

CHAPTER 8

CABLE TELEVISION

ARTICLE I – VIDEO SERVICE PROVIDER FEE

8-1-1 FEE IMPOSED. Telecommunications Management LLC, d/b/a NewWave shall pay an annual service provider fee to the City in an amount equal to **five percent (5%)** of the annual gross revenues derived from the provision of Cable or Video Service to households located within the City. The **twelve (12) month** period for the computation of the service provider fee shall be a calendar year.

8-1-2 PAYMENT DUE. The service provider fee payment shall be due annually and payable within **ninety (90) days** after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. If mailed, the fee shall be considered paid on the date it is postmarked.

8-1-3 DEFINED. For purposes of the calculation of the service provider fee, “gross revenues” shall mean consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by Telecommunications Management LLC, d/b/a NewWave for the operation of its cable system to provide cable or video service within the City, including the following: (i) recurring charges for cable service or video service; (ii) event-based charges for cable service or video service, including, but not limited to, pay-per view and video-on-demand charges; (iii) rental of set-top boxes and other cable service or video service equipment; (iv) service charges related to the provision of cable service or video service, including, but not limited to, activation, installation, and repair charges; (v) administrative charges related to the provision of cable service or video service, including, but not limited to service order and service termination charges; and, (vi) late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.

8-1-4 CALCULATION OF FEE. For purposes of the calculation of the service provider fee, “gross revenues” shall not include: (i) revenues not actually received, even if billed, such as bad debt; (ii) the service provider fee or any tax, fee or assessment of general applicability; (iii) any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, voice over internet protocol (VoIP) services, information services, the provision of directory or Internet advertising, or any other revenues attributed by the holder to non-cable service or non-video service in accordance with the holder’s books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders; (vi) security deposits collected from subscribers; or, (vii) any amounts paid by subscribers to “home shopping” or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.

(Ord. No. 18-1402; 03-13-18)

ARTICLE II – SMALL WIRELESS FACILITIES

8-2-1 PURPOSE AND SCOPE.

(A) **Purpose.** The purpose of this Article is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the City's jurisdiction, or outside the rights-of-way on property zoned by the City exclusively for commercial or industrial use, in a manner that is consistent with the Act.

(B) **Conflicts with Other Ordinances.** This Article supersedes all ordinances or parts of ordinances adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(C) **Conflicts with State and Federal Laws.** In the event that applicable federal or State laws or regulations conflict with the requirements of this Article, the wireless provider shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

8-2-2 DEFINITIONS. For the purposes of this Article, the following terms shall have the following meanings:

Antenna: Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

Applicable codes: Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.

Applicant: Any person who submits an application and is a wireless provider.

Application: A request submitted by an applicant to the City for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

Collocate or collocation: To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

Communications service: Cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53) as amended; or wireless service other than mobile service.

Communications service provider: A cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.

FCC: The Federal Communications Commission of the United States.

Fee: A one-time charge.

Historic district or historic landmark: A building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the City pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.

Law: A federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.

Micro wireless facility: A small wireless facility that is not larger in dimension than **twenty-four (24) inches** in length, **fifteen (15) inches** in width, and **twelve (12) inches** in height and that has an exterior antenna, if any, no longer than **eleven (11) inches**.

Municipal utility pole: A utility pole owned or operated by the City in public rights-of-way.

Permit: A written authorization required by the City to perform an action or initiate, continue, or complete a project.

Person: An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

Public safety agency: The functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

Rate: A recurring charge.

Right-of-way: The area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include City-owned aerial lines.

Small wireless facility: A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than **six (6) cubic feet** in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than **six (6) cubic feet**; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than **twenty-five (25) cubic feet** in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

Utility pole: A pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

Wireless facility: Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

Wireless infrastructure provider: Any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the City.

Wireless provider: A wireless infrastructure provider or a wireless services provider.

Wireless services: Any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

Wireless services provider: A person who provides wireless services.

Wireless support structure: A freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

8-2-3 REGULATION OF SMALL WIRELESS FACILITIES.

(A) **Permitted Use.** Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in **Section 8-2-3(C)(9)** regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

(B) **Permit Required.** An applicant shall obtain one or more permits from the City to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

- (1) **Application Requirements.** A wireless provider shall provide the following information to the City, together with the City's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
- (a) Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - (b) The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;
 - (c) Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
 - (d) The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
 - (e) A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
 - (f) Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
 - (g) In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the City, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.
- (2) **Application Process.** The City shall process applications as follows:
- (a) The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
 - (b) An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the City fails to approve or deny the application within **ninety (90) days** after the submission of a completed application.
 However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than **seventy-five (75) days** after the submission of a completed application.
 The permit shall be deemed approved on the latter of the **ninetieth (90th) day** after submission of the complete application or the **tenth (10th) day** after the receipt of the deemed approved notice by the City. The receipt of the deemed

- approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Article.
- (c) An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the City fails to approve or deny the application within **one hundred twenty (120) days** after the submission of a completed application. However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the City in writing of its intention to invoke the deemed approved remedy no sooner than **one hundred five (105) days** after the submission of a completed application. The permit shall be deemed approved on the latter of the **one hundred twentieth (120th) day** after submission of the complete application or the **tenth (10th) day** after the receipt of the deemed approved notice by the City. The receipt of the deemed approved notice shall not preclude the City's denial of the permit request within the time limits as provided under this Article.
- (d) The City shall deny an application which does not meet the requirements of this Article. If the City determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider. The City shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the City denies an application. The applicant may cure the deficiencies identified by the City and resubmit the revised application once within **thirty (30) days** after notice of denial is sent to the applicant without paying an additional application fee. The City shall approve or deny the revised application within **thirty (30) days** after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within **thirty (30) days** of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the City's review period. The applicant must notify the City in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application. Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.
- (e) **Pole Attachment Agreement.** Within **thirty (30) days** after an approved permit to collocate a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a Master Pole Attachment Agreement, provided by the City for the

initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the City and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

- (3) **Completeness of Application.** Within **thirty (30) days** after receiving an application, the City shall determine whether the application is complete and notify the applicant. If an application is incomplete, the City must specifically identify the missing information. An application shall be deemed complete if the City fails to provide notification to the applicant within **thirty (30) days** after all documents, information and fees specifically enumerated in the City's permit application form are submitted by the applicant to the City.

Processing deadlines are tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information.

- (4) **Tolling.** The time period for applications may be further tolled by:
 - (a) An express written agreement by both the applicant and the City; or
 - (b) A local, State or federal disaster declaration or similar emergency that causes the delay.

- (5) **Consolidated Applications.** An applicant seeking to collocate small wireless facilities within the jurisdiction of the City shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to **twenty-five (25)** small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the City may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The City may issue separate permits for each collocation that is approved in a consolidated application.

- (6) **Duration of Permits.** The duration of a permit shall be for a period of not less than **five (5) years**, and the permit shall be renewed for equivalent durations unless the City makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable City codes or any provision, condition or requirement contained in this Article.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable City code provisions or regulations in effect at the time of renewal.

- (7) **Means of Submitting Applications.** Applicants shall submit applications, supporting information and notices to the City by personal delivery at the City's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

(C) **Collocation Requirements and Conditions.**

- (1) **Public Safety Space Reservation.** The City may reserve space on municipal utility poles for future public safety uses, for the City's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the City reasonably determines that the municipal utility pole cannot accommodate both uses.

- (2) **Installation and Maintenance.** The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Article. The wireless provider shall ensure that its employees, agents or contracts that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.
- (3) **No Interference with Public Safety Communication Frequencies.** The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.
A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.
Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.
If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.
The City may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.
- (4) The wireless provider shall not collocate small wireless facilities on City utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.
However, the antenna and support equipment of the small wireless facility may be located in the communications space on the City utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.
For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.
- (5) The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
- (6) The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a City ordinance, written policy adopted by the City, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.
- (7) **Alternate Placements.** Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocation small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna

systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the City may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within **one hundred (100) feet** of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the City, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- (8) **Height Limitations.** The maximum height of a small wireless facility shall be no more than **ten (10) feet** above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- (a) **ten (10) feet** in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the City, that is located within **three hundred (300) feet** of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the City, provided the City may designate which intersecting right-of-way within **three hundred (300) feet** of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
- (b) **forty-five (45) feet** above ground level.

- (9) **Height Exceptions or Variances.** If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a special use permit, variance, or administrative waiver in conformance with procedures, terms and conditions set forth in **Chapter 40** of the City Code.

- (10) **Contractual Design Requirements.** The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.

- (11) **Ground-mounted Equipment Spacing.** The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.

- (12) **Undergrounding Regulations.** The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.

- (13) **Collocation Completion Deadline.** Collocation for which a permit is granted shall be completed within **one hundred eighty (180) days** after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within **sixty (60) days** after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed **three hundred sixty (360) days** after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

(D)

Application Fees. Application fees are imposed as follows:

- (1) Applicant shall pay an application fee of **Six Hundred Fifty Dollars (\$650.00)** for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and **Three Hundred Fifty Dollars (\$350.00)** for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- (2) Applicant shall pay an application fee of **One Thousand Dollars (\$1,000.00)** for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- (3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (4) The City shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - (a) routine maintenance;
 - (b) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least **ten (10) days** prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection (d) under the Section titled Application Requirements; or
 - (c) the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are string between existing utility poles in compliance with applicable safety codes.
- (5) Wireless providers shall secure a permit from the City to work within rights-of-way for activities that affect traffic patterns or require lane closures.

(E)

Exceptions to Applicability. Nothing in this Article authorizes a person to collocate small wireless facilities on:

- (1) property owned by a private party or property owned or controlled by the City or another unit of local government that is not located within rights-of-way, or a privately owned utility pole or wireless support structure without the consent of the property owner;
- (2) property owned, leased, or controlled by a part district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
- (3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter

rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Article do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Article shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Article.

(F) **Pre-Existing Agreements.** Existing agreements between the City and wireless providers that relate to the collection of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on City utility poles, that are in effect on **June 1, 2018**, remain in effect for all small wireless facilities collocated on the City's utility poles pursuant to applications submitted to the City before **June 1, 2018**, subject to applicable termination provisions contained therein. Agreements entered into after **June 1, 2018**, shall comply with this Article.

A wireless provider that has an existing agreement with the City on the effective date of the Act may accept the rates, fees and terms that the City makes available under this Article for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted **two (2) or more years** after the effective date of the Act by notifying the City that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the City's utility poles pursuant to applications submitted to the City before the wireless provider provides such notice and exercises its option under this paragraph.

(G) **Annual Recurring Rate.** A wireless provider shall pay to the City an annual recurring rate to collocate a small wireless facility on a City utility pole located in a right-of-way that equals (i) **Two Hundred Dollars (\$200.00)** per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the City utility pole.

If the City has not billed the wireless provider actual and direct costs, the fee shall be **Two Hundred Dollars (\$200.00)** payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

(H) **Abandonment.** A small wireless facility that is not operated for a continuous period of **twelve (12) months** shall be considered abandoned. The owner of the facility shall remove the small wireless facility within **ninety (90) days** after receipt of written notice from the City notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the City to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within **ninety (90) days** of such notice, the City may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the City if it sells or transfers small wireless facilities within the jurisdiction of the City. Such notice shall include the name and contact information of the new wireless provider.

8-2-4 DISPUTE RESOLUTION. The Circuit Court of Hamilton County shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than **Two Hundred Dollars (\$200.00)** per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

8-2-5 **INDEMNIFICATION.** A wireless provider shall indemnify and hold the City harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the City improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Article and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the City or its employees or agents. A wireless provider shall further waive any claims that they may have against the City with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

8-2-6 **INSURANCE.** The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (A) property insurance for its property's replacement cost against all risks;
- (B) workers' compensation insurance, as required by law; or
- (C) commercial general liability insurance with respect to its activities on the City improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of City improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the City as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the City in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the City. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the City evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the City.

8-2-7 **SEVERABILITY.** If any provision of this Article or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Article is severable.

(Ord. No. 18-1043; 06-12-18)

ARTICLE I

GENERAL PROVISIONS

8-1-1 **TITLE.** This Chapter shall be known and may be cited as the "Cable Franchise", hereinafter "Franchise", and it shall become a part of the City Code of the City of McLeansboro, Illinois.

8-1-2 **DEFINITIONS.** For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(A) **Additional Service** shall mean cable television communications service provided by the Grantee or others over its Cable System for which a special charge is made based on program or service content, time or spectrum space usage, and shall include all cable television services offered by the Grantee that are not included within the "basic service tier".

(B) **Basic Service Tier** shall mean those subscriber services provided by the Grantee, pursuant to the Cable Television Consumer Protection and Competition Act of 1992, including the delivery of broadcast signals electing carriage and any public, educational and governmental access covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.

(C) **Board/Council** shall mean the McLeansboro City Council, the governing body of the City of McLeansboro, Illinois.

(D) **Cable System (CS)** shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which provided for sale to or use by the inhabitants or businesses of the City.

(E) **Cable Mile** shall mean a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

(F) **City** is the City of McLeansboro, a municipal corporation of the State of Illinois.

(G) **Class IV Channel** shall mean a signaling path provided by a Cable System to transmit signals of any type from a subscriber terminal to another point in the cable system.

(H) **Converter** means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by use of an appropriate channel selector also permits a subscriber to receive all signals delivered at designated converter dial locations.

(I) **FCC** shall mean the Federal Communications Commission and any legally appointed or elected successor.

(J) **Franchise** shall mean the non-exclusive rights granted pursuant to this Chapter to construct and operate a Cable System along the public ways within all or a specified area in the City. Any such authorizations, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances and laws of this City.

(K) **Grantee** shall mean any "person" receiving a Franchise pursuant to this Chapter and its lawful successor, transferee or assignee.

(L) **Gross Receipts** shall mean all receipts derived directly or indirectly by the Grantee, from providing cable television services within the City, including, but not limited to, basic subscriber and additional service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes or copyright fees on services furnished by the Grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Grantee on behalf of said governmental unit.

(M) **Installation** shall mean the connection of the system from feeder cable to subscribers' terminals.

(N) **Monitoring** means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever. Provided, monitoring shall not include system-wide, non-individually addressed sweeps of the system for purposes of verifying system integrity, controlling return paths transmissions, or billing for services.

(O) **Person** shall mean an individual, partnership, association, organization, corporation, or any lawful successor, transferee or assignee of said individual, partnership, association, organization or corporation.

(P) **Public School** shall mean any school at any educational level operated within the City by any public, private or parochial school system, but limited to, elementary, junior high school, and high school.

(Q) **Reasonable Notice** shall be written notice addressed to the Grantee at its principal office or such other office as the Grantee has designated to the City as the address to which notice should be transmitted to it, which notice shall be certified and postmarked not less than **four (4) days** prior to that day in which the party giving such notice shall commence any action which requires the giving of

notice. In computing said **four (4) days**, Saturdays, Sundays and holidays recognized by the City shall be excluded.

(R) **Reasonable Order** shall be written orders not excessive or extreme as to costs or time to comply, governed by sound thinking.

(S) **Sale** shall include any sale, exchange, barter or offer for sale.

(T) **Service Area** shall mean the geographic area within Franchise territory having **forty (40) dwellings** per cable mile.

(U) **State** shall mean the State of Illinois.

(V) **Street** shall include each of the following which have been dedicated to the public or hereafter dedicated to the public and maintained under public authority or by others and located within the City limits; streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the City shall permit to be included within the definition of street from time to time.

(W) **Subscriber** shall mean any person receiving either basic service or additional service from the Grantee.

(X) **User** means a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

8-1-3 **RIGHTS AND PRIVILEGES OF GRANTEE.** The Franchise granted by the City pursuant to this Chapter shall grant to the Grantee the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a cable system.

8-1-4 **FRANCHISE TERRITORY.** This nonexclusive Franchise relates to the City limits as presently defined and to any area henceforth added thereto during the term of this Franchise.

8-1-5 **DURATION AND ACCEPTANCE OF FRANCHISE.** The Franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage thereof, as provided by law, and shall continue in force and effect for a term of **fifteen (15) years**, provided that within **thirty (30) days** after the date of final passage of the Franchise the Grantee shall file with the City its unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms, and conditions.

8-1-6 **FRANCHISE REQUIREMENTS FOR OTHER FRANCHISE HOLDERS.** In the event that City grants **one (1)** or more franchise(s) or similar authorizations, for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the CS it shall not make the grant on more favorable or less burdensome terms. If Grantee finds that the agreement(s) granting said other franchise(s) contain provisions imposing lesser obligations on the Company(s) thereof than are imposed by the provisions of this Franchise, Grantee may petition City for a modification of this Franchise. The Grantee shall be entitled, with respect to said lesser obligations to such modification(s) of this Franchise as may be determined to be necessary to insure fair and equal treatment by this Franchise and said other agreements.

In the event that a non-franchised multi-channel video programming distributor provides service to the residents of the City, the Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to the Grantee. In requesting amendments, the Grantee shall file a petition seeking to amend the Franchise. Such petitions shall:

- (A) Indicate the presence of a non-franchised competitor(s);
- (B) Identify the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage;
- (C) Identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage.

The City shall not unreasonably withhold granting the Grantee's petition and so amending the franchise.

8-1-7 **FRANCHISE RENEWAL.**

- (A) This Franchise may be renewed by the City upon application of the Grantee pursuant to applicable law.
- (B) A renewed Franchise may be granted pursuant to the Chapter as amended for an additional period of **ten (10) years**.

8-1-8 **POLICE POWERS.** In accepting this Franchise, the Grantee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to Grantee or CS franchises which contains provisions inconsistent with this Franchise shall prevail only if upon such exercise, the City finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

8-1-9 CABLE SYSTEM FRANCHISE REQUIRED, EXCLUSIVE CONTRACTS PROHIBITED.

(A) No CS shall be allowed to occupy or use the streets or public right-of-way of the City or be allowed to operate without a CS Franchise.

(B) No Grantee or other multi-channel video programming distributor shall enter into or enforce an exclusive contract for the provision of cable service or other multi-channel video programming with any Person, or demand the exclusive right to serve a Person or location, as a condition of extending service to that or any other Person or location.

No Grantee or other multi-channel video programming distributor shall engage in acts that have the purpose or effect of limiting competition for the provision of cable service or services similar to cable service in the City, except for such actions as are expressly authorized by law.

8-1-10 USE OF COMPANY FACILITIES. The City shall have the right, during the life of this Franchise, to install and maintain free of charge upon the poles owned by the Grantee any wire and pole fixtures that do not unreasonably interfere with the CS operations of the Grantee.

8-1-11 NOTICES. All notices from Grantee to the City pursuant to this Franchise shall be to the City Clerk. Grantee shall maintain with the City, throughout the term of this Franchise, an address for service of notices by mail.

8-1-12 INDEMNIFICATION AND INSURANCE.

(A) **Indemnification.** The Grantee shall, by acceptance of the Franchise granted herein, defend Grantor, its Officers, Boards, Commissions, Agents, and Employees for all claims for injury to any person or property caused by the negligence or alleged negligence of Grantee in the construction or operation of the cable system and in the event of a determination of liability shall indemnify and hold Grantor, its Officers, Boards, Commissions, Agents, and Employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the violation or failure of Grantee to observe its proper duty or because of the negligence or alleged negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the cable system.

(B) **Insurance.**

(1) The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including Coverage on all owned, non- Owned hired autos Umbrella Liability	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- (2) The City shall be added as an additional insured to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- (3) The Grantee shall furnish the City with current certificates of insurance evidencing such coverage.
- (4) The minimum amounts set forth herein for such insurance shall not be construed to limit the liability of the Grantee to the City under the Franchise issued hereunder to the amounts of such insurance.

8-1-13 RIGHTS OF INDIVIDUALS.

(A) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Chapter by reference.

(B) Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC and state and local regulations, as amended from time to time.

(C) No signals of a Class IV cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Such written permission shall be for a limited period of time not to exceed **one (1) year**, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever provided that such revocation request may be required to be in writing by Grantee. Such authorization is required

for each type or classification of Class IV cable activity planned; provided however, that the Grantee shall be entitled to conduct system-wide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return-path transmission, or billing for services.

(D) The Grantee, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party;

(1) lists of the names and addresses of such individual subscribers, or;

(2) any list which identifies the viewing habits of individual subscribers.

(E) The CS of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the network; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of the Grantee and any regulatory agencies affecting the same.

(F) Grantee shall establish rates that are nondiscriminatory within the same general class of subscribers which must be applied fairly and uniformly to all subscribers in the franchise area for all services. Nothing contained herein shall prohibit the Grantee from offering:

(1) discounts to commercial and multiple family dwelling subscribers billed on a bulk basis;

(2) promotional discounts; or

(3) reduced installation rates for subscribers who have multiple services.

8-1-14 PUBLIC NOTICE. Minimum public notice of any public meeting relating to this Franchise shall be by publication at least once in a newspaper of general circulation in the area at least **ten (10) days** prior to the meeting, posting at City Hall and by announcement on at least **one (1) channel** of the Grantee's CS for **five (5) consecutive days** prior to the meeting.

8-1-15 SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Chapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Chapter.

ARTICLE II

CS EXTENSION, OPERATION, STANDARDS AND PROCEDURES

8-2-1 SERVICE AVAILABILITY. The Grantee shall provide cable service throughout the entire Franchise area pursuant to the provisions of this Franchise and shall keep a record of all service extended by the Grantee. This record shall be available for inspection by the City at the local office of the Grantee during regular office hours.

(A)

Line Extensions.

- (1) In all areas of the Franchise territory, the Grantee shall be required to extend its system pursuant to the following requirements:
 - (a) Grantee must extend and make CS service available to every dwelling unit in all unserved, developing areas having at least **forty (40) dwelling units** per cable mile as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.
 - (b) Grantee must extend and make CS service available to any isolated resident requesting connection at the standard connection charge, if the connection to the isolated resident would require no more than a standard **one hundred fifty (150) foot** aerial drop line.
- (2) **Early Extension.** In areas not meeting the requirement for mandatory extension of service, Grantee shall provide, upon the written request of a potential subscriber desiring service, an estimate of the costs required to extend service to said subscriber. Grantee may require advance payment or assurance of payment satisfactory to Grantee. The amount paid by subscribers for early extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for early extension.
- (3) **New Development Underground.** In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of

conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching.

Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within **five (5) working days** of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the **five (5) day** period, the cost of new trenching is to be borne by Grantee. Except for the notice of the particular date on which trenching will be available to Grantee, any notice provided to Grantee by City of a preliminary plat request shall satisfy the requirement of reasonable notice if sent to the local general manager or system engineer of Grantee prior to approval of the preliminary plat request.

(B) **Special Agreements.** Nothing herein shall be construed to prevent Grantee from serving areas not covered under this Section upon agreement with developers, property owners, or residents.

8-2-2

CONSTRUCTION AND TECHNICAL STANDARDS.

(A)

Construction Standard.

- (1) **Compliance With Safety Codes.** All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.
- (2) **Compliance With Electrical Codes.** All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Safety Code as amended.
- (3) **Antennas and Towers.** Antenna supporting structures (towers) shall be designed for the proper loading zone as specified in Electronics Industry Association's R.S.-22A Specifications.
- (4) **Compliance With Aviation Requirements.** Antenna supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.
- (5) **Construction Standards and Requirements.** All of the Grantee's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed,

replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the Municipality may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on municipal properties.

- (6) **Safety, Nuisance, Requirements.** The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

(B) **Network Technical Requirements.** The Cable System shall be operated so as to meet the following general objectives:

- (1) Capable of continuous **twenty-four (24) hour** daily operation;
- (2) Capable of operating over an outdoor temperature range of -20 degrees F to +120 degrees F and meeting all specifications as set forth herein over said temperature range without catastrophic failure or irreversible performance changes over variations in supply voltages from 105 to 130 volts AC;
- (3) Operated in such a manner as to avoid causing interference with reception of off-the-air signals by non-subscribers to the network;
- (4) Designed, installed and operated so as to assure the delivery to all subscribers of standard color and monochrome signals on the FCC-designed Class I channels without noticeable picture degradation or visible evidence of color distortion or other forms of interference directly attributable to the performance of the Cable System.

(C) **Performance Monitoring.**

- (1) Test procedures used in verification of the performance criteria set forth herein, if not as set forth in paragraph 76.609, Subpart K of the FCC Rules and Regulations shall be in accordance with good engineering practice and shall be fully described in an attachment to the annual certificate filed upon request with the City.
- (2) To the extent that the report of measurements as required above may be combined with any reports of measurements required by the FCC or other regulatory

agencies, the City shall accept such combined reports, provided that all standards and measurements herein or hereafter established by the City are satisfied.

- (3) At any time after commencement of service to subscribers the City may require additional tests, full or partial repeat tests, different test procedures, or test involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. The City will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

(D)

Street Occupancy.

- (1) Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately-owned property until the written approval of the City is obtained, which approval shall not be unreasonably withheld. However, no location of any pole or wire holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City reasonably determines that the public convenience would be enhanced thereby.
- (2) The facilities of the Grantee shall be installed underground in those areas of the City where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the City, the Grantee shall likewise place its facilities underground.
- (3) A Grantee shall notify the City at least **ten (10) days** prior to the intention of the Grantee to commence any construction in any streets. The City shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the City.

- (4) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. 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. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.
- (5) Grantee shall, at its own expense, and in a manner approved by the City, restore to City standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.
- (6) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Chief of the Fire Department or Chief of the Police Department to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the City for restoration and repair, unless such acts amount to gross negligence by the City.
- (7) Grantee or its designee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the City. Trimming of trees on private property shall require written consent of the property owner.
- (8) The Grantee at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of Grantee when, in the opinion of the City the same is required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other types of structure or improvements by governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including but not limited to movement of buildings, urban renewal and

redevelopment, and any general program under which the City shall undertake to cause all such properties to be located beneath the surface of the ground. The Grantee shall in all cases have the privilege, subject to the corresponding obligations, to abandon any property of Grantee in place. Nothing hereunder shall be deemed a taking of the property of Grantee and Grantee shall be entitled to no surcharge by reason of anything hereunder.

- (9) Upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of this Chapter to be done in any street, within the time prescribed and to the reasonable satisfaction of the City, the City may, at its option, cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City to Grantee within **thirty (30) days** after receipt of such itemized report.
- (10) The Grantee shall make no paving cuts or curb cuts unless absolutely necessary, but only after written permission has been given by the City.
- (11) The Grantee shall install in conduit all cable passing under any major roadway.

8-2-3 SERVICE AND RATES.

(A) **Office and Phone.** The Grantee shall maintain an office located in Mt. Vernon, Illinois, which shall be open during all usual business hours, have a locally listed telephone and be so operated that complaints and requests for repairs or adjustments may be received at any time. In addition, the Grantee shall maintain a service during normal business hours, for the receipt of sums due by its subscribers and shall provide for regular billing of accounts.

(B) **Notification of Service Procedures.** The Grantee shall furnish each subscriber at the time service is installed, written instructions that clearly set forth procedures and furnish information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the City **thirty (30) days** prior notice of any rate increases, channel lineup or other substantive service changes.

(C) **Rate Revision.** To the extent that Federal or State law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by Grantee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

8-2-4 **CONTINUITY OF SERVICE.**

(A) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or the City gives notice of intent to terminate or fails to renew this Franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service unless circumstances are beyond the control of the Grantee, unforeseen circumstances, or acts of God.

In the event of a change of Grantee, or in the event a new operator acquires the system, the Grantee shall cooperate with the City, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system.

(B) In the event Grantee fails to operate the system for **seven (7) consecutive days** without prior approval of the City or without just cause, the City may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of the Grantee's failure to perform.

8-2-5 **GRANTEE RULES AND REGULATIONS.** The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

8-2-6 **FRANCHISE FEE.** Grantee shall pay to the City an annual fee in an amount equal to **three percent (3%)** of the annual gross receipts. Such payment shall be in addition to any other payment, charge, permit fee or bond owed to the City/County by the Grantee and shall not be construed as payment in lieu of personal or real property taxes levied by state, county or local authorities.

8-2-7 **PAYMENT TO CITY/COUNTY.**

(A) **Method of Computation.** Sales taxes or any other taxes or fees including copyright fees which are collected from subscribers by the Grantee to be remitted by the Grantee to a governmental agency shall be deducted from the gross subscriber receipts prior to the computation of the annual Franchise fee. The fee due the City under the provisions of **Section 8-2-6** above shall be computed and paid quarterly, based on the Grantee's fiscal year, with the last quarter payment being

adjusted based on review of the Grantee's gross receipts and shall be paid not later than **ninety (90) days** after the end of the Grantee's fiscal year at the office of the Treasurer during its regular business hours. The payment period shall commence as of the effective date of the Franchise. In the event of a dispute, the City, if it so requests, shall be furnished a statement of said payment, by a Certified Public Accountant, reflecting the gross receipts and the above charges, deductions and computations for the period covered by the payment.

(B) **Acceptance by City.** No acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee under this Chapter or for the performance of any other obligation of the Grantee.

(C) **Failure to Make Required Payment.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay as additional compensation:

- (1) an interest charged, computed from such due date, at the annual rate of **nine percent (9%)** per annum and;
- (2) a sum of money equal to **two percent (2%)** of the amount due in order to defray those additional expenses and costs incurred by the City by reason of delinquent payment.

8-2-8 TRANSFER OF OWNERSHIP OR CONTROL.

(A) The Franchise granted hereunder shall be a privilege to be held for the benefit of the public. Said Franchise cannot in any event be sold, transferred, leased, assigned or disposed of, including but not limited to, by forced or voluntary sale, merger, consolidation, receivership, or other means without the prior consent of the City, and then only under such conditions as the City may establish. Such consent as required by the City shall, however, not be unreasonably withheld or delayed.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition by any person or group of persons of **ten percent (10%)** of the voting shares of the Grantee. Every change, transfer, or acquisition of control of the Grantee shall make the Franchise subject to cancellation unless and until the City shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualification of the prospective controlling party, and the Grantee shall assist the City in any such inquiry.

(C) By its acceptance of this Franchise, the Grantee specifically grants and agrees that any such sale, assignment or transfer occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Grantee.

(D) The foregoing requirements shall not apply to any sale, assignment or transfer to any Person which is owned or controlled by the Grantee, or any Person which owns or controls the Grantee. Grantee shall notify the City **thirty (30) days** prior to any sale, assignment or transfer.

8-2-9

RECORDS, REPORTS AND MAPS.

(A)

Reports Required. The Grantee shall file with the City:

- (1) The Grantee's schedule of charges, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Grantee's policy in connection with its subscribers shall be filed with the City upon request.
- (2) All petitions, applications and communications of all types submitted by Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other Federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of Grantee's system shall be submitted to the City upon request.
- (3) All rules, regulations, terms and conditions which Grantee adopted for the conduct of its business shall be submitted to the City upon request.

(B)

Records Required. The Grantee shall at all times maintain:

- (1) A record of all complaints received and interruptions or degradation of service experienced shall be maintained for **one (1) year**.
- (2) A full and complete set of plans, records and "as-built" maps showing the exact locations of all CS equipment installed or in use in the City, exclusive of subscriber service drops.

(C) **Filing.** When not otherwise prescribed herein, all matters required to be filed with the City/County shall be filed with the City Clerk.

(D) **Other Records.** The City may impose reasonable requests for additional information, records and documents from time to time.

(E) **Inspection of Property and Records.** At all reasonable times, Grantee shall permit examination by any duly authorized representative of the City of all Franchise property, together with any appurtenant property of Grantee situated within or without the City. Grantee shall also permit any duly authorized representative of the City to examine and transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations or property of Grantee.

8-2-10 REMOVAL OF CS. At the expiration of the term for which this Franchise is granted, or upon its termination as provided herein, Grantee shall forthwith, upon notice by City, remove at its own expense the CS from all streets and public property within the City.

8-2-11 REQUIRED SERVICES AND FACILITIES. The Grantee agrees that the equipment used in fulfillment of its franchise obligation shall be maintained at the highest standards consistent with changes in the state of the art and Grantee shall regularly advise the City of its equipment changes and modifications to upgrade the system.

8-2-12 AREA-WIDE INTERCONNECTION. The Grantee shall cooperate with any interconnection corporation, regional interconnection authority or City, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the City.

8-2-13 COMMUNITY PROGRAMMING. The Grantee shall maintain, without charge, **one (1) outlet** to each public school, located in the area served by the system and will provide free basic service, for so long as the system remains in operation in the area. Any such school may install, at its expense, such additional outlets for classroom purposes as it desires, provided that such installation shall not interfere with the operation of Grantee's system, and that the quality and manner of installation of such additional connections shall have been approved by the Grantee and shall comply with all City, state and federal laws and regulations.

In addition, the Grantee shall furnish to the City, without charge, that is, without installation or monthly charges, **one (1) outlet** to each Police and Fire Station, and to the City Hall.

ARTICLE III

ADMINISTRATION AND REGULATION

8-3-1 CITY/COUNTY RULES AND REGULATIONS.

(A) In addition to the inherent powers of the City to regulate and control this Franchise, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Franchise.

(B) The City may also adopt such regulations at the request of Grantee upon application.

8-3-2 PERFORMANCE EVALUATION SESSIONS.

(A) The City and the Grantee may hold performance evaluation sessions as may be required by federal and state law or by the City. All such evaluation sessions shall be open to the public.

(B) All evaluation sessions shall be announced in a newspaper of general circulation in accordance with general legal notice requirements. Grantee shall notify its subscribers of all evaluation sessions by announcement on at least **one (1) channel** of its system for **five (5) consecutive days** preceding each session.

(C) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this Chapter; judicial and FCC rulings; line extension policies; and Grantee or City rules.

8-3-3 FORFEITURE OR REVOCATION.

(A) **Grounds for Revocation.** The City reserves the right to revoke the Franchise granted hereunder and rescind all rights and privileges associated with the Franchise in the following circumstances, each of which shall represent a default and breach under this Chapter and the Franchise grant:

- (1) If the Grantee should default in the performance of any of its material obligations under this Chapter or under such documents, contracts and other terms and provisions entered into by and between the City and the Grantee.
- (2) If the Grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverage's as required herein.
- (3) If the Grantee should frequently violate any orders or rulings of any regulatory body having jurisdiction over the

Grantee relative to this Franchise unless such orders or rulings are being contested by the Grantee in a court of competent jurisdiction.

- (4) If the Grantee fails to receive necessary FCC approval.
- (5) If the Grantee ceases to provide services for any reason within the control of the Grantee. The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Chapter in any case in which performance of any such provision is prevented for reasons beyond the Grantee's control.
- (6) If the Grantee attempts to evade any of the provisions of this Chapter or the Franchise agreement or practices any fraud or deceit upon the City.

(B)

Procedure Prior to Revocation.

- (1) The City shall make written demand by certified mail to the Grantee to comply with any such requirement, limitation, term, condition, rule or regulation and shall provide the Grantee with minimum of **thirty (30) days** to cure the City's complaint. If the default, failure, refusal or neglect of the Grantee continues for a period of **thirty (30) days** following such written demand, the City may place its request for termination of the Franchise upon a regular Council meeting agenda. The City shall cause to be served upon Grantee, at least **ten (10) days** prior to the date of such Council meeting, a written notice of this intent to request such termination, and the time and place of the meeting, notice of which shall be published by the City Clerk at least once, **ten (10) days** before such meeting in a newspaper of general circulation within the City.
- (2) The Council shall hear any persons interested therein, and shall determine, in its discretion, whether or not any default, failure, refusal or neglect by the Grantee was with just cause.
- (3) If such default, failure, refusal or neglect by the Grantee was with just cause, the Council shall direct the Grantee to comply within such time and manner and upon such terms and conditions as are reasonable.
- (4) If the Council shall determine such default, failure, refusal or neglect by the Grantee was without just cause, then the Council may, by resolution, declare that the Franchise of Grantee shall be terminated.

(C)

Restoration of Property.

In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as prevailed prior to the Grantee's removal of its equipment and appliances without

affecting the electrical or telephone cable wires, or attachments. The City shall inspect and approve the condition of the public ways and public places; and cables, wires, attachments and poles after removal. The liability, indemnity and insurance as provided herein shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this paragraph and this Chapter.

(D) **Restoration by City, Reimbursement of Costs.** In the event of a failure by the Grantee to complete any work required by **Section 8-2-10** and/or subsection (C) above, or any other work required by City law or ordinance within the time as may be established and to the reasonable satisfaction of the City, the City may cause such work to be done and the Grantee shall reimburse the City the reasonable cost thereof within **thirty (30) days** after receipt of an itemized list of such costs. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(E) **Extended Operation.** Upon the revocation of a Franchise, the City may require the Grantee to continue to operate the system for a period of time not to exceed **three (3) months** from the date of such revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the CS under the terms and conditions of this Chapter and the Franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. The City shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.

(F) **Rights Not Affected.** The termination and forfeiture of any Franchise shall in no way affect any of the rights of the City or Grantee under the Franchise or any provision of law.

8-3-4 RECEIVERSHIP AND FORECLOSURE.

(A) The Franchise herein granted shall at the option of the City, cease and terminate **one hundred twenty (120) days** after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said **one hundred twenty (120) days**, or unless:

- (1) Such receivers or trustees shall have, within **one hundred twenty (120) days** after their election or appointment, fully complied with all the terms and provisions of this Chapter and the Franchise granted pursuant hereto, and the receivers or trustees within said **one hundred twenty (120) days** shall have remedied all defaults under the Franchise; and
- (2) Such receivers or trustees shall, within said **one hundred twenty (120) days**, execute any agreement duly approved by the Court having jurisdiction in the premises, whereby

such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise herein granted.

(B) In the case of a foreclosure or other judicial sale of the plant, property and equipment of the Grantee, or any substantial part thereof, including or excluding this Franchise, the Council may serve notice of termination upon the Grantee and the successful bidder at such sale, in which event the Franchise herein granted and all rights and privileges of the Grantee hereunder shall cease and terminate **thirty (30) days** after service of such notice, unless:

- (1) The Council shall have approved the transfer of this Franchise, as and in the manner in this Chapter provided and;
- (2) Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of this Franchise.

8-3-5 **COMPLIANCE WITH STATE AND FEDERAL LAWS.** Notwithstanding any other provisions of this Franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof which relate to the conduct of Grantee's system business.

8-3-6 **INTEGRATION.** This Agreement sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated Agreement.

(Ord. No. 02-819; 09-10-02)

