



Legislation Text

File #: ORD-07:3167, **Version:** 2

AN ORDINANCE GRANTING RITTER COMMUNICATIONS, INC., D/B/A RITTER COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF JONESBORO AND LEVYING A FRANCHISE FEE IN CONNECTION WITH RITTER'S PROVISION OF CABLE TELEVISION SERVICE IN THE CITY OF JONESBORO; AND FOR OTHER PURPOSES.

WHEREAS, Ritter Communications, Inc. ("Ritter") has been authorized by applicable state and federal law to provide telecommunications services in the City of Jonesboro ("City"), and is subject to the terms and conditions of City Ordinance Nos. 1743 and 3577 respecting local access telephone service companies, and

WHEREAS, Ritter and other telecommunications services providers operating within the City presently occupy the streets, alleys, airways and other public rights-of-way of the City for the purpose of operating and maintaining their respective telecommunications systems, and

WHEREAS, the City Council for the City of Jonesboro acknowledges and recognizes that applicable federal law provides that telecommunications service providers may provide cable services over their existing telecommunications system facilities within the City upon receipt of a franchise from the City, and

WHEREAS, Ritter seeks to provide cable television services within the City upon the terms and conditions reasonably requested by the City, including the award of a non-exclusive cable service franchise to Ritter by the City, and

WHEREAS, the City Council for the City has determined that it is appropriate and in the public interest to promote the development of competitive cable television service offerings within the City, and

WHEREAS, the City is legally authorized to award one (1) or more non-exclusive franchises to qualifying entities operating within the City, and to impose upon all cable television service providers a just and reasonable franchise fee in connection with such providers' cable television service operations within the City, and

WHEREAS, the City Council for the City has determined that Ritter is presently capable of providing cable television services to the residents of the City over Ritter's existing telecommunications system and lawful additions thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS, THAT:

SECTION 1. Non-exclusive Cable Television Service Franchise. Ritter is hereby granted a non-exclusive franchise to provide cable television services over its existing telecommunications system and lawful additions thereto located within the City.

SECTION 2. Annual Franchise Fee. There is hereby imposed and Ritter shall pay to the City a monthly cable

television service franchise fee in an amount equal to five percent (5%) of Ritter's Gross Subscriber Revenues, as defined by City Ordinance No. 3296, Section 3.F, collected within the City's corporate limits during the previous month (the "Cable Television Service Franchise Fee").

SECTION 3. Payment of Cable Television Service Franchise Fee. Ritter's Cable Television Service Franchise Fee shall be paid to the city monthly on the 15th day of each month following collection.

SECTION 4. Certification of Cable Television Service Revenues. On a monthly basis, by the 15th day of the month, Ritter shall certify to the City Ritter's Gross Cable Television Service Revenues collected during the previous month in Jonesboro, Arkansas.

SECTION 5. Build-Out and Non-discriminatory Service Requirement. Within twenty-four (24) months from the effective date of this Ordinance, Ritter shall build and extend its telecommunications system so that cable television service may be distributed and provided to businesses located and operating within an area of the City bounded by Jackson Avenue on the North, Culberhouse Street on the West, Nettleton Avenue on the South, and Rains Street and Bridge Street on the East. Ritter shall further offer to distribute and provide cable television service to businesses in other areas of the City served by Ritter in the future. Ritter shall have an obligation to not unduly discriminate in the provision of its services.

SECTION 6. Contribution to Public, Educational, and Governmental Access. Ritter shall make an annual contribution to the City to support and extend public, educational, and governmental ("PEG") access to cable television channel capacity within the City. Ritter's annual contribution to PEG access shall be determined by multiplying its year-end cable television service customer base in the City by the average value per customer of the facilities and services provided to the City by Suddenlink, the incumbent cable television service provider or its successor, during the year to support, maintain and extend PEG access within the City. Ritter's annual contribution to PEG access within the City shall be made by the first of February of each succeeding year. At Ritter's discretion its annual contribution to PEG access within the City may be passed through to its cable television service customers, on a pro rata basis, on monthly subscriber bills as permitted by federal law and FCC regulation.

SECTION 7. Existing Franchise Rights Not Affected. Nothing herein contained shall be construed as altering or amending any other rights of the city or Ritter as provided for in City Ordinance Nos. 1743 and 3577 pertaining to local access telephone service and the local access telephone service carrier franchise fee. The Cable Television Service Franchise Fee to be paid by Ritter to the City shall be in addition to Ritter's payment of the City's local access telephone service carrier franchise fee.

SECTION 8. Term. The Franchise granted under this Ordinance commences upon adoption by the City Council and shall continue for fifteen (15) years, unless renewed or terminated sooner. So long as Ritter remains in material compliance with the provisions of the Ordinance Ritter, at its option, may extend the term for an additional ten (10) years by providing written notice to the city no more than twenty-four (24) months, but not less than twelve (12) months before expiration of the initial term.

SECTION 9. Change of Law. The Franchise granted under this Ordinance is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission ("FCC"), the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and by the laws of the State of Arkansas. Should there be any modifications of the provisions of the Rules and Regulations of the FCC or federal or state law which are inconsistent with the terms and conditions of this Franchise, and which change or nullify the ability of the City

to enforce this Franchise, the parties agree that upon prior notice from either party, the parties shall meet to negotiate acceptable amendments to the Ordinance to comply with such modifications in the law.

SECTION 10. Indemnification and Insurance Requirements. Ritter shall indemnify and save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever (“Losses”), whether litigated or not, against the City arising out of the operation and maintenance by Ritter of its cable television service system within the City (unless such Losses arise from the negligence or intentional misconduct of the City, its officers, agents or employees), except Ritter shall not incur any such liability for libel, slander, obscenity, incitement, invasion of privacy, false or misleading advertising or similar causes of action for any program carried on any channel designated for public, educational or governmental use. Ritter’s indemnification shall include the payment of reasonable attorney’s fees should the City be required to defend such suit, judgment, execution, claim or demand.

In addition, Ritter shall carry insurance with an insurance company or companies qualified to do business in the State of Arkansas in the following amounts:

- (a) General Liability
 - (i) Personal Injury:
 - (a) \$500,000 per person; and
 - (b) \$2,000,000 per occurrence.
 - (ii) Property Damage: \$500,000
- (b) Workers’ Compensation: In an amount sufficient to comply with state law.
- (c) Automobile liability:
 - (i) Personal Injury:
 - (a) \$100,000 per person;
 - (b) \$300,000 per accident.
 - (ii) Property Damage: \$100,000

The City shall notify Ritter, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the city arising out of the operation and maintenance of Ritter’s cable television system. Where any such claim or demand against the City is made by suit or other legal action, written notice thereof shall be given by the City to Ritter not less than five (5) days prior to the date upon which any answer to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever is the shorter period.

SECTION 11. Right to Audit. Once each three (3) years, the City shall have the right to conduct an independent audit of Ritter’s books and records to verify the amount of compensation received by Ritter during the three (3) year period from the provision of cable television service within the City. The audit shall be conducted at Ritter’s expense using a qualified CPA satisfactory to Ritter. Ritter agrees not to withhold, unreasonably, its concurrence in the City’s selection of a CPA to conduct the audit.

SECTION 12. This ordinance shall be in effect on and after _____, 2008.

PASSED AND ADOPTED this 3rd day of January, 2008.