

TOWN OF OWENS CROSS ROADS, ALABAMA
ORDINANCE NO. 11-001
New Hope Telephone Cooperative - Franchise Agreement

WHEREAS, the New Hope Telephone Cooperative (NHTC) is an Alabama cooperative and has successfully provided the Town of Owens Cross Roads, Alabama (Town) within its corporate limits with telecommunication services for over 29 years and NHTC desires to renew and extend its franchise agreement at the end of the current agreement with different terms and conditions.

WHEREAS, NHTC has requested that the Town approve its application to renew and extend its franchise agreement at the end of the current Franchise Agreement adopted by the Town as Ordinance 81-4, with different terms and conditions; NHTC has agreed to pay the Town the standard 5% of gross revenues derived from the CATV revenues from customers of NHTC located within the town limits and NHTC will bill to and collect such fees from the customers; and the Town has deemed that it is in the best interest of the Town to approve the application of NHTC; and it is the considered judgment and opinion of the Town that said request of NHTC should be granted and the Mayor of the Town is authorized to sign the attached Franchise Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Town that the attached non-exclusive Franchise Agreement with NHTC is approved and NHTC is granted authority to serve its customers located with the town limits with telecommunications services conditioned on payment by NHTC to the Town of the standard franchise payment on cable service, currently 5% of the gross revenues derived from CATV service, payable annually, ~~with payments being due and payable on or before the 15th day of February of each year, with the first payment being due and payable February 15, 2012, as set out in the Franchise Agreement attached as Exhibit "1".~~

The effective date of the Franchise Agreement is August 13, 2011, immediately following the expiration date of the current Franchise Agreement adopted by the Town on August 13, 1981, as set out in Ordinance 81-4.

TOWN OF OWENS CROSS ROADS,
ALABAMA

By: Curtis J. Craig
Curtis J. Craig
Its: Mayor

ADOPTED this the 25th day of February, 2011.

ATTEST:

Barbara Webster
Barbara Webster, Town Clerk

Certification of Clerk

I, the undersigned, as Clerk of the Town of Owens Cross Roads, Alabama, hereby certify that the foregoing Ordinance No. 11-001 as approved and adopted by the Town of Owens Cross Roads at a regular meeting held on the 25th day of February, 2011. This Ordinance was duly posted on the 26th day of February, 2011, in three (3) public places in the Town of Owens Cross Roads (Town Hall, U.S. Postal Service Office, Curt & Betty's Grocery and Ken's Restaurant).

A handwritten signature in cursive script, appearing to read "Barbara Webster", written in black ink.

Barbara Webster, Town Clerk

TOWN OF OWENS CROSS ROADS, ALABAMA
FRANCHISE AGREEMENT WITH THE
NEW HOPE TELEPHONE COOPERATIVE

(Approved by Board of Directors of NHTC on October 19, 2010)
(Approved by Owens Cross Roads Town Council:
Ordinance 11-001, on January 27, 2011)

This Franchise Agreement by and between the Town of Owens Cross Roads, Alabama (Town), its successors, transferees and assigns and the New Hope Telephone Cooperative, Inc. (NHTC), its subsidiaries, successors, transfers and assigns (collectively, the "Parties"), is made and entered into on this the 25th day of February, 2011, and is effective on August 13, 2011, immediately following the expiration date of the current Franchise Agreement adopted by the Town on August 13, 1981, by Ordinance 81-4.

WHEREAS, the Town determined that NHTC has the financial, legal and technical ability which is reasonably sufficient to provide continuation of services, facilities and equipment necessary to meet the future telecommunications needs of the Town.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and it being the intention of the Parties to be legally bound hereby, both Parties hereto agree as follows:

1. **Terms.** For the purpose of this Franchise Agreement, the following terms, phrases, words and abbreviations shall have the meanings below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

a. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide cable and other telecommunication services.

b. The "System" shall mean the Cable System and other telecommunication services.

c. "Gross Receipts" means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the Town of Owens Cross Roads, including, but not limited to, 1) all Cable Service fees, 2) upgrade and downgrade fees, and 3) converter rental fees, but excluding Other Programming Service defined as "information services" by any Federal Agency with jurisdictional authority. The term "Gross Revenue" shall not include bad debts or any taxes or fees on Services furnished by Grantee imposed upon subscribers by any municipality, state or other governmental unit, including Franchise fees, the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support, advertising revenue, installation or reconnection fees, home shopping commissions, or revenue associated with DVR rental. Franchise Authority and Grantee acknowledge and agree that Grantee

will maintain its books and records in accordance with generally accepted accounting principles (GAAP).

d. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way permanent fixtures or improvements located thereon now or hereafter held by the Town which shall entitle the Town and NHTC to the use thereof for the purposes of installing, operating, repairing and maintaining the System.

e. "Service Area" means the present town limits within the service area of NHTC, and shall include any additions thereto by annexation or other legal means.

2. Grant.

(1) The Town hereby grants to NHTC a non-exclusive Franchise to construct and operate the System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the town limits and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, fiber optics, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the System.

(2) Any franchise granted under this Agreement shall be non-exclusive, and nothing herein shall be construed to prevent the Town from granting identical or similar franchises to more than one person or entity, within all or any portion of the town limits of the Town.

3. Term.

(1) The Franchise granted pursuant to this Agreement shall be for a term of twenty (20) years from the date of the expiration of the existing Franchise Agreement which is August 12, 2011, and shall be extended automatically for one (1) additional ten (10) year term, unless notice is provided by one of the parties at least eighteen (18) months prior to the expiration date, except as provided herein.

(2) The Town may terminate the franchise in the event NHTC shall refuse or neglect to comply with any material requirements or limitation contained in this Franchise Agreement.

4. Conditions of Street Occupancy.

(1) All transmission and distribution structures, poles, other lines and equipment installed, buried or erected by NHTC pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and

reasonable convenience of property owners who own property that adjoins any of said Public Ways.

(2) All privileges described by such a franchise shall be subordinate to any prior lawful occupancy of the public streets.

(3) Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by NHTC shall be done in such a manner as to give the least inconvenience to the citizens. NHTC shall, at its own cost and expense, and in a manner consistent with good construction practices and code requirements, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good a condition as before the work involving such disturbance was done, and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways and easements to the Town. These maps shall be available by NHTC for inspection by the Town at any time during business hours.

(4) In all sections of the area where the cable wires or other similar facilities of public utilities are placed underground, NHTC shall place its cable, fiber optics, wires, accessories and/or other like facilities underground to the maximum extent that existing technology reasonably permits NHTC to do so.

5. Restoration of Public Ways. If during the course of NHTC's construction, operation or maintenance of the System there occurs a disturbance of any Public Way by NHTC, then NHTC shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbances.

6. Safety Requirements. Construction, installation and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable Federal Communications Commission or other federal, state and local regulations and the National Electric Safety Code. The System shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7. Franchise Fee.

(1) NHTC shall pay to the Town a franchise fee equal to five (5%) percent of its Gross Receipts received by NHTC from customers of NHTC who are located within the town limits from the operation of its System on an annual basis. The franchise fee shall be calculated beginning on the first day of the month following the adoption of an ordinance by the Town approving this Franchise Agreement. The franchise fee payment shall be due and payable on the 15th day of February of each year, with the first payment being due and payable February 15, 2012. Each payment shall be accompanied by a financial statement certified by a responsible officer of NHTC, showing in detail the gross subscriber revenues, as defined herein, of NHTC during the preceding calendar year or portion thereof.

(2) The Town shall have the right to inspect NHTC's records showing the gross subscriber revenues from which its franchise payments are computed and shall have the right of

audit and re-computation of any and all amounts paid under this Franchise Agreement. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the Town may have for further or additional sums payable under this Franchise Agreement or for the performance of any other obligation hereunder; however, an accounting rendered to the Town and to which no exception is made within six (6) months after the receipt by the Town shall be deemed to be accurate and shall not thereafter be subject to the question or made the basis of any claim by the Town against NHTC.

8. Renewal of Agreement Franchise. This Franchise Agreement may be renewed pursuant to the terms and conditions of all applicable federal and state laws and regulations.

9. Transfer of Franchise Agreement. NHTC's right, title or interest in the Franchise Agreement shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with NHTC, without the prior consent of the Town; such consent shall not be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest of NHTC in the Franchise Agreement or the System in order to secure indebtedness.

10. Liability and Indemnification.

(1) NHTC shall at all times indemnify the Town and save the Town harmless from any and all claims, demands, and/or suits, whether for damages to person or property or for any reason whatsoever which the Town shall be required to pay arising proximately, consequentially or otherwise by reason of the installation, operation or existence of the System, or from the maintenance, continuation or use thereof or the abandonment thereof by NHTC.

(2) NHTC shall also pay all expenses incurred by the Town in defending itself with regard to any and all damages and penalties resulting from NHTC's operation hereunder.

(3) NHTC shall maintain in full force and effect at its own cost and expense, during the term of this Franchise Agreement, Commercial General Liability Insurance providing an amount of \$1,000,000 for bodily injuries (including accidental death) to any one person, and subject to an aggregate limit in the amount of \$5,000,000 for any one occurrence, and the amount of \$100,000 per occurrence for property damage.

11. Notice of Violation. In the event that the Town believes that NHTC has not complied with the terms of this Franchise Agreement, it shall notify NHTC of the exact nature of the alleged non-compliance. NHTC shall have thirty (30) days from receipt of the notice to respond to the Town to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, NHTC shall initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

12. Impossibility of Performance. NHTC shall not be held in default or noncompliance with the provisions of this Franchise Agreement, nor suffer any enforcement or

penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

13. Alternative Services. It is not the Town's intention to prohibit the erection or continued use of individual television antennas or satellite dishes, and no one will be required to receive cable television service or connect with a television system. It is further the policy of the Town to promote the availability of alternative services wherever possible.

14. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise Agreement to be served upon the Town or NHTC shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly scaled and correctly addressed envelope by certified or registered mail, postage prepared, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. The notices or responses to the Town shall be addressed as follows:

Mayor of the Town of Owens Cross Roads
9032 Old Highway 431 S
Owens Cross Roads, Alabama 35763

The notices or responses to NHTC shall be addressed as follows:

New Hope Telephone Cooperative, Inc.
General Manager
5415 Main Drive
Post Office Box 452
New Hope, Alabama 35760

cc: Martinson & Beason, P.C.
115 North Side Square
Huntsville, Alabama 35801-4822
Attorneys for NHTC

The Town and NHTC may designate such other address or addresses from time to time by giving written notice to the other.

15. Severability. If any Section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of common jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of its Franchise or any renewal or renewals thereof.

16. Effective Date. The effective date of this ordinance is August 13, 2011.

IN WITNESS WHEREOF, the parties have executed this Franchise Agreement as of the date first written above, subject to applicable federal, state and local law.

Dated: February 15th, 2011

TOWN OF OWENS CROSS ROADS, ALABAMA

By: Curtis J Craig
Curtis J. Craig
Its: Mayor

ATTEST:

Barbara Webster
Barbara-Webster, Town Clerk

Sworn and subscribed to before me this 15th day of February, 2011.

May Rossiah
Notary Public
My Commission Expires: 6, 18, 2012

Dated: January 28, 2011

NEW HOPE TELEPHONE
COOPERATIVE, INC.

By: Tom Wing
Tom Wing
Its: General Manager

Sworn and subscribed to before me this 28 day of January, 2011.

Rhonda C. Tart
Notary Public
My Commission Expires: _____, 2011

