

ORDINANCE 2012-RO1

AN ORDINANCE REPLACING ORDINANCE 2002-02 AND GRANTING TO CENTURLINK, INC., IT'S SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND AUTHORITY TO SELL, FURNISH AND DISTRIBUTE TELECOMMUNICATIONS SERVICES AND TO ERECT, MAINTAIN, EXTEND AND OPERATE A SYSTEM FOR THE DISTRIBUTION, TRANSMISSION, FURNISHING OR SALE OF LOCAL EXCHANGE TELEPHONE SERVICES TO THE CITY OF CHEROKEE VILLAGE, LOCATED IN SHARP AND FULTON COUNTIES, ARKANSAS, WITHIN THE UTILITY'S ALLOCATED SERVICE TERRITORY, AND THE INHABITANTS AND ALL OTHER CONSUMERS THEREOF, AND TO USE THE PUBLIC WAYS OF THE CITY IN CONNECTION THEREWITH; FIXING THE TERMS THEREOF, AND FOR OTHER PURPOSES.

THIS ORDINANCE AND AGREEMENT is made and entered into by and between the City of Cherokee Village, a municipal corporation organized and existing under the laws of the State of Arkansas (the "Municipality"), and telecommunications company CenturyLink, Inc., Monroe, La, its successors and assigns (the "Company"), doing and authorized to do local exchange services in the State of Arkansas and in the Municipality.

WHEREAS, it is to the mutual advantage of the Municipality and the Company that the Company provide local exchange services in the Municipality, and in furtherance thereof that the Company be permitted to maintain its facilities in the public ways of the Municipality under conditions mutually agreed upon by the Municipality and the Company;

WHEREAS, under Arkansas Code Annotated (ACA) § 14-200-101 (as amended), the Municipality is authorized to collect franchise fees for occupation of the public right of way and determine use of the fees collected.

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

DEFINITIONS:

Basic Local Exchange Telephone Service (BLETS) as defined in ACA § 23-17-403 means the service provided to the premises of residential or business customers composed of the following:

- (A) Voice-grade access to the public switched network, with ability to place and receive calls;
- (B) Touch-tone service availability;
- (C) Flat-rate residential local service and business local service;
- (D) Access to emergency services (911/E911) where provided by local authorities;
- (E) Access to basic operator services;
- (F) A standard white-page directory listing;
- (G) Access to basic local directory assistance;
- (H) Access to long distance toll service providers; and
- (I) The minimum service quality as established and required by the Arkansas Public Service Commission on February 4, 1997;

Other Local Exchange Telephone Service (OLETS) is defined as a communication service enhancement other than BLETS, by the Company for residential or business customers, enabled by the Municipalities public ways, such as call waiting, call forwarding, caller ID and the like.

“Franchise fee” means compensation paid to the Municipality by the Company for services enabled by the Companies use of the Municipalities public ways per ACA § 14-200-101(b).

“Public ways” means the streets, roads, highways, alleys, rights-of-way, public utility easements, and public property within the geographic limits of the Municipality and air space over them.

SECTION 1: The Municipality has granted a non-exclusive franchise to the Company in Ordinance No. 2002-02, which expires July 31, 2012, and which will automatically renew for a term of ten (10) years unless the City Council of Cherokee Village votes otherwise. By the adoption of this ordinance, the City Council of Cherokee Village votes to prevent the automatic renewal of the franchise terms contained in Ordinance 2002-02 and enter into a new non-exclusive franchise agreement with the Company on the terms and conditions contained in this ordinance.

SECTION 2: COMPANY'S RIGHT OF USE

(a) Pursuant to the terms of this Agreement, the Municipality acknowledges that the Company is authorized to use and occupy the public ways of the Municipality for the purpose of construction, maintaining and operating its poles, wires, conduits, cables, anchors, towers, transmission lines, underground appliances, 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 public ways of the Municipality shall not be exclusive, and the Municipality reserves the right to grant a similar use of said public ways to any person, firm or corporation at any time during the period of this Agreement, provided that if local exchange telephone service is either offered or provided within all or any portion of the corporate limits of the Municipality by any person, firm 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 franchise fee not less than required of the Company under Section 2.

SECTION 3: CONSIDERATION

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 a franchise fee of four and one-quarter percent (4.25%) of the Company's gross receipts from BLETS and OLETS provided by the Company within the corporate limits of the Municipality. These rates shall be based on rates established from time to time by the Arkansas Public Service Commission. This Ordinance does not restrict the Municipality from the right to alter the franchise fee, upon proper notification in advance to the Company, if allowed by Arkansas Code. The franchise fee shall not apply to services exempt from the franchise taxing authority of the Municipality.

(b) 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.

(c) 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.

(d) 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 (d) 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 4: 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 5: 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 6: 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 7: 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 8: 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 ACA § 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, 2012 and ending on July 31, 2022.

This Agreement will automatically renew for another ten-year period unless the Council votes otherwise.

PASSED AND APPROVED BY THE CHEROKEE VILLAGE CITY COUNCIL.

DATED: 4/19/2012

APPROVED: Lloyd Hefley
Lloyd Hefley, Mayor

ATTEST: Lana Hamilton
Lana Hamilton, Clerk/Recorder

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.

CenturyLink, Inc., a corporation, hereby accepts the above franchise subject to the terms and conditions therein this _____ day of _____, 2012.

APPROVED: _____

ATTEST: _____