

CHAPTER 8

CABLE TELEVISION

ARTICLE I – SHORT TITLE AND DEFINITIONS

**8-1-1**        **SHORT TITLE.** This Chapter shall be known and cited as the Cable Communications Franchise.

**8-1-2**        **DEFINITIONS.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory.

(A)            **“Basic Cable Service”** means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7)(1993).

(B)            **“Cable Communications System” or “System”** means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities located in Village, and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing audio, video, and other forms of electronic signals in Village. System as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 522(6)(1993).

(C)            **“Cable Programming Service”** means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

- (1) Video programming carried on the basic service tier;
- (2) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
  - (a) consists of commonly-identified video programming; and
  - (b) is not bundled with any regulated tier of service.

Cable programming service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2)(1993) and 47 C.F.R. 76.901(b)(1993).

(D)            **“Cable Communications Service”** means the provision of television reception, communications and/or entertainment services distributed over a Cable Communications System. This definition shall not include telecommunications services regulated pursuant to federal and state law as may be amended from time to time.

- (E) **"Cable Service"** means:
- (1) the one-way transmission to subscribers of (i) video programming, or (ii) 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.
- (F) **"Converter"** means an electronic device which converts signals to a frequency acceptable to a television receiver of a subscriber and by an appropriate selector permits a subscriber to view all Cable Communications Services which the subscriber is lawfully authorized to receive.
- (G) **"Drop"** means the cable that connects the ground block on the subscriber's residence to the nearest feeder cable of the system.
- (H) **"FCC"** means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (I) **"Grantee"** is Mediacom, its agents and employees, lawful successors, transferees or assignees.
- (J) **"Gross Revenues"** means all revenue received from cable service directly by the Grantee from the operation of its system within Village. Gross revenues shall include Internet services to the extent Internet services are included in the definition of cable service under any present or future federal law or a decision of a court of applicable jurisdiction interpreting the same, or if a franchise authority is otherwise permitted to collect franchise fees from Internet services. The term gross revenues shall not include Internet services to the extent Internet services are subject to the Telecommunications Municipal Infrastructure Maintenance Fee Act. The term gross revenues shall not include franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- (K) **"Installation"** means the connection of the system from feeder cable to the point of connection, including standard installation and custom installations.
- (L) **"Lockout Device"** means an optional mechanical or electrical accessory to a subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.
- (M) **"Pay Television"** means the delivery over the system of pay-per-channel or pay-per-program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.
- (N) **"Person"** is any person, firm, partnership, association, corporation, company, or other legal entity.
- (O) **"Standard Installation"** means any residential installation which can be completed using a drop of **one hundred fifty (150) feet** or less.
- (P) **"Street"** means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by Village.
- (Q) **"Subscriber"** means any person who lawfully receives cable service. In the case of multiple office buildings or multiple dwelling units, the "subscriber" means the lessee, tenant or occupant.
- (R) **"Village"** means Village of New Berlin, a municipal corporation, in the State of Illinois, acting by and through its Village Board.
- (S) **"Village Board"** means the New Berlin, Illinois Village Board.

**ARTICLE II - GRANT OF AUTHORITY AND GENERAL PROVISIONS**

**8-2-1**        **FRANCHISE REQUIRED.** It shall be an unlawful for any person to construct, operate or maintain a Cable Communications System in Village, unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any person to provide cable service in Village unless such person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by Village, shall contain the same substantive terms and conditions.

**8-2-2**        **GRANT OF FRANCHISE.** This Franchise is granted pursuant to the terms and conditions contained herein.

**8-2-3**        **GRANT OF NONEXCLUSIVE AUTHORITY.**

(A)            The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Village, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Village of a Cable Communications System as herein defined.

(B)            This Franchise shall be nonexclusive, and Village reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this Franchise, provided, however, that any additional Franchises granted shall contain the same substantive terms and conditions as this Franchise.

**8-2-4**        **FRANCHISE TERM.** The Franchise shall be in effect for a period of **ten (10) years** from the effective date, unless renewed, revoked or terminated sooner as herein provided. The Franchise shall automatically be extended for an additional **five (5) years** provided that during the initial **ten (10) year** term, Village has not finally terminated the Franchise after Grantee's exhaustion of all procedural rights and judicial remedies pursuant to **Article VIII** herein.

**8-2-5**        **PREVIOUS FRANCHISES.** Upon acceptance by Grantee as required by **Article XIII** herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable Communications System within Village is hereby expressly repealed.

**8-2-6**        **RULES OF GRANTEE.** The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as

shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise.

**8-2-7 TERRITORIAL AREA INVOLVED.** This Franchise is granted for the corporate boundaries of Village, as it exists from time to time. In the event of annexation by Village, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of **thirty (30) homes** per cable mile. In order to accommodate residents in areas where there are less than **thirty (30) homes** per cable mile, residents located in such an area may request Grantee to provide extension of cable service to said area. The cost of the extension is to be borne by Grantee and the residents in an exact ratio to which the homes per mile are deficient in relation to the provisions hereof. Example: If there are **ten (10) homes** per cable mile, the Grantee would pay 10/30 of the cost (33.3%) and the residents would pay 20/30 of the cost (66.7%) of such extension. Access to cable service shall not be denied to any group of potential residential cable subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

**8-2-8 WRITTEN NOTICE.** All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to any officer of Grantee or Village's Administrator of this Franchise or **forty-eight (48) hours** after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to Village: Village of New Berlin  
Village Hall  
301 East Illinois  
P.O. Box 357  
New Berlin, IL 62670-9999  
Attn: Village Clerk

If to Grantee: Mediacom  
609 South Fourth Street  
P.O. Box 334  
Chillicothe, IL 61523  
Attn: General Manager

With copies to: Larkin, Hoffman, Daly & Lindgren, Ltd.  
1500 Norwest Financial Center  
7900 Xerxes Avenue South  
Bloomington, MN 55431  
Attn: Jane E. Bremer, Esq.

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

**8-2-9**        **DROPS TO PUBLIC BUILDINGS.** Grantee shall provide installation of **one (1)** cable drop, **one (1)** cable outlet, and monthly basic cable service without charge to the following institutions:

- (A)            New Berlin Village Hall
- (B)            All New Berlin State Certified Public and Private Schools
- (C)            New Berlin Public Library
- (D)            New Berlin Police Station
- (E)            New Berlin Fire Station

Additional drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such installation meets Grantee's standards and provided that any fees for cable services are paid. Nothing herein shall be construed as requiring Grantee to extend the System to service additional institutions as may be designated by Village. Grantee shall have **one (1) year** from the date of Village Board designation of additional institution(s) to complete construction of the drop and outlet.

**ARTICLE III – CONSTRUCTION STANDARDS**

**8-3-1 CONSTRUCTION CODES AND PERMITS.**

(A) Grantee shall obtain all necessary permits from Village before commencing any construction upgrade or extension of the system, including the opening or disturbance of any street, or private or public property within Village.

(B) The Village shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provision of local, state and federal law.

**8-3-2 REPAIR OF STREETS AND PROPERTY.** Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work.

**8-3-3 BUILDING MOVERS.** The Grantee shall, on request of any person holding a moving permit issued by Village, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and the Grantee shall be given not less than **ten (10) days** advance notice to arrange for such temporary changes.

**8-3-4 TREE TRIMMING.** The Grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, or public easements of Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

**8-3-5 NO WAIVER.** Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

**8-3-6 UNDERGROUNDING OF CABLE.**

(A) In all areas of Village where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground.

(B) In any area of Village where **one (1)** or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

**8-3-7**        **SAFETY REQUIREMENTS.**    The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

**8-3-8**        **EASEMENTS AND RIGHTS-OF-WAY ON PRIVATE PROPERTY.**    It shall be the sole responsibility of Grantee to secure any necessary easements or other rights-of-way for the installation of its equipment and lines on private property.

**8-3-9**        **CONSTRUCTION STANDARDS.**    Grantee shall perform all construction required in this Franchise in compliance with state and federal law.

**ARTICLE IV – OPERATIONS PROVISIONS**

**8-4-1**        **MINIMUM CHANNEL CAPACITY.**    Grantee shall provide a system which utilizes 450 MHz equipment and which is capable of delivering a minimum of **sixty (60) channels** within **forty-eight (48) months** of the effective date of this Franchise.

**8-4-2**        **TECHNICAL STANDARDS.**    The technical standards used in the operation of the system shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the Federal Communications Commission’s rules and regulations and found in Title 47, Section 76.601 to 76.617.

**8-4-3**        **LOCKOUT DEVICE.**    Upon the request of a subscriber, Grantee shall provide by sale or lease a lockout device.



**ARTICLE V – SERVICES PROVISIONS**

**8-5-1**        **SUBSCRIBER INQUIRIES.** Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive subscriber complaints and requests on a **twenty-four (24) hour-a-day, seven (7) days-a-week** basis.

**8-5-2**        **REFUND POLICY.** In the event a subscriber established or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

**8-5-3**        **CREDIT POLICY.** For service interruptions of **twenty-four (24) hours** or more, Grantee shall provide, at the subscriber's request, a credit of **one-thirtieth (1/30)** of **one (1) month's** fees for each **twenty-four (24) hour** period of affected service.

**8-5-4**        **CUSTOMER SERVICE STANDARDS.** Grantee agrees to adhere to the customer service obligations promulgated by the FCC at 47 C.F.R. § 76.309.

**8-5-5**        **BOOKS AND RECORDS.** Grantee shall comply with federal law regarding books and records to be maintained.

**8-5-6**        **CLOSED-CAPTION PROGRAMMING.** The system shall be designed so as not to prohibit the delivery of closed-caption programming but subscribers will continue to be required to obtain their own descrambling equipment in order to receive and view the closed captioned signal.

**8-5-7**        **COMPLAINT PROCEDURE.** Subject to the privacy provisions of 47 U.S.C. § 521 et seq., as amended from time to time. Village and Grantee shall prepare and maintain written records of complaints made to them which would constitute a violation of this Franchise and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Grantee.

**8-5-8**        **REGULATION OF SERVICE RATES.** The Village may regulate rates for the provision of cable service, equipment, or any other communications service provided over the system to the extent allowed under federal or state law(s).

**8-5-9**        **SUBSCRIBER CONTRACTS.** Subscribers may terminate cable service at any time in the absence of an agreement to the contrary provided, however, said subscribers remain responsible for any costs or fees incurred.

**ARTICLE VI – COMMUNITY ACCESS CHANNEL**

**8-6-1**        **COMMUNITY ACCESS.**

(A)            Village or its designee is hereby designated to operate, administer, promote, and manage access to the cable system established pursuant to this Section. Grantee shall have no responsibility whatsoever for community access except as expressly stated in this Section.

(B)            Upon **ninety (90) days** prior written notice by Village, Grantee shall dedicate **one (1) channel** for community access programming.

(C)            All residential subscribers who receive all or any part of the total services offered on the system shall be eligible to receive the access channel at no additional charge.

**ARTICLE VII – FRANCHISE FEES AND INSURANCE PROVISIONS**

**8-7-1            FRANCHISE FEE.**

(A)            Grantee shall pay to Village a franchise fee in an annual amount equal to **three percent (3%)** of its annual gross revenues. Upon **ninety (90) days** prior written notice to Grantee, Village may increase or decrease the franchise fee which in no event shall exceed the maximum amount permitted by law. Village shall exercise the option to increase or decrease the franchise fee no more than once per year.

(B)            Payments due Village under this provision shall be payable quarterly. The payment shall be made within **ninety (90) days** of the end of Grantee's fiscal quarters together with a brief report showing the basis for the computation.

**8-7-2            INSURANCE.**

(A)            Upon request, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy coverage, in protection of Village in its capacity as such. The policies of insurance shall be in the sum of not less than **One Million Dollars (\$1,000,000)** for personal injury or death of any **one (1) person**, and **Three Million Dollars (\$3,000,000)** for personal injury or death of **two (2)** or more persons in any one occurrence, **One Million Dollars (\$1,000,000)** for property damage to any **one (1) person** and **Three Million Dollars (\$3,000,000)** for property damage resulting from any one act or occurrence.

(B)            The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after **thirty (30) days'** advance written notice have been provided to Village.

**ARTICLE VIII – REVOCATION OF FRANCHISE**

**8-8-1 VILLAGE’S RIGHT TO REVOKE.**

(A) In addition to all other rights which Village has pursuant to law or equity, Village reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after the hearing required by **Section 8-8-2** herein, it is determined that:

- (1) Grantee has violated any material provision of this Franchise; or
- (2) Grantee has practiced fraud or deceit upon Village or subscriber.

**8-8-2 PROCEDURES FOR REVOCATION.**

(A) Village shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee **sixty (60) days** subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice required herein, Village shall provide Grantee with written findings of fact which are the basis of the revocation.

(B) Grantee shall be provided the right to a public hearing affording due process before the Village Board prior to revocation, which public hearing shall follow the **sixty (60) day** notice provided in paragraph (A) above. Village shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(C) After the public hearing and upon written determination by Village to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

(D) During the appeal period, the Franchise shall remain in full force and effect unless the term thereof sooner expires.

(E) Upon satisfactory correction by Grantee of the violation upon which said notice was given as determined, the initial notice shall become void.

**ARTICLE IX – SALE OR TRANSFER OF FRANCHISE**

**8-9-1        SALE OR TRANSFER OF FRANCHISE.** No sale or transfer of this Franchise shall take place without the written approval of the Village, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of Grantee.

(A)            Said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(B)            Transfers or assignments of the Franchise and/or the system or any rights or privileges granted by the Franchise shall be allowed between Grantee and any parent, affiliate or subsidiary corporation or between entities of which at least **fifty-one percent (51%)** of the beneficial ownership is held by Grantee or any parent corporation shall be permitted without the prior approval of Village.

**8-9-2        TRANSFER PROCEDURE.**

(A)            Grantee shall file a written request for transfer of the Franchise with Village.

(B)            Village shall have **thirty (30) days** from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee’s subscribers resulting from the sale or transfer. Such approval or determination shall be expressed by Board Resolution within **thirty (30) days** of receipt of said request, or the request shall be deemed approved as a matter of law.

(C)            If a public hearing is deemed necessary pursuant to (B) above, such hearing shall be commenced within **thirty (30) days** of such determination and notice of any such hearing shall be given in accordance with local law or **fourteen (14) days** prior to the hearing by publishing notice thereof once in a newspaper of general circulation in Village. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by Village. Said hearing may be continued only with Grantee’s written consent.

(D)            Within **thirty (30) days** after the closing of the public hearing, Village shall approve or deny in writing the sale or transfer request. Village shall set forth in writing with particularity its reason(s) for denying approval. Village shall not unreasonably withhold its approval.

**ARTICLE X – PROTECTION OF INDIVIDUAL RIGHTS**

**8-10-1**      **SUBSCRIBER POLICY.**    Grantee shall comply with the terms of 47 U.S.C. § 551 relating to the protection of subscriber privacy.

**ARTICLE XI – UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

**8-11-1 UNAUTHORIZED CONNECTIONS OR MODIFICATIONS PROHIBITED.** It shall be unlawful for any firm, person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the system.

**8-11-2 REMOVAL OR DESTRUCTION PROHIBITED.** It shall be unlawful for any firm, person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the system for any purpose whatsoever.

**8-11-3 PENALTY.** Any firm, person, group, company, corporation or government body or agency found guilty of violating this Section may be fined not less than **Twenty Dollars (\$20.00)** and the costs of the action nor more than **Five Hundred Dollars (\$500.00)** and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence. **(See Section 1-1-20 for penalties also.)**

**ARTICLE XII – MISCELLANEOUS PROVISIONS**

**8-12-1**      **FRANCHISE RENEWAL.** Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

**8-12-2**      **AMENDMENT OF FRANCHISE ORDINANCE.** Grantee and Village may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if Village and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. Village shall act pursuant to local law pertaining to the ordinance amendment process.

**8-12-3**      **PERIODIC REVIEW.** The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advanced and modern system, the following evaluation provisions shall apply:

(A)            Upon **thirty (30) days** prior written notice to Grantee, Village may require an evaluation session. Evaluation sessions may be required no more than once per year beginning **one (1) year** from the effective date of this Franchise.

(B)            A representative of Grantee shall attend all evaluation sessions. All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice.

(C)            Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, system performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics Village and Grantee deem relevant.

(D)            As a result of the evaluation session, Village and Grantee may develop such changes and modifications to the terms and conditions of the Franchise as are mutually agreed upon and which are both economically and technically feasible.

**8-12-4**      **APPLICABLE LAW.** This Franchise is governed by the laws of the State of Illinois and of the United States.



**ARTICLE XIII – PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

**8-13-1**      **PUBLICATION; EFFECTIVE DATE.** This Franchise shall be published in accordance with applicable Illinois law. The effective date of this Franchise shall be date of acceptance by Grantee.

**8-13-2**      **ACCEPTANCE.**

(A)            Grantee shall accept this Franchise within **sixty (60) days** of its enactment by the Village Board, unless the time for acceptance is extended by Village. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

(B)            Grantee shall accept this Franchise in the following manner:

- (1)            This Franchise will be properly executed and acknowledged by Grantee and delivered to Village.
- (2)            With its acceptance, Grantee shall also deliver the insurance certificate required herein that has not previously been delivered.

**(Ord. No. 99-03; 05-19-99)**

**ARTICLE XIV – CABLE TELEVISION SERVICE PROVIDER FEE**

**8-14-1**      **ADOPTION.** Pursuant to Section 21-801 of the Cable and Video Competition Law of 2007, **220 ILCS 5/21-100**, the Village hereby adopts a cable service or video service fee in the amount of **five percent (5%)** of “gross revenues,” as that term is defined in Section 21-801(d) of the Cable and Video Competition Law of 2007, **220 ILCS 5/21-801(d)**, as it presently exists or is hereafter amended. The payment of the service provider fee shall be due on a quarterly basis, **forty-five (45) days** after the close of each calendar quarter. The fee shall take effect with respect to a holder of a State-issued authorization to provide cable service, on the first day of the calendar month that is at least **thirty (30) days** after the holder receives a copy of this Article.

**8-14-2**      **EXEMPTION.** Nothing in this Chapter shall be construed as exempting a holder of a State-issued authorization to provide cable service from any tax that is or may later be imposed by Village, or from amounts due through the date of this Article under the prior **Chapter 8** of this Code or from any franchise agreement, or from any tax that is or may later be required to be paid by or through the holder.

**8-14-3**      **AUTHORIZATION.** The Clerk shall mail a certified copy of this Article to Mediacom Illinois, LLC, the only entity known by the Village to hold a State-issued authorization to provide cable service within the Village, by first class mail and by certified mail at the following address:

Mediacom, Illinois, LLC  
3900 26<sup>th</sup> Avenue  
Moline, IL 61625

With a copy to:

Craig Gilly  
Edwards Wildman Palmer LLP  
1255 23<sup>rd</sup> Street, NW  
Eighth Floor  
Washington, DC 20027.

**(Ord. No. 14-12; 11-19-14)**

**ARTICLE XV – SMALL WIRELESS FACILITIES**

**8-15-1**        **DEFINITIONS.** For the purposes of this Article, the following terms shall have the following meanings:

**Alternative Antenna Structure:** An existing pole or other structure within the public right-of-way that can be used to support an antenna and is not a utility pole or a Village-owned infrastructure.

**Antenna:** Communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

**Applicant:** Any person or entity submitting an application to install personal wireless telecommunication facilities or structures to support the facilities within a public right-of-way.

**City-Owned Infrastructure:** Infrastructure in public right-of-way within the boundaries of the Village, including, but not limited to, streetlights, traffic signals, towers, structures, or buildings owned, operated or maintained by the Village.

**Distributed Antenna System (DAS):** A type of personal wireless telecommunication facility consisting of a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area. Generally serves multiple carriers.

**Landscape Screening:** The installation at grade of plantings, shrubbery, bushes or other foliage intended to screen the base of a personal wireless telecommunication facility from public view.

**Monopole:** A structure composed of a single spire, pole or tower designed and used to support antennas or related equipment and that is not a utility pole, an alternative antenna structure, or a Village-owned infrastructure.

**Personal Wireless Telecommunication Antenna:** An antenna that is part of a personal wireless telecommunication facility.

**Personal Wireless Telecommunication Equipment:** Equipment, exclusive of an antenna, that is part of a personal wireless telecommunications facility.

**Personal Wireless Telecommunications Facility:** An antenna, equipment, and related improvements used, or designed to be used, to provide wireless transmission of voice, data video streams, images, or other information including, but not limited to, cellular phone service, personal communication service, paging, and Wi-Fi antenna service.

**Small Cell Facilities:** A Personal Wireless Telecommunications Facility consisting of an antenna and related equipment either installed singly or as part of a network to provide coverage or enhance capacity in a limited defined area. Generally single-service provider installation.

**Tower:** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers, and that is not a utility pole, an alternative antenna structure, or a Village-owned infrastructure.

Except as otherwise provided for by this Article, the requirements for a tower and associated antenna facilities shall be those required in this Article.

**Utility Pole:** An upright pole designed and used to support electric cables, telephone cables, telecommunication cables, cable service cables, which are used to provide lighting, traffic control, signage, or a similar function.

**Variance or Variation:** A grant of relief by the Village President or his/her designee.

**Wi-Fi Antenna:** An antenna used to support Wi-Fi broadband Internet access service based on the IEEE 802.11 standard that typically uses unlicensed spectrum to enable communication between devices.

**8-15-2**        **STANDARDS AND REGULATIONS.** Personal wireless telecommunication facilities will be permitted to be placed in right-of-way within the jurisdiction of the Village as attachments to existing utility poles, alternative antenna structures, or Village-owned infrastructure subject to the following regulations:

(A)            **Number Limitation and Co-Location.** The Village President or his/her designee may regulate the number of personal wireless telecommunications facilities allowed on each

utility pole or unit of Village-owned infrastructure. No more than **two (2)** personal wireless telecommunications facilities will be permitted on utility poles or Alternative Antenna Structure of **ninety (90) feet** or less. No more than **three (3)** personal wireless telecommunications facilities will be permitted on utility poles or Alternative Antenna Structures in excess of **ninety (90) feet** and less than **one hundred twenty (120) feet**. This Article does not preclude or prohibit co-location of personal wireless telecommunication facilities on towers or monopoles that meet the requirements as set forth elsewhere in this Section or as required by federal law.

(B) **Separation and Clearance Requirements.** Personal wireless telecommunication facilities may be attached to a utility pole, alternative antenna structure, monopole, or Village-owned infrastructure only where such pole, structure or infrastructure is located no closer than a distance equal to **one hundred percent (100%)** of the height of such facility to any residential building and no closer than **three hundred (300) feet** from any other personal wireless telecommunication facility. A separation or lesser clearance may be allowed by the Village President or his/her designee as an administrative variance to this Article when the Applicant establishes that the lesser separation or clearance is necessary to close a significant coverage or capacity gap in the Applicant's services or to otherwise provide adequate services to customers, and the proposed antenna or facility is the least intrusive means to do so within the right-of-way.

(C) **Village-Owned Infrastructure.** Personal wireless telecommunication facilities can only be mounted to Village-owned infrastructure including, but not limited to, streetlights, traffic signal, towers or buildings, if authorized by a license or other agreement between the owner and the Village.

(D) **No Towers.** No new monopole or other tower to support personal wireless telecommunication facilities in excess of **sixty (60) feet** is permitted to be installed on right-of-way within the jurisdiction of the Village unless the Village Board finds, based on clear and convincing evidence provided by the applicant, that locating the personal wireless telecommunications facilities on the right-of-way is necessary to close a significant coverage or capacity gap in the Applicant's services or to otherwise provide adequate services to customers, and the proposed new monopole or other tower within the right-of-way is the least intrusive means to do so.

(E) **Attachment Limitations.** No personal wireless telecommunication antenna or facility within the right-of-way will be attached to a utility pole, alternative antenna structure, tower, or Village-owned infrastructure unless all of the following conditions are satisfied:

- (1) **Surface Area of Antenna.** The personal wireless telecommunication antenna, including antenna panels, whip antennas or dish-shaped antennas, cannot have a surface area of more than **seven (7) cubic feet** in volume.
- (2) **Size of Above-Ground Personal Wireless Telecommunication Facility.** The total combined volume of all above-ground equipment and appurtenances comprising a personal wireless telecommunication facility, exclusive of the antenna itself, cannot exceed **thirty-two (32) cubic feet**.
- (3) **Personal Wireless Telecommunication Equipment.** The operator of a personal wireless telecommunication facility must, whenever possible, locate the base of the equipment or appurtenances at a height of no lower than **eight (8) feet** above grade.
- (4) **Personal Wireless Telecommunication Services Equipment Mounted at Grade.** In the event that the operator of a personal wireless telecommunication facility proposes to install a facility where equipment or appurtenances are to be installed at grade, screening must be installed to minimize the visibility of the facility. Screening must be installed at least **three (3) feet** from the equipment installed at-grade and **eight (8) feet** from a roadway.
- (5) **Height.** The top of the highest point of the antenna cannot extend more than **seven (7) feet** above the highest point of the utility pole, alternative antenna support structure, tower or Village-owned

infrastructure. If necessary, the replacement or new utility pole, alternative support structure or Village-owned infrastructure located within the public right-of-way may be no more than **ten (10) to seventy (70) feet** higher than existing poles adjacent to the replacement or new pole or structure, or no more than **ninety (90) feet** in height overall, whichever is less.

- (6) **Color.** A personal wireless telecommunication facility, including all related equipment and appurtenances, must be a color that blends with the surroundings of the pole, structure tower or infrastructure on which it is mounted and use non-reflective materials which blend with the materials and colors of the surrounding area and structures. Any wiring must be covered with an appropriate cover.
- (7) **Antenna Panel Covering.** A personal wireless telecommunication antenna may include a radome, cap or other antenna panel covering or shield, to the extent such covering would not result in a larger or more noticeable facility and, if proposed, such covering must be of a color that blends with the color of the pole, structure, tower or infrastructure on which it is mounted.
- (8) **Wiring and Cabling.** Wires and cables connecting the antenna to the remainder of the facility must be installed in accordance with the electrical code currently in effect. No wiring and cabling serving the facility will be allowed to interfere with any wiring or cabling installed by a cable television or video service operator, electric utility or telephone utility.
- (9) **Grounding.** The personal wireless telecommunication facility must be grounded in accordance with the requirements of the electrical code currently in effect in the Village.
- (10) **Guy Wires.** No guy or other support wires will be used in connection with a personal wireless telecommunication facility unless the facility is to be attached to an existing utility pole, alternative antenna support structure, tower or Village-owned infrastructure that incorporated guy wires prior to the date that an applicant has applied for a permit.
- (11) **Pole Extensions.** Extensions to utility poles, alternative support structures, towers and Village-owned infrastructure utilized for the purpose of connecting a personal wireless telecommunications antenna and its related personal wireless telecommunications equipment must have a degree of strength capable of supporting the antenna and any related appurtenances and cabling and capable of withstanding wind forces and ice loads in accordance with the applicable structural integrity standards as set forth in (12) below. An extension must be securely bound to the utility pole, alternative antenna structure, tower or Village-owned infrastructure in accordance with applicable engineering standards for the design and attachment of such extensions.
- (12) **Structural Integrity.** The personal wireless telecommunication facility, including the antenna, pole extension and all related equipment must be designed to withstand a wind force and ice loads in accordance with applicable standards established in Chapter 25 of the National Electric Safety Code for utility poles, Rule 250-B and 250-C standards governing wind, ice, and loading forces on utility poles, in the American National Standards Institute (ANSI) in TIA/EIA Section 222-G established by the Telecommunications Industry Association (TIA) and the Electronics Industry Association (EIA) for steel wireless support structures and the applicable industry standard for other existing structures. For any facility attached to Village-owned infrastructure or, in the discretion of the

Village, for a utility pole, tower, or alternative antenna structure, the operator of the facility must provide the Village with a structural evaluation of each specific location containing a recommendation that the proposed installation passes the standards described above. The evaluation must be prepared by a professional structural engineer licensed in the State of Illinois. This paragraph shall not serve to adopt the codes referenced herein in their entirety.

(F) **Signage.** Other than signs required by federal law or regulations or identification and location markings, installation of signs on a personal wireless telecommunication facility is prohibited.

(G) **Screening.** If screening is required under Section (C)(4) above, it must be natural landscaping material or a fence subject to the approval of the Village and must comply with all regulations of the Village. Appropriate landscaping must be located and maintained and must provide the maximum achievable screening, as determined by the Village, from view of adjoining properties and public or private streets. Notwithstanding the foregoing, no such screening is required to extend more than **nine (9) feet** in height. Landscape screening when permitted in the right-of-way must be provided with a clearance of **three (3) feet** in all directions from the facility. The color of housing for ground-mounted equipment must blend with the surroundings. For a covered structure, the maximum reasonably achievable screening must be provided between such facility and the view from adjoining properties and public or private streets. In lieu of the operator installing the screening, the Village, at its sole discretion, may accept a fee from the operator of the facility for the acquisition, installation, or maintenance of landscaping material by the Village.

(H) **Permission to Use Utility Pole or Alternative Antenna Structure.** The operator of a personal wireless telecommunications facility must submit to the Village written copies of the approval from the owner of a utility pole, monopole, or an alternative antenna structure, to mount the personal wireless telecommunication facility on that specific pole, tower, or structure, prior to issuance of the Village permit.

(I) **Licenses and Permits.** The operator of a personal wireless telecommunication facility must verify to the Village that it has received all concurrent licenses and permits required by other agencies and governments with jurisdiction over the design, construction, location and operation of said facility have been obtained and will be maintained within the corporate limits of the Village.

(J) **Variance Requirements.** Each location of a personal wireless telecommunication facility within a right-of-way must meet all of the requirements of this Article, unless a variance has been obtained from the Village.

(K) **Abandonment and Removal.** Any personal wireless telecommunication facility located within the corporate limits of the Village that is not operated for a continuous period of **twelve (12) months**, shall be considered abandoned and the owner of the facility must remove same within **ninety (90) days** of receipt of written notice from the Village notifying the owner of such abandonment. Such notice shall be sent by certified or registered mail, return-receipt-requested, by the Village to such owner at the last known address of such owner. In the case of personal wireless telecommunication facilities attached to Village owned infrastructure, if such facility is not removed within **ninety (90) days** of such notice, the Village may remove or cause the removal of such facility through the terms of the applicable license agreement or through whatever actions are provided by law for removal and cost recovery.

(L) **Permits and Application Fees and Procedures.** Permits for placement of personal wireless telecommunication facilities in right-of-way within the Village are required. Except as otherwise provided for by in this Article, the procedures for the application for, approval of, and revocation of such a permit must be in compliance with Village permit application requirements. Any applications must demonstrate compliance with the requirements of this Section. Unless otherwise provided by franchise, license, or similar agreement, or federal, State or local law, all applications for permits pursuant to this Section must be accompanied by a fee in the amount of no less than **Five Hundred Dollars (\$500.00)** for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure; **Three Hundred Dollars (\$300.00)** for each small wireless facility addressed in an application to collocate more than one small wireless facility on existing utility

poles or wireless support structures; or **One Thousand Dollars (\$1,000.00)** for each small wireless facility addressed in an application that includes the installation of a new utility for such collocation. The application fee will reimburse the Village for regulatory and administrative costs with respect to the work being performed.

(M) **Conflict of Laws.** Where the conditions imposed by any provisions of this Article regarding the siting and installation of personal wireless telecommunication facilities are more restrictive than comparable conditions imposed elsewhere in any other local law, ordinance, resolution, rule or regulation, the regulations of this Article will govern.

**(Ord. No. 18-18; 07-18-18)**