

CHAPTER 8

CABLE TELEVISION

ARTICLE I – SMALL WIRELESS FACILITIES

8-1-1 **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 Village's jurisdiction, or outside the rights-of-way on property zoned by the Village 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.

8-1-2 **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 Village 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 Village 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 Village in public rights-of-way.

Permit: A written authorization required by the Village 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 Village-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 Village.

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.

8-1-3 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 8-1-3(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 Village 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 Village, together with the Village'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 Village, 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 Village 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 Village 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 Village 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 Village. The receipt of the deemed approved notice shall not preclude the Village'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 Village 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 Village 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 Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Article.

- (d) The Village shall deny an application which does not meet the requirements of this Article.

If the Village 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 Village 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 Village denies an application.

The applicant may cure the deficiencies identified by the Village 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 Village 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 Village's review period.

The applicant must notify the Village 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 Village and the applicant shall enter into a Master Pole Attachment Agreement, provided by the Village 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 Village 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 Village shall determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. An application shall be deemed complete if the Village fails to provide notification to the applicant within **thirty (30) days** after all documents, information and fees specifically enumerated in the Village’s permit application form are submitted by the applicant to the Village. Processing deadlines are tolled from the time the Village 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 Village; 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 Village 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 Village 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 Village 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 Village makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable Village 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 Village 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 Village by personal delivery at the Village’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 Village may reserve space on municipal utility poles for future public safety uses, for the Village's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the Village 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 Village 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 Village 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 Village 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 Village ordinance, written policy adopted by the Village, 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 Village 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 Village, 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 Village, 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 Village, provided the Village may designate which intersecting right-of-way within **three hundred (300) feet** of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
 - (b) **forty-five (45) feet** above ground level.
- (9) **Height Exceptions or Variances.** If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a variance in conformance with procedures, terms and conditions set forth in **Chapter 40 Article X Division III – Variance**, of the Revised Code of Ordinances.
- (10) **Contractual Design Requirements.** The wireless provider shall comply with requirements that are imposed by a contract between the Village 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 Village 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 Village 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 Village 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 Village at least **ten (10) days** prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with (d) under the Section titled Application Requirements; or
 - (c) the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are string between existing utility poles in compliance with applicable safety codes.
- (5) Wireless providers shall secure a permit from the Village 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 Village 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 Village 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 Village utility poles, that are in effect on **June 1, 2018**, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village 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 village on the effective date of the Act may accept the rates, fees and terms that the Village 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 Village 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 Village's utility poles pursuant to applications submitted to the Village 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 Village an annual recurring rate to collocate a small wireless facility on a Village 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 Village utility pole.

If the Village 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 Village notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the Village 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 Village 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 Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

8-1-4 **DISPUTE RESOLUTION.** The Circuit Court of Sangamon County, Illinois shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the Village 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.

8-1-5 **INDEMNIFICATION.** A wireless provider shall indemnify and hold the Village 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 Village 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 Village or its employees or agents. A wireless provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

8-1-6 **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 Village

improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of Village improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Village 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 Village. 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 Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the Village.

8-1-7 **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. 2018-6)

ARTICLE II – FRANCHISE AGREEMENT

8-2-1 **DEFINITION OF TERMS.** For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

"Cable Act" or "Act" means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

"Cable Operator" means any Person or group of Persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System; or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

"Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service.

"Cable System" or "System" has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

"Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

"Customer" or "Subscriber" means a Person who lawfully receives and pays for Cable Service with the Grantee's express permission.

"FCC" means the Federal Communications Commission or successor governmental entity thereto.

"Franchise" means the initial authorization, or renewal thereof, issued by the Village, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction or operation of the Cable System.

"Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

"Franchise Area" means the present legal boundaries of the Village as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

"Grantee" shall mean Comcast of Illinois/Indiana/Ohio, LLC.

"Gross Revenue" means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly Basic Cable Service, cable programming service regardless of Service Tier, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources from Cable Service delivered over the Cable System as may now exist or hereafter develop, provided that such revenues, fees, receipts, or charges may be lawfully included in the gross revenue base for purposes of computing the Village's permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, third party advertising sales commissions

and agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include amounts collected from Subscribers for Franchise Fees pursuant to *Village of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the "Pasadena Decision," *Village of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

"Initial Franchise Service Area" means that portion of the Franchise Area served by the Grantee's Cable System as of the Effective Date of this Franchise Agreement.

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Village.

"Public Way" shall mean the surface of, and the space above and below, any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including, but not limited to, public utility easements and other easements dedicated for compatible uses, now or hereafter held by the Village in the Franchise Area, to the extent that the Village has the right and authority to authorize, regulate, or permit the location of facilities other than those of the Village. Public Way shall not include any real or personal Village property that is not specifically described in this definition and shall not include Village buildings, fixtures, and other structures and improvements, regardless of whether they are situated in the Public Way.

"Standard Installation" means those installations to Subscribers that are located up to **one hundred twenty-five (125) feet** from the existing distribution system (Cable System).

"Village" means the Village of Illiopolis, Illinois or the lawful successor, transferee, designee, or assignee thereof.

"Video Programming" or "Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

8-2-2 GRANT OF AUTHORITY.

(A) Pursuant to Section 621(a) of the Cable Act, 47 U.S.C. § 541(a), and **65 ILCS 5/11-42-11(a)** of the Illinois Municipal Code, and Ordinance No. 2025-05 approving and authorizing the execution of this Agreement, the Village hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenance to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

(B) **Term of Franchise.** The term of the Franchise granted hereunder shall be **ten (10) years** from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law. From and after the Effective Date of this Franchise Agreement, the Parties acknowledge that this Franchise Agreement is intended to be the sole and exclusive Franchise Agreement between the Parties pertaining to the Grantee's Franchise for the provision of Cable Service.

(C) **Renewal.** Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, and any applicable State law which may exist at the time of renewal, and which is not superseded by the Cable Act.

(D) **Police Powers.** Nothing in this Franchise Agreement shall be construed as an abrogation by the Village of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the Village pursuant to such police power.

(E) **Reservation of Authority.** Nothing in this Franchise Agreement shall (1) abrogate the right of the Village to perform any public works or public improvements of any description,

(2) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Village, or (3) be construed as a waiver or release of the rights of the Village in and to the Public Ways.

(F)

Competitive Equity.

- (1) In the event the Village grants an additional Franchise to use and occupy any Public Way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, **65 ILCS 5/11-42-11.**
- (2) In the event an application for a new cable television franchise or other similar authorization is filed with the Village proposing to serve the Franchise Area, in whole or in part, the Village shall to the extent permitted by law promptly notify the Grantee, or require the Grantee to be notified, and include a copy of such application.
- (3) Provided that appropriate vehicle safety markings have been deployed, Grantee's vehicles shall be exempt from parking restrictions of the Village while used in the course of installation, repair and maintenance work on the Cable System.

8-2-3

CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM.

Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of the Revised Code of Ordinances of Illiopolis, Illinois as may be amended from time to time.

(A)

Aerial and Underground Construction.

At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aurally or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

(B)

Undergrounding and Beautification Projects.

- (1) In the event the Village requires users of the Public Way who operate aerial facilities to relocate such aerial facilities underground, Grantee shall participate in the planning for relocation of its aerial facilities, if any, contemporaneously with such users. Grantee shall be reimbursed its relocation costs from public or private funds allocated for the project to the same extent as such funds are made available to other users of the Public Way, if any, provided that any utility's exercise of authority granted under its tariff to charge consumers for the said utility's cost of the project that are not reimbursed by the Village shall not be considered to be public or private funds.
- (2) The Grantee shall not be required to relocate its facilities unless it has been afforded at least **forty-five (45) days'** notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate the facilities. Grantor and Grantee will work together for a mutually acceptable start date and payment schedule. In instances where a third party is seeking the relocation of the Grantee's facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

8-2-4 SERVICE OBLIGATIONS.

(A) **Initial Service Obligations.** As of the Effective date of this Agreement, Grantee’s Cable System has been designed to provide, and is capable of providing, Cable Service to residential Customers throughout the Initial Franchise Service Area. The Grantee shall continue to make Cable Service available in the Initial Service Area throughout the term of this Agreement and Grantee shall extend its Cable System and provide service consistent with the provisions of this Franchise Agreement.

(B) **General Service Obligation.** The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where the minimum density is at least **thirty (30) dwelling units** per linear Cable System network mile as measured from the existing Cable System’s technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within **one hundred twenty-five (125) feet** of the Grantee’s distribution cable (e.g., a Standard Installation).

(1) The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

(C) **Programming.** The Grantee agrees to provide cable programming services in the following broad categories:

Children	General Entertainment	Family Oriented
Ethnic/Minority	Sports	Weather
Educational	Arts, Culture and Performing Arts	News & Information

Pursuant and subject to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of the Grantee.

(D) **Technical Standards.** The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, as amended from time to time. The Grantee shall cooperate with the Village in conducting inspections related to these standards upon reasonable prior written request from the Village based on a significant number of Subscriber complaints.

(E) **Annexations and New/Planned Developments.** In cases of annexation the Village shall provide the Grantee written notice of such annexation. In cases of new construction, planned developments or property developments where undergrounding or extension of the Cable System is required, the Village shall provide or cause the developer or property owner to provide notice of the same. Such notice shall be provided at the time of notice to all utilities or other like occupants of the Village’s Public Way. If advance notice of such annexation, new construction, planned development or property development is not provided, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise Agreement.

(F) **Service to School Buildings and Governmental Facilities.**

(1) The Village may request that Grantee provide Cable Service and the corresponding equipment to the location(s) specified in Attachment A and shall specify the requested level of services and number of outlets for each location. Upon written notice to Grantee, the Village may unilaterally amend Attachment A to add or remove locations provided any additional locations are “eligible” under **220 ILCS 5/22 501(f)**. The Village shall notify Grantee in writing whether it wishes to be invoiced at standard rates as disclosed by Grantee for these services and equipment or to have the charges deducted from the franchise fee payment due pursuant to this franchise. Eligible buildings shall not include buildings leased to non-governmental third parties or buildings

such as storage facilities at which government employees are not regularly stationed.

- (2) **Long Drops.** The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of a Standard Installation. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds a Standard Installation.

(G) **Emergency Alerts.** At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an "Emergency Alert System" ("EAS") consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the "State of Illinois Emergency Alert System State Plan" – as may be amended from time to time. The Village must become qualified and authorized to activate the EAS, through the authorized State EAS plan. The Village agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the Village, its employees or agents in using such system.

8-2-5 OVERSIGHT AND REGULATION BY VILLAGE.

(A) **Franchise Fees.** The Grantee shall pay to the Village a Franchise Fee in an amount equal to **five percent (5%)** of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due **forty-five (45) days** after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee payments, Grantee shall make such payments including interest at the prime lending rate as quoted by JP Morgan Chase & Company or its successor, computed from time due until paid. Any undisputed overpayments made by the Grantee to the Village shall be credited upon discovery of such overpayment until such time when the full value of such credit has been applied to the Franchise Fee liability otherwise accruing under this Section.

- (1) The Parties acknowledge that, at present, the Cable Act limits the Village to collection of a maximum permissible Franchise Fee of **five percent (5%)** of Gross Revenues. In the event that a change in the Cable Act would allow the Village to increase the Franchise Fee above **five percent (5%)**, and the Village actually proposes to increase the Franchise Fee in exercise of such authority, the Village may amend the Franchise Fee percentage. Following the determination to increase the Franchise Fee and enactment of an ordinance enabling the same, the Village shall notify the Grantee of its intent to collect the increase Franchise Fee, and Grantee shall have a reasonable time (not to be less than **ninety (90) days** from receipt of notice from the Village) to effectuate any changes necessary to begin the collection of such increased Franchise Fee. In the event that the Village increases said Franchise Fee, the Grantee shall notify its Subscribers of the Village's decision to increase said fee prior to the implementation of the collection of said fee from Subscribers as required by law.
- (2) In the event a change in state or federal law requires the Village to reduce the franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: (a) the maximum permissible franchise fee percentage; or (b) the lowest franchise fee percentage paid by any other Cable

Operator granted a Cable Franchise by the Village pursuant to the Cable Act, and Section 11-42-11 of the Illinois Municipal Code; provided that: (i) such amendment is in compliance with the change in state or federal law; (ii) the Village approves the amendment by ordinance; and (iii) the Village notifies Grantee at least **ninety (90) days** prior to the effective date of such an amendment.

- (3) **Taxes Not Included.** The Grantee acknowledges and agrees that the term "Franchise Fee" does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

(B) **Franchise Fees Subject to Audit.** The Village and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at **65 ILCS 5/11-42-11.05** (Municipal Franchise Fee Review; Requests for Information). Any audit shall be conducted in accordance with generally applicable auditing standards.

In accordance with **65 ILCS 5/11-42-11.05(k)**, the Village shall provide on an annual basis, a complete list of addresses within the corporate limits of the Village. If an address is not included in the list or if no list is provided, the Grantee shall be held harmless for any franchise fee underpayments (including penalty and interest) from such errors.

(C) **Proprietary Information.** Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, with the exception of the information directly related to an audit of Franchise Fees as set forth in **Section 8-2-5(C)**. The Village agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Village that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Village has in its possession and receives a request under the Illinois Freedom of Information Act (**5 ILCS 140/1 et seq.**), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Village shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the Village from and against any claims arising from the Village's opposition to disclosure of any information Grantee designates as proprietary or confidential. Compliance by the Village with an opinion or directive from the Illinois Public Access Counselor or the Illinois Attorney General under the Illinois Freedom of Information act, **5 ILCS 140/1 et seq.**, or with a decision or order of a court with jurisdiction over the Village, shall not be a violation of this Section.

8-2-6 TRANSFER OF CABLE SYSTEM OR FRANCHISE OR CONTROL OF GRANTEE.

(A) Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed.

(B) No transfer of control of the Grantee, defined as an acquisition of **fifty-one percent (51%)** or greater ownership interest in Grantee, shall take place without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed.

(C) No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the

Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

(D) The Grantee, and any proposed transferee under this Section, shall submit a written application to the Village containing or accompanied by such information as is required in accordance with applicable law and FCC regulations, specifically including a completed Form 394 or its successor, and in compliance with the process established for transfers under FCC rules and regulations, including Section 617 of the Cable Act, 47 U.S.C. § 537. Within **thirty (30) days** after receiving a request for consent, the Village shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Village has not taken final action on the Grantee's request for consent within **one hundred twenty (120) days** after receiving such request, consent shall be deemed granted. As a condition to granting of any consent, the Village may require the transferee to agree in writing to assume the obligations of the Grantee under this Franchise Agreement.

(E) Any transfer of control resulting from or after the appointment of a receiver or receivers or trustee or trustees, however denominated, designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of a **one hundred twenty (120) day** period, shall be treated as a transfer of control pursuant to 47 U.S.C. § 537 and require the Village's consent thereto in the manner described in **Section 8-2-6** above.

8-2-7 INSURANCE AND INDEMNITY.

(A) **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Village certificates of insurance designating the Village and its officers, boards, commissions, councils, elected officials, agents, and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of **One Million Dollars (\$1,000,000.00)** for bodily injury or death to any one person, and **One Million Dollars (\$1,000,000.00)** for bodily injury or death of any two or more persons resulting from one occurrence, and **One Million Dollars (\$1,000,000.00)** for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon **thirty (30) days** prior written notice to the Village. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Village from any workers' compensation claims to which the Grantee may become subject during the term of this Franchise Agreement. The limits of said policies shall not limit or otherwise alter the liability of Grantee hereunder.

(B) **Indemnification.** The Grantee shall indemnify, defend and hold harmless the Village, its officers, employees, and agents (the "Indemnitees") from and against any injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense (the "Indemnification Events"), arising in the course of the Grantee constructing and operating its Cable System within the Village. The Grantee's obligation with respect to the Indemnitees shall apply to Indemnification Events which may occur during the term of this Agreement or after the termination or expiration of this Agreement, provided that the claim or action is initiated within the applicable statute of limitations, notwithstanding that the claim may be made or action filed subsequent to the termination or expiration of this Agreement. The Village shall give the Grantee timely written notice of its obligation to indemnify and defend the Village after the Village's receipt of a claim or action pursuant to this Section. For purposes of this Section, the word "timely" shall mean within a time period that does not cause prejudice to the respective positions of the Grantee and/or the Village. If the Village elects in its own discretion to employ additional counsel, the costs for such additional counsel for the Village shall be the responsibility of the Village.

- (1) The Grantee shall not indemnify the Village for any liabilities, damages, costs or expense resulting from any conduct for which the Village, its officers, employees and agents may be liable under the laws of the State of Illinois.

- (2) Nothing herein shall be construed to limit the Grantee's duty to indemnify the Village by reference to the limits of insurance coverage described in this Agreement.

8-2-8 **ENFORCEMENT OF FRANCHISE.**

(A) **Notice of Violation or Default.** In the event the Village believes that the Grantee has not complied with a material term of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

(B) **Grantee's Right to Cure or Respond.** The Grantee shall have **thirty (30) days** from the receipt of the Village's written notice: (1) to respond to the Village, contesting the assertion of noncompliance or default; or (2) to cure such default; or (3) in the event that, by nature of the default, such default cannot be cured within the **thirty (30) day** period, initiate reasonable steps to remedy such default and notify the Village of the steps being taken and the projected date that the cure will be completed.

(C) **Enforcement.** Subject to applicable federal and state law, and following notice and an opportunity to cure and respond pursuant to the provisions of paragraph (B) above, in the event the Village determines that the Grantee is in default of any material provision of the Franchise, the Village may:

- (1) seek specific performance of any provision that reasonably lends itself to such remedy or seek other relief available at law, including declaratory or injunctive relief; or
- (2) in the case of a substantial or frequent default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:
 - (a) The Village shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have **sixty (60) days** from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Village has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy or in the event that the Grantee has not taken action to cure the default, it may then seek termination of the Franchise at a public hearing. The Village shall cause to be served upon the Grantee, at least **ten (10) days** prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.
 - (b) At the designated hearing, the Village shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which the Village shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record. A copy of the transcript shall be made available to the Grantee at its sole expense. The decision of the Village shall be in writing and shall be delivered to the Grantee in a manner authorized by paragraph (B). The Grantee may appeal such determination to any court with jurisdiction within **thirty (30) days** after receipt of the Village's decision.

(D) **Remedies Not Exclusive.** In addition to the remedies set forth in this Section, the Grantee acknowledges the Village's ability to enforce the requirements and standards, and the penalties for noncompliance with such standards, consistent with the Illinois Cable and Video Customer Protection Law. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to permit

the Village to exercise such rights and remedies in a manner that permits duplicative recovery from, or payments by, the Grantee. Such remedies may be exercised from time to time and as often and in such order as may be deemed expedient by the Village.

8-2-9 MISCELLANEOUS PROVISIONS.

(A) **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee’s ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee’s cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. Noncompliance or default shall be corrected within a reasonable amount of time after force majeure has ceased.

(B) **Notice.** Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties’ rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Village:
 Village of Illiopolis
 302 5th Street
 PO Box 299
 Illiopolis, IL 62539
 ATTN:

To the Grantee:
 Comcast
 1475 E Woodfield
 Schaumburg, IL 60173
 ATTN: Director of Government Affairs

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

(C) **Entire Agreement.** This Franchise Agreement embodies the entire understanding and agreement of the Village and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and communications, whether written or oral. Except for ordinances adopted pursuant to this Agreement, all ordinances or parts of ordinances related to the provision of Cable Service that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

- (1) The Village may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

(D) **Severability.** If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. If any material provision of this Agreement is made or found to be unenforceable by such a binding and final decision, either party may notify the other in writing that the Franchise has been materially altered by the change

and/or of the election to begin negotiations to amend the Franchise in a manner consistent with said proceeding or enactment; provided, however, that any such negotiated modification shall be competitively neutral, and the parties shall be given sufficient time to implement any changes necessitated by the agreed-upon modification.

(E) **Governing Law.** This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

(F) **Venue.** Except as to any matter within the jurisdiction of the federal courts or the FCC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in the Circuit Court of the State of Illinois, Sangamon County, Illinois. Any matter brought pursuant to the jurisdiction of the federal court shall be brought in the United States District Court of the Central District of Illinois.

(G) **Modification.** Except as provided in **Section 8-2-5(A)(1) and (2)**, no provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Village and the Grantee, which amendment shall be authorized on behalf of the Village through the adoption of an appropriate ordinance or resolution by the Village, as required by applicable law.

(H) **No Third-Party Beneficiaries.** Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

(I) **No Waiver of Rights.** Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

(J) **Validity of Franchise Agreement.** The parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Franchise Agreement, in their entirety, and that the Parties have the power and authority to enter into the provisions, terms, and conditions of this Agreement.

(K) **Authority to Sign Agreement.** Grantee warrants to the Village that it is authorized to execute, deliver and perform this Franchise Agreement. This individual signing this Franchise Agreement on behalf of the Grantee warrants to the Village that she/he is authorized to execute this Franchise Agreement in the name of the Grantee.

(Ord. No. 25-05; 09-15-25)