

CHAPTER 51**TELEPHONE FRANCHISE**

51.01 SHORT TITLE. This Subchapter shall be known and may be cited as the "Northwestern Bell Telephone Company Franchise Ordinance."

51.02 FRANCHISE TO NORTHWESTERN BELL TELEPHONE COMPANY. A non-exclusive franchise is hereby granted unto Northwestern Bell Telephone Company, a corporation, its successors and assigns, (herein the "Grantee"), for a term of twenty-five (25) years, commencing with the date this franchise ordinance becomes effective, to acquire, construct, operate and maintain the necessary facilities for the operation of a general telephone system, (herein the "Telephone Utilities"), within the present and future corporate limits of the City of Windsor Heights, Iowa, (herein the "City"), and the Grantee is granted the right, franchise authority to construct, install and maintain such Telephone Utilities over, across and under the streets, highways, avenues, alleys, bridges and public grounds of the City, and to furnish telephone services to the City and its inhabitants for all lawful purposes, including public and private use, and upon such terms, conditions, restrictions and regulations as may be adopted pursuant to this franchise ordinance.

51.03 RESERVATION OF POWERS. The Grantee shall, at all times during this franchise ordinance, be subject to all lawful exercise of police power by the City and to such other reasonable regulations as the City may hereinafter by resolution or ordinance provide. This franchise ordinance shall not restrict in any manner the right of the City in the exercise of any power which it now has or which may hereafter be authorized or permitted by the laws of the State of Iowa.

51.04 CONSTRUCTION OF TELEPHONE UTILITIES. All Telephone Utilities shall be constructed or reconstructed in conformance with applicable rules and regulations imposed upon the Grantee or ordered by the Federal or State government and the applicable ordinances of the City in effect at the time of the construction or reconstruction.

51.05 INDEMNIFICATION OF THE CITY. Grantee shall hold the City harmless from liability and damages in any manner arising out of the exercise by Grantee of the rights, privileges and franchise ordinance granted hereby.

51.06 RIGHT OF EMINENT DOMAIN. Grantee shall have the power to appropriate and condemn private property for the purpose of providing telephone service to the extent necessary to serve a public use and in a reasonable relationship to an overall plan of providing telephone services in the public interest. The procedure to be followed in any such condemnation actions shall be that which is set forth in Chapter 6B, Code of Iowa, 1995.

51.07 FRANCHISE TAX. If during the term of this franchise ordinance there shall be enacted by the Iowa General Assembly a valid taxing statute authorizing the City to collect a tax on the telephone revenues received by Grantee from its customers in the City, then if such tax is levied by the City, said Grantee, subject to the approval of the Iowa State Commerce Commission, will include such tax as a separate item on its customer's bills, identified as 'City of Windsor Heights Franchise Tax,' and remit the sums collected to the City under the terms and provisions of such enacted statute.

51.08 LEASE OR ASSIGNMENT OF FRANCHISE. This franchise ordinance shall apply to, inure to and bind the parties hereto and their successors and assigns.

51.09 SEVERABILITY. If any of the provisions of this franchise ordinance are for any reason illegal or void, then the lawful provisions of this franchise ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

51.10 EFFECTIVE DATE. This franchise ordinance is passed and adopted subject to the approval thereof by the electors of the City of Windsor Heights, Iowa, as provided in Section 364.2(4) (b) and (c) and Chapter 49, Code of Iowa, 1981. Upon passage of this franchise ordinance by the City Council, the said Council shall provide for the calling of a special election in said City for the purpose of submitting the question of the approval of this franchise ordinance and the contract provisions therein contained to the electors of said City, as provided by law, and if approved by a majority of said electors of said City, voting at said election, that this franchise ordinance shall be published as provided by law. Upon such said publication and upon the acceptance of this franchise ordinance by the Grantee, as herein provided, then, and not until then, shall this franchise ordinance take effect and its provisions be binding upon the City.

51.11 ACCEPTANCE OF FRANCHISE. Within thirty (30) days from and after the passage of this franchise ordinance and its approval by the electors of said City, the Grantee shall file with the City Clerk its acceptance of the provisions of this franchise ordinance and of its terms and conditions and said franchise ordinance with acceptance, shall become and be a binding contract between the City and the Grantee, provided, however, that Northwestern Bell Telephone Company shall pay all the costs incurred in holding said election as by law provided.

51.12 DEREGULATION. If, during the term of this franchise ordinance, there shall be enacted by the Iowa General Assembly a valid statute abolishing the Iowa State Commerce Commission and deregulating telephone rates, City of Windsor Heights residents shall not be charged any different rates for their telephone services than City of Des Moines residents.

51.13 REPEAL. In the event this franchise ordinance becomes effective, as hereinbefore provided, then all ordinances and parts of ordinances of the City in conflict herewith are hereby repealed.

EDITOR'S NOTE

Ordinance No. 82-4, adopting a telephone franchise for the City was passed and adopted on October 18, 1982. Voters approved the franchise at an election held on October 19, 1982. The franchise was accepted January 21, 1983.