

**CITY OF DIAMOND CITY, ARKANSAS  
ORDINANCE NO. 14-11**

*Sec 65  
Amended  
By 15-11  
Amended  
02-2013*

**AN ORDINANCE BY THE CITY COUNCIL OF DIAMOND CITY, BOONE COUNTY, ARKANSAS RENEWING ORDINANCE 60-81 GRANTING A FRANCHISE TO THE YELCOT VIDEO GROUP TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF DIAMOND CITY, ARKANSAS; SETTING FORTH THE TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; AND PROVIDING FOR CITY REGULATIONS OF THE CABLE TELEVISION SYSTEM OF THE CITY OF DIAMOND CITY, ARKANSAS.**

**WHEREAS**, The City Council of Diamond City, Arkansas, has found and determined that the public necessity and convenience of the general public of the City requires a cable television system in the City; and

**WHEREAS**, the City Council of Diamond City, Arkansas, having considered and approved the legal character, financial, technical and other qualifications of the Yelcot Video Group, Inc. ("Grantee") and having considered and approved the construction, programs, and proposal of Yelcot Video Group, Inc., the provisions hereinafter set out were further considered and approved.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DIAMOND CITY, BOONE COUNTY, ARKANSAS, AS FOLLOWS:**

**SECTION 1. GRANT OF AUTHORITY**

There is hereby granted by the City to the Grantee that right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cable, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV System for the interception, sale, and distribution of television, radio, data, and communications signals of all types.

**SECTION 2. DURATION OF FRANCHISE**

The duration of the rights, privileges and authorities hereby granted shall be fifteen (15) years from the date of passage of this ordinance by the City Council of the City of Diamond City, Arkansas, provided that the Grantee shall have the option of extending this Franchise for an additional period of fifteen (15) years upon application by the Grantee not later than six (6) months before the expiration date of the Franchise and not earlier than one (1) year before the expiration date of the Franchise and conditioned upon a review of the Grantee's qualifications and performances and approval thereof by the City Council.

**SECTION 3. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

The Grantee shall, at all times during the duration of this Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereinafter provide.

#### **SECTION 4. RATES**

The Grantee, its successors and assigns may make, promulgate, set rates, and enforce reasonable rules and regulations as conditions for the interception, sale, and distribution of television, radio, data and communication signals of any type to any person, firm, or corporation.

Service charges will be made for, installations of cable into a residence, installation of extra outlets, turning on of cable in a previously wired building and non-payment reconnection.

#### **\* SECTION 5. PAYMENT TO CITY**

For the use of the streets and other facilities of the City in the operation of the CATV System and for the municipal supervision thereof, the Grantee shall pay to the City annually an amount equal to Five Percent (5%) of the Grantee's gross subscriber revenue from operations within the City of Diamond City, Arkansas during the year beginning October 1, 2011. For this purpose, "gross subscriber revenues" does not include sales, excise or other privilege taxes billed to and collected from subscribers by Grantee in addition to charges from installation charges. Basic services are the services provided for which there is no additional charge.

#### **SECTION 6. INDEMNIFICATION**

The Grantee shall hold the City of Diamond City, Arkansas harmless from all claims for damages arising out of the construction, maintenance, or operation of the said cable system or other apparatus under the control of the Grantee.

#### **SECTION 7. STANDARD OF SERVICE**

- A. The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
- B. Procedures have been adopted by the City and the Grantee regarding the receipt, investigation and resolution of any and all complaints regarding the cable television operations. The procedures include, but are not limited to, requirements that:
  - 1. Complaints shall be investigated and resolved by the Grantee within twenty-four (24) hours of the receipt thereof, whenever possible.
  - 2. To receive complaints regarding cable television operations, the Grantee shall maintain a toll-free telephone operated so as to receive complaints, requests for repairs or service twenty-four (24) hours per day, seven days per week.
  - 3. The Company shall be required to maintain a local business office or agent not more than thirty (30) miles from any subscriber services by the CATV system who will receive and commence resolution of complaints regarding cable television service.
- C. The City hereby designates the Mayor and Recorder to be the office responsible for continuing administration of this franchise and for the exercising of the authority for implementing the complaint procedures adopted by the City and the Grantee.

- D. The Grantee shall give written notice to all subscribers, upon subscribing to the cable television system and periodically thereafter, which will indicate procedures for reporting and resolving complaints above cable television service and will indicate the name of the office designated in subsection (B) of this section whose responsibility it is to implement complaints.

## **SECTION 8. RIGHT OF REVOCATION**

The franchising authority shall have the right to rescind or revoke the rights granted upon any substantial violation by the Grantee of any of the obligations and requirements here after written notice by the franchising authority to the Grantee and continuation of such violation, failure or default.

- A. Such written notice to the Grantee shall specify precisely the manner in which the Grantee is in violation, failure or default with respect to the Franchise.
- B. The notice given by the franchising authority shall give the Grantee a specified, reasonable amount of time within which to correct the violation, failure or default, but in no event shall the time period be less than thirty (30) days from the date of receipt of the notice to the Grantee.

## **SECTION 9.**

In the event that the City of Diamond City, Arkansas annexes additional territory, the Grantee shall construct and provide service to all of the annexed area which has a density of 40 homes per mile of cable or where a drop line from a presently existing distribution line exists no further than 300 feet from the location of the potential subscriber requesting service, or upon payment by said subscriber requesting service of all cable installation charges exceeding installation cost of 300 feet.

All construction required to be undertaken by the Grantee pursuant to the above section shall be accomplished within one (1) year after the City annexes such additional territories.

## **SECTION 10.**

If the Grantee herein fails and neglects to provide services as specified in this Ordinance to the said City of Diamond City, Arkansas within a twelve (12) month period from the effective date thereof, this Franchise shall be null and void.

## **SECTION 11. SEVERABILITY**

If any section, sub-section, sentence, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or any state or federal agency having jurisdiction over such matters, such portion shall be deemed separate, distinct, and independent provision portions hereof.

## **SECTION 12. REGULATORY ACTION**

- A. The performance by the Grantee hereunder is subject to limitations, restrictions, or requirements now existing or which may henceforth be imposed by law. Rules or order of the Federal Communications Commissioners, any other government board, commission or

authority of any kind. The Grantee shall not be deemed in breach of any of the requirements of this Franchise to the extent it performs in accordance with or refrains from doing anything prohibited by such law, rule or order.

- B. Should the Federal Communications Commission modify or amend the provisions of Section 76.31 of its Rules and Regulations entitled "Franchise Standards" such modifications or amendments shall be incorporated into this Franchise within one (1) year of adoption of the modification or amendment, or at the time of the renewal at the expiration of this Franchise pursuant to Section 2 hereof, whichever occurs first.

**SECTION 13. EMERGENCY CLAUSE.**

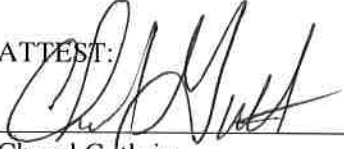
Inasmuch as this Ordinance is necessary to continue receiving funds from the franchise fees paid by Yelcott Video Group having expired August 31, 2011, and the importance of providing for Cable service to the community, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect immediately upon its passage and approval.

Approved and adopted by roll call vote as follows this 12<sup>TH</sup> day of September, 2011.

Ayes 6 J+m Nays 0 J+m Abstentions 0 Absent 0

We, the undersigned, hereby certify that the foregoing Ordinance 14-11 was duly adopted by the City Council of Diamond City, Arkansas.

ATTEST:

  
Cheryl Guthrie  
Recorder/Treasurer

APPROVED:

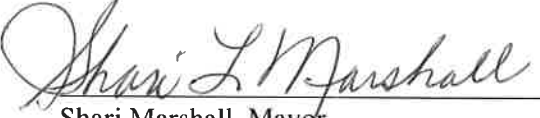
  
Shari Marshall  
Mayor

**PROOF OF POSTING OF ORDINANCE**

**STATE OF ARKANSAS**

**COUNTY OF BOONE**

We, Shari Marshall and Cheryl Guthrie, do solemnly swear that as Mayor and City Recorder/Treasurer, respectively, of and for the City of Diamond City, Boone County, Arkansas, that a certified copy of Ordinance No. 14-11 was, on the 13th day of September, 2011, duly posted in five separate and distinct places inside the corporate limits of the Town in accordance with Ordinance No. 3-10 of the City, and that Ordinance No. 14-11 remain posted for thirty (30) days.

  
Shari Marshall, Mayor

  
Cheryl Guthrie, City Recorder/Treasurer