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**City of Conway, Arkansas  
Ordinance No. O-16-64**

**AN ORDINANCE TO GRANT RITTER COMMUNICATIONS HOLDINGS, INC., AND ITS SUBSIDIARIES A FRANCHISE TO OCCUPY PUBLIC RIGHTS-OF-WAY AND PROVIDE TELECOMMUNICATIONS SERVICES; TO SET FORTH THE TERMS AND CONDITIONS FOR THE USE AND RENTAL OF SUCH RIGHT-OF-WAY; AND FOR OTHER PURPOSES.**

**Whereas**, the City has been requested by Ritter Communications to grant it a franchise to use the public streets, rights-of-way and airspace to construct and maintain a telecommunications network.

**Whereas**, the City is willing to grant Ritter Communications a franchise for the use of the public streets and rights-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:**

**Section 1. Authority to Execute Franchise.** The Mayor, City Council and City Clerk, are authorized to take all steps necessary to execute a franchise agreement in substantially the form set forth within this ordinance, as approved by the City Attorney, to Ritter Communications Holdings, Inc., a utility headquartered in Jonesboro, Arkansas, to provide telecommunication services and for any other purposes permitted by local, state or federal law.

**Section 2. Definitions.** For the purposes of this ordinance, the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- (a) "City" - means the City of Conway, Arkansas.
- (b) "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication or data transmission services.
- (c) "Grantee" - means Ritter Communications Holdings, Inc. and its subsidiaries, a telecommunications service provider, providing service within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- (d) "Gross Revenues" – All revenues, (excluding sales tax, extension, terminal equipment, toll, access, yellow pages and miscellaneous equipment revenues) collected by the Grantee: for local intrastate wireline telecommunications services and/or video services provided by the Grantee and billed to its end user customers, in both respects, within the corporate limits of the City and from operation of the Company's Network installed pursuant to this ordinance.

Notwithstanding the foregoing definition, the term Gross Revenues shall not include the following: (1) those revenues that the Grantee has received or will receive from another

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telecommunications service provider and upon which the other telecommunications provider has paid or will pay a franchise fee, and (2) revenues that the Grantee has received from its corporate parent, subsidiary, or an affiliate.

- (e) "Public Improvement" - means any existing or contemplated facility, building, or Capital Improvement Project, owned, occupied or used by the City, including without limitation streets, alleys, sidewalks, sewer, water, drainage, Rights-of-Way improvements, and Public Projects.
- (f) "Public Project" - means any project, or that portion thereof, planned, undertaken or financed through the City or any governmental entity for construction, reconstruction, maintenance, or repair of Public Improvements, or for any other purpose of a public nature or in the public interest. In designating a project as a Public Project, the City shall use reasonable discretion.
- (g) "Public Right-of-Way" - means all City real property, including air rights, as well as any area of real property in which the City has a dedicated or acquired right-of-way interest in the real property, excluding properties in which the City's interest is merely an easement for public pedestrian and bicycle ingress and egress. 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 non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (h) "Private Development Project" - means a project, or that portion thereof, planned, undertaken or financed by a non-governmental third-party that is primarily for the benefit and use of the third party. As used herein, the term Private Development Project does not include any project or portion that is a Public Project.
- (i) "Telecommunication Services" - 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. Basic Grant of Franchise.**

(a) Contingent upon Grantee's execution of a separate franchise agreement in substantially the form set forth within this ordinance, there shall be granted to Grantee a nonexclusive license to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of supplying Telecommunication Services to the consumers or recipients of such service located within the corporate boundaries of the City for the Franchise Term, as defined in Section 8 of this Ordinance, which shall be subject to the terms and conditions set forth herein (hereinafter the "Franchise").

(b) The grant of the Franchise by the City shall not convey title, equitable or legal, in the Public Right-of-way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and

for the period stated in this ordinance. This ordinance does not:

(1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public Right-of-Way, specifically including, but not limited to, parkland property, City Hall property, public works facility property, or the Tucker Creek trail system and any easement merely authorizing public ingress and egress to and from that trail system; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party; or,

(4) Negate any provision of the City's utility relocation policy as it may exist as of the passage of this ordinance, or as it may be created or amended in the future.

(c) As a condition of the grant of the Franchise, Grantee 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. Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public property).

(d) This authority to occupy the Public Right-of-Way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with State or Federal Law.

#### **Section 4. Use of Public Right-of-Way.**

(a) The Franchise shall afford Grantee the right to construct, maintain and operate its Facilities along, across, upon and under the Public Right-of-Way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct legal use of the Public Right-of-Way by the City or other utilities.

(b) Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its powers in its administration and regulation related to the management of the Public Right-of-Way. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted or hereinafter adopted by the City, relating to the construction and use of the Public Right-of-Way.

(c) Further, Grantee shall comply with the following:

(1) Grantee's use of the Public Right-of-Way shall in all matters be subordinate to the City's use or occupation of the Public Right-of-Way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested or granted in the City. Grantee shall coordinate the installation of its Facilities in the Public Right-of-Way in a manner which minimizes adverse impact on

Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvement as defined in the City's engineering design standards and construction specifications.

(2) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Public Right-of-Way damaged or removed by Grantee in its activities under this ordinance shall be fully repaired or replaced promptly by Grantee without cost to the City to the reasonable satisfaction of the City; however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto. Nothing in this ordinance shall require Grantee to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with Grantee's access to any of its Facilities located in a utility easement. Any excavation, back filling, repair and restoration, and all other work performed in the rights-of-way shall be done in conformance with the City's engineering design standards and construction specifications, as promulgated by the City. The City has the authority to inspect the repair or replacement of the damage, and if necessary, to require Grantee to do the additional necessary work. At the time of any inspection, the City Engineer may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or wellbeing of the public. Notice of the unsatisfactory restoration and the deficiencies found will be provided to Grantee and a reasonable time not to exceed thirty (30) days will be provided to allow for the deficiencies to be corrected.

(3) Except in the event of an emergency, as reasonably determined by the City, Grantee shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected.

(4) Grantee shall maintain and file with the City updated maps, in such form as may be required by the City, providing the location and sufficient detail of all existing and new facilities in the Public Right-of-Way, and such other related information as may be reasonably required by the City. Such maps shall be updated and kept current with the City at all times during the Franchise Term as defined in Section 8 of this Ordinance.

(5) Grantee shall be responsible for its costs that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Public Right-of-Way.

(6) Grantee shall be responsible for its own costs incurred in removing or relocating its Facilities when required by the City for purposes of a Public Project consistent with the City utility relocation policy in effect at the time. If Grantee wishes to challenge that a project is a Public Project, it shall relocate its facilities pursuant to this subsection immediately upon written request, and shall resolve any questions as to whether the project is a Public Project at a later time. FAILURE TO DO SO CAN RESULT IN THE TERMINATION OF THIS FRANCHISE AND AN ORDER TO REMOVE ALL FACILITIES AT GRANTEE'S EXPENSE WITHOUT RESCOURSE AGAINST THE CITY.

(7) Grantee shall take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Grantee fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City.

(8) At a minimum, and without limitation, Grantee shall comply with all building and zoning codes currently in force or hereafter enacted in the City.

(9) Grantee shall comply with all technical and zoning standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Public Right-of-Way, as required by present and future Federal, State, and City Laws and Regulations.

(10) Permission is hereby granted to the Grantee to trim trees upon and overhanging the Right-of-Way if such trimming is necessary to prevent imminent damage to the Facilities. For routine trimming operations, customers shall be contacted at least one (1)-week in advance by either personal contact or by informational door hanger.

(11) The Grantee shall pay to the City franchise fees beginning with the calendar year immediately following its generation of Gross Revenues, an amount equal to 5.0% of Gross Revenues as defined in this Ordinance. The rate shall remain 5.0% for the Franchise Term, as defined in Section 8 of this Ordinance, or until agreed otherwise by both the City and Grantee, or until otherwise changed by law. In addition, the Grantee will provide the City with four (4) dark pairs of fiber for the City's use for public purposes, provided that this obligation applies only to fiber placed by Grantee and does not apply where Grantee has leased fiber in the facilities of another entity with which the City has a franchise. Grantee, at the City's cost, shall perform all splicing, maintenance, and repairs to the City Fibers. Cost to the City shall be the actual invoice cost for such splicing, maintenance, and repairs plus ten percent (10%). Grantee shall provide actual documentation for splicing, maintenance, and repair which shall be included with the invoice to the City.

#### **Section 5. Indemnity and Hold Harmless Requirements.**

(a) Grantee (the "Indemnifying Party") shall indemnify, defend and hold harmless the City, its directors, officers, employees, representatives, members, partners, trustees and affiliates (collectively

the "Indemnified Party") from and against any and all costs, liabilities, losses and expenses (including, but not limited, reasonable attorneys' fees) resulting from any claim, demand, suit, action, judgment, loss or proceeding brought against the Indemnified Party for:

- (1) personal injury including death;
- (2) the damage to any personal or real property;
- (3) any unauthorized use of the facilities of the Indemnified Party; or
- (4) a violation of any United States intellectual property right including patents, copyrights, trademarks, or service marks all of which must be established under United States Law, arising directly or indirectly from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, employees, contractors, representatives or agents. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the state of Arkansas without, however, waiving any governmental immunity available to the City under State Law and without waiving any defenses of the parties under State or Federal Law.

(b) During any construction phase, Grantee shall have in place commercial, general liability, and automobile liability insurance in amounts acceptable to the City. Evidence of such insurance shall be presented to the City for its approval as a condition precedent to the commencement of any construction or installation of Facilities within the Public Right-of-Way pursuant to the franchise hereby granted.

**Section 6. Reservation of Rights.**

(a) The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications Service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

**Section 7. Failure to Enforce.** The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee. This provision does not apply to Grantee's requirements under Section 4 (c) (4) above, nor shall it preclude the City from declaring that the franchise is abandoned should Grantee declare bankruptcy, enter into receivership, or have any action occur which leads to its continued failure to meet all of the terms of this franchise for a period of three (3) consecutive months.

**Section 8. Term and Termination Date.**

(a) The Franchise shall be effective for a term of ten (10) years from the effective date of this ordinance (the "Franchise Term"). Thereafter, the Franchise will renew for additional five (5)-year terms, unless either party notifies the other party of its intent to terminate or renegotiate the franchise at

least 180 days before the termination of the then current term. Any such additional term shall be deemed a continuation of the Franchise Term and not as a new franchise or amendment.

(b) Upon written request of either the City or Grantee, the terms of the Franchise shall be renegotiated at any time, in accordance with the requirements of State Law, if any of the following events occur: changes in Federal, State, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee.

(c) In the event the parties are actively negotiating in good faith new franchise terms or an amendment to the Franchise when the Franchise Term expires, the parties may by written mutual agreement extend the Franchise Term to allow for further negotiations. Any such extension period shall be deemed a continuation of the Franchise Term and not a new franchise license or amendment.

(d) The franchise hereby granted and the exercise of any power under it by the Grantee shall be subject to any changes in local, state, or federal law or regulation, as well as to any City utility relocation policy which may be currently in effect or enacted in the future.

**Section 9. Point of Contact and Notices.** Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the City Engineer. All other notices between the City and Grantee shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

If to City:

Office of the Mayor  
1201 Oak Street  
Conway, Arkansas 72032  
(501) 450-6100

If to Ritter Communications:

Ritter Communications Holdings, Inc.  
Attn: John D. Strode  
2400 Ritter Drive  
Jonesboro, AR 72401  
(870) 336-2345

**Section 10. Transfer and Assignment.** The franchise hereby created is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City which shall be in accordance with applicable law; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, between wholly owned subsidiaries, or to an

entity acquiring all or substantially all of Grantee's assets, upon notice to the City.

**Section 11. Force Majeure.** Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

**Section 12. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional such declaration or adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the ordinance.

**Section 13. Repealer.** All laws, ordinances, resolutions, and parts of the same that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

PASSED this 14<sup>th</sup> day of June, 2016.

**Approved:**



**Mayor Tab Townsell**

**Attest:**



**Michael O. Garrett**  
City Clerk/Treasurer

