

CHAPTER 8

CABLE TELEVISION

ARTICLE I – GENERAL REGULATIONS

DIVISION I – DEFINITION OF TERMS

8-1-1 TERMS. For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the 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) **"Cable System", "Cable Service", "Cable Operator" and "Basic Cable Service"** shall be defined as set forth in Section 602 of the Cable Act [47 U.S.C. Section 522].

(B) **"Cable Act"** shall mean Title VI of the Communications Act of 1934, as amended [47 U.S.C. Section 521, et seq.].

(C) **"Council"** shall mean the City Council, the governing body of the City of Carlinville, Illinois.

(D) **"FCC"** shall mean the Federal Communications Commission and any successor governmental entity thereto.

(E) **"Franchise"** shall mean the non-exclusive rights granted pursuant to this franchise to construct and operate a Cable System along the public ways within all or a specified area in the Service Area.

(F) **"Grantor"** shall mean the City of Carlinville, Illinois.

(G) **"Grantee"** shall mean Charter Communications Entertainment I, LLC, d/b/a Charter Communications (Charter) or its lawful successor, transferee or assignee.

(H) **"Gross Revenue"** means any revenue, as determined in accordance with generally accepted accounting principals received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, provided, however, that such phrase shall not include: (1) any taxes, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee and franchise fee; and (2) unrecovered bad debt.

(I) **"Person"** shall mean an individual, partnership, association, organization, corporation, trust or government entity.

(J) **"School"** shall mean any school at any educational level operated within the Service Area by any public, private or parochial school system, but limited to, elementary, junior high school, and high school (K-12).

(K) **"Service Area"** shall mean the geographic boundaries of the Franchise Authority, and shall include any additions thereto by annexation or other legal means, subject to the exception in **Section 8-1-20** hereto.

(L) **"State"** shall mean the State of Illinois.

(M) **"Street"** shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and

extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

(N) **"Subscriber"** shall mean any person lawfully receiving Cable Service from the Grantee.

8-1-2 RESERVED.

DIVISION II – GRANT OF FRANCHISE

8-1-3 GRANT. The Grantor franchise hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee 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. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.

8-1-4 TERM. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term of **fifteen (15) years**, commencing on the effective date of this Franchise as set forth herein.

8-1-5 POLICE POWERS AND CONFLICTS WITH FRANCHISE. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes, which are the result of the Grantor's exercise of its lawful general police power, the Grantor may not take any unilateral action, which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by the Grantee and the Grantor. In the event of any conflict between this Franchise and any Grantor ordinance or regulation, this Franchise will prevail.

8-1-6 CABLE SYSTEM FRANCHISE REQUIRED. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Service Area or be allowed to operate without a Cable System Franchise.

8-1-7 RESERVED.

DIVISION III – FRANCHISE RENEWAL

8-1-8 **PROCEDURES FOR RENEWAL.** The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee’s Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. Section 546], or any such successor statute.

8-1-9 **RESERVED.**

DIVISION IV – INDEMNIFICATION AND INSURANCE

8-1-10 **INDEMNIFICATION.** The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any person or property caused by the 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 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, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within **ten (10) days** of receipt of a claim or action pursuant to this Section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor’s use of the Cable System.

8-1-11 **INSURANCE.**

(A) 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	[\$1,000,000] per occurrence C.S.L.
Umbrella Liability	[\$1,000,000] per occurrence C.S.L.

(B) The Grantor shall be added as an additional insured to the above General Liability, Auto Liability and Umbrella Liability insurance coverage.

(C) The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage.

8-1-12 **RESERVED.**

DIVISION V – SERVICE OBLIGATIONS

8-1-13 **NO DISCRIMINATION.** 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.

8-1-14 **PRIVACY.** The Grantee shall fully comply with the privacy rights of Subscribers as contained in Section 631 of the Cable Act (47 U.S.C. Section 551).

8-1-15 **RESERVED.**

DIVISION VI – SERVICE AVAILABILITY

8-1-16 **SERVICE AREA.** The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Service Area where there is a minimum density of at least **forty (40) residences** per linear strand mile of cable as measured from Grantee’s closest trunk line or distribution cable that is actively delivering Cable Service as of the date of such request for service. If the resident is located within **one hundred twenty-five (125) feet** of Grantee’s feeder cable, the Cable Service will be provided at Grantee’s published rate for standard installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where: another operator is providing Cable Service; into an annexed area which is not contiguous to the present Service Area of the Grantee; or, into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

8-1-17 **SUBSCRIBER CHARGES FOR EXTENSION OF THE CABLE SYSTEM.** No Subscriber shall be refused service arbitrarily, however, if an area does not meet the density requirements of **Section 8-1-16** above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.

8-1-18 **NEW DEVELOPMENT UNDERGROUND.** In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least **thirty (30) days** prior notice of such construction or development, and of the particular dates 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.

8-1-19 **RESERVED.**

DIVISION VII – CONSTRUCTION AND TECHNICAL STANDARDS

8-1-20 **COMPLIANCE WITH CODES.** All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

8-1-21 **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 and performed by experienced maintenance and construction personnel.

8-1-22 **SAFETY.** The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

8-1-23 **NETWORK TECHNICAL REQUIREMENTS.** The Cable System shall be operated so that it is capable of continuous **twenty-four (24) hour** daily operation, capable of meeting or exceeding all applicable federal technical standards, as they may be amended from time to time, and operated in such a manner as to comply with all applicable FCC regulations.

8-1-24 **PERFORMANCE MONITORING.** Grantee shall test the Cable System consistent with the FCC regulations.

8-1-25 **RESERVED.**

DIVISION VIII – CONDITIONS ON STREET OCCUPANCY

8-1-26 **GENERAL CONDITIONS.** Grantee shall have the right to 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 on public property without obtaining all legally required permits of the Grantor.

8-1-27 **UNDERGROUND CONSTRUCTION.** The facilities of the Grantee shall be installed underground in those Service Areas 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 Grantor, the Grantee shall likewise place its facilities underground. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.

8-1-28 **CONSTRUCTION CODES AND PERMITS.** The Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Street within the Service Area. The Grantee shall cooperate with the Grantor in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area.

8-1-29 **SYSTEM CONSTRUCTION.** 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 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 by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8-1-30 **RESTORATION OF PUBLIC WAYS.** Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

8-1-31 **REMOVAL IN EMERGENCY.** Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless such acts amount to gross negligence by the Grantor.

8-1-32 **TREE TRIMMING.** Grantor 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.

8-1-33 **RELOCATION FOR THE GRANTOR.** The Grantee shall, upon receipt of reasonable advance written notice, to be not less than **ten (10) business days**, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to their facilities.

8-1-34 **RELOCATION FOR A THIRD PARTY.** The Grantee shall, on the request of any person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this Section, "reasonable advance written notice" shall be no less than **ten (10) business days** in the event of a temporary relocation and no less than **one hundred twenty (120) days** for a permanent relocation.

8-1-35 **REIMBURSEMENT OF COSTS.** If funds are available to any person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

8-1-36 **EMERGENCY USE.** If the Grantee provides an Emergency Alert System ("EAS"), then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS.

8-1-37 **RESERVED.**

DIVISION IX – SERVICE AND RATES

8-1-38 **PHONE SERVICE.** The Grantee shall maintain a toll-free telephone service operated such that complaints and requests for repairs or adjustments may be received at any time.

8-1-39 **NOTIFICATION OF SERVICE PROCEDURES.** The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee's name, address and local telephone number. Grantee shall give the Grantor **thirty (30) days** prior notice of any rate increases, channel lineup or other substantive service changes.

8-1-40 **RATE REGULATION.** Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC.

8-1-41 **CONTINUITY OF SERVICE.** It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored.

8-1-42 **RESERVED.**

DIVISION X – FRANCHISE FEE

8-1-43 **AMOUNT OF FEE.** Grantee shall pay to the Grantor an annual franchise fee in an amount equal to **five percent (5%)** of the annual Gross Revenue. Such payment shall be in addition to taxes of general applicability owed to the Grantor by the Grantee that are not included as franchise fee under federal law.

8-1-44 **PAYMENT OF FEE.** Payment of the fee due the Grantor shall be made on an annual basis, and within **forty-five (45) days** of the close of each calendar year. The payment period shall commence as of the Effective Date of the Franchise. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges, deductions and computations for the period covered by the payment.

8-1-45 **ACCORD AND SATISFACTION.** No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

8-1-46 **LIMITATION ON RECOVERY.** In the event that any Franchise payment or recomputed payment is not made on or before the dates specified herein, Grantee shall pay an interest charge, computed from such due date, at the annual rate of **one percent (1%)** over the prime interest rate. The period of limitation for recovery of any franchise fee payable hereunder shall be **three (3) years** from the date on which payment by the Grantee was due.

8-1-47 **RESERVED.**

DIVISION XI – TRANSFER OF FRANCHISE

8-1-48 **FRANCHISE TRANSFER.** The Franchise granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, which such consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within **thirty (30) days** of receiving the request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken any action on the Grantee's request for transfer within **one hundred twenty (120) days** after receiving the request, consent by the Grantor shall be deemed given.

8-1-49 **RESERVED.**

DIVISION XII – RECORDS, REPORTS AND MAPS

8-1-50 **REPORTS REQUIRED.** 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 Grantor upon written request.

8-1-51 **RECORDS REQUIRED.** The Grantee shall at all times maintain:
(A) A record of all complaints received regarding interruptions or degradation of Cable Service shall be maintained for **one (1) year**.

(B) A full and complete set of plans, records and strand maps showing the location of the Cable System.

8-1-52 **INSPECTION OF RECORDS.** Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice to examine during normal business hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Grantee's compliance with the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than **three (3) years**, except for service complaints, which shall be kept for **one (1) year** as specified above. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books; records or maps that constitute proprietary or confidential information to the extent Grantee make the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

8-1-53 **RESERVED.**

DIVISION XIII – COMMUNITY PROGRAMMING

8-1-54 **SERVICE TO SCHOOLS AND BUILDINGS.** The Grantee shall maintain, without charge, **one (1)** outlet to each School, located in the Service Area served by the Cable System and will provide free Basic and Expanded Basic Service, for so long as the Cable System remains in operation in the Service 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 Cable 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 local, State and federal laws and regulations. In addition, the Grantee shall furnish to the Grantor, without installation or monthly charges, **one (1) outlet** to each Police and Fire Station, each public library and City Hall.

8-1-55 **LIMITATIONS ON USE.** The Cable Service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by **Section 8-1-54** above.

The Grantee shall not be required to provide an outlet to any such building where a standard drop of more than **two hundred (200) feet** is required, unless the Grantor or building owner/occupant agrees to pay the incremental cost of any necessary extension or installation.

8-1-56 RESERVED.

DIVISION XIV – ENFORCEMENT OR REVOCATION

8-1-57 NOTICE OF VIOLATION. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

8-1-58 GRANTEE'S RIGHT TO CURE OR RESPOND. The Grantee shall have **thirty (30) days** from receipt of the Violation Notice to: (1) respond to the Grantor, contesting the assertion of noncompliance, or (2) to cure such default, or (3) if, by the nature of default, such default cannot be cured within the **thirty (30) day** period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

8-1-59 PUBLIC HEARING. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Council shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least **twenty (20) days** prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with **Section 8-1-67** hereof. The Grantee shall have the right to present evidence and to question the witnesses. The Grantor shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, the Grantee may petition for reconsideration before any competent tribunal having jurisdiction over such matters.

8-1-60 ENFORCEMENT. Subject to applicable federal and state law, in the event the Grantor, after the hearing set forth in **Section 8-1-59** above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- (A) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- (B) Commence an action at law for monetary damages or seek other equitable relief; or
- (C) In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with **Section 8-1-61** below.

8-1-61 REVOCATION.

(A) Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have **sixty (60) days** from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least **thirty (30) days** prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

(B) At the hearing, the Council shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within **twenty (20) business days**. The decision of the Council shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Council *de novo*.

8-1-62 RESERVED.

DIVISION XV – MISCELLANEOUS PROVISIONS

8-1-63 FORCE MAJEURE. The Grantee shall not be held in default under, on in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee’s Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

8-1-64 MINOR VIOLATIONS. Furthermore, the parties hereby agree that it is not the Grantor’s intention to subject the Grantee to penalties, fine, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise territory, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

8-1-65 ACTION OF PARTIES. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8-1-66 **EQUAL PROTECTION.** In the event that the Grantor 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 a Cable System, it shall not make the grant on more favorable or less burdensome terms. If said other franchise(s) contain provision imposing lesser obligations on the company(s) thereof than are imposed by the provisions of this Franchise, the Grantee may petition the Grantor 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 to insure fair and equal treatment to this Franchise and said other agreements and to provide all parties equal protection under the law.

8-1-67 **NOTICES.**

(A) All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given upon delivery if delivered personally to the person designated below, or on the **fifth (5th) day** following mailing if sent in accordance with the notice requirement of this Section and deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

As stated in contract with provider.

(B) The Grantor and Grantee may designate alternative addresses by giving notice to the other in the manner provided for in this Section.

8-1-68 **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 **twenty (20) days** prior to the meeting and a posting at the administrative buildings of the Grantor.

8-1-69**SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Franchise 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 Franchise.

8-1-70**ENTIRE AGREEMENT.** This Franchise 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 Franchise. 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.

(Ord. No. 1503; 11-15-04)

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**ARTICLE II – CABLE/VIDEO SERVICE PROVIDER FEE
AND PEG ACCESS FEE**

8-2-1 **DEFINITIONS.** As used in this Article, the following terms shall have the following meanings:

- (A) **"Cable Service"** means that term as defined in 47 U.S.C. § 522(6).
- (B) **"Commission"** means the Illinois Commerce Commission.
- (C) **"Gross Revenues"** means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the City.

- (1) Gross revenues shall include the following:
 - (a) Recurring charges for cable or video service.
 - (b) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
 - (c) Rental of set top boxes and other cable service or video service equipment.
 - (d) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
 - (e) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
 - (f) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
 - (g) A *pro rata* portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the City. The allocation shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
 - (h) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (i).
 - (i) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless

- the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- (j) The service provider fee permitted by 220 ILCS 5/22-501.
- (2) Gross revenues do not include any of the following:
- (a) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/22-501.
 - (b) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.
 - (c) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable 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.
 - (d) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the City and pay the fee permitted by 220 ILCS 5/22-501 with respect to the service.
 - (e) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, state, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
 - (f) Security deposits collected from subscribers.
 - (g) 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.
- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/22-501 which would otherwise be paid by the cable service or video service.

(D) **"Holder"** means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/22-501.

(E) **"Service"** means the provision of "cable service" or "video service" to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

(F) **"Service Provider Fee"** means the amount paid under this Article and 220 ILCS 5/22-501 by the holder to a City for the service areas within its territorial jurisdiction.

(G) **"Video Service"** means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

8-2-2 CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED.

(A) **Fee Imposed.** A fee is hereby imposed on any holder providing cable service or video service in the City.

(B) **Amount of Fee.** The amount of the fee imposed hereby shall be **five percent (5%)** of the holder's gross revenues.

(C) **Notice to the City.** The holder shall notify the City at least **ten (10) days** prior to the date on which the holder begins to offer cable service or video service in the City.

(D) **Holder's Liability.** The holder shall be liable for and pay the service provider fee to the Village. The holder's liability for the fee shall commence on the first day of the calendar month following **thirty (30) days** after receipt of the ordinance adopting this Article by the holder. The ordinance adopting this Article shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/22-501 to the City.

(E) **Payment Date.** The payment of the service provider fee shall be due on a quarterly basis, **forty-five (45) days** after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

(F) **Exemption.** The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the City in which a fee is paid.

(G) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/22-501 with credit to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under the law.

8-2-3 PEG ACCESS SUPPORT FEE IMPOSED.

(A) **PEG Fee Imposed.** A PEG access support fee is hereby imposed on any holder providing cable service or video service in the City in addition to the fee imposed pursuant to **Section 8-2-2(B)**.

(B) **Amount of Fee.** The amount of the PEG access support fee imposed hereby shall be **one percent (1%)** of the holder's gross revenues or, if greater, the percentage of gross revenues that incumbent cable operators pay to the City or its designee for PEG access support in the City.

(C) **Payment.** The holder shall pay the PEG access support fee to the City or to the entity designated by the City to manage PEG access. The holder's liability for the PEG access support fee shall commence on the date set forth in **Section 8-2-2(D)**.

(D) **Payment Due.** The payment of the PEG access support fee shall be due on a quarterly basis, **forty-five (45) days** after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

(E) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to **220 ILCS 5/22-501** shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been terminated pursuant to that section. All payments made by an incumbent cable operator pursuant to the previous sentence may be credited against the fees that the operator owed under **Section 8-2-3(B)**.

8-2-4 APPLICABLE PRINCIPLES. All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

8-2-5 NO IMPACT ON OTHER TAXES DUE FROM HOLDER. Nothing contained in this Article shall be construed to exempt a holder from any tax that is or may later be imposed by the City, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the City's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

8-2-6 AUDITS OF CABLE/VIDEO SERVICE PROVIDER.

(A) **Audit Requirement.** The City will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit of its books and records. The holder shall comply with the same requirements the City imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to recomputed any amounts determined to be payable under the requirements of the City. If all local franchises between the City and cable operator terminate, the audit requirements shall be those adopted by the City pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* found in Chapter 36. No acceptance of amounts remitted should be construed as an accord that the amounts are correct. **(See Chapter 36 - Taxation)**

(B) **Additional Payments.** Any additional amount due after an audit shall be paid within **thirty (30) days** after the municipality's submission of an invoice for the sum.

8-2-7 **LATE FEES/PAYMENTS.** All fees due and payments which are past due shall be governed by ordinances adopted by this municipality pursuant to the Local Government Taxpayers' Bill of Rights Act, **50 ILCS 45/1 *et seq.***

(220 ILCS 5/22-501)

ARTICLE III - CABLE AND VIDEO CUSTOMER PROTECTION LAW

8-3-1 CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.

(A) **Adoption.** The regulations of **220 ILCS 5/22-501** are hereby adopted by reference and may applicable to the cable or video providers offering services within the City's boundaries.

(B) **Amendments.** Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Article shall be incorporated into this Article by reference and shall be applicable to cable or video providers offering services within the City's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Article by reference without formal action by the corporate authorities of the City.

8-3-2 ENFORCEMENT. The City does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law with respect to complaints received from residents within the City.

8-3-3 CUSTOMER CREDITS. The City hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of **220 ILCS 5/22-501(s)** and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit.

8-3-4 PENALTIES. The City, pursuant to **220 ILCS 5/22-501(r)(1)**, does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed **Seven Hundred Fifty Dollars (\$750.00)** for each day of the material breach, and shall not exceed **Twenty-Five Thousand Dollars (\$25,000.00)** for each occurrence of a material breach per customer.

(A) Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the law.

(B) The City shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least **thirty (30) days** from the receipt of the notice to remedy the specified material breach.

(C) A material breach, for the purposes of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (B).

ARTICLE IV – SMALL WIRELESS FACILITIES

8-4-1 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 and Other Ordinances.** This Article supersedes all ordinances or parts of ordinances adopted prior to hereto that are in conflict herewith, to the extent of such conflict.

(C) **Conflicts with State and Federal Law.** 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.

8-4-2 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: (1) 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.

8-4-3 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 8-4-3(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 variance in

conformance with procedures, terms and conditions as shall be established by the Board of Trustees.

- (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, 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 (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 to 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 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.

8-4-4 DISPUTE RESOLUTION. The Circuit Court of Macoupin County, Illinois 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.

8-4-5 **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.

8-4-6 **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.

8-4-7 **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. 1796; 08-20-18)

ARTICLE V – NEW WAVE COMMUNICATIONS

8-5-1 ANNUAL FEE. Telecommunications Management LLC, dba NewWave shall pay an annual service provider fee to the City in an amount equal to **five percent (5%)** of 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.

8-5-2 QUARTERLY PAYMENTS. The service provider fee payment shall be due quarterly and payable within **forty-five (45) days** after the close of the preceding calendar quarter. Each payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation in accordance with each section of **220 ILCS 5/21-801** and as detailed below. If mailed, the fee shall be considered paid on the date it is postmarked.

8-5-3 GROSS REVENUES 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, dba NewWave Communications for the operation of its cable system to provide cable or video service within the City's jurisdiction, including the following:

- (A) recurring charges for cable service or video service;
- (B) event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges;
- (C) rental of set-top boxes and other cable service or video service equipment;
- (D) service charges related to the provision of cable service or video service, including, but not limited to, activation, installation, and repair charges;
- (E) administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges;
- (F) late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments;
- (G) a pro rata portion of all revenue derived by Telecommunications Management LLC d/b/a NewWave Communications or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of Telecommunications Management LLC d/b/a NewWave Communications network to provide cable service or video service within the jurisdiction of the City. The allocation shall be based on the number of subscribers in relation to the relevant regional or national compensation arrangement.
- (H) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such "home shopping" or similar channel, subject to item (I) of this Section.
- (I) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the

holders revenue attributable to the other services, capabilities or applications shall be included in gross revenue unless Telecommunications Management LLC, d/b/a NewWave Communications can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

(J) The service provider fee.

8-5-4 FEE EXCLUSION. For purposes of the calculation of the service provider fee, "gross revenues" do not include any of the following:

(A) Revenues not actually received, even if billed, such as bad debt; subject to item (F) of **Section 8-5-3.**

(B) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by Telecommunications Management LLC, d/b/a NewWave Communications to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.

(C) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including without limitation, revenue received from telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder or noncable 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;

(D) The sale of cable services or video services for resale in which the purchase is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the City's jurisdiction and pay the fee as permitted with respect to this service.

(E) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, state, federal or any other governmental entity and collected by Telecommunications Management LLC d/b/a NewWave Communications and required to be remitted to the taxing entity including sales and use taxes.

(F) Security deposits collected from subscribers, or

(G) 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.

(H) The City incorporates by reference **220 ILCS 5/21-801(C)(3) et seq.** regarding revenue of affiliates including for public, education, and government access fees.

(Ord. No. 1793; 07-02-17)

(See Article II)