

CHAPTER 8

CABLE TELEVISION

ARTICLE I - GENERALLY

8-1-1 GRANTING OF AUTHORITY. In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, the right, privilege and franchise is hereby granted to the Company, to erect, maintain, and operate a system of antennas, cables, wires, lines, facilities, and additions thereto, in, under, over, along, across, and upon the lanes, streets, avenues, sidewalks, alleys, and any easement or right-of-way for or hereinafter held by the City, or dedicated for use by the City or the general public, for the purpose of transmission and distribution of Television signals in accordance with laws and regulations of the United States of America, the State of Illinois, and the ordinances and regulations of the City, and for such other uses compatible with the Cable System as the Company may, from time to time, determine, including, but not limited to, the transmission of voice and data.

The Company is hereby granted the further right, privilege and authority to lease, rent or in any lawful manner, obtain the use of towers, poles, lines, cables, underground conduits and other equipment and facilities from any and all holders of public licenses and/or franchises within the limits of the City and to use such towers, poles, lines, cables and underground conduits and other equipment and facilities subject to all existing ordinances and regulations of the City. The poles predominantly used by the Company shall be those wholly owned by the City where the City owns poles which may be utilized. Where the City poles cannot be used for the distribution of the Cable System, the Company shall have the right to erect and maintain its own poles, as may be necessary for the proper construction and maintenance of the television distribution of Cable System, or poles provided by any local public utility company when and where practical, providing mutually satisfactory rental agreements, if needed, can be entered into with said companies. **(See Appendix "A")**

8-1-2 NON-EXCLUSIVE FRANCHISE (FROM OTHER FRANCHISE). The right, privilege, and franchise granted by this Ordinance is not exclusive. The City shall have the right to grant to other persons or entities who own and operate community antenna systems rights similar to those granted to the Company herein at any time during the term of this franchise and renewal thereof, upon such terms and conditions as the City may determine and as may be permitted under applicable law with due consideration of the interests of the public and the Company; provided that no other franchise shall be granted upon terms which are more favorable to the operator than the terms hereunder.

8-1-3 DEFINITIONS.
"Cable System" shall mean a system designed to receive, transmit, amplify and distribute Television, radio, and satellite signals, data and electronic communications, and/or

designed for such other uses which are compatible therewith, including, but not limited to, the transmission of voice and data.

"Basic Service" shall mean the initial service including, but not limited to, mandatory carriage signals and local access channels and such other service as the Federal Communications Commission (the "FCC") may mandate or the Company may include. This shall not include optional premium services, as long as they are sold separately from basic tier service.

"Satellite Tier(s)" shall mean non-broadcast/television programming typically satellite delivered cable only programming which is marketed and sold as an optional additions to the Basic Service.

"Subscriber(s)" shall mean any person who pays the applicable rates to receive Cable Television or other communications service from the Company.

"Television" shall mean any transmission of audio, video, digital, or other electrical signals and any other transmission by means of impulses.

"Gross Revenues" shall mean any and all compensation or receipts derived by the Company from the transmission and carriage of broadcast signals and FCC mandated non-broadcast services, satellite tiers, and any premium channels, such as HBO, Cinemax and Disney within the City, but shall not include any deposits delivered to the Company until such time as the Company legally is entitled to the same, nor installations, additional outlets, converters, disconnections, reinstallation charges, inspections, repairs or modifications of any installation and shall be net of all refunds or credits made to Subscribers and any taxes imposed upon or with respect to the services furnished by the Company. Nor shall *"gross revenues"* include revenue from "ancillary" or "auxiliary" services, which include but are not limited to advertising, leased channels, pay-per-view and programming supplied on a per program or per channel charge basis, if any.

8-1-4 CONDITIONS OF STREET/PUBLIC WAY OCCUPANCY.

(A) All poles, wires, cables, underground conduits and facilities of every kind shall be located, installed and maintained so as to cause minimum interference with the proper use of streets, and to assure that the safety, functioning and appearance of the property, and the convenience and safety of other persons and the public shall not be adversely affected thereby. The Cable System shall be constructed, installed, operated, and maintained in compliance with applicable governmental regulations. All equipment and facilities shall be installed in accordance with good engineering practices. **(See the Pole Lease Agreement in Addendum "A" at the conclusion of this Chapter.)**

(B) The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line and those placed in alleys shall be placed close to the line of the lot abutting on said alley.

(C) In case of disturbance of any street, sidewalk, or paved area caused by the Cable System or the Company, the Company shall, at its expense, and in a manner approved by the City, replace and restore such street or paved area to a condition which is reasonably similar to the condition existing prior to the disturbance.

(D) In case of fire, earthquake, flood, or other similar occurrence, the City may temporarily remove any of the Company's facilities or equipment, with advance notice to the Company being given as promptly as possible. The Company shall not be entitled to payment for any damage caused by this removal, unless the City acted with gross negligence or willful misconduct.

(E) If the City decides to alter or change any street, sidewalk, alley or other public way, or to undertake any improvements on, or about the street, sidewalk, alley or other public way, the City shall give the Company a **ninety (90) day** advance notice of such alteration and the Company shall relocate its facilities and equipment or take such other reasonable action as may be necessary to accommodate the public improvements, at the Company's expense.

(F) The Company agrees to temporarily remove, reroute or move any or all of its equipment and facilities to accommodate public or private works or construction, and movement of buildings or extra large truckloads, etc. The Company shall be entitled to both a **ninety (90) day** notice prior to such event and reasonable costs for such relocations from any private party causing such relocation but not from the City.

(G) Before undertaking any construction or installation of equipment or facilities which would materially disrupt the use of rights-of-way, the Company shall provide the City with reasonable prior notice of the work to be performed and location and period of time involved in the undertaking. The City shall have the right to inspect the work at any time to be certain it is being done in accordance with this Ordinance. When completed, the Company shall, upon request, submit a plan to the City showing the location of facilities and equipment and identifying the equipment and facilities comprising the Cable System.

(H) The Company agrees to compensate property owners for or to restore all damages caused to private and public property including landscaping by the construction, operation or maintenance of its Cable System. Notwithstanding any agreement it may have with any construction company, the Company shall be primarily responsible for all such damages.

(I) The Company shall have the authority and is hereby required to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City to prevent the branches of such trees from coming in contact with the wires, cables and distribution system components of the Company, all trimming to be done under the supervision and direction of the City and at the sole expense of the Company.

8-1-5 CONSTRUCTION BOND.

(A) Upon acceptance of this franchise the Company will provide and furnish to the City a construction bond, in such form and with surety satisfactory to the City, in the amount of **One Hundred Thousand Dollars (\$100,000.00)** conditioned upon completion of construction of the new cable plant to be completed by **March, 1994**, providing nevertheless,

that the time allowed herein shall automatically be extended an additional **six (6) months** in the event construction is delayed by acts of God, or unforeseen circumstances beyond the control of the Company. Upon completion of the new physical cable plant, the bond will be canceled.

(B) The Company agrees to rebuild its Cable System utilizing 550 MHz equipment and fiber optic backbone in the construction of the new cable plant.

8-1-6 INDEMNIFICATION AND INSURANCE.

(A) The Company shall at all times indemnify, protect and hold the City harmless from all claims, actions, suits, liabilities, losses, expenses, or damages of every kind and description, including investigation costs, court costs and reasonable attorneys' fees which may accrue to or be suffered or claimed by any person or persons by reason of or relating to the ownership, construction, repair, replacement, operation and maintenance of the Cable System and by reason of any license, copyright, property right or patent of any article or system used in said system.

(B) In order for the City to assert its rights to be indemnified, defended, and held harmless, the City shall provide:

- (1) Prompt notice to the Company of any claim or legal proceeding which gives rise to such rights;
- (2) Full cooperation with the requests of the Company with respect to the Company's participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding.

(C) The Company shall maintain in full force and effect public liability and property insurance with the following minimal coverage: property damage -- **One Hundred Thousand Dollars (\$100,000.00)** per occurrence, **Three Hundred Thousand Dollars (\$300,000.00)** aggregate; bodily injury -- **One Million Dollars (\$1,000,000.00)** per occurrence, **One Million Dollars (\$1,000,000.00)** aggregate, which insurance shall name the City as additional insured and which shall require **thirty (30) days** notice of cancellation to be given to the City. The Company also shall carry insurance coverage for all claims under any applicable Workers' Compensation law. On the request of the City, the Company shall file with the City, certificates of insurance for the above coverage.

8-1-7 FRANCHISE FEE.

(A) The Company shall pay to the City a franchise fee in an amount equal to **five percent (5%)** of all Gross Revenue received from Subscribers located within the City.

(B) The Company shall pay this fee to the City within **sixty (60) days** after the end of each **six (6) month** period, and the fee shall be based on the total Gross Revenue received by the Company from Subscribers located within the City during the preceding year.

(C) The Company shall submit with each payment a report concerning the information upon which the fee owed the City was based and shall provide additional information or records as the City may reasonably request in order to review and determine the fee obligation.

(D) Nothing in this Ordinance shall waive, limit, or otherwise affect the right of the City to adopt ordinances or to enforce existing ordinances regarding, and to collect other fees and taxes permitted by law.

8-1-8 **CITY EXPENSES AND FEES.** The Company shall pay or reimburse the City for costs, fees, expenses, and charges reasonably incurred by the City for the following:

(A) Protection, removal or relocation of the Company's equipment or facilities if such action has been reasonably requested by the City and the Company has failed to perform the work within a reasonable period of time.

(B) Restoring or remedying any damage or condition resulting from the construction, installation, maintenance, removal or any work performed by the Company.

(C) Any costs, fees, expenses and charges incidental to the awarding or renewal of the franchise provided that the City will provide the Company with advance notice of any anticipated extraordinary charges to be incurred.

(D) Any costs, fees, expenses and charges, including reasonable attorneys' fees incurred in the collection of fees or expenses or in the enforcement of this Ordinance.

(E) Any costs, fees, expenses and charges, including reasonable attorneys' fees incurred by reason of the Company's failure to comply with its obligations under this Ordinance or under state or federal laws and regulations.

8-1-9 **TERM.** The initial term of this franchise shall be **eleven (11) years** from the effective date of this Ordinance. At the end of this initial term, the Company may file an application for renewal of the franchise not less than **ninety (90) days** prior to the expiration hereof, unless the consent of the City to such renewal is required by applicable federal, state or local laws and regulations, which consent shall not be withheld unreasonably after public notice and opportunity to be heard; in determining whether to grant a renewal, the City shall consider those factors prescribed by applicable law and, among other things, (1) whether the Company has substantially complied with the material terms of this franchise and with applicable law; (2) the extent and quality of the Company's service; (3) whether the Company remains financially, legally and technically qualified; and (4) whether the Company's renewal would reasonably meet the future cable-related community needs and interests. Any renewal of the initial hereof shall be for an additional **ten (10) years**.

8-1-10 **SERVICE STANDARDS.**

(A) **Technical and Operational Standards.**

(1) The Company shall maintain the Cable System so that it is capable of providing continuous, reliable and good quality reception and service to Subscribers.

- (2) The Company shall make repairs promptly. Service interruptions due to Cable System repairs, maintenance, modifications or installations shall be for the shortest time possible, and shall, to the extent practicable, be preceded by notice to Subscribers and shall occur during periods of minimal viewership.
- (3) The Company shall maintain the Cable System so that it meets the technical standards applied by the FCC. Procedures for testing the technical capacity of the Cable System shall conform with the technical and testing standards applied to Cable Systems by the FCC.
- (4) The Company shall reevaluate the technical standards incorporated in the construction of the cable system on a **three (3) year** basis to determine if new technologies and needs, warrant the investment to install the new technology. In the determination for the need, the cost and benefits to the subscriber must be taken into consideration and agreed upon by the Company and the City.
- (5) The Company shall maintain sufficient replacement and repair equipment, facilities and supplies, and trained personnel to perform necessary and prompt repairs to the Cable System in the event of damage thereto. In the event of major damage to the equipment and facilities, the Company shall make every effort to restore service as expeditiously as possible and to provide for alternative means of providing service to as many Subscribers as possible while making necessary repairs.
- (6) The Company agrees to have a technician living within a **five (5) mile** radius of the City.

(B) **Subscriber Service Standards.**

- (1) The Company shall maintain a publicly listed, toll-free telephone number to receive Subscriber complaints, and the Company shall notify Subscribers of this telephone number on a periodic basis. The Company may provide separate telephone numbers for complaints made after normal business hours, but must be capable of handling complaints **twenty-four (24) hours** a day.
- (2) The Company shall maintain within the City a local business office or agent for the purpose of receiving payments and resolving complaints regarding the quality of service, equipment malfunctions and similar matters.
- (3) The Company shall investigate all Subscriber complaints regarding quality of service, equipment malfunctions and similar matters expeditiously and no later than the next business day. Upon notification of a service complaint, the Company shall

dispatch a qualified employee to investigate the complaint and adjust, repair or replace Company equipment as necessary to resolve the complaint.

- (4) If there is an interruption of total service that could have been corrected by the Company for **twenty-four (24)** consecutive hours or more, the affected Subscriber(s) shall receive, upon request, a pro-rate reduction of charges, provided that the Subscriber has notified the Company immediately of the outage and made claim for credit within **ninety (90) days** of its occurrence. The loss of service must be caused directly by failure of the Company's equipment in order to qualify for a credit. No credit will be given if the service interruption is caused by any of the Subscriber's equipment or any action taken with respect to the Company's equipment by someone other than the Company's employees. The Company is not responsible for the operation, maintenance, service or repair of any Subscriber's televisions, radios, VCRs, other receivers and related equipment.
- (5) Notwithstanding any provision contained herein to the contrary, the Company will not be liable for any inconvenience, loss, liability or damage resulting from any circumstance beyond its control, and any such circumstance also shall toll the Company's obligation to perform hereunder until such circumstance has passed.

(C) **Services to be Provided.**

- (1) The Company shall provide a Basic Service to all Subscribers within the area of the City reasonably serviceable by the Cable System installed.
- (2) The Company shall provide upon request and without charge, Basic Service to each governmental building, fire station, police station, or public school building located in an area served by the Cable System.
- (3) The Company also agrees to give access to the public school, free of charge, on the local access channel, provided it does not interfere with other programming.

(D) **Rate and Regulation by Other Agencies.**

- (1) The Ordinance granted shall be subject to and controlled by all of the provisions of the laws of the State of Illinois and of the United States federal and state regulations, now existing or hereafter enacted.
- (2) The Company shall comply with all federal and state guidelines pertaining to Equal Employment Opportunity (EEO) policies. The Company is an Equal Opportunity Employer.

(E)

Theft of Services and Tampering.

- (1) No person whether or not a Subscriber to the Cable System, shall willfully, maliciously or otherwise damage or cause to be damaged any wire, cable, conduit, apparatus, appurtenance or equipment of the Company operating a cable television system within the City, or commit any act with intent to cause such damage, or to tap, tamper or otherwise connect any wire or device to a wire, cable, conduit, apparatus, appurtenance or equipment of said Company with the intent to obtain a signal or impulse from the Cable System without authorization from or compensation to the Company, or to obtain cable television or other communication service with intent to cheat or defraud the Company of any lawful charge to which it is entitled.
- (2) Whoever shall violate any provision of the above section shall be guilty of a misdemeanor and shall be liable to a penalty of not less than **One Hundred Dollars (\$100.00)** for a first offense and not less than **Five Hundred Dollars (\$500.00)** for a second and every subsequent offense. The penalties provided in this Section shall be enforced by appropriate proceedings instituted by the City or the Company. The courts of Moultrie County, Illinois shall have jurisdiction to enforce this Section.
- (3) Persons receiving Cable Service may not alter, extend or otherwise tamper with the Company's facilities to serve more equipment than being contracted for.

8-1-11 REPORT REQUIREMENTS. In addition to the other reporting requirements set forth in this Ordinance, the Company shall, upon request, submit to the City copies of reports submitted to the FCC which relate to the Cable System. The City may on reasonable notice inspect the FCC public files and technical files maintained by the Company at its local office with respect to the Cable System.

8-1-12 ASSIGNMENT OF TRANSFER. The right, privilege and franchise given to the Company by this Ordinance shall not be assigned or transferred without the prior approval of such transfer by the City. Such approval shall not be withheld, unreasonably. For the purpose of this paragraph, an "assignment" or a "transfer" shall not be deemed to include any (1) transfer to an entity which is affiliated with the Company through common control, ownership or otherwise, (2) transfer of a portion of all of the control of the Company or any of its affiliates, (3) restructuring of the Company or any of its affiliates, and (4) security interest or collateral assignment of the Cable System or the Company's rights hereunder to secure repayment of indebtedness.

8-1-13 **FRANCHISE SUBJECT TO POLICE POWER.** The Company shall at all times during the term of this franchise be subject to all lawful exercise of the police power by the City, which reserves the right to adopt from time to time such ordinance as may be necessary to the exercise of that police power as it may be related to this franchise.

8-1-14 **OTHER PERMITS REQUIRED.** This franchise does not supersede any other provisions of any of the City Ordinance or regulation which may require the Company to obtain other permits, licenses, etc., or relieve the Company from compliance with such ordinances. Specifically, the Company is not relieved from the requirements to obtain building permits, utility pole agreements, etc.

8-1-15 **MODIFICATIONS OF ORDINANCE.** This Ordinance contains the entire agreement between the City and the Company, and may be amended or modified as agreed upon by the City and the Company.

8-1-16 **FRANCHISE VIOLATIONS AND ENFORCEMENT.**

(A) If the Company violates any provision of this Ordinance, the City:

- (1) shall comply with paragraph (B) hereafter; and
- (2) if such hearing and procedures set forth in paragraph (B) hereof have not resolved the dispute, the City may proceed in any appropriate court of law or administrative agency to compel compliance with the provisions of this Ordinance, to collect any sums due hereunder which have not been paid, or to terminate the franchise granted hereby. Except as expressly provided herein, the Company shall not otherwise be liable to the City. In no event shall the Company be liable for any consequential damages.

(B) If the City believes that the Company has violated any provision of this Ordinance, it shall hold a hearing and take the actions as set forth hereafter.

The City shall notify the Company in writing, with a certified letter of the alleged violations and of the City's proposed remedy; the Company shall have **forty-five (45) days** after its actual receipt of such notice to cure such violations.

If the Company disputes the existence of the violation or the proposed remedy, or if such default is not cured within the **forty-five (45) days** after the Company's actual receipt of such default notice, then the matter shall be referred to a public hearing to be held after public notice at least **ten (10) days** in advance, and written notice of the hearing and the alleged violations to the Company not less than **ten (10) days** prior to the date of the hearing.

At the hearing, the City shall publicly list all the alleged violations, and shall give the Company and all other interested parties an opportunity to be heard as to the alleged violation.

Within a reasonable time after the hearing, the City shall determine whether the Company has violated this Ordinance and the remedy for the violation, and shall issue written findings and conclusions with respect thereto, and the Company shall be given a reasonable opportunity of not less than **forty-five (45) days** after the issuance of said findings and conclusions to remedy the matter or comply with this Ordinance.

(C) Prevention or delay of any performance under this franchise due to circumstances beyond the reasonable control of Company, unforeseen circumstances, or acts of God, shall not be deemed noncompliance with or a violation of this franchise.

8-1-17 SEVERABILITY. The provisions of this Ordinance shall be severable, and if any provision hereof shall be held to be unconstitutional, invalid or illegal, by any court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as legislative intent that this Ordinance would have been enacted had such unconstitutional, invalid or illegal provisions not been included herein, and that any court of competent jurisdiction should reform such unconstitutional, invalid or illegal provision to the minimum extent necessary to make such constitutional, valid and legal.

8-1-18 FINAL TERMINATION OF THE ORDINANCE. Upon termination of the Ordinance, the Company shall remove its cables, wires and equipment from all poles of the City and all space reserved for the City's use on poles belonging to others, within a **six (6) month** period. If not so removed, the City shall have the right to remove or have its contractor remove them at the risk, cost and expense of the Company and without any liability therefore.

(Ord. No. 93-2; 03-08-93)

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

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

(A) **"Cable Service"** means (1) the one-way transmission to subscribers of (a) video programming, or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(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 5/21-801(b).
- (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 5/21-801(c)(1)(vi).
 - (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 5/21-801(b) 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 5/21-801(b) 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 5/21-401.

(E) **"PEG"** means public, education and governmental.

(F) **"PEG Access Support Fee"** means the amount paid under this Article and 220 ILCS 5/21-801(d) by the holder to the City for the service areas within its territorial jurisdiction.

(G) **"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.

(H) **"Service Provider Fee"** means the amount paid under this Article and 220 ILCS 5/21-801 by the holder to a City for the service areas within its territorial jurisdiction.

(I) **"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 City. 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 5/21-401(b)(6) 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 5/21-301(c) with credit to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under **Section 8-2-2(B)**.

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) **Amount of Fee.** The amount of the PEG access support fee imposed hereby shall be **one percent (1%)** of the holder's gross revenues.

(C) **Payment.** The holder shall pay the PEG access support fee to the City. 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 5/21-301(c)** 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 any City 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.** Audits will be conducted by the City in accordance with the standards set forth in **55 ILCS 5/5 – 1095.1**.

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

(Ord. No. 15-22; 11-09-15)

ARTICLE III – SMALL WIRELESS FACILITIES

8-3-1 **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.

8-3-2 **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.

8-3-3 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 8-3-3(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 to the City Administrator and to be approved or denied by the City Council.
- (10) **Contractual Design Requirements.** The wireless provider shall comply with requirements that are imposed by a contract between the City and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- (11) **Ground-mounted Equipment Spacing.** The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.
- (12) **Undergrounding Regulations.** The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.
- (13) **Collocation Completion Deadline.** Collocation for which a permit is granted shall be completed within **one hundred eighty (180) days** after issuance of the permit, unless the City and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within **sixty (60) days** after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed **three hundred sixty (360) days** after issuance of the permit. Otherwise, the permit shall be void unless the City grants an extension in writing to the applicant.

(D) **Application Fees.** Application fees are imposed as follows:

- (1) Applicant shall pay an application fee of **Six Hundred Fifty Dollars (\$650.00)** for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and **Three Hundred Fifty Dollars (\$350.00)** for each small wireless facility addressed in a consolidated application

to collocate more than one small wireless facility on existing utility poles or wireless support structures.

- (2) Applicant shall pay an application fee of **One Thousand Dollars (\$1,000.00)** for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- (3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (4) The City shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - (a) routine maintenance;
 - (b) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the City at least **ten (10) days** prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with (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 strung 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 utility poles pursuant to applications submitted to the City before the wireless provider provides such notice and exercises its option under this paragraph.

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

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

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

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

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

8-3-4 DISPUTE RESOLUTION. The Circuit Court of Moultrie County shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the City shall allow the collocating person to collocate on its poles at annual rates of no more than **Two Hundred Dollars (\$200.00)** per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

8-3-5 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.

8-3-6 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.

8-3-7 SEVERABILITY. If any provision of this Article or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Article is severable.

(Ord. No. 18-13; 06-11-18)

POLE LEASE AGREEMENT

THIS AGREEMENT made and entered into this **8th day of March, 1993** by and between the **CITY OF SULLIVAN** (hereinafter referred to as "**Licensor**"), and **MEDIACOM** (hereinafter referred to as "**Licensee**").

WHEREAS, the City of Sullivan granted to MEDIACOM a franchise to erect, maintain, own and operate a cable television distribution system within the City of Sullivan by Ordinance 93-2 passed on March 8, 1993.

WHEREAS, MEDIACOM desires to utilize, to the extent possible the wholly owned poles of the City of Sullivan for the purpose erecting and maintaining said cable television distribution system;

NOW, THEREFORE, the Licensor and Licensee covenant and agree to the following terms and conditions:

SECTION 1 - POLE USE.

The poles used, where Licensor owns poles which may be utilized for the distribution system of the Licensee, shall be those wholly owned by the Licensor. Where said wholly owned Licensor poles cannot be used for the distribution system, the Licensee shall have the right to erect and maintain its own poles, as may be necessary for the proper construction and maintenance of the television distribution system provided, however, the Licensee shall obtain prior approval of the Licensor as to the necessity for and location of any new poles to be erected. However, nothing in this Section shall preclude the Licensee from contracting with the Licensor to provide and maintain poles to be used for the transmission system of the Licensee.

SECTION 2 - APPLICATIONS AND PERMITS.

Before making attachments to any pole or poles of the Licensor or to space reserved for Licensor's use on any poles belonging to others, the Licensee shall make written application to the Licensor in substantially the form of Exhibit "A", hereto attached and made a part hereof. If the Licensor is willing to permit such attachments, then the Licensor shall return **one (1) copy** of Exhibit "A" to the Licensee bearing endorsement of its permission.

Where the Licensor is required to rearrange or replace its equipment in order to accommodate the Licensee's facilities, the Licensor shall return **two (2)** signed copies of said application to the Licensee indicating the nature of the work involved and the estimated cost thereof. The Licensee shall, within **thirty (30) days**, either notify the Licensor (1) of its

acceptance of the work and costs or (2) of its cancellation of the application, by signing in the "Accepted" space and returning **one (1) copy**. Upon receiving an accepted permit from the Licensee, the Licensor shall promptly make the changes and rearrangements, and notify the Licensee when such work is completed.

Upon receiving an approved permit where no changes are required, or notification of the completion of all changes and rearrangements by the Licensor, but no sooner, the Licensee shall have the right to install, maintain and use its equipment described in said application upon the poles identified therein.

Before commencing any such installation, the Licensee shall notify the Licensor verbally, or as locally agreed, of the time when it proposes to start work sufficiently in advance thereof so that the Licensor may, at its option, have its representative present when such work is performed.

SECTION 3 - COSTS OF REARRANGEMENT AND GUYS.

Where the Licensee's attachments require rearranging the facilities of the Licensor or any others using such poles, the Licensee agrees to compensate the Licensor and such others for full expense incurred in completing such rearrangements. Any strengthening of poles (guying) required to accommodate the attachments of the Licensee shall be provided by and at the expense of the Licensee and to the satisfaction of the Licensor.

SECTION 4 - ADDITIONAL ATTACHMENTS AND MOVING ATTACHMENTS.

The Licensee shall not have the right to place, nor shall it place any additional equipment, nor shall the Licensee change the position of any equipment, upon any pole used by it hereunder without first making application therefore and receiving the Licensor's permission to do so. The provisions of this Section shall not restrict the attachment of television service drops to television crossarms or television cable messengers unless the Licensee is in default under the terms of Section 7.

SECTION 5 - INSTALLATION AND MAINTENANCE OF ATTACHMENTS.

The Licensee shall, at its own expense, make and maintain its attachments in safe condition and in thorough repair, and in a manner suitable to the Licensor and so as not to conflict with the use of said poles by the Licensor, or by others lawfully using said poles, or interfere with the working use of facilities thereon or which may from time to time be placed thereon by the Licensor or others. The Licensee shall at any time, at its own expense, upon notice from the Licensor, repair, maintain, relocate, replace, and renew its facilities placed on said poles, and transfer them to substituted poles or perform any other work in connection with said facilities that may be required by the Licensor. Failure to comply within **thirty (30) days**

with such notice or notices from the Licensor, except for causes over which the Licensee has no control, shall constitute a default. Upon such default, the Licensor may at its option: (1) suspend all future attachment of television drops to television crossarms or television cable messenger during period of default; or (2) terminate the permit covering the poles as to which such noncompliance shall have occurred; or (3) the Licensor or the Licensor's contractor may repair, do maintenance work on, relocate, replace or renew facilities placed on such poles by the Licensee, transfer them to substituted poles or perform any other work required to conform with the Licensor's notice or notices and the Licensee shall, on demand, reimburse the Licensor for the expense thereby incurred. In cases of emergency, the Licensor or the Licensor's contractor may at the Licensee's sole risk and expense, arrange to relocate or replace the facilities attached to said poles by the Licensee, transfer them to substituted poles or perform any other work the Licensor deems necessary to meet safety requirements or service needs of the Licensor, and the Licensee shall, on demand, reimburse the Licensor for the expense thereby incurred.

SECTION 6 - POLE ERECTION AND CONSTRUCTION.

The Licensee's distribution system poles, and the wires, and appurtenance thereon shall be located, erected and maintained, so as not to endanger or interfere with the lives of persons, or interfere with new improvements the Licensor may deem proper to make, or to unnecessarily hinder or obstruct the free use of streets, alleys, bridges, or other public property. Removal of poles or rearrangement of its facilities to avoid such interference will be at the Licensee's expense.

SECTION 7 - SPECIFICATIONS.

Whereas, the Licensee's poles, cables, wires, and appliances in each and every location shall be erected and maintained in accordance with: (1) such requirements and specifications as the Licensor shall from time to time prescribe; (2) all requirements and specifications of the Electrical Codes of the City of Sullivan and the most recent edition of the National Electrical Safety Code where applicable; (3) any amendments or revisions of said codes or practices; and (4) in compliance with any rules or orders now in effect or that may hereafter be issued by the Illinois Commerce Commission or other authority having jurisdiction.

All installations of equipment shall be of permanent nature, durable, and installed in accordance with good engineering practice. Installation standards shall be the same for wholly owned Licensor poles as for other utility poles.

The Licensee's distribution cable shall be supported on **one-fourth (1/4) inch** or larger galvanized steel stranded messenger with metallic wire lashing the cable to the messenger. The stranded messenger shall be tensioned and guyed in accordance with accepted standards. The Licensee's service drops shall be installed in a neat and workmanlike manner including the house attachments so as to preserve the best overall appearance of power, telephone and

television drops through the air and attached to buildings. Service drops shall be tensioned so that sag is not excessive and also so that side pull on the television cable messenger is not excessive. Television service drops are to be installed where practicable from the cable messenger, away from a pole so as to preserve climbing space on the pole.

SECTION 8 - COST OF POLE REPLACEMENTS.

In the event that any pole or poles of the Licensor or any pole or poles belonging to others on which space is reserved for the Licensor's use to which the Licensee desires to make attachments are considered by the Licensor to be inadequate in height or strength to support the additional facilities, in accordance with the aforesaid specifications, the Licensor shall notify the Licensee of such fact and of the estimated cost to the Licensee of replacing such pole which will accommodate the attachments of the Licensee. After acceptance or after completion of the work, the Licensor will present to the Licensee a statement of the costs. The Licensee will pay any balance due as shown by said statement.

The Licensee agrees to reimburse the Licensor for the entire cost and expenses of replacing such inadequate poles with suitable poles, including cost of removal, less any salvage recovery and depreciation, and the expenses of transferring the facilities of the Licensor and any others using such poles from the old to the new poles. The Licensee will also, on demand, reimburse the other owners of other facilities attached to said poles for any expenses incurred by it or them in transferring or rearranging said facilities.

SECTION 9 - SUBSEQUENT POLE REPLACEMENTS.

In the event that the Licensor or any other electric power company who by agreement with the Licensor is a joint user of a pole to which the Licensee has made attachments shall require the space occupied by the Licensee's existing attachments and said pole has not been previously replaced in order to accommodate the Licensee's facilities, then all provisions of Section 10 shall apply, except that the Licensee may elect to remove its attachments from the pole if it does not approve of such replacement.

SECTION 10 – PROTECTION OF THE LICENSOR'S SERVICE.

The Licensor reserves to itself the right to maintain its poles and space reserved for its use on poles belonging to others and to operate its facilities thereon in such manner as will best enable it to fulfill its own service requirements, but in accordance with the specifications herein before referred to. The Licensor shall not be liable to the Licensee for any interruption to service of the Licensee or for interference with the operation of the cables, wires and appliances of the Licensee arising in any manner, directly or indirectly, out (or as the result) of

the use hereunder of the Licensor's poles or of space reserved for the Licensor's use on poles belonging to others; or out (or as the result) of the Licensor's use or maintenance of its poles and the space reserved for its use on poles belonging to others or of its facilities thereon.

SECTION 11 – INDEMNIFICATION AND INSURANCE.

The Licensee shall at all times indemnify, protect and hold the Licensor harmless from all claims, actions, suits, liabilities, losses, expenses, or damages of every kind and description, including investigation costs, court costs and reasonable attorneys' fees which may accrue to or be suffered or claimed by any person or persons by reason of or relating to the ownership, construction, repair, replacement, operation and maintenance of the cable system and by reason of any license, copyright, property right or patent of any article or system used in said system.

In order for the Licensor to assert its rights to be indemnified, defended, and held harmless, the Licensor shall provide:

(A) Prompt notice to the Licensee of any claim or legal proceeding which gives to such rights;

(B) Full cooperation with the requests of the Licensee with respect to the Licensee's participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding.

The Licensee shall maintain in full force and effect public liability and property insurance with the following minimal coverage: property damage -- **One Hundred Thousand Dollars (\$100,000.00)** per occurrence, **Three Hundred Thousand Dollars (\$300,000.00)** aggregate; bodily injury -- **Three Hundred Thousand Dollars (\$300,000.00)** per occurrence, **Five Hundred Thousand Dollars (\$500,000.00)** aggregate, which insurance shall name the Licensor as additional insured and which shall require **thirty (30) days** notice of cancellation to be given to the Licensor. The Licensee also shall carry insurance coverage for all claims under any applicable Workers' Compensation law. On the request of the Licensor, the Licensee shall file with the City of Sullivan, certificates of insurance for the above coverage.

SECTION 12 – INSPECTIONS.

The Licensor, because of the importance of its service, reserves the right to inspect each new installation of the Licensee on its poles, and in space reserved for its use on poles belonging to others and in the vicinity of its lines or appliances, and to make periodic inspections, at reasonable intervals, semiannually or oftener as plant conditions may reasonably warrant of the entire plant of the Licensee. Such inspections, whether made or not, shall not operate to relieve the Licensee of any responsibility, obligation or liability assumed under this Pole Lease Agreement.

SECTION 13 – REMOVAL OF ATTACHMENTS.

The Licensee may at any time remove its attachments from any pole or poles of the Licensor or from space reserved from the Licensor's use on any pole or poles belonging to others, but shall immediately give the Licensor written notice of such removal in substantially the form of Exhibit "B", hereto attached and made a part hereof. No refund of any rental will be due on account of such removal.

SECTION 14 – RELOCATION OF FACILITIES.

In the event that any time during the period of this Pole Lease Agreement, the Licensor shall elect to alter or change the grade of any streets, alleys or other public ways, the Licensee, upon a **thirty (30) day** notice by the Licensor shall remove, release and relocate its poles, wires, cables, and underground conduits, manholes and other fixtures at its own expense. Should the poles moved be the property of the Licensor or the holder of any public franchise within the City of Sullivan, the Licensee shall move its cables and appurtenances attached to the poles at its own expense, with the Licensor or public franchise holder moving the poles at its or their expense.

SECTION 15 – DAMAGES.

The Licensee shall exercise special precaution to avoid damage to facilities of the Licensor and of others supported on said poles; and hereby assumes all responsibility for and agrees to indemnify the Licensor from and against any and all losses or damages, or claims therefore, resulting from the attachment to such poles of the Licensee's facilities, and from any and all acts or omissions of the Licensee in connection therewith. The Licensee shall make an immediate report to the Licensor of the occurrence of any loss or damage and hereby agrees to pay the cost incurred in making repairs to such facilities of the Licensor or others.

SECTION 16 – PAYMENT.

The Licensee agrees to pay the Licensor an annual pole and boulevard fee in the sum of **Two Thousand Five Hundred Dollars (\$2,500.00)**. Payments of amounts due to the Licensor shall be made by the Licensee annually on a date which shall be the date of acceptance of this Pole Lease Agreement.

SECTION 17 – GENERAL TERMS.

Failure to enforce or insist upon compliance with any of the terms or conditions of this Pole Lease Agreement shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Nothing herein contained shall be construed as affecting the rights and privileges previously conferred by the Licensor, by contract or otherwise to others, not parties to this Pole Lease Agreement, to use any poles or spaces reserved for the Licensor's use on poles belonging to others covered by this Pole Lease Agreement; and the Licensor shall have the right to continue and extend such rights or privileges. The attachment privileges herein granted shall at all times be subject to such contracts and arrangements.

No use under this Pole Lease Agreement however extended of the Licensor's poles or of space reserved for the Licensor's use on poles belonging to others shall create or vest in the Licensee any ownership or property rights in said poles, but the Licensee's right therein shall be and remain a mere license. Nothing herein contained shall be construed to compel the licensor to maintain any of said poles for a period longer than that demanded by its service requirements.

If any section, sentence, clause or phrase of this Pole Lease Agreement is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity or the Ordinance and any portions in conflict are hereby repealed.

SECTION 18 – LENGTH OF AGREEMENT.

This Pole Lease Agreement shall become effective and run concurrently with Ordinance 93-2, "The Cable Television Franchise Agreement" and any renewal thereof.

SECTION 19 – ASSIGNMENT.

This Pole Lease Agreement may not be assigned by either party without the expressed written consent of the other, which consent will not be unreasonably withheld. However, nothing in this Pole Lease Agreement shall prevent the Licensee, from assigning this Pole Lease Agreement to any entity which is affiliated with the Licensee through common control and ownership, and as collateral security for any obligations of the Licensee.

APPENDIX "A"

EXTENSION OF CONTRACT

Section 1. The City agrees and consents to extend the current cable franchise, Ordinance No. 93-2, as amended, through March 14, 2006 or until a new cable franchise is approved by the City Council and accepted by Mediacom, whichever occurs first, subject to the terms and conditions set forth below.

Section 2. The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in the franchise:

(A) All terms and conditions of the cable franchise shall remain in full force and effect during the extension period.

(B) The extension shall have no adverse effect on Mediacom's compliance with the current franchise, nor shall the extension be grounds for any change or modification in the remaining terms, conditions, and obligations of the franchise. Further, the extension of the franchise will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of the cable system.

(C) The City's agreement to extend the franchise, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the current franchise and shall not be a defense against correction of any deficiencies or non-compliance by Mediacom.

PASSED by the Mayor and City Council of the City of Sullivan, County of Moultrie and State of Illinois on the 14th day of March, 2005.

(Ord. No. 05-03; 03-14-05)