

## **ORDINANCE NO. 1187**

### **A NON-EXCLUSIVE CONTRACT FRANCHISE ORDINANCE GRANTED TO RAINBOW COMMUNICATIONS, L.L.C., A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF HORTON.**

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

SECTION 1. Pursuant to K.S.A. 12-2001, a non-exclusive contract franchise ordinance is hereby granted to RAINBOW COMMUNICATIONS, L.L.C., a telecommunications local exchange service provider providing local exchange service within the City of Horton (“City”), subject to the provisions contained hereafter. The initial term of this ordinance shall be for a period beginning July 1, 2020 and ending June 30, 2030. Compensation for said contract franchise ordinance shall be established pursuant to Section 3 of this ordinance.

SECTION 2. For the purpose of this contract franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

“Access line” shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer’s premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

“Access line count” means the number of access lines serving consumers within the corporate boundaries of the city on the last day of each month.

“Access line fee” means a fee determined by a city, up to a maximum as set out in this act and amendment thereto, to be used by a telecommunications local exchange service provider in calculating the amount of access line remittance.

“Access line remittance” means the amount to be paid by a telecommunications local exchange service provider to a city, the total of which is calculated by multiplying the access line fee, as determined in the city, by the number of access lines served by that telecommunications local exchange service provider within that city for each month in that calendar quarter.

“Gross Receipts” means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) Recurring local

exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services; lines providing only data service without voice services processed by a telecommunications local exchange service provider; private line service arrangements, Internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross Receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.

“Local exchange service” means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

“Provider” shall mean a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187 and amendments thereto, or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto.

“Public right-of-way” means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.

“Telecommunications local exchange service provider” means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187, and amendments thereto, and a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term telecommunications local exchange service provider does not include an interexchange carrier that does not provide local exchange service, competitive access provider that does not provide local exchange service or any wireless telecommunications local exchange service provider.

“Telecommunications services” means providing the means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 3. Compensation made pursuant to this contract franchise ordinance shall be paid on a semi-annual basis without invoice or reminder from the city and paid within forty-five (45) days after the last day of each 6-month period ending June 30 and December 31. Compensation to the city pursuant to this contract franchise ordinance shall be 5% of gross receipts as defined herein.

SECTION 4. The city shall have the right to examine, upon written notice to the telecommunications local exchange service provider, no more than once per calendar year, those records necessary to verify the correctness of the compensation paid pursuant to this contract franchise ordinance.

SECTION 5. As a condition of this contract franchise ordinance, RAINBOW COMMUNICATIONS, L.L.C. is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC), subject to RAINBOW COMMUNICATIONS, L.L.C.'s right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. RAINBOW COMMUNICATIONS, L.L.C. shall also comply with all applicable laws, statutes and/or ordinances, subject to RAINBOW COMMUNICATIONS, L.L.C.'s right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6. If requested by City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, RAINBOW COMMUNICATIONS, L.L.C. shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the City. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the City for such relocation or adjustment. Any damages suffered by the City or its contractors as a result of RAINBOW COMMUNICATIONS, L.L.C.'s failure to timely relocate or adjust its facilities shall be borne by RAINBOW COMMUNICATIONS, L.L.C.

SECTION 7. Permission is hereby granted to RAINBOW COMMUNICATIONS, L.L.C. to trim trees upon and overhanging streets, alleys, sidewalks and public places of said city so as to prevent the branches of such trees from coming in contact with RAINBOW COMMUNICATIONS, L.L.C.'s facilities, all the said trimming shall comply with all applicable laws, statutes and/or ordinances.

SECTION 8. Nothing herein contained shall be construed as giving RAINBOW COMMUNICATIONS, L.L.C. any exclusive privileges, nor shall it affect any prior or existing rights of RAINBOW COMMUNICATIONS, L.L.C. to maintain a telecommunications system within the City.

SECTION 9. RAINBOW COMMUNICATIONS, L.L.C. shall collect and remit compensation as described in Section 3 on those access lines that have been resold to another telecommunications local exchange service provider.

SECTION 10. Any required or permitted notice under this contract franchise ordinance shall be in writing. Notice upon the city shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon RAINBOW COMMUNICATIONS, L.L.C. shall be delivered by first class United States mail or by personal delivery to:

Jason Smith, CEO  
RAINBOW COMMUNICATIONS, L.L.C.  
608 MAIN STREET, PO BOX 147  
EVEREST, KS 66424

SECTION 11. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this contract franchise ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

SECTION 12. Force Majeure. Each and every provision hereof shall be subject to the acts of God, fires, strikes, riots, floods, war and other disasters beyond RAINBOW COMMUNICATIONS, L.L.C.'s or the City's control.

SECTION 13. This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise shall be effective until the ordinance granting the same has been adopted as provided by law.

SECTION 14. This franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by RAINBOW COMMUNICATIONS, L.L.C. and publication in the official City newspaper. Publication shall be at the cost of RAINBOW COMMUNICATIONS, L.L.C. RAINBOW COMMUNICATIONS, L.L.C. shall have sixty days after the final passage and approval of this franchise ordinance to file with the City Clerk its written acceptance of the provisions, terms and conditions of this franchise ordinance and, when so accepted, this franchise ordinance and acceptance shall constitute a contract between the City and RAINBOW COMMUNICATIONS, L.L.C. and such contract shall be deemed effective on the date such acceptance is filed with the City.

SECTION 15. All prior ordinances of the City of Horton, Kansas in conflict herewith are hereby repealed.

Passed by the Governing Body and approved by the Mayor of the City of Horton, Kansas, this  
\_2nd\_ day of \_\_\_March\_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

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

Seal: