

**CHAPTER 29
UTILITY FRANCHISES**

Sec. 29-1. First Electric Cooperative.

Effective November 9, 1993, there is hereby imposed upon First Electric Cooperative a franchise tax equal to 4.25% of the gross residential and commercial revenues of the said First Electric Cooperative for service provided to customers within the City limits of the City of Searcy.

The said franchise tax shall be payable by First Electric Cooperative based upon the gross monthly residential and commercial revenues generated by First Electric Cooperative for each monthly billing cycle, and shall be payable in monthly installments. The first such payment of the franchise tax shall be due as of the first billing cycle which occurs after the effective date hereof. *(Ord. No. 93-31, §§ 1&2, 11-9-93)*

Sec. 29-2. White County Video.

Subject to the conditions, limitations and restrictions herein contained, the City of Searcy by the City Council of said City of Searcy does hereby grant a non-exclusive Permit to install, operate and maintain a cable television system to White County Video, Inc. of Little Rock, Arkansas, (the "Permittee") whose mailing address is P.O. Box 2221, Little Rock, Arkansas 72203.

1. **Territorial Area Involved.** This Permit extends to the existing territorial limits of the City and to any area hereafter annexed thereto during the term of this Permit.
2. **Term.** Except as otherwise provided herein, the Permit herein granted shall commence on March 1, 1993 and shall end on the last day of February 2013. *(Ord. No. 2006-11, § 1, 5-9-2006)*
3. **Extension of Service.** The upgraded cable system shall be designed and constructed so that cable television service shall be available to each residential unit within the City of Searcy, Arkansas.

In newly annexed residential areas, cable television services shall be made available no later than twelve (12) months after the date of annexation to any area where the system extension will pass occupied dwelling units equivalent to a density of twenty (20) homes per system mile as measured from the nearest fiber node or trunk line. *(Ord. No. 96-30, 11-12-96)*

Cable service shall be available to businesses which are located contiguously to the cable system designed for the residential areas of Searcy. For businesses located in areas that are non-contiguous to the upgraded cable plant, which will require cable plant extension in order to serve the area, the cost of the extension shall be shared by the Permittee and the businesses requesting cable service. The Permittee shall determine the estimated construction cost, and the Permittee's share of

the cost shall be five-hundred (\$500) dollars per customer, the rest of the cost shall be borne by the customers requesting service.

4. **Upgraded System Capability.** The cable system shall be upgraded utilizing the latest fiber optic technology employing the design technology commonly known as the "Fiber-to-the-feeder technology. The system shall be capable of delivering seventy-eight (78) television channels.

The upgraded cable system shall meet and/or exceed all technical specifications set forth by the Federal Communications Commission.

The upgraded cable system shall be capable of incorporating new technology such as "digital compression" which is an emerging technology.

The engineering phase shall begin immediately upon approval of this Ordinance, and the system construction shall be completed and the system operational within thirty-six (36) months from the date of enactment of this Ordinance.

If Permittee fails to complete the system upgrade within the thirty-six (36) month period as required by this Ordinance or extend service to annexed areas within the twelve (12) month period following annexation, the franchise shall terminate; unless the city, through action by the City Council, approves an extension of time. Such extension shall be authorized only when the City Council finds that such extension is necessary and appropriate due to causes beyond the control of the Permittee.

5. **Underground and Overhead Construction.** In all sections of the City where all the cables, wires or other like facilities of public utilities are placed underground, Permittee shall place its facilities underground to the maximum extent that the existing technology reasonably allows.
6. **Local Office and Handling of Complaints.**
 - a. Permittee shall comply with the consumer protection and customer service regulations to be promulgated by the Federal Communications Commission pursuant to the Cable Television Consumer Protection and Competition Act of 1992.
 - b. Permittee shall maintain a local business office within the City which shall be open during all usual business hours, have a publicly listed telephone and be so operated that complaints and request for repairs or adjustments may be received on a twenty-four (24) hour basis.

- c. The Permittee shall maintain a repair and maintenance crew capable of responding to existing subscriber complaints or requests for repair service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this repair service unless such maintenance or repair is required as a result of damage caused by subscriber. The Grantee may charge for service calls to the subscribers' home that are not the result of cable failure upon approval of a rate and equitable procedure by the City. In the event of a service outage and on request by a subscriber, the Permittee shall credit a subscriber's account on the basis of 1/30 of the applicable monthly charge for the loss of service for every 24 hours commencing twenty-four hours after notification by the subscriber.

Any resident who believes that Permittee has failed adequately to resolve the resident's complaint within thirty (30) days of receipt by Permittee of a written complaint, may refer the matter in the first instance to the Mayor or his designated representative. In the event that said official is unable informally to resolve the matter to the satisfaction of all parties involved, the matter shall be referred to the Cable Committee for further review and action.

Each subscriber shall be given notice of the procedures for reporting and resolving complaints no later than the time of initial tap in and connection.

7. **Rate Regulation.** The City intends to exercise its authority to regulate rates for basic cable television service in accordance with Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 and the regulations to be promulgated thereunder by the Federal Communications Commission on or about April 3, 1993. The City and the Permittee agree that promptly after promulgation of the aforesaid regulations, appropriate amendments to this Ordinance to implement the City's rate regulation authority, if required, shall be adopted. There is attached hereto as "Attachment A" a schedule of the rates and charges currently in effect. Permittee agrees that it will not implement any increases in basic or tier rates and charges prior to implementation of the City's rate regulation authority provided hereunder. City agrees that it will expeditiously request certification by the FCC for authority to adopt and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. par. 543(b).
8. **Applicable Legislation.** Permittee agrees to comply with all applicable Federal, State and local statutes, ordinances and rules and regulations in the operation of the cable television system provided hereby. Any modifications of the provisions of the Ordinance made necessary by an amendment to Federal law or regulation shall be incorporated into this Ordinance within one (1) year of the effective date of the amendment, unless such amendment requires an earlier modification hereof.

9. **Permit Fees.** Permittee agrees to pay quarterly to the City of Searcy a franchise fee equal to three (3%) percent of Permittee's gross monthly revenues attributable to basic service charges, premium service charges and tier service charges. However, the Council shall have the unilateral right, in its sole discretion, to increase the rate of said franchise fee from three (3%) percent up to a maximum of five (5%) percent by giving Permittee a ninety (90) day written notice.

The City shall have the right to audit the Permittee's income records in accordance with the above paragraph and to recompute the franchise fee if necessary; any additional amounts determined to be payable under this Ordinance shall be paid within fifteen (15) days; provided, however, that such audit shall take place within thirty-six (36) months following the close of each of Permittee's fiscal years.

10. **Compliance with Applicable Laws and Ordinances.** The Permittee shall, at all times during the life of this Permit, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

11. **Operation and Maintenance of System.**

- a. Permittee shall render efficient service through the use of radio dispatched vehicles, make repairs promptly and in conformance with regulations to be adopted by the Federal Communications Commission and interrupt service only for good cause and for the shortest time practical. Such interruptions, insofar as practical, shall be preceded by notice and shall occur during periods of minimum use of the system.
- b. The Permittee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- c. The Permittee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the applicable ordinances, statues and regulation of the City and State of Arkansas, and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.
- d. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alley, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

- e. The Permittee shall maintain a force of one or more resident agents or employees at all times and shall have sufficient employees to provide safe, adequate and prompt service for its facilities.
12. **Emergency Use of Facilities.** In the case of any emergency or disaster, the Permittee shall, upon request of the Mayor or his designated agent, make available its facilities to the City for the course of the emergency or disaster period.
13. **Other Business Activities.** Neither the Permittee hereunder nor any shareholder of the Permittee shall engage in the business of selling or repairing television or radio receivers within the City of Searcy during the term of this Permit, and the Permittee shall not allow any of its shareholders to so engage in any such business.
14. **Other Commitments.**
- a. **Senior Citizen Discount** - White County Video, Inc., shall provide a permanent "Senior Citizen's Discount" of \$1.00 per month. To qualify, a customer must be sixty (60) years old, head-of-the-household and complete a request form at the cable office. Permittee will provide one free installation to any senior citizen.
 - b. **Studio** - Upon the completion of the system upgrade, the Permittee shall equip and provide a studio to produce programming for the local community channel.
 - c. **Basic Hook-Up Charge** - The FCC is directed by the Cable Television Consumer Protection and Competition Act of 1992 to establish guidelines for Franchising Authorities to regulate rates including installation charges. Notwithstanding the above, Permittee agrees that the installation charges will be no greater than cost. Moreover, Permittee agrees to absorb up to forty-five (\$45.00) dollars of the cost of burying underground service lines where all other service lines are located underground; any additional cost over forty-five (\$45.00) dollars shall be paid by the customer.
 - d. **Notification of Rate and Channel Changes** - The FCC is directed by the Cable Television Consumer Protection and Competition Act of 1992 to establish guidelines for cable television companies to notify Franchising Authorities and Customers of rate and channel changes. Notwithstanding the above, Permittee agrees to give ninety (90) day written notification of rate changes and channel changes. In the event that a channel change must be made earlier than a ninety (90) day notice would permit, a written explanation shall be forwarded to the Mayor.

- e. **Pay-Per-View (PPV)** - The upgraded system shall be capable of providing viewers the option to purchase selected programming on a pay-per-view basis.

- f. **Programming** - Although the responsibility for programming is that of the Permittee, Permittee shall solicit input from the City Council and Subscribers when selecting additional programming to be added to the cable system programming line-up.

- g. **Fiber Connectivity of City Facilities.** Permittee shall provide the City of Searcy data and communication connectivity through fiber optic strands dedicated to the sole and exclusive use of the City and such additional strands as may be necessary to provide continued or backup service in the event of a discontinuation of service (the “Fiber System”), and capable of carrying not less than one (1) gigabite of data per second to the following locations:
 - i. City Hall – 401 W. Arch;
 - ii. City of Searcy Police Department – 101 N. Gum Substation – 2203 E. Moore;
 - iii. City of Searcy Fire Stations
 Central Fire Station (current) – 1711 S. Higginson
 Central Fire Station (under constr.) – 501 W. Beebe Capps;
 Station 2: 1901 E. Market
 Station 3: 2612 W. Beebe-Capps
 - iv. City of Searcy Street Department – 301 Mulberry Ave.
 - v. City of Searcy Sanitation Department – 409 W. Beebe-Capps;
 - vi. Parks and Recreation – 801 South Elm;
 - vii. White County District Court, Searcy Division – Clerk’s Offices
 Current – 406 E. Booth Road
 White County Detention Center – 1600 East Booth Road;
 - viii. Searcy Municipal Airport – 2609 South Main Street;

The Fiber System shall be maintained by Permittee consistent with then current prudent business practices. Permittee shall use best efforts to repair the Fiber System following any discontinuation to any location served by Permittee under this Section; provided, however, that in the event of service discontinuation for reasons not within the control of Permittee or as a result of any act of God or nature, war, riot, period of public insurrection, or any other, similar event, repairs to and service of the Fiber System shall be restored as soon as may be practicable.

Permittee shall, upon not less than ninety (90) days notice, and upon the payment of, or the acceptance of arrangement to pay, the cost of the fiber and the estimated costs of installation of same, construct an extension of the Fiber System to other facilities within the city limits of the City of Searcy that are maintained by, operated by, and staffed with employees of, the City of Searcy or other such facility as may be agreed upon by Permittee and the City of Searcy.

Permittee and the City of Searcy agree that the Fiber System shall be the sole and exclusive property of Permittee and that the use of the Fiber System is given pursuant to the license, terms and other agreements contained herein and that the City of Searcy has no property interest in or to the Fiber System. The obligations of Permittee shall end upon the delivery of a continuous, uninterrupted pathway for the transmission of data, VoIP communications or other information through the Fiber System to the locations specified herein and Permittee shall not be responsible for any loss, damage, injury or claim resulting from the use or operation of the Fiber System and the cost, responsibility and obligation to operate and maintain any equipment employed to transmit data or other information over the Fiber System.

To the extent Permittee shall provide services for the transmission of voice, VoIP data or other communication through or over any portion of the Fiber System, the City of Searcy may recover from Permittee, from sums actually received by Permittee, or from any affiliate or entity related or associated with Permittee, the amount of Fifty Percent (50%) of the cost of the shared asset.

The license to use the Fiber System may not be assigned by the City of Searcy absent the written consent of Permittee. Access to the Fiber System is for the operation of the City of Searcy and the provision of governmental services to the residents thereof; therefore, access to use of the Fiber System shall be restricted to the City of Searcy and its authorized personnel, agents, contractors or service personnel. Additional entities may be granted use of the Fiber System by Permittee upon request of the City of Searcy with such consent not to be unreasonably withheld. (*Ord. No. 2006-11, § 2, 5-9-2006*)

15. **Liability and Indemnification.** The Permittee shall maintain, and by its acceptance of this Permit specifically agrees that it will maintain throughout the term of this Permit, liability insurance insuring the City and the Permittee with regard to damages in the minimum amounts of:
 - i. \$500,000 for bodily injury or death to any one person, within the limit however, of \$1,000,000 for bodily injury or death resulting from any one accident,

- ii. \$500,000 for property damage resulting from any one accident,
 - iii. Worker's Compensation insurance in compliance with the laws of the State of Arkansas,
 - iv. The Permittee by its acceptance of this Permit further agrees that it will be liable for and shall pay all costs of repair or restoration, arising out of any damage that may be done to streets, right-of-way, roads, alleys, public places or property, and private property, including driveways in the construction, installation, operation, and maintenance of television cable, conductors and/or any fixtures necessary for the operation of a cable television and closed circuit electronic system in the City.
16. **New Developments.** It shall be the policy of the City liberally to amend this permit, upon application of the Permittee, when necessary to enable the Permittee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently, or economically to serve its customers. Provided, however, that this Section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.
17. **Preferential or Discriminatory Practices Prohibited.** The Permittee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage. The rate structure of the Permittee shall be uniform throughout the geographic area covered by this ordinance.
18. **Removal of Facilities Upon Request.** Upon termination of service to any subscriber, the Permittee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.
19. **Transfer of Permit.** The Permittee shall not transfer this Permit to another person, firm, corporation or other entity without prior written approval of the City by Ordinance.
20. **Change of Control of Permittee.** Prior approval of the City Council shall be required where ownership or control of more than 20% of the right of control of Permittee is acquired by a person or group of persons acting in concert, none of whom already own or control 20% or more of such right of control, singularly or collectively. By its acceptance of this Permit, the Permittee specifically grants and agrees that any such acquisition occurring without prior approval of the City Council

shall constitute a violation of this Permit by the Permittee. "Attachment C" lists the current stockholders.

21. **Separability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.
22. **Ordinance Repealed.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed "including, specifically, Ordinance No. 597 of the City of Searcy."
23. **Publication Costs.** The Permittee shall assume the cost of publication of the Permit as such publication is required by law and such is payable upon the Permittee's filing of acceptance of this Permit.
24. **Acceptance.** Permittee shall have fifteen (15) days from the date of enactment hereof, to accept the Permit granted hereby by a writing directed to the Mayor of the City, which such acceptance shall not vary the terms hereof. (*Ord. No. 93-05, 2-9-93*)

Sec. 29-3. Procedures for Assuring Access to Cable and/or Data Services to Residents of Multiple Dwelling Units. (*Ord. No. 98-40, 12-8-98, Repealed via Ord No. 2006-11, § 3, 5-9-2006*)

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