

SHEET:



Garnett, KS  
 Anderson County

T20S R19E

- S23
- S24
- S25
- S36

T20S R20E

- S18
- S19
- S20
- S28
- S29
- S30
- S31

SECTION A  
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