

ORDINANCE 2002-02

AN ORDINANCE GRANTING TO CENTURYTEL OF ARKANSAS, INC., ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE TELEPHONE SERVICE AND ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF TELEPHONE SERVICE TO THE CITY OF CHEROKEE VILLAGE, LOCATED IN SHARP AND FULTON COUNTIES, ARKANSAS, WITHIN THE UTILITY'S ALLOCA ED SERVICE TERRITORY, AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE STREETS, ALLEYS, BRIDGES AND OTHER PUBLIC GROUNDS OF THE CITY IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES.

THIS ORDINANCE AND AGREEMENT is made and entered into y and between the City of Cherokee Village, a municipal corporation organized and existing under the laws of the State of Arkansas (the "Municipality"), and CenturyTel of Arkansas, a corporation organized under the laws of the State of Arkansas (the "Company"), doing and authorized to do a general telephone business in the State of Arkansas and in the Municipality.

WHEREAS, it is to the mutual advantage of the Municipa ity and the Company that the Company provide telecommunication services in the Muni ipality, and in furtherance thereof that the Company be permitted to maintain its facilities in the streets, alleys, public ways and thoroughfares of the Municipality under conditions mutually agreed upon by the Municipality and the Company;

NOW, THEREFORE, in consideration of these premises and e following mutual covenants, the Municipality and the Company do hereby agree as follows:

SECTION 1: COMPANY'S RIGHT OF USE

(a) Pursuant to the terms of this Agreement, the Municipal acknowledges that the Company is authorized to use and occupy the streets, a leys, public ways and thoroughfares of the Municipality for the purpose of construction, maintaining and operating its poles, wires, conduits, cables, anchors, towers, transmission lines, manholes, piers, abutments, and other structures and facilities used in or incidental to the provision of telecommunication services to the public.

(b) The Company's right to use and occupy said streets, al public ways and thoroughfares of the Municipality shall not be exclusive, and the Municipality reserves the r ght to grant a similar use of said streets, alleys, public ways and thoroughfares to any person, firm or corporation at any time during the period of this Agreement, provided that if local exchange telephone service (as defined in Section 2 (b)) is either offered or provided within all or any portion of the corporate limits of the Municipality by any person, fiiiiii or corporation other than

the Company, such person, firm or corporation enters into a similar agreement with the Municipality, including the requirement that such other person, firm or Corporation pay to the Municipality a percentage of its gross receipts from local exchange telephone service (as defined in Section 2 (b)), not less than the percentage required of the Company under Section 2(a).

SECTION 2: CONSIDERATION

(a) In consideration for the Municipality's acknowledgement of the Company's rights set forth in Section 1, the Company hereby agrees to pay to the Municipality four and one-quarter percent (4.25%) of the Company's gross receipts from local exchange telephone service provided by the Company within the corporate limits of the Municipality.

(b) For purposes of this Agreement, the term "gross receipts from local exchange telephone service" is defined to mean and include only those charges resulting from the Company's provision of basic local exchange telephone service to residences and businesses, based on rates established from time to time by the Arkansas Public Service Commission.

(c) The payments contemplated by this Section are to be made in quarterly installments and paid not later than thirty (30) days after the end of each calendar quarter.

(d) The terms of this Agreement shall apply to newly annexed areas of the Municipality within a reasonable period, as agreed upon by the Municipality and the Company, after written notice of such annexation has been transmitted to the Company by the Municipality.

(e) The payments contemplated by this Section are deemed to be the sole and exclusive consideration for the Municipality's acknowledgment of the Company's rights set forth in Section 1; and the Municipality hereby agrees that, for the period during which this Agreement is in effect, the Municipality will not pass any law or Ordinance, or otherwise seek to impose, levy, or collect from the Company any other amount or service for any of the rights set forth in Section 1. This Subsection (e) shall not affect the Company's liability to pay any general taxes, fees or licenses legally imposed for the general maintenance of the Municipality.

SECTION 3: INDEMNIFICATION AND REIMBURSEMENT

(a) The Company hereby agrees to protect, indemnify, and hold the Municipality harmless from any and all claims for damages to persons or property arising from or resulting from the Company's exercise of any of the rights set forth in Section 1; provided, however, that the Company shall not be liable for any damages caused by the negligence of the Municipality, its officers, agents, contractors or employees. The Municipality's right of indemnification under Subsection (a) shall not be limited by the amount of the Company's insurance coverage.

(b) The Municipality hereby agrees to reimburse the Company for the cost of repairing any and all damage to the Company's structures or facilities caused by the negligence of the Municipality, its officers, agents, contractors or employees.

(c) The provisions of this Section are not intended to create liability for the benefit of third parties, but solely for the benefit of the Municipality and the Company.

SECTION 4: COMPLIANCE WITH ORDINANCES

The Company shall at all times during the life of this Agreement be subject to all lawful exercises of the police power of the Municipality, and to such reasonable and lawful regulation as the Municipality shall hereafter by ordinance or resolution provide.

SECTION 5: CONDITIONS ON USE AND OCCUPANCY

None of the Company's structures or facilities shall at any time interfere with the use, repair, maintenance, or drainage of the streets, alleys, public ways and thoroughfares of the Municipality. Except in the case of an emergency, the Company shall, in advance of any construction or repairs, comply with all applicable laws and ordinances of the Municipality relative to permits regarding such construction or repair. The Company shall be responsible for all repair or replacement costs incurred by the Municipality as a result of any damage to the streets, alleys, public ways and thoroughfares of the Municipality caused by the construction, maintenance or repair work of the Company.

SECTION 6: MAINTNENACE

The Company shall at all times maintain its structures and facilities in good condition and shall comply with all reasonable safety requirements in the operation thereof.

SECTION 7: CONSTRUCTION AND EFFECTIVE DATES

(a) This Agreement is entered into and is to be construed under and in accordance with the laws of the State of Arkansas.

(b) The Municipality hereby covenants that its Council, Board of Aldermen or other governing body has passed all necessary ordinances or resolutions, in accordance with the terms of its charter and all applicable provisions of Arkansas law, authorizing the undersigned Mayor to execute this Agreement on behalf of the Municipality and by doing so bind the Municipality to all of the terms and conditions of this Agreement.

(c) The Municipality and the Company understand, acknowledge and agree that the payments contemplated by Section 2 are to be considered payments received by a municipality from a public utility within the meaning of ARC Sec. 23-1-101, as amended, and that in accordance with the Company's tariff, such payments are subject to the charge-back provisions contained therein.

(d) The Municipality and the Company mutually agree that by entering this Agreement, neither party shall be considered to have surrendered, waived, or in any way prejudiced any rights or claims granted to them by any applicable constitutions, laws or ordinances.

(e) The Municipality and the Company hereby agree that this Agreement shall be in effect for a term of ten (10) years, beginning on August 1, 2002 and ending on July 31, 2012. This Agreement will automatically renew for another ten-year period unless the Council votes otherwise.

IN WITNESS of all of which the parties hereto have caused these presents to be executed on the respective days and dates set forth below.

PASSED AND APPROVED BY THE CHEROKEE VILLAGE CITY COUNCIL.

DATED: March 18, 2002

APPROVED: Marjorie A. Rogers
Marjorie A. Rogers, Mayor

ATTEST: Susan E. Maynard
Susan E. Maynard, Clerk/Treasurer

(SEAL)

APPROVED AS TO FORM:

Tom Garner, Attorney

CenturyTel of Arkansas, Inc., a corporation, hereby ac above franchise subject to the
terms and conditions therein this _____ day of _____, 2002.

ATTEST: Kay C. Buchat
Secretary

By: GM

(SEAL)