

ORDINANCE NUMBER 109

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF ARRIBA, COLORADO, GRANTING EASTERN SLOPE RURAL TELEPHONE ASSOCIATION, INC. A FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A TELEPHONE SYSTEM IN THE STREETS, ALLEYS AND PUBLIC WAYS OF THE TOWN OF ARRIBA FOR A TERM OF TWENTY YEARS, AND FIXING THE TERMS AND CONDITIONS THEREOF, AND REPEALING ANY CONFLICTING ORDINANCE .

An Ordinance of the Town of Arriba, Colorado, granting to Eastern Slope Rural Telephone Association, Inc., its lessees, successors and assigns a non-exclusive franchise for a period of 20 years to erect, maintain and operate a telephone system upon, over, across and along the streets, alleys bridges, and public places of the Town of Arriba, to provide telephone service in said Town of Arriba and for the purpose of transmitting, transporting and conveying telephone messages through or beyond the immediate limits of said Town to other towns, cities and customers, and prescribing the terms and conditions under which said Company is to operate, and repealing any conflicting Ordinances of said Town of Arriba. BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ARRIBA, COLORADO.

SECTION 1

That Eastern Slope Rural Telephone Association, Inc. its lessees, successors and assigns, hereinafter referred to as Grantee, be and are hereby granted a non-exclusive franchise for a period of 20 years to construct, maintain and operate a telephone system upon, over, across and along the streets, alleys, bridges and public places in the Town of Arriba to provide telephone service in said Town of Arriba and for the purpose of transmitting, transporting and conveying telephone messages through or beyond the immediate limits of said Town to other towns, cities and customers.

SECTION 2

Wheresoever the Grantee, in the construction or maintenance, replacement or removal of its system or in the installation, replacement or removal of any extension thereto, shall cut into or take up any pavement or shall make any excavations in any street, avenue, alley or public place, within the boundaries of said Town, the same shall be done in a manner so as to not unduly interfere with the use of such thoroughfares by the public. The Grantee shall use such safeguards as may be necessary to prevent injury to persons or property during such construction work and upon its completion, all pavement shall be replaced in as good condition as it was before taken

up. All excavations shall be refilled and restored, as nearly as possible to the original condition prior to excavation and all obstructions shall be removed, all at the expense of the Grantee. In the event that the Grantee shall fail to comply with the provisions of this section after having been given reasonable notice, the Town may do such work as may be needed to properly repair said thoroughfare and the cost thereof shall be repaid to the Town by the Grantee. All poles, wires, and other facilities of every kind and nature, forming a part of said telephone system, shall be so erected, operated and maintained so as not to interfere with traffic on the traveled portions of the streets and alleys.

SECTION 3

The Grantee is constructing and maintaining said telephone system, and in entering and using said streets, highways, avenues, alleys and public places in said Town, shall not in any manner interfere with or injure any improvement which said Town now has or may hereafter have upon any of its streets, alleys, highways or public places, without express permission from the Town.

SECTION 4

This Ordinance is granted subject to all conditions, limitations and immunities now provided for and applicable to the operations of a public utility, by the laws of the State of Colorado. The rates to be charged for telephone service within said Town and the rules and regulations with reference to the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body as may, from time to time during this grant, be vested by law with authority and jurisdiction of the rates, regulations and quality and standards of service to be supplied by the Grantee.

SECTION 5

The Grantee shall hold the Town harmless from any and all claims of negligence and actions, litigation or damage, arising out of the negligence or default of the Grantee in the construction, erection, installation, maintenance or operation of its properties operated by authority of this Ordinance within the boundaries of the Town, or out of the negligence of its employees of in the operation thereof, including the court costs and reasonable attorney fees in making defense against such claims. A copy of the process served upon the Town shall be delivered to Grantee and Grantee shall have the right to defend, in the name of the Town and to employ counsel for such purpose.

The Grantee shall insure its operations for at least the maximum amount which shall be from time to time provide by statute for claims for personal injury or property damage against a Colorado Municipality. Said insurance shall be available to indemnify and save the Town harmless from damages or injury to persons or property and loss and expense caused by the negligence or default of the Grantee.

SECTION 6

If the Grantee shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue to default for more than thirty (30) days after receiving notice from the Board of Trustees of said Town of such default, the said Board of Trustees may, by Ordinance duly passed and adopted, terminate all rights granted under this Ordinance to the Grantee. The notice of default shall specify the provision or provisions, in default. Said notice shall be in writing and shall be served in the manner provided by the laws of Colorado for the service of original notices in civil action. In the event of cancellation or other termination of this franchise pursuant hereto, the Town of Arriba may require Grantee, at Grantee's own expense, to forthwith remove all its construction and equipment from the streets, alleys, and public ways in the Town of Arriba and restore the same in good condition, satisfactory that upon the transfer, assignment, or sub-letting of this franchise by Grantee with the approval of the Town of Arriba, said removal requirement may not be enforced by the Town of Arriba.

In the event Grantee's construction and equipment is acquired through transfer, assignment, sale or acquisition by the Town, the requirement that Grantee remove its equipment from the streets shall be void and shall in no way affect the value of Grantee's system for condemnation purposes.

In any event, at such time as Grantee or its successors or assigns, for whatever reason, shall cease operations of a telephone system in the Town, Grantee or its successors or assigns, and its plant and equipment is not acquired by the Town, or some other third party, Grantee shall have the right to enter upon the streets, alleys, bridges and public places for the purpose of removing therefrom any or all of its plants, structures, conduits, cables, poles, wire and all other equipment of any kind or nature; and the operations for such removal shall be carried out in a workmanlike manner in keeping with the terms and provisions of Section 2 hereof.

Nothing in this Ordinance shall be so construed as to prevent or restrict the Grantee from assigning all of its

rights, title or interest, gained or authorized under or by virtue of the terms of this Ordinance.

SECTION 7

The Grantee shall, at all times, make and keep full and complete plats, maps, and records showing the exact location of all equipment and construction located and used by Grantee in the Town of Arriba, Colorado.

SECTION 8

That in consideration of said grant and in compensation for the use and occupancy of the streets, alleys and public grounds, the said Grantee, its lessees, successors and assigns shall pay into the treasury of said Town, monthly, an amount equal to five percent (5%) of Grantee's gross receipts providing local exchange service to the residents of the Town.

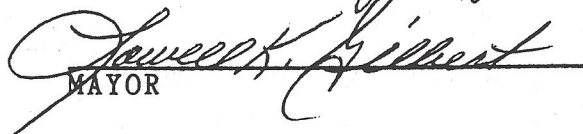
SECTION 9

Conflicting Ordinance of the Town of Arriba, Colorado, as the same has been amended, is hereby repealed as of the effective date hereof.

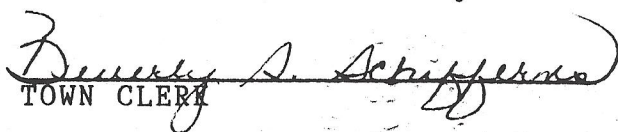
SECTION 10

This Ordinance shall be effective upon its acceptance by Grantee. If the Grantee does not within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Grantee shall be deemed to have accepted this Ordinance and the terms and conditions of the franchise contained therein.

This Ordinance was introduced, read on first reading, approved and ordered published by the Board of Trustees of the Town of Arriba, Colorado, this 14th day of June, 1990.


MAYOR

ATTEST:


TOWN CLERK

(S E A L)