

CHAPTER 8

CABLE TELEVISION

ARTICLE I - GENERALLY

8-1-1 AGREEMENT. The following agreement is hereby included and provided for Cable Television for the Village.

THIS AGREEMENT made and concluded at the Village of Oblong, Illinois, this **1st day of May, 1996**, by and between the Village Board and the Village of Oblong, Illinois hereinafter referred to as "**Village**" and Triax Midwest Associates L.P., a Missouri partnership, hereinafter referred to as "**COMPANY**":

WHEREAS: Village granted a franchise for a cable television system to Cox Cable Robinson, Inc., on **June 6, 1981** for a period of **fifteen (15) years**, which was then assigned to **Triax Midwest Associates L.P.**; and

WHEREAS: said franchise was set to expire on **June 6, 1996**, and Company is desirous of entering into a new non-exclusive franchise for the operation and maintenance of its cable television system in the Village of Oblong, Illinois; and

WHEREAS: the Village of Oblong has received public input and has negotiated with the Company on the proposed franchise and the parties mutually desire to enter into a franchise agreement;

NOW THEREFORE: in consideration of the mutual promises and agreements contained herein, it is agreed by and between the parties as follows:

SECTION 1. The Company is hereby granted the non-exclusive right to erect, maintain, operate and utilize facilities for the operation of Communications Systems as hereinafter defined and additions thereto, in the streets, roads, and rights of way of the Village of Oblong for an initial term of this agreement of **fifteen (15) years** from the effective date hereof. The Company may, with the approval of the Village, renew this franchise for the number of years determined by the Council, by giving written notice to the Village, not less than **three (3) months** prior to the expiration thereof. If the consent of the Village to such renewal is required by applicable federal or state law, such consent shall not be withheld unreasonably, after public notice and hearing. In deciding whether to consent to a renewal, the Village shall consider those factors prescribed by applicable law, and (1) whether the Company has complied substantially with the material terms hereof; (2) the extent and quality of the Company's service; and (3) whether the Company remains financially, legally and technically qualified; Any renewal of the initial term shall be as negotiated by the Village and the Company.

SECTION 2.

(A) The term "**Communications System**", whenever used in this agreement, includes community antenna television and the receipt, transmission, and distribution of voices, sounds, writings, signals, pictures, visions, images, or any type of closed circuit transmission of signal transmission by means of electrical impulses.

(B) Whenever the term "**streets**" is used in this agreement, it shall be deemed to include any duly dedicated streets, highways, lanes, avenues, sidewalks, alleys, bridges, boulevards, or other public places in the Village including all public rights of way and streets' rights of way.

(C) Whenever the term "**in**" is used in this agreement with respect to streets, it shall be deemed to refer to and include the terms in, unde4r, above, along, across, or upon such streets.

SECTION 3. The Company shall, upon agreement with the owners, use existing poles, towers, or other facilities wherever possible, and it shall be the sole responsibility of the Company to negotiate and enter into any and all contract with the owners of such facilities to secure the necessary space thereon or therein for its operation under this franchise. It is the stated intention of the Village that the number of new or additional poles constructed by the Company under the provisions of this franchise be kept to a minimum, and to the extent necessary to carry out this intention, the Company, upon securing such agreement with other holders of public permits and franchises, is hereby granted the right to use existing poles, towers, and other facilities. Except for companies furnishing the same or similar services, the Company shall permit any utility or utilities or holder of public permits or franchises for the use of streets for the erection of pole line facilities, by appropriate contracts or agreements negotiated by the parties, to use any and all facilities constructed or erected in the streets by the Company. All said agreements and installations shall be subject to all existing and future regulatory resolutions of the Village.

SECTION 4.

(A) To the extent that the Company is unable to use particular poles, towers, and other facilities, due to refusal by the owners of such facilities, it may be required to place its own poles, and may receive approval as set forth in Section 3. In the event that existing poles, towers, and other facilities are on private property, the Company agrees to secure easements where required from the property owners. When existing utilities are underground and no poles exist, the Company agrees to install its facilities underground with new lines to be constructed underground.

(B) The Company's poles, wires, and appurtenances shall be located, erected and maintained so as not to endanger the lives of any person, or to interfere with street improvements the Village may deem proper to make, or with facilities of present franchise holders, or to hinder unnecessarily or obstruct the free use of the streets. Removal of poles or equipment, when deemed necessary by the Village Board or their authorized representatives to avoid such interference for relocation of a street

or change in the grade of a street, will be at the Company's expense except as provided in Section 4(C) of this agreement. The Company shall be given not less than **four (4) weeks** advance notice to arrange such removal.

(C) The Company, on the request of any person who has complied with all requirements of the Village, or who has secured a building moving permit if required, will temporarily remove, raise, or lower its wires to permit the moving of the building. The actual expense incurred by Company for such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same. The Company shall have the authority to require the payment of a deposition advance to cover **fifty percent (50%)** of the estimated cost and reasonable assurance, including a bond for payment of the balance. The Company shall be given not less than **four (4) weeks** advance notice to arrange for such removal.

(D) Construction and maintenance of the Communications System shall be in accordance with the resolutions and regulations of the Village affecting said installation. The Company shall restore all property damaged by such construction or maintenance to as reasonably good a condition as existed on such property prior to construction.

(E) All installations of equipment shall be durable and installed in accordance with good engineering practice and of sufficient height as directed by the Village Board and State Law so as not to interfere unduly with the rights of the public and individual property owners.

SECTION 5.

(A) In the maintenance and operation of its Communications System in the streets, and in the course of any new construction or addition to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public and shall not unduly obstruct the streets, impede traffic, or interfere with travel by the public.

(B) The Company shall not make or cause to be made any opening or obstruction in the streets without first securing the approval of the Village Engineering Department.

(C) In case of disturbance by the company of any street, sidewalks, or paved area, the Company shall promptly, at its expense, in a manner reasonably approved by the Village, restore such area to a condition reasonably similar to the condition existing prior to the disturbance.

(D) In the case of fire, earthquake, flood or other similar event, the Village may temporarily remove any of the cable system, without advance warning being given to the Company. The Company shall not be entitled to payment for damage caused thereby.

(E) If the Village alters, changes, or makes any improvements on or about, any street, sidewalk, alley or other public way, the Village shall give the Company reasonable advanced notice to relocate its facilities and equipment, or take such other action as may be reasonably necessary to accommodate the public improvements.

(F) The Company shall temporarily move, reroute or move its equipment and facilities to accommodate public or private works, construction, movement of public or private works, construction, movement of buildings, extra large truckloads, etc., but the Company shall be entitled to reasonable notice prior to such any event and reasonable costs from any party causing such relocation, other than the Village.

(G) Before beginning and construction or installation of equipment or facilities which would materially disrupt the use of public ways, and suitable to the Village's reasonable approval, the Company shall provide the Village with reasonable prior notice of the work to be performed, and the location of and period of time involved in the undertaking. The Village shall have the right to inspect such work.

(H) The Company shall compensate property owners for, or restore, all damages caused by the construction, operation, or maintenance of the cable system. The Company shall be primarily responsible for all such damages, even though it may have been an agreement with a construction company.

(I) Upon request, the Company will provide the Village a diagram showing the location of the cable system, including any and all underground facilities existing and installed.

SECTION 6. The Company agrees to make the cable system available to each property owner or occupant of property within the Village limits. The Company agrees to make service available to annexed areas with a density of **twenty-five (25) homes** per mile within **twelve (12) months** of request. If there is not a density of **twenty-five (25) homes** per mile the company agrees to build the extension, if the potential customers pay for the extension on a cost sharing basis.

SECTION 7. The Company shall: (1) Provide continuous, reliable and good quality television reception and service; (2) Make repairs and maintenance promptly. Service interruptions shall be for the shortest time possible, and shall to the extent practicable, be preceded by a notice to subscribers and occur during periods of minimal viewership; (3) Maintain and test the cable system in compliance with the technical standards of the FCC; In the event of major damage to the cable system, the Company shall make reasonable efforts to supply alternative means of providing service to as many subscribers as possible, while making repairs.

SECTION 8.

(A) The Company shall indemnify, protect, and save harmless the Village and its agents and employees from any and all loss or damage arising out of, or claims for, injury or death to any person or persons or damage to any property incurred by or asserted against the Village or its agents or employees, directly or indirectly, by reason of the operations of the Company and the grant herein authorized, including undertaking the defense of the Village and paying all reasonable costs related thereto, including but not limited to reasonable attorney fees and court costs.

(B) The Company shall carry insurance to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result directly or indirectly from or by reason of such loss, injury, or damage. The amounts of such insurance against liability due to physical damages to property shall not be less than **Five Hundred Thousand Dollars (\$500,000.00)**, and against liability due to bodily injury or to death of person, not less than **Five Hundred Thousand Dollars (\$500,000.00)**, to any **one (1) person** and not less than **Five Hundred Thousand Dollars (\$500,000.00)** to any **one (1) accident**. All insurance required by this agreement shall be and remain in full force and effect for the entire life of this agreement. Said policy or policies of insurance or a certificate or certificates thereof shall be submitted to the Village on request and be deposited with and kept on file in the office of said Village and shall name the Village as an additional insured.

(C) The Company shall indemnify and save the Village harmless and defend at its cost, any and all claims by persons for alleged violations of copyrights resulting from the company's activities or any and all claims by persons, resulting from the granting of the right to operate a cable system within the Village, to the Company.

SECTION 9. This franchise may not be assigned or transferred, in whole or in part, or in any other manner, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any transferee or assignee, except as otherwise provided in this paragraph, without the prior written consent of the Village. Any assignment or a transfer of such rights shall not be deemed to include any: (1) Transfer to an entity affiliated with the Company through common control, ownership or otherwise; (2) Restructuring or reorganization of the Company or any of its affiliates, and (3) Granting security interests in liens or encumbrances on, or collateral assignment of, the cable system or the Company rights hereunder to secure repayment of indebtedness.

SECTION 10.

(A) The Company shall maintain and notify the subscribers of a toll-free telephone number, and other telephone numbers for receiving complaints and requests made after normal business hours, and the Company must be capable of handling complaints **twenty-four (24) hours** each day.

(B) The Company shall investigate all complaints expeditiously, and within **forty-eight (48) hours**, the Company shall dispatch a qualified employee or agent to investigate the complaint.

(C) The Company shall maintain records concerning complaints and disruptive services, including the date and nature of the complaints and disrupted services, the action taken to resolve the same, date of resolution, and reasons for any delay in investigating and resolving the same. The Company shall make these records available to the Village upon request.

(D) Any subscriber to the service of the Company shall report any outages or failures or reception as set forth above. A subscriber may demand of the

Company a pro-rata adjustment of the charge for a Communications Services in the event of complete outage or failure, other than occurring as a result of a subscriber's negligence, which lasts for a period longer than **twenty-four (24) hours** after the subscriber has notified company of said failure. The Company shall compute such pro-rata adjustment for each **twenty-four (24) hour** period or any portion thereof above **twenty-four (24) hours**, and reflect the same in the next billing to such subscriber.

SECTION 11. The Company shall furnish such basic service connections as may be required to Village buildings; to the public and parochial elementary and secondary schools; without charge for monthly service or installation where service is available. The Village and the schools, may install such additional connections as they desire, provided that such installation shall not interfere with the operations of the Company's system, and additional connections shall have been approved by the Company and shall comply with all Village, County, and Federal laws and regulations.

SECTION 12. Subscribers to the Company's service shall not be required to assure the Company that they will subscribe to the Company's service for any length of time.

SECTION 13. The Company shall provide the Village and subscribers with at least **thirty (30) days'** notice of its intent to adjust rates. The Company and Village agree to abide by the rules of the Federal Communications Commission, as well as any other lawful authority with jurisdiction over rate regulation.

SECTION 14.

(A) The Company shall reimburse the Village for costs, fees and expenses reasonably incurred for the following: (1) Protection, removal or relocation of the cable system, if the Company has failed to perform its obligations hereunder; and (2) Restoring any damage or condition resulting from the construction, maintenance or other work performed by the Company.

(B) The Company shall pay to the Village a Franchise Fee of **three percent (3%)** of the Company's gross service revenues from subscriber service charges, excluding connection fee revenues. Said franchise fee shall be payable annually, on a calendar year basis on or before **March 31**.

SECTION 15.

(A) If the Company violates any material provision of the agreement, the Village shall comply with subsection (C) below; and

(B) If the procedures set forth in subsection (C), have not resolved the dispute, the Village may proceed to compel compliance with the provisions hereof, to collect any sums due hereunder, or to terminate the franchises granted hereby. Except as expressly provided herein, the Company shall not be liable for incidental or consequential damages.

(C) If the Village believes that the Company has violated a material provision hereof, it shall notify the Company in writing, (the "Violation Notice"), of the alleged violation(s) and the proposed remedy which is acceptable to the Village, and the Company shall have **ninety (90) days** after its receipt of the Violation Notice to cure such violation(s). If the Company disputes the proposed remedy or the existence of the violation, or if such default is not cured within such **ninety (90) day** period, then the matter shall be referred to a public hearing before the Village Board of Oblong, to be held after public notice and written notice to the Company at least **ten (10) days** in advance. At the hearing, the Village shall list the alleged violation(s) and proposed remedies as set forth in the Violation Notice, and shall give the Company and all other interested parties an opportunity to be heard with respect thereto. Within a reasonable time after the hearing, the Village shall determine whether the Company has violated the agreement, and shall issue written findings and conclusions with respect thereto, and the Company shall have reasonable opportunity of not less than **thirty (30) days** after the issuance of said findings and conclusions to remedy this matter. Any such determination shall be subject to judicial review and a de novo hearing before any court of competent jurisdiction, and/or to judicial review under any applicable state or federal law.

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

(E) It is the intent of the Village and the Company to avoid a forfeiture of this franchise; thus, the Company shall not be in default hereunder if it has delivered a reasonably or functionally equivalent service to that expressly required hereunder. Moreover, if the Village shall propose any remedy under Section 15, the Company shall be deemed to have satisfied such proposed remedy if it provides a reasonably or functionally equivalent service to that proposed.

(F) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a licensed community cable system with the Village for the purpose of taking or receiving television signals, radio signals, pictures, programs or sound.

(G) It shall be unlawful for any person, without consent of the Company to willfully tamper with, remove or injure any cable, wires, or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(H) Any person, firm or corporation violating any of this Section shall be guilty of an offense, and each and every day or portion thereof during which any violation of any provisions of the section is committed, continued, or permitted, shall be deemed a separate offense, and upon conviction of any such violations, such violator shall be punished in an amount not exceeding the maximum prescribed by state statute. Any equipment or structure erected or maintained and any work commenced or continued in violation of this agreement shall be and is hereby declared unlawful and a public nuisance, and the Village Attorney, on direction of the Village Board, shall

institute necessary legal proceedings for abatement, removal or enjoinder thereof in the manner provided by law and shall take such other steps as may be necessary to accomplish these ends.

SECTION 16. The effective date of this franchise agreement between the Village of Oblong and Triax Midwest Associates L.P. is **June 6, 1996**.

SECTION 17. If any section, sentence, clause, or phrase of this resolution is for any reason held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect the validity of this agreement, and any portions in conflict are hereby repealed.

SECTION 18. This agreement shall constitute the entire agreement between the Village and the Company.

Village

Betty Cunningham, President

Triax Midwest Associates, L.P.

ATTEST:

Jim Russell, Clerk-Treasurer

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

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

(A) **"Cable Service"** means that term as defined in 47 U.S.C. § 522(6).

(B) **"Commission"** means the Illinois Commerce Commission.

(C) **"Gross Revenues"** means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the Village.

(1) Gross revenues shall include the following:

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

compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (i).

- (i) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- (j) The service provider fee permitted by 220 ILCS 5/21-801(b).
- (2) Gross revenues do not include any of the following:
 - (a) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
 - (b) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.
 - (c) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or non-video service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
 - (d) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.

- (e) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, state, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
 - (f) Security deposits collected from subscribers.
 - (g) Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

(D) **"Holder"** means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

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

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

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

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

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

(B) **Amount of Fee.** The amount of the fee imposed hereby shall be **three percent (3%)** of the holder's gross revenues.

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

(D) **Holder's Liability.** The holder shall be liable for and pay the service provider fee to the Village. The holder's liability for the fee shall commence on the first day of the calendar month following **thirty (30) days** after receipt of the ordinance adopting this Article by the holder. The ordinance adopting this Article shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the Village.

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

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

(G) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 116.02(b).

8-2-3 PEG ACCESS SUPPORT FEE IMPOSED.

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

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

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

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

(E) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to **220 ILCS 5/21-301(c)** shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been

terminated pursuant to that section. All payments made by an incumbent cable operator pursuant to the previous sentence may be credited against the fees that the operator owed under **Section 8-2-3(B)**.

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

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

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

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

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

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

(See 220 ILCS 5/21-801)

ARTICLE III - CABLE AND VIDEO CUSTOMER PROTECTION LAW**8-3-1 CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.**

(A) **Adoption.** The regulations of 220 ILCS 5/70-501 are hereby adopted by reference and may be applicable to the cable or video providers offering services within the Village's boundaries.

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

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

8-3-3 CUSTOMER CREDITS. The Village hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 5/70-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit.

8-3-4 PENALTIES. The Village, pursuant to 220 ILCS 5/70-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed **Seven Hundred Fifty Dollars (\$750.00)** for each day of the material breach, and shall not exceed **Twenty-Five Thousand Dollars (\$25,000.00)** for each occurrence of a material breach per customer.

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

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

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

ARTICLE IV – SMALL WIRELESS FACILITIES

8-4-1 PURPOSE AND SCOPE.

(A) Purpose. The purpose of this Article is to establish regulations, standards and procedures for the siting and collocation of small wireless facilities on rights-of-way within the 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.

8-4-2 DEFINITIONS. For the purposes of this Article, the following terms shall have the following meanings:

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

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

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

Application: A request submitted by an applicant to the 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.

8-4-3

REGULATION OF SMALL WIRELESS FACILITIES.

(A) **Permitted Use.** Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in **Section 8-4-3(C)(9)** regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

(B) **Permit Required.** An applicant shall obtain one or more permits from the 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 as shall be established by the Board of Trustees.

- (10) **Contractual Design Requirements.** The wireless provider shall comply with requirements that are imposed by a contract between the 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, 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.

8-4-4 **DISPUTE RESOLUTION.** The Circuit Court of Crawford 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.

8-4-5 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.

8-4-6 INSURANCE. The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (A) property insurance for its property's replacement cost against all risks;
- (B) workers' compensation insurance, as required by law; or
- (C) commercial general liability insurance with respect to its activities on the 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.

8-4-7 SEVERABILITY. If any provision of this Article or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Article is severable.

(Ord. No. 18-593; 07-11-18)