

Ordinance Summary published in The Augusta Daily Gazette on June 1, 2013
and the full text of the Ordinance made available at www.andoverks.com for a minimum of 1 week
from the date of publication.

ORDINANCE NO. 1539

A CONTRACT FRANCHISE ORDINANCE GRANTED TO WILDFLOWER TELECOMMUNICATIONS, LLC DBA IDEATEK, A TELECOMMUNICATIONS LOCAL EXCHANGE SERVICE PROVIDER PROVIDING LOCAL EXCHANGE SERVICE WITHIN THE CITY OF ANDOVER.

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

SECTION 1. Pursuant to K.S.A. 2012 Supp. 12-2001, a contract franchise ordinance is hereby granted to Wildflower Telecommunications, LLC ("Wildflower"), a telecommunications local exchange service provider providing local exchange service within the City of Andover ("City"), subject to the provisions contained hereafter. The initial term of this ordinance shall be for a period beginning May 28th 2013, and ending May 31st 2018. 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. 2012 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 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 of 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; privateline 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 monthly basis without invoice or reminder from the city and paid within forty-five (45) days after the last day of the applicable month, unless approval for quarterly payments has been granted by the City Finance Department. For the first year of this contract franchise ordinance, said compensation shall be a sum equal to \$1.44 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 \$1.44 per access line; unless the city notifies Wildflower prior to ninety days (90) before the end of the calendar year that it intends to increase or decrease the amount for access lines for the following calendar year or that it intends to switch to a gross receipt fee for the following calendar year. In the event City elects compensation based on a gross receipt fee, nothing herein precludes City from switching back to an access line fee provided City notifies Wildflower 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. Beginning January 1, 2004, 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) K.S.A. 2012 Supp. 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, Wildflower 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 Wildflower's right to challenge in good faith such requirements as established by the FCC, KCC or other City Ordinance. Wildflower shall also comply with all applicable laws, statutes and /or ordinances, subject to Wildflower's right to challenge in good faith such laws, statutes and/or ordinances.

SECTION 6. This contract franchise ordinance does not provide Wildflower the right to provide cable service as a cable operator (as defined by 47 U.S. C. § 522 (5)) within the City.

SECTION 7. 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, Wildflower 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 Wildflower's failure to timely relocate or adjust its facilities shall be borne by Wildflower.

SECTION 8. Permission is hereby granted to Wildflower 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 Wildflower's facilities, all the said trimming shall comply with all applicable laws, statutes and /or ordinances.

SECTION 9. Nothing herein contained shall be construed as giving Wildflower any exclusive privileges, nor shall it affect any prior or existing rights of Wildflower to maintain a telecommunications system within the City.

SECTION 10. Wildflower 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 11. 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 Wildflower shall be delivered by first class United States mail to PO Box 258 Buhler, KS 67522, or by personal delivery to 102 N Main Buhler, KS 67522 to the attention of Daniel Friesen, President.

SECTION 12. 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 13. Force Majeure. Each and every provision hereof shall be subject to the acts of God, fires, strikes, riots, floods, war and other disasters beyond Wildflower's or the City's control.

SECTION 14. 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. If any provision or clause of this ordinance shall be held or deemed to be or shall, in fact, be inoperative, invalid or unenforceable as applied in any particular case or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such determination shall not affect in any way any other provision or clause herein which can be given effect without the inoperative, invalid or unenforceable provision or clause.

This Ordinance shall be in full force and effect after it is passage and approval by the governing body of the City and publication thereof, or a certified summary thereof, one time in the official City newspaper.

PASSED, APPROVED AND ADOPTED by the governing body of the City of Andover, Kansas this 30th day of April, 2013.



CITY OF ANDOVER, KANSAS

By [Signature]
Ben Lawrence, Mayor

ATTEST:

APPROVED AS TO FORM:

[Signature]
Susan C. Renner, City Clerk

[Signature]
City Attorney

A general summary of the subject matter contained in this ordinance shall be published in *The Augusta Daily Gazette* in substantially the following form:

Ordinance No. 1539 Summary

On May 28, 2013, the City of Andover, Kansas, adopted Ordinance No. 1539, a Contract Franchise Ordinance granted to Wildflower Telecommunications, LLC dba Ideatek, a telecommunications local exchange service provider providing local exchange service within the City of Andover. The complete text of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 1609 E. Central or will be available at www.andoverks.com for a minimum of one week following publication of this summary. This summary has been certified by the Andover City Attorney.

This summary is hereby certified to be legally accurate and sufficient pursuant to K.S.A. 12-3001, *et seq.*

SUMMARY CERTIFIED:

[Signature]
City Attorney

I hereby certify that the foregoing is the original ordinance; that said ordinance was passed on the 28 day of May, 2013; that the record of the final vote on its passage is found on page 4 of the minutes from May 28, 2013; that it was published in the Augusta Daily Gazette on the 1 day of June, 2013.

City Clerk [Signature]