

ORDINANCE NO. 24-3446

A CONTRACT FRANCHISE ORDINANCE GRANTED TO TWIN VALLEY COMMUNICATIONS, INC., A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF ABILENE, KANSAS.

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

SECTION 1. Pursuant to K. S.A. 12-2001, a contract franchise ordinance is hereby granted to Twin Valley Communications, Inc. d/b/a Twin Valley (“TVC”), a telecommunications local exchange service provider providing local exchange service within the City of Abilene, Kansas (“City”), subject to the provisions contained hereafter. The initial term of this contract franchise ordinance shall be for a period of two (2) years beginning March 11, 2024, and ending March 11, 2026. Thereafter, this contract franchise ordinance will automatically renew for additional one (1) year terms, unless either party notifies the other party of its intent to terminate the contract franchise ordinance at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this contract franchise ordinance and not as a new contract franchise ordinance or amendment. Pursuant to K.S.A. 12-2001(b)(2) under no circumstances shall this contract franchise ordinance exceed twenty (20) years from the effective date of the contract franchise ordinance. 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 serviced 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 process 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 K.S.A. 2006 Supp. 12-2001 and amendments 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 telecommunication 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.

“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 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. TVC shall collect from each access line subscriber and remit to the City an access line fee in the amount of \$1.75 per month per line. Access line remittances made pursuant to this contract franchise ordinance shall be paid on a quarterly basis without an invoice or reminder from the City and paid not later than forty-five (45) days after the end of the remittal period. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to \$1.75 per access line. Thereafter, compensation for each calendar year of the remaining term of the contract franchise ordinance shall continue to be based on a sum equal to \$1.75 per access line; unless the City notifies TVC prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the access line fee for the following calendar year or that it intends to switch to a gross receipts fee for the following calendar year. In the event City elects compensation based on gross receipts, nothing herein precludes City from switching back to an access line fee provided City notifies TVC prior to ninety days (90) before the end of

the calendar year that it intends to elect an access line fee for the following calendar year. Any increased access line fee or gross receipt fee shall be in compliance with the public notification procedures set forth in subsections (l) and (m) of K.S.A. 12-2001.

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, TVC 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 TVC's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. TVC shall also comply with all applicable laws, statutes and/or ordinances, subject to TVC's right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6: Nothing herein contained shall be construed as giving TVC any exclusive privileges, nor shall it affect any prior or existing rights of TVC to maintain a telecommunications system within the City.

SECTION 7: TVC 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 8: The City agrees to provide TVC with notification in the event that it annexes property into the corporate boundaries of the City that would require TVC to collect and pay a franchise fee on access lines or gross receipts which prior to the annexation of the property TVC was not required to pay a franchise fee. The City agrees to provide TVC with notification in the event the City renumbers or renames any streets that would require TVC to collect and pay a franchise fee on access lines or gross receipts which prior to the renumbering or renaming of the streets TVC would not have been required to pay a franchise fee. The City agrees that in the event the City does not provide TVC with notice of an annexation or renumbering and/or renaming of the streets, TVC is not liable to the City for payment of franchise fees on the annexation or renumbered and/or renamed streets prior to the City providing notice to TVC of such.

SECTION 9: The City agrees that pursuant to K.S.A. 12-2001(j)(1) and (2) that the franchise fee imposed under this contract franchise ordinance must be assessed in a competitively neutral manner, may not unduly impair competition, must be nondiscriminatory and must comply with state and federal law.

SECTION 10: Permission is hereby granted to TVC 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 TVC's facilities, all the said trimming shall comply with all applicable laws, statutes and/or ordinances and done in a manner that is aesthetically appealing.

SECTION 11: TVC shall repair all damage to the public right-of-way caused by the activities of TVC, or of any agent, affiliate, employee, or subcontractor of TVC, while occupying, installing, repairing or maintaining facilities in a public right-of-way and return the right-of-way to its functional equivalence before the damage pursuant to the reasonable requirements and specifications of the City. If TVC fails to make the repairs required by the City, the City may effect those repairs and charge TVC the costs of those repairs. If the City incurs damages as a result of a violation of this subsection, then the City shall have a

cause of action against TVC for violation of this subsection, and may recover its damages, including reasonable attorney fees, if TVC is found liable by a court of competent jurisdiction.

SECTION 12: If requested by the City, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, TVC 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 TVC's failure to timely relocate or adjust its facilities shall be borne by TVC.

SECTION 13: 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 TVC shall be delivered by first class United States mail or by personal delivery to:

Twin Valley Communications, Inc.
Scott Leitzel
Vice President - Operations
22 W. Spruce St.
Miltonvale, Kansas 67466

SECTION 14: 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 15: Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond TVC's or the City's control.

SECTION 16: TVC has entered into this contract franchise ordinance as required by the City and KS.A. 12-2001. If any clause, sentence, section, or provision of KS.A. 12-2001, and amendments thereto, shall be held to be invalid by a court of competent jurisdiction, either the City or TVC may elect to terminate the entire contract franchise ordinance. In the event a court of competent jurisdiction invalidates KS.A. 12-2001, and amendments thereto, if TVC is required by law to enter into a contract franchise ordinance with the City, the parties agree to act in good faith in promptly negotiating a new contract franchise ordinance.

SECTION 17: In entering into this contract franchise ordinance, neither the City's nor TVC present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the contract franchise ordinance, neither the City nor TVC waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or TVC may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of this contract franchise ordinance or any present or future laws, ordinances, and/or rulings which may be the basis for the City and TVC entering into this contract franchise ordinance.

SECTION 18: The parties agree that in the event of a breach of this contract franchise ordinance by either party, the non-breaching party has the right to terminate the contract franchise ordinance immediately. Prior to terminating the contract franchise ordinance, the non-breaching party shall first serve a written notice upon the breaching party, setting forth in detail the nature of the breach, and the breaching party shall

have thirty (30) days thereafter in which to cure the breach. If at the end of such thirty (30) day period, the non-breaching party deems that the breach has not been cured, the non-breaching party may take action to terminate this contract franchise ordinance.

SECTION 19: This contract franchise ordinance is made under and in conformity with the laws of the State of Kansas. No such contract franchise ordinance shall be effective until the ordinance granting the same has been adopted as provided by law.

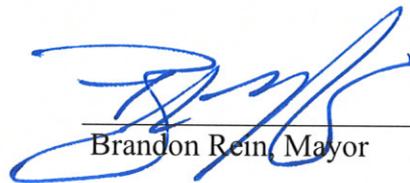
SECTION 20: This ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper by the following summary:

Ordinance No. 24-3446 Summary

On March 11, 2024, the City of Abilene, Kansas, passed Ordinance No. 24-3446. The ordinance granted to Twin Valley Communications, Inc. a telecommunications local exchange service franchise for the right to provide local exchange service in the City of Abilene, Kansas, pursuant to K.S.A. 12-2001. A complete copy of the ordinance is available online at www.abilenecityhall.com or in the office of the City Clerk, 419 N. Broadway Street in Abilene, Kansas, free of charge. This summary is certified by the City's legal counsel.

APPROVED AND PASSED by the Governing Body of the City of Abilene, Kansas, this 11th day of March 2024.

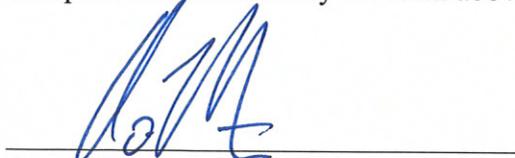



Brandon Rein, Mayor

Attest:


Shayla L. Mohr, CMC, City Clerk

The publication summary set forth above is certified this 11th day of March 2024.


Aaron O. Martin, Legal Counsel