

ORDINANCE NO. 2019-10

AN ORDINANCE AUTHORIZING YELCOT, IT'S SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND OPERATE A COMMUNICATIONS NETWORK WITHIN THE CITY OF GASSVILLE, ARKANSAS, LEVYING A FRANCHISE TAX, PROVIDING FOR THE PAYMENT THEREOF AND DESCRIBING THE METHOD OF COLLECTION OF SUCH FRANCHISE FEES

WHEREAS, Yelcot operates a communications network within the City of Gassville, Arkansas; and

WHEREAS, the Gassville City Council desires to grant Yelcot the privilege of operating and maintaining a communications network franchise agreement as set forth herein,

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

SECTION 1: That permission be and is hereby granted to Yelcot, or its other business names and its successors in interests, assigns, and subsidiary or parent corporations or limited liability companies, subject to the regulatory authority of the City Council and the FCC and other regulatory authorities, to construct, maintain and operate its poles, posts, cable, wires, and all other necessary overhead apparatus on, over and along; and its conduits, ducts, mains, pipes, cables, wires, manholes, distributing poles and all other necessary underground appliances on, in, under and through the streets, alleys and highway, within the limits of the City of Gassville, Arkansas, and to sell, furnish, transmit, and distribute communications services within the corporate limits of the City of Gassville and to use the property of the other companies and permit other companies to use its property upon such arrangements as the two companies may agree, subject to the following conditions:

SECTION 2: That all poles erected by Yelcot shall be located so they will not interfere with the safety or convenience of persons traveling on or over the said street, alleys and highways; and in the work of installing and maintaining any underground system, Yelcot shall not open or encumber more of any street, alley or highway than will be necessary to enable it to perform same with proper economy and efficiency; nor shall it permit such opening or encumbrance to remain for a longer period than shall be necessary to do the work for which said opening shall have been made.

SECTION 3: That all work done under the provisions of this Ordinance in said City, shall be subject to the supervision of the City Engineer or some other representative appointed by said Council and Yelcot shall replace and properly repair or replace the sidewalk or street pavement which may have been displaced or damaged by it in the construction and maintenance of its system in said City.

SECTION 4: That Yelcot shall maintain all poles, cables, and wires, conduits, ducts, mains, pipes, manholes, distributing poles and all other apparatus erected or constructed under the provisions of this Ordinance, in good and safe order and condition; and shall at all times fully indemnify, protect, and save harmless the said City from and against all lost and necessary expenditures arising from the erection, construction and maintenance of its networks in said City, or from its neglect or failure to maintain the said apparatus in good and safe order and condition.

SECTION 5: That nothing in the Ordinance shall be construed to grant unto the said, Yelcot any exclusive right, or to prevent a grant of similar privileges to other companies.

SECTION 6: So long as Yelcot, or its other business names and its successors in interests, assigns, and subsidiary or parent corporations or limited liability companies, shall operate a communications network within the City, it shall pay to the City a franchise tax in the amount equal (five) 5% of basic local voice service excluding extensions, terminal equipment, toll, yellow pages and other miscellaneous equipment revenues within the corporate boundaries of the City. This amount will be paid to the City of Gassville each quarter, and shall be made during the first (ten) 10 days of each month following the end of the quarter; provided, the amount of the tax levied herein by the City may be collected by Yelcot from those of Yelcot's customers receiving local exchange telephone service within the corporate boundaries of the City of Gassville, in accordance with the tariffs of Yelcot and the rules, regulations and orders of the Arkansas Public Service Commission. This Ordinance does not restrict the City from the right to alter the tax upon proper notification in-advance to Yelcot.

SECTION 7: If at any point in the future, Yelcot begins providing cable television or video services, Yelcot shall pay to the City a municipal franchise adjustment fee in an amount equal to (five) 5% of Yelcot's annual gross revenues (before taxes) derived from sales to all consumers for the basic maintenance and service charges. Payments shall be made to the City on the same schedule as the franchise fee payments for basic local voice communications services set out in Paragraph 6 above.

SECTION 8: (a) It is expressly agreed and understood by the City of Gassville and Yelcot that the aforesaid payment shall constitute and be considered as complete payment and discharge by Yelcot, or its other business names and its successors in interests, assigns, and subsidiary of parent corporations or limited liability companies of all licenses, fees, charges, impositions or taxes of any kind (other than automobile license fees,

special mileage taxes, general ad valorem taxes, curb cut fees, and other general taxes applicable to all citizens and taxpayers) which are now or might in the future be imposed by the City of Gassville under authority conferred upon the City of Gassville by law. However this does not relieve Yelcot of its obligation to secure necessary permits from the City in compliance with the City's ordinances. In the event such other taxes are imposed by the City of Gassville, the obligation of Yelcot to pay the City of Gassville the franchise tax set out in Section 6 of this Ordinance shall be immediately terminated.

(b) Yelcot shall at all times maintain and display the proper warning devices and allow sufficient space along the public way for the passage of vehicles around areas of construction, and shall as soon as practicable restore the public ways to as good condition as before the construction was commenced.

(c) Yelcot shall have the authority to divert or detour traffic from the area of construction on proper notice to the Police Department and Public Works Department of the city when diversion or detour is necessary for the safety and well-being of the inhabitants of the city.

(d) Yelcot shall promptly furnish to the Department of Public Works, or to any other authority, any and all information which may be requested in regard to any portion of its system, in any form whatsoever, and any other information in regard to its occupation of the public ways.

(e) Yelcot shall remove, raise, or lower its wires, cables or lines temporarily to permit the moving of houses or other structures provided that a person requesting such temporary removal, raising or lowering of any portion of the system shall pay the expense of such temporary removal, raising or lowering, and provided that Yelcot shall not be required to take action to remove, raise or lower any portion of its system within less than 48 hours advance notice.

(f) Permission is hereby granted to Yelcot to trim trees upon and overhanging the public ways of the city so as to prevent the branches of such trees from coming in contact with any portion of its system.

(g) Yelcot agrees that it shall bear full relocation costs of any Yelcot owned utilities inside City's rights of way.

SECTION 9: The franchise awarded hereunder shall take effect and be in full force from and after approval by the Mayor and the City Council of the City of Gassville, Arkansas from the date signed. Nothing in the preceding sentence shall be construed as to prohibit any modification of this agreement. The Mayor shall send a certified copy of this Ordinance to Ritter once this Ordinance becomes law to notify Yelcot of the Ordinance.

SECTION 10; Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 11: All ordinances, agreement or parts of ordinances in conflict with this Ordinance are hereby repealed.

Approved and passed this 17th day of December 2019.

Signed:

Jeff Brain

Mayor

Jeffrey Young

Recorder/Treasurer

