ORDINANCE NUMBER 2012-02

AN ORDINANCE GRANTING A FRANCHISE TO FARMERS TELECOMMUNICATIONS COOPERATIVE, INC. ITS SUBSIDIARIES AND AFFILIATES TO CONSTRUCT, MAINTAIN AND OPERATE A COMMUNIATIONS SYSTEM FOR THE TRANSMISSION OF TELEPHONIC, VIDEO, DATA AND OTHER ELECTRONIC MESSAGES IN, ON UNDER AND/OR ACROSS TOWN PROPERTY AND PUBLIC PLACES OR WAYS IN THE TOWN AND PRESCRIBING CONDITIONS AND LIMITATIONS RELATED THERETO.

BE IT ORDAINED BY THE TOWN OF THE TOWN OF COLLINSVILLE, ALABAMA, as follows:

Section 1. Definitions.

(a) "Town" is the "Town" of Collinsville, Alabama, a municipal corporation.

(b) "Communications System" means a system for the transmission of voice, video and/or data communications utilizing the streets, alleys, roads, conduit, public ways and public places of the "Town" regardless of technology used.

(c) "Franchise" is the authorization, and renewal thereof, issued by the Town as franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction and operation of a Communications System utilizing the streets, alleys, roads, public ways and public places of the Town and use of any Town owned conduit.

(d) "Grantee" is Farmers Telecommunications Cooperative, Inc. and those of its subsidiaries and affiliates directly using the streets, alleys, roads, public ways and public places of the Town for the operation of a Communications System.

(e) "Regular Video Subscriber Service" is that basic cable video service regularly provided to all subscribers. It includes all broadcast signal carriage, and any FCC-required

access channel carriage. It does not include specialized programming for which a per-program or per-channel charge is made.

(f) "Person" is any person, firm, partnership, trust, joint stock company, association, corporation, company, governmental entity or organization of any kind.

(g) "Video Gross Subscriber Revenues" means those revenues derived directly by the Grantee from the supplying of Regular Video Subscriber Service; that is the monthly reoccurring charge for Grantee's basic video package, plus installation fees, disconnect and reconnect fees. It does not include revenues derived from auxiliary services, late fees, equipment charges or from any taxes or governmental fees, per program or per channel charges, leased channel revenues, advertising revenues, or any other income derived from the system. If charges for Regular Video Subscriber Services are not separately identified on a customer bill, Grantee shall maintain records apportioning the revenues for such services among other services included in the customer bill based on a pro-rata application of any discount of the total price of the services if ordered separately.

Section 2. Consideration.

(a) The Grantee shall annually pay to the Town of Collinsville, Alabama a fee of three percent (3%) of Video Gross Subscriber revenues as defined under this Agreement. This fee shall be in lieu of any other municipal franchise or privilege fee. Said fee shall be paid annually to the Town and shall be due within sixty (60) days of the anniversary date of this agreement. At that time, the Grantee shall also file with the Town a notarized statement certifying the calculation of the gross revenues and the franchise fee for the fiscal year. Said franchise payment and statement shall be considered delinquent if not made within thirty (30) days of the due date as specified herein and shall be subject to penalty at the same rate in effect

and approved by the Town Council on that date of delinquency as is assessed for late payment of gross receipt license due the Town. Collection penalties shall in no way reduce the Town's right to terminate or cancel this franchise for non-payment of franchise fees.

Section 3. Franchise Term and Limitations.

(a) The right, privilege and franchise is hereby granted to Grantee, its successors and assigns, for an *initial term* of twenty (20) years from and after the date this Ordinance is accepted by the Grantee, to lay, construct, lease and/or operate a Communications System, together with the right to make, install, maintain, repair and replace such facilities as may be reasonably necessary or desirable. The right to use and to occupy said streets, alleys, public ways, places and conduit for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said streets, alleys, public ways, places, and conduit to any person at any time during the period of this franchise. This franchise may be extended beyond such initial term upon application to the Town in accordance with applicable federal, state and/or local laws. The Grantee shall file with the Town true and correct maps or plats of all existing and proposed installations and the types of equipment and facilities installed or constructed, properly identified and described as to the type of equipment and facility by appropriate symbols and marks and which shall include annotations of all public ways, streets, road and conduits where the work is to be undertaken. If, at any time during the period of this franchise, the Town shall lawfully elect to vacate, relocate, abandon, alter, reconstruct or change the grade of any street, sidewalk, ally or other public way to include drainage and utility areas, the Grantee, upon reasonable notice by the Town, shall remove, re-lay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures. Should Grantee refuse or fail to remove its equipment or plant as provided for herein within forty-five (45) days after written notification,

the Town shall have the right to do such work or cause it to be done, free of any liability to the Grantee for damage done to its equipment and plant in the course of such work, and the full cost thereof, shall be chargeable to the Grantee.

Section 4. Permits Required.

(a) If required by Town ordinance, the Grantee shall obtain from the Town a street cut permit, as well as any other permits of licenses which may be required for the construction and operation of the Communications System. The Grantee shall not unnecessarily obstruct or impair traffic upon the streets, roads and other public ways of the Town No street will be cut unless under extreme conditions and with prior approval of the Town. Upon making an opening in any public way, street, sidewalk or road as authorized by this franchise, the Grantee shall, without unnecessary delay, replace and restore same to its former condition as nearly as possible, and in full compliance with the provisions of the Town's street cut policy and any other provisions of the Town Code. The Grantee shall replace all excavated areas to their original or better condition in order to minimize the disruption of public property. The Grantee shall provide safe passageway for pedestrians and vehicles through, in and around the work site areas.

Section 5. Safety Requirements.

(a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(b) The Grantee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the Building Code and applicable regulations of the Town and, which applicable, the statutes and regulations of appropriate Federal, state and local agencies, including but not limited to the Federal Communications Commission.

(c) All structures and all conduits, cables, lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the Town, wherever situated, or located, shall at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

Section 6. Liability and Indemnification.

(a) By acceptance of this franchise and right, Grantee agrees that it shall indemnify, protect and hold harmless the Town and its officers, agents and employees from any and all claims whatsoever, from liabilities, losses, costs, judgments, penalties, damages and expenses, arising out of the its failure to perform any of the obligations of this franchise, including but not limited to, claims for injury or death to any person or persons, or damages to any property, as may be incurred by or asserted against the Town its officers, agents or employees, directly or indirectly, by reason of the installation, operation or maintenance by the Grantee of the Grantee's Communication System.

(b) The Grantee shall maintain, and by its acceptance of this franchise, specifically agrees that it will provide throughout the term of this franchise, workmen's compensation insurance and liability insurance, by self-insurance or by a commercial policy, with regard to all damages mentioned in subsection (a) and (b) above in the minimum amounts of:

1. General Liability Insurance - public liability including premises, products and complete operations.

    a. Bodily injury liability:
    $500,000 each person
    $1,000,000 each occurrence

    b. Property damage liability:
    $1,000,000 each occurrence, or

    c. In lieu of (1) and (2) above, bodily injury and property damage combined --$1,000,000 single limit.

2. Comprehensive—Automobile Liability Insurance including owned, non-owned and hired vehicles.

   a. Bodily injury liability:
   $500,000 each person
   $1,000,000 each occurrence

   b. Property damage liability:
   $1,000,000 each occurrence, or

   c. In lieu of (1) and (2) above, bodily injury and property damage combined --$1,000,000 single limit.

Section 7. Town Rights in Franchise.

The Grantee shall construct, maintain and operate its Communications System in such locations and, for underground facilities, at such depths below the grades of said streets as may be validly required by the Town, and will at all times comply with all reasonable requirements, regulations, laws and ordinances now in force, and which may hereafter be adopted by said, and be applicable to the construction, repair or maintenance of said Communications System or for the use of any Town owned conduit. Failure of Grantee to comply with the terms of this franchise or failure to pay the franchise fees prescribed by this Agreement shall be cause for the Town to terminate this franchise. The Town also reserves the right to terminate and cancel this franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee attempts to evade any of the provisions of this franchise or practices any fraud or deceit upon the Town. The right is hereby reserved to the Town or the Town Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations of general application to all similarly situated franchises as it shall find necessary in the exercise of its police power; provided, that such regulations, by Ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

Section 8. Acceptance.

This franchise and the rights, privileges and authority hereby granted, shall take effect and be in force from and after final enactment and publication thereof, as provided by law, provided that within thirty (30) days after the date of the passage of this Ordinance and prior to the commencement of any construction or the laying of any cable, the Grantee shall file with the Town Clerk its unconditional acceptance of this franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing, duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer and accompanied by an insurance certificate as specified in Section 6 unless these documents or evidence thereof have been previously field filed with Town Clerk.

Section 9. Renewal Procedures.

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

Section 10. Most Favored Nation Provision

This Franchise shall be amended to reflect: (a) any more favorable terms, including lower fees, given by the Town to any other similarly situated provider of Communications Services; and (b) any changes in federal, state or local law eliminating the need for a Town franchise or limiting the franchise fee paid by providers of cable or other communications services to the Town.

Section 11. Successors and Assigns.

This franchise shall be binding on Grantee, its successors and assigns. Prior to the transfer of ownership of Grantee's Communications System, the transferee shall file with the

Town a formal acknowledgment and acceptance of the terms of this Franchise in a form reasonably acceptable to the Town.

Section 12. Ordinance Repealed.

All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

Section 13. Separability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct an independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 14. Notice.

For the purpose of giving notice as provided for in this Ordinance, the Grantee's address is declared to be:

Farmers Telecommunications Cooperative, Inc.
Post Office Box 217
144 McCurdy Avenue, North
Rainsville, Alabama 36986
Attn: Fred Johnson, Executive Vice President & General Manager

The Town of Collinsville
Office of the Town Clerk
P. O. Box 390
Collinsville, AL 35961

Unless the Town is notified to the contrary, in writing; the placing of notices in the United States Mail addressed to the Grantee as set forth above shall constitute compliance with the provisions of this Section.

Section 15. Adoption.

By the adoption of this Ordinance, the Town Council of the Town of Collinsville, Alabama hereby expressly authorizes the Mayor to proceed with the implementation of this franchise and to enforce the provision contained herein.

ADOPTED and APPROVED this 19 day of March, 2012.

APPROVED: _____
JOHNNY TRAFFANSTEDT, MAYOR
TOWN OF
COLLINSVILLE, ALABAMA

ATTESTED: _____
TOWN CLERK
PEGGY WRIGHT
PRINTED NAME