

ORDINANCE NO. 2024-02-8805

AN ORDINANCE AMENDING CHAPTER 108 “TELECOMMUNICATIONS”, OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH, KENTUCKY

WHEREAS, the City of Paducah adopted Ordinance No. 2022-08-8745 which repealed and replaced Chapter 108 “Telecommunications” of the Code of Ordinances of the City of Paducah, Kentucky; and

WHEREAS, the City now desires to amend said Ordinance to enact certain updates to the Ordinance; and

WHEREAS, the City of Paducah has determined that it is in the best interest of the City to amend Chapter 108 “Telecommunications” of the *Code of Ordinances of the City of Paducah, Kentucky*, which governs telecommunications franchises.

NOW THEREFORE be it ordained by the City Commission of the City of Paducah as follows:

SECTION A. Chapter 108 “Telecommunications” of the *Code of Ordinances of the City of Paducah, Kentucky* is hereby amended as follows:

Secs. 108-1—108-25. - Reserved.

Sec. 108-26. - Short title.

This article shall be known and may be cited as the “Paducah Telecommunications Systems Franchising Ordinance of 2022.”

Sec. 108-27. – Purpose.

The purpose and intent of this article is to:

- 1) Establish a local policy concerning telecommunications providers and services;
- 2) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and Telecommunications Services;
- 3) Promote competition in telecommunications;
- 4) Encourage the provision of advanced and competitive Telecommunications Services on the widest possible basis to the businesses, institutions and residents of the City;
- 5) Permit and manage reasonable access to the Rights-of-ways of the City for telecommunications purposes on a competitively neutral basis;
- 6) Conserve the limited physical capacity of the Rights-of-way held in public trust by the City;
- 7) Ensure that the City's current and ongoing costs of granting and regulating private access to and use of the Rights-of-way are fully paid by the Persons seeking such access and causing such costs;
- 8) Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the Rights-of-way;
- 9) Ensure that all telecommunications carriers providing Facilities or services within the City comply with the ordinances, rules and regulations of the City;
- 10) Ensure that the City can continue to fairly and responsibly protect the public health, safety and welfare;
- 11) Enable the City to discharge its public trust consistent with rapidly evolving Federal and State regulatory policies, industry competition and technological development.

Sec. 108-28. – Creation of Franchise.

There is hereby created a non-exclusive franchise granting to the Grantee thereof whose bid may be accepted the right to construct, erect, operate, and maintain upon, through, along, under, and over the Rights-of-way of the City of Paducah, a Telecommunications System (or a related system which is not otherwise a Cable System) embracing Equipment and apparatus necessary,

essential, used or useful to and in the operation a of Telecommunications System, subject to all of the provisions of this Ordinance. This franchise does not excuse the Grantee thereof from complying with any and all applicable existing and future local laws and ordinances as may be adopted or amended in the future, and their pursuant regulations. It shall be unlawful for any Person to erect, construct, maintain, or operate a Telecommunications System in, upon, along, across, over, above, and under the Rights -of-way of the City without a valid franchise therefore.

Sec. 108-29. – Existing Legislation.

The City has already adopted legislation and regulations pertaining to, and including but not limited to, permitting, construction, Street projects, and other related activities by Grantees, Grantees, and others in its Rights-of-way. Therefore, the terms and provisions of the City of Paducah's existing ordinances and regulations, (the "Ordinances"), and as they may be amended in the future, are incorporated herein by reference, and shall apply as if fully set forth herein.

Sec. 108-30. – Definitions.

The definitions and terminology of any terms contained in this Ordinance which are not specifically defined in this section may be contained in the applicable provisions of the Ordinances (as they may be amended in the future) which are hereby incorporated herein by reference.

- (a) "Applicant" means a Person who is applying for a franchise.
- (b) "Application" shall refer to the list of documents and information set forth in Section 108-31 required from new entrants, including any written responses provided on City forms or written correspondence provided in response to City inquiries and investigations. Applications must comply with the requirements of this Ordinance in its entirety.
- (c) "Board of Commissioners" or "City Commission" means the Board of Commissioners of the City of Paducah.
- (d) "Cable Service" shall have the meaning in this Ordinance as it is defined in Section 602(6) of the Communications Act of 1934, as amended as it may be amended (hereinafter cited as 47 U.S.C. § 522(6)).
- (e) "Cable System" shall have the meaning in this Ordinance as it is defined in Section 602(7) of the Communications Act of 1934, as it may be amended (47 U.S.C. § 522(7)).
- (f) "City" means City of Paducah, Kentucky, its elected and appointed officials, employees, agents, boards, authorities, commissions, consultants, assigns, volunteers and successors in interest.
- (g) "Communications Act" means the Communications Act of 1934, as amended from time to time (47 U.S.C. § 151 et seq.).
- (h) "Customer" means a Person located within the territorial limits of the City who is legally receiving Telecommunications Service from the Grantee.
- (i) "Equipment and apparatus" means any manholes, underground conduits, ducts, nodes, electronic devices, Poles, Towers, Support structures, cables, boxes, wires, fixtures, conductors, or other Facilities necessary, essential, used or useful to and operated by the Telecommunications System.
- (j) "Facility" or "Facilities" means any tangible component of Grantee's Telecommunication System.
- (k) "FCC" means the Federal Communications Commission, or its lawful successor.
- (l) "Franchise Fee" means for the purposes of this Ordinance any fee that may be imposed by the City on Grantee as compensation for Grantee's use of Rights-of-way. Use of this definition in this Ordinance is without prejudice to any rights Grantee or the City may have under Federal and Kentucky law as they may be amended.
- (m) "Grantee" means a Person to which a franchise under this Ordinance is granted by the Board of Commissioners, or its successors and assigns.
- (n) "Gross Revenues" means after adjustment for the net write-off of uncollectible accounts, any and all revenues derived by Franchisee within the City of Paducah from Franchisee's Telecommunications System, including, but not limited to: revenues from the sale of and use of Telecommunications Services originating or terminating in the City of Paducah; revenues charged to or attributable to a circuit location in the City of Paducah, regardless of where the circuit is billed or paid; revenues from the use, rental, or lease of Franchisee's operating Facilities within the City of Paducah, revenues from the provision of any and all products, services, or charges (including installation, maintenance and service charges) and revenues from any leases or Indefeasible Right of Use interests ("IRU") of any portion of Franchisee's

Telecommunications System within the City of Paducah. "IRU" or "Indefeasible Right of Use" means any form of acquired capital interest in Franchisee's Telecommunications System in which the holder possesses a right to use the Telecommunications System but not the right to control, maintain, construct or revise the Telecommunications System.

- (o) "Material Alteration" means an alternation that palpably or perceptively varies or changes the form, shape, elements, or specifications of a Facility in such a manner as to appreciably affect or influence its function, use, or appearance.
- (p) "Minimum Annual Franchise Fee" means six thousand dollars (\$6,000.00) in the first year of the Grantee's franchise and shall increase by one thousand dollars (\$1,000.00) annually.
- (q) "PSC" means the Kentucky Public Service Commission or its lawful successor.
- (r) "Person" is any person, firm, partnership, association, corporation, company, governmental entity (with the exception of the City) or organization of any kind. The City shall not be included the definition of Person.
- (s) "Pole" means a utility, lighting, or similar Pole made of wood, concrete, metal, or other material, located or to be located within the Rights-of-way. The term does not include a Tower or Support structure.
- (t) "Road" or "Street" or "Rights-of-way" shall mean the surface of and the space above and below any public road, street, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the City for the purpose of public travel and shall include other rights-of-way as shall be now held or hereafter held by the City which shall, within their proper use and meaning entitle the City and its Grantees to the use thereof for the purposes of installing or transmitting Telecommunication System transmissions over Poles, Towers, or Support structures, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Telecommunication System.
- (u) "Shall" or "shall" is mandatory, not merely directive.
- (v) "Small wireless facilities" are Wireless facilities that meet each of the following conditions:
 - (1) The Facilities are mounted on Poles, Towers, or Support structures fifty-five (55) feet or less in height including their antennas;
 - (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
 - (3) All other Wireless equipment associated with the structure, including the Wireless equipment associated with the antenna and any associated equipment on the structure, including collations, is no more than fifteen (15) cubic feet in volume, cumulatively. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services;
 - (4) The Facilities do not require antenna structure registration under federal law;
 - (5) The Facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards provided in federal law; and
 - (6) Small wireless facilities do not include Poles, Towers, or Support structures.
- (w) "Support structure" means a structure in the Rights-of-way other than a Pole or a Tower to which a Wireless facility is attached at the time of the application for an Installation permit
- (x) "Telecommunications Service" means any service provided for consideration for the purpose of provision, transmission, conveyance, or routing of information including, but not limited to, voice, video, images data, or any other information signals without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. As used in this definition, the word "video" does not pertain to Cable Service. By way of example, and not limitation, Telecommunications Service includes, but is not limited to the following:
 - 1. telecommunications service (as defined by 47 USC §153(53) (as such term is now, or may in the future be, defined under federal law);
 - 2. telephone exchange service (as defined by 47 USC §153(54) (as such term is now, or may in the future be, defined under federal law);
 - 3. exchange access (as defined by 47 USC §153 (20) (as such term is now, or may in the future be, defined under federal law);
 - 4. mobile service (as defined by 47 USC §153(33) (as such term is now, or may in the future be, defined under federal law);

5. advanced communications services (as defined by 47 USC §153(1) (as such term is now, or may in the future be, defined under federal law);

6. long distance, inter-exchange and inter-LATA services, which may include MTS, WATS, 800, operator services, directory assistance and travel card services;

7. private line point to point service for end users of voice and data transmission; non-entertainment video, videoconferencing, or point to point private line service; and

8. any other intrastate or interstate telecommunication services which the PSC or the FCC has authorized, or services provided by radio common carrier.

(y) "Telecommunications System" means all fiber optics, wires, cables, ducts, conduits, vaults, Poles, Towers, Support structures, anchors, nodes, antennas, cabinets, fixtures, transformers, Equipment and apparatus and apparatus and other necessary Facilities owned or used by Grantee for the purpose of providing Telecommunications Service and located in, above or below the Streets.

(z) "Tower" means any structure in the Rights-of-way built for the sole or primary purpose of supporting a Wireless facility. A Tower does not include a Pole or a Support structure.

(aa) "Transfer" means any sale, lease, mortgage, assignment, merger or other form of transfer of the Grantee, or of the rights and privileges granted or authorized by this Ordinance or any franchise granted pursuant to this ordinance.

(bb) "Wireless facility" means a Telecommunications System that enables Wireless services but does not include: (i) the Support structure, Tower, or Pole on, under, or within which the equipment is located or collocated; or (ii) coaxial, fiber-optic or other cabling that is between Telecommunications System or Poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. A Small wireless facility is one (1) example of a Wireless facility.

(cc) "Wireless services" means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. 108-31. Applications.

(a) Applications shall be accompanied by a non-refundable Application fee of five thousand dollars (\$5,000.00) payable to the City. Said Application fee shall not be considered Franchise Fee payments.

(b) The City reserves the right to reject any and all Applications that fail to comply with the Application requirements of this Ordinance, and waive informalities, and/or technicalities where the best interest of the City may be served.

(c) All questions regarding the meaning or intent of the Ordinance or Application documents shall be submitted to the City in writing. Replies will be issued by addenda mailed or delivered to all parties recorded by the City as having received the Application documents. The City reserves the right to make extensions of time for receiving Applications as it deems necessary. Only replies to questions by written addenda will be binding. All Applications must contain an acknowledgment of receipt of all addenda.

(d) Applications must be submitted at the time and place indicated in the Application documents. Applications may be modified at any time prior to the opening of the Applications, provided that any modifications must be duly executed in the manner that the Applicant's Application must be executed.

(e) Before submitting its Application, each Applicant must (i) examine the Ordinance and the Application documents thoroughly, (ii) familiarize itself with local conditions that may in any manner affect performance under this Ordinance, and (iii) familiarize itself with federal, state and local laws, Ordinances, rules and regulations affecting performance under the franchise.

(f) The City may make such investigations as it deems necessary to determine the ability of the Applicant to perform under the franchise, and the Applicant shall furnish to the City all such information and data for this purpose as the City may request. The City reserves the right to reject any Application if the evidence submitted by, or investigation of, such Applicant fails to satisfy the City that such Applicant is properly qualified to carry out the obligations of the franchise and to complete the work contemplated therein. Conditional Applications will not be accepted.

(g) All Applications received by the City from the Applicants will become the sole property of the City. Applicants shall submit all requested information as provided by the terms of this Ordinance. The following information must be complete and verified as true by the Applicant:

1. *Name and address of Applicant.* The Applicant's name, address, e-mail address and telephone and facsimile numbers; date of Application and signature of Applicant or appropriate corporate officer(s); the name, address and e-mail address, and telephone and facsimile numbers of a local representative who shall be available at all times; and information regarding how to contact the local representative in an emergency.
2. *Description of proposed Telecommunications System.* A description of the Applicant's proposed Telecommunications System design.
3. *Services.* A statement setting forth a description of all the types of Telecommunications Services proposed.
4. *Applicant organization.* The Applicant shall be a corporation or limited liability company authorized to do business in the Commonwealth of Kentucky, as certified by the Secretary of State. Applicant must fully disclose the ownership of the Facilities to be used in rendering the Telecommunications Service.
5. *Technical description.* Applicant shall provide a technical description of the type of Telecommunication System proposed by the Applicant and Applicant's plan for the installation of the Telecommunications System. Telecommunications System designs are to be submitted in bullet format detailing equipment start point, routes and end point location accompanied by network routing maps(s) and shall include a ~~The following information shall be included:~~
 - ~~(a) If the Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-way, information in sufficient detail to identify the location of the existing ducts or conduits to be occupied.~~
 - ~~(b) If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-way, the location, depth, size and quantity of proposed new ducts or conduits;~~
 - ~~(c) A preliminary installation schedule and completion date.~~
6. *Engineering statement.* A statement from the Applicant's senior technical staff member, or consultant, advising that the Applicant's planned Telecommunications System and operations thereof would meet all the requirements set forth herein.
7. *Additional requirements.*
 - (a) Supplementary, additional or other information that the Applicant deems reasonable for consideration may be submitted at the same time as its Application but must be separately bound. The City may, at its discretion, consider such additional information as part of the Application.
 - (b) A copy of the Applicant's certificate of authority from the PSC where the Applicant is lawfully required to have such certificate from the PSC.
 - (c) A copy of all insurance policies or certificates required under this Ordinance.
 - (d) A statement signed by the Applicant that the Applicant agrees to be bound by all provisions of this Ordinance and its franchise and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a Telecommunications System in the Rights-of-way.
 - (e) A statement signed by the Applicant that the Applicant is registered as a member of Kentucky 811 (commonly referred to as "Call Before You Dig") and Applicant that agrees to contact Kentucky 811 before performing any excavation in the City.
- (h) The information provided by Applicant shall be certified as true and correct and Applicant shall be responsible to certify to the City any material changes to the information provided in the completed Application during the term of any franchise.
- (i) The City reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.
- (j) The City reserves the right to waive all formalities and/ or technicalities where the best interest of the City may be served.

Any work involving a Material Alteration of any portion of the (a) Telecommunications System or Facilities or (b) the Rights-of-way itself, such as any significant excavation or deviation thereof, must be approved in advance by: (1) a licensed structural engineer at Grantee's sole cost and expense if applicable and (2) all City departments.

Sec. 108-32. - Rights Under Franchise.

- (a) The Grantee shall have the non-exclusive right and privilege of constructing, erecting, operating, and maintaining a Telecommunications System upon, through, along, under and over the Rights-of-way within the City of Paducah as they now exist or may hereafter be extended; subject to the provisions hereof and to all powers (including police power) inherent in, conferred upon or reserved to the City, including but not limited to those contained in the Ordinances. The City reserves the right to grant similar franchises to more than one Grantee.
- (b) This Ordinance does not give the Grantee the right nor the privilege of attaching its Telecommunications System to any buildings, Poles, Towers, or Support structures, streetlights, Equipment and apparatus, or other facilities owned by the City. Additionally, this Ordinance does not give the Grantee the right nor the privilege of constructing, erecting, operating and maintaining a Telecommunications System upon, through, along, under and over real property over the City (other than Rights-of-way.) If Grantee desires to attach its Telecommunications System to any buildings, Poles, Towers, or Support structures, street lights, Equipment and apparatus, or other facilities owned by the City or construct, erect, operate and maintain a Telecommunications System upon, through, along, under and over real property owned by the City (other than Rights-of-way), the Grantee shall be required to enter into separate agreements with the City.
- (c) This Ordinance does not include the right or privilege to provide Cable Service or open video system (as defined by 47 CFR 76.1500 (a)), which shall be subject to separate franchising requirements in accordance with Chapter 22 of the City of Paducah Code of Ordinances and also does not apply to (1) private communications system services provided without using the Rights-of-way; (2) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (3) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.
- (d) References to Grantee's Poles, Towers, or Support structures throughout this Ordinance shall not be construed as permission to install Grantee's Poles, Towers, or Support structures in the Rights-of-way absent the issuance of a permit or approval by the City.

Sec. 108-33. - Standards.

The Grantee shall conform to all standards or requirements in federal, state, and local law or regulation in the operation of its Telecommunications System pursuant to this Ordinance. In addition to complying with all applicable law and regulations in state, federal, and local law, the Grantee shall ensure:

- (a) All working Facilities and conditions used during construction, installation and maintenance of Facilities (including clearance of wires and cables above the Rights-of-way and placement of any underground facilities) shall comply with the standards of the Occupational Safety and Health Administration, the National Electric Safety Code, and the National Electric Code.
- (b) All materials and Equipment and apparatus used or installed in construction shall be of first-class quality, and any defect in the work, materials or Equipment and apparatus, whether latent or patent, will be remedied by the Grantee at its cost;
- (c) Construction, reconstruction, maintenance, or removal of any Facilities shall be performed with due regard for the rights of the City and others, and shall not unnecessarily interfere with, or in any way injure the property of the City or others under, on, or above the ground, or otherwise unduly interfere with the public use of the Rights-of-way;
- (d) Placement of lights, danger signals or warning signs shall be undertaken by the Grantee in compliance with applicable law;
- (e) Facilities shall be installed underground at any location where all other utilities' Facilities that are used to provide customer service are then being installed underground, or when otherwise required under the Ordinances, and shall be in conformance with the applicable requirements of this Ordinance and those set forth in the Code, the Zoning Ordinance, or any other applicable local law or regulation. The Grantee assumes all responsibility for

damage or injury resulting from its placement or maintenance of any above-ground Facilities;

- (f) With respect to any Facilities and Equipment and apparatus of Grantee that are or have been installed aboveground in the Rights-of-way, Grantee may be required subsequently, in order to protect public safety, to bury those facilities which are capable of being placed underground at its expense subject to the provisions of this Ordinance and/or City ordinances, rules and regulations. Once Grantee is permitted to install its Facilities aboveground, the City may require Grantee to bury its Facilities in conformance with City ordinances, rules or regulations only on the condition that all utilities in the Rights-of-way are also required to bury their Facilities. The Grantee may contract and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular Facility are borne fairly and proportionately by all utilities involved in the underground project.
- (g) Grantee shall identify all of its Facilities, new and existing, by tagging or marking its Facilities with the Grantee's name and telephone number. Additionally, Grantee shall provide the City annually with an electronic map (compatible with the City's GIS System) which contains the location of all of its Facilities;
- (h) The City, through its City Manager or his or her designee, or through such assistants as the City may employ or designate, may, at all times and under reasonable conditions with prior notice, have reasonable access to all or any of the property or used in part or in whole by the Grantee in its operating and maintaining the Telecommunications System under this Ordinance and located within the Rights-of-way;
- (i) The Grantee shall provide the City and/ or its Board of Commissioners with information pertaining to its provision of Telecommunications Services pursuant to this Ordinance upon reasonable request. This shall include, but is not necessarily limited to, attending public meeting(s) at which some or all of the Board of Commissioners members are in attendance (in order to provide such information upon reasonable advance notice) and providing an annual update to the Board of Commissioners upon its request;
- (j) Facilities of the Telecommunications System shall be concealed or enclosed as much as possible in a box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off Poles, Towers, or Support structure shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible. All such Equipment and apparatus, boxes, cabinets and units shall be painted and maintained to prevent any deterioration, degradation or rusting of such Equipment and apparatus, boxes, cabinets and units. Failure of Grantee to comply with this section, after a thirty (30) day right-to-cure period, shall constitute an event of default;
- (k) As soon as practical, but not later than five (5) days from the date Grantee receives notice thereof, Grantee shall remove all graffiti on any of its Telecommunications System, Facilities, Poles, Towers, or Support structures and related Equipment and apparatus located in the Rights-of-way. In the event Grantee does not remove the graffiti within the time period specified in this section or should the City deem any graffiti to be overtly offensive or obscene and reasonable discretion dictates its immediate removal, then the City may remove or cause the graffiti to be removed promptly at the reasonable cost and expense of Grantee. Grantee shall reimburse the City within thirty (30) days of billing by the City accompanied by an itemized statement of the City's reasonable costs. Any removal of graffiti effected by painting over the graffiti shall be done with the same color and type of paint as is on the Telecommunications System, Facilities, Poles, Towers, or Support structures or related Equipment and apparatus. The foregoing shall not relieve Grantee from complying with any City graffiti or visual blight ordinance or regulation.
- (l) If at any time the City or other agency or authority of competent jurisdiction determines that any work being done in the Rights-of-way by Grantee or its contractors presents a danger to the public health, safety or welfare, the City may require Grantee to cease and desist all work until Grantee and/or its contractors, at its or their own expense, take the necessary corrective action. Should the City have to correct any condition, the City shall bill the Grantee for the actual cost of such correction and the Grantee shall promptly reimburse the City for its actual costs. If the Grantee fails to promptly reimburse the City, the City may take whatever actions necessary to enforce this Ordinance or Grantee's Franchise awarded pursuant to this Ordinance, including revoking Grantee's Franchise.
- (m) Grantee shall not allow or install power generators or back-up generators in the Rights-of-way without the express written consent of the City.

- (n) In order to minimize Street cuts, excavation and additional Poles, Towers, or Support structures in the Rights-of-way, while preserving the rights of Grantee and other Grantees to provide Telecommunications Services or other services, prior to applying for an encroachment permit to construct or install, or perform work on, the Telecommunications System Facilities, Poles, Towers, or Support structures, or other Equipment and apparatus in the Rights-of-way, Grantee shall seek to use an existing Poles, Towers, Support structures, conduit, duct, conduit system or other Facility where available in the Rights-of-way. If there is an existing Pole, Tower, or Support structure or other arial option available for Grantee's use, the use of which will not require excavation of the Rights-of-way, the Grantee shall be required to utilize such Poles, Towers, or Support structures. The Grantee shall secure and place on file with the City Clerk an agreement with each utility within the City currently owning such Poles, Towers, Support structures, conduits, and/or other Facilities that are to be used by the Grantee. If an existing Poles, Towers, Support structures, conduit, duct, pipe or other Facilities are unavailable to accommodate the proposed installation or the conditions required by other Grantees owning the Poles, Towers, Support structures, conduit system, conduit, duct, pipe and/or other Facilities that Grantee seeks to use are commercially unreasonable, Grantee shall indicate the reason(s) as part of its encroachment permit and the City may consider the reasons given in its evaluation of issuance of the permit.
- (o) It is the policy of the City to encourage shared use of Poles, Towers, Support structures, conduit, conduit system, duct and or pipe by Grantees whenever practicable or feasible. Accordingly, Grantee shall make available and grant permission to other Grantees of the Rights-of-way the right to utilize Grantee's Poles, Towers, Support structures, conduit, conduit system, duct, and or pipe; provided, however, that such utilization, attachment or location is practicable or feasible and provided, the other Person enters Grantee's standard agreement, the terms and pricing provisions of which shall be in accordance with Federal and State laws and regulations.
- (p) The City may require Grantee to relocate its Telecommunications System, Facilities, Poles, Towers, Support structures and related Equipment and apparatus at the expense of Grantee: (i) in order to allow the City to make any public use of or improvements to the Rights-of-way; (ii) as made necessary due to a change in grade or other change in the Rights-of-way made by the City; (iii) as a result of traffic conditions or public safety or the widening or reconfiguring Streets, highways or lanes; (iv) as a result of the construction or installation of any public structure or public improvement by the City, the State or other public agency or district; or (v) in connection with any decision or action by the City to abandon or vacate Rights-of-way. Nothing in this Ordinance or the Franchise granted pursuant hereto shall abrogate the right of the City, or any governmental authority, to perform or carry out any public works or public improvements of any description, provided that the City shall comply with the provisions of the Telecommunications Act. The City shall not be liable for lost revenues sustained by Grantee, however caused, because of damage to, modification, alteration, or destruction of Grantee's Facilities in the Rights-of-way or from the construction, installation, operation, and/ or maintenance of City facilities, structures and/or the Rights-of-way.
1. The City shall provide thirty (30) days' prior written notice of the necessary relocation. Grantee shall have no more than ninety (90) days to complete the relocation.
 2. If Grantee fails to complete the work within the time allotted by the City, the City or other public agency or district may perform the work at the expense of Grantee.
 3. In the event Grantee refuses or neglects to alter or relocate its Telecommunications System, Facilities, Poles, Towers, Support structures or related Equipment and apparatus in a timely fashion, the City or other public agency shall have the right to break through, remove, alter or relocate such Facilities, Equipment and apparatus, Poles, Towers, or Support structures as necessary without any damages or liability owing to Grantee, and Grantee shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation. Grantee shall pay to the City, within thirty (30) days of billing accompanied by an itemized statement, the actual costs incurred by the City in connection with its relocation, removal and/or alteration of Grantee's Telecommunications System, Facilities, Poles, Towers, Support structures and/or related Equipment and apparatus.

4. In cases of emergency, the City shall notify Grantee promptly upon learning of the emergency and the City may take necessary action to remediate the emergency situation, exercising reasonable efforts to avoid an interruption of Grantee's service. In cases of emergency, the City may cut, remove, or relocate the Grantee's Telecommunications System, Facilities, Poles, Towers, Support structures, and related Equipment and apparatus immediately at Grantee's expense without notice to Grantee, provided that the City shall undertake efforts to notify Grantee as soon as practicable after any remediation is complete. Grantee shall bear all costs of reinstallation, repair or other costs arising out of the emergency cutting, removal or relocation. All costs incurred by the City in cutting, removing or relocating such Facilities, Poles, Towers, or Support structures, and Equipment and apparatus shall be paid by Grantee within thirty (30) days of billing accompanied by an itemized statement by the City.

Sec. 108-34. – Permits and Tree Trimming.

- (a) The Grantee shall, at the request of any Person, temporarily raise or lower its wires to permit the moving of buildings or other structures. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) days advance notice to arrange for such temporary wire changes.
- (b) The Grantee shall have the authority to trim trees upon the overhanging Rights-of-way so as to prevent the branches of such trees from coming in contact with the wires or cables of the Grantee. Any trimming, removal or other disturbance of trees shall conform to all applicable laws or regulations including, but not limited to, Chapter 118 of the Paducah Code of Ordinances as it may be amended in the future. and customary industry practices.

Sec. 108-35. – Indemnification.

The Grantee shall indemnify, hold harmless, and defend the City from any and all losses or claims of whatever kind to the extent that they arise from or are alleged to have arisen, directly or indirectly from the execution, performance or breach of this franchise by Grantee, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the City. This indemnity shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive to the extent permitted by the applicable statute of limitations.

For purposes of this indemnity provision:

- 1) The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Grantee's expense, using an attorney selected by the Grantee and approved in writing by the City which approval shall not be unreasonably withheld.
- 2) The word "claims" includes, but is not limited to, claims, demands, liens, suits, and other causes of action of whatever kind.
- 3) The word "losses" includes, but is not limited to: attorneys' fees and expenses; costs of litigation; court or administrative agency costs; judgments; fines; penalties; interest, all environmental cleanup and redemption costs of whatever kind; and any liability arising from death, injury or damage of any kind to any Person, including employees and agents of Grantee, its servants, owners, principals, licensees, vendees, lessees, contractors and subcontractors or the City, and damage to or destruction of any property, including the property of the City.

Sec. 108-36. – Insurance and Bond.

- (a) Insurance.
 - 1) The Grantee shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the Grantee:
 - i. Commercial General Liability Insurance as follows:

- a. Bodily Injury with limits of not less than \$5,000,000.00 per person and \$10,000,000.00 per occurrence
 - b. Property damage with limits of not less than \$5,000,000.00 per occurrence, \$10,000,000.00 in the aggregate
 - c. Products-Completed Operations coverage;
 - d. Personal and Advertising Injury coverage;
 - e. Explosion, collapse & underground coverage;
 - f. Grantee's Commercial General Liability insurance policy will list as additional insureds, "the City of Paducah, its elected and appointed officials, employees, volunteers and consultants for their vicarious liability from the negligent acts or omissions of Grantee.
 - g. Additionally, such insurance shall contain endorsement that Grantee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self-insurance maintained by the City shall be in excess of the Grantee's insurance and shall not contribute to it.
- ii. Comprehensive Automobile Liability Insurance providing limits of not less than \$3,000,000.00 per person/\$5,000,000.00 per occurrence for bodily injury, and property damage not less than \$3,000,000.00 per occurrence.
 - iii. Workers' Compensation Insurance as required by the Kentucky Revised Statutes and Employers Liability Coverage equal to \$1,000,000.00 with endorsement that insurer shall agree to waive all rights of subrogation against the City for losses arising from work performed by the Grantee for the City; and
- 2) The Grantee shall abide by all local, state, and federal insurance regulations.
 - 3) Insurance is to be placed with insurers qualified to do business in the Commonwealth of Kentucky;
 - 4) Grantee shall furnish the City with Certificates of Insurance reflecting the above coverages, and Grantee shall provide to the City the following:
 - i. Signed renewal Certificates for expiring policies; and
 - ii. New Certificates of Insurance if policies or carriers change during the term of this franchise, showing compliance with the above requirements.
 - 5) The City may review, audit, and inspect any and all of Grantee's relevant records and operations to ensure compliance with these Insurance requirements.
 - 6) Grantee shall adhere to and comply with all Federal, State and Local safety and environmental laws, regulations and Ordinances. The Grantee shall provide all safeguards, safety devices and protective Equipment and apparatus necessary to protect the life, health, safety and property of all persons on the job site, the public and the owner as required by applicable Federal, State and local law.
 - 7) The insurance required herein shall not be suspended, voided, canceled by the Grantee, reduced in coverage or in limits, except upon thirty (30) days prior written notice by certified mail, return receipt requested, to the City.
 - 8) If Grantee fails to comply with any of these insurance, safety or loss control provisions within ten (10) business days after notice from the City, then the Grantee shall be in noncompliance which noncompliance shall constitute a default under this Ordinance. The City may elect, at its option, any single remedy or any combination of remedies, as available, including but not limited to, purchasing insurance and charging Grantee for any such insurance premiums purchased, or terminating the Grantee's franchise. The date of default shall relate back to the date of breach, without regard to the date on which notice of such breach is provided by the City.

(b) Performance Bond.

Upon the effective date of the franchise agreement requiring Telecommunications System construction, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in a sum equal to the lesser of (a) one-fourth (1/4) of the fair estimated cost of the Telecommunications System to be erected, or (b) one hundred thousand dollars (\$100,000.00). Said bond shall be enforceable in case the Grantee should fail, within three hundred sixty-five (365) days, to establish and begin rendering the

Telecommunications Service in the manner set forth in this Ordinance. ~~Any bond required by this Ordinance shall be AAA rated.~~

Upon completion of any Telecommunication System construction/upgrade the bond shall be reduced to fifty thousand dollars (\$50,000.00). The bond shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each and every term and condition of this Ordinance and the franchise agreement, and that, in the case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and the surety, jointly and severally, thereof by the City for all damages resulting from the failure of the Grantee to well and truly observe and perform any provisions of this Ordinance or the franchise agreement. The aforesaid bond shall be maintained by the Grantee throughout the term of the franchise and written evidence of the payment of the required payments shall be filed and maintained with the office of the City Clerk ~~Engineer~~.

Sec. 108-37. – Non-discrimination and Affirmative Action.

The Grantee shall comply with all applicable federal, state or local nondiscrimination and affirmative action requirements of any laws, regulations and executive directives, and shall not discriminate in its employment practices against any employee or applicant for employment because of race, color, religion, national origin, sex, age or disability.

Sec. 108-38. – Transfer of Control and General Rate Cases.

- (a) In the event that the Grantee files for a Transfer of the Grantee, or a general rate case with the PSC, it will furnish the City Manager or his or her designee with timely notice of such filing. In the event the City should choose to intervene in such PSC action, the Grantee shall not oppose such intervention.
- (b) No Transfer shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition, without prior notice to and approval by the City which shall not be unreasonably refused, withheld, or delayed. The notice shall include full identifying particulars of the proposed transaction, and the Board of Commissioners shall act by resolution. The City shall have one hundred twenty (120) days within which to approve or disapprove a Transfer if no action is taken within such one hundred twenty (120) days; approval shall be deemed to have been given.
- (c) Subsection (b) above is not intended to apply to assignments to a parent, subsidiary or affiliate of the Grantee,
- (d) In making a determination on whether to grant an application for a Transfer, the City may consider the financial, technical and other qualifications of the transferee (assignee) to operate the Telecommunication System; whether the incumbent Grantee is in compliance with this Ordinance and, if not, the proposed transferee's (assignee's) commitment to cure such noncompliance and any other criteria allowed by applicable law.
- (e) The consent or approval of the City to any Transfer of the Grantee shall not constitute a waiver or release of the rights of the City in and to the Streets.
- (f) The Person to whom the Franchise is transferred ("Transferee") shall complete a Transfer application in a form required by City and pay a five thousand dollars (\$5,000.00) application fee, providing the following information:
 - i. Address and telephone number of local office of Transferee, if any;
 - ii. Method to contact Transferee on a 24-hour basis in case of emergency with respect to its Telecommunications System, Facilities, poles, and Equipment and apparatus;
 - iii. The articles of incorporation or organization of Transferee, the state in which Transferee was formed, and whether Transferee is in good standing in that state;
 - iv. Whether Transferee is qualified to do business in the Commonwealth of Kentucky;
 - v. The name, address and telephone number of Transferee's agent for service of process in Kentucky;
 - vi. A statement signed by an officer of Transferee certifying that Transferee has obtained authorization from the PSC to provide Telecommunications Services in Kentucky, and a copy of the document constituting that authorization. If no approval is required by the PSC, the Transferee shall

identify the statute or regulation exempting Transferee from the necessity to obtain approval;

- vii. An agreement signed by Transferee and Grantee stating that Transferee:
 - (a) has read this Ordinance, (b) will comply with all its terms and conditions, and (c) has accepted and assumed all obligations and liabilities arising under this Ordinance and/or franchise agreement.
- (g) Should Grantee attempt to affect a Transfer of its Franchise without fully complying with this Section, or should Transferee fail to comply with the requirements of this Section, such assignment or Transfer shall be invalid, unless ratified by the City. The Transferee shall be liable for all costs incurred by the City with regard to the Transfer of the Franchise, including attorneys' fees, and shall reimburse City within thirty (30) days of billing accompanied by an itemized statement.
- (h) Notwithstanding a Transfer of a Franchise to the Transferee, Grantee shall remain liable and obligated for any debts or obligations incurred to the City by Grantee prior to the date of the Transfer.

Sec. 108-39. – Duration of Franchise.

- (a) The franchise hereby created shall be for a period of ten (10) years from the date of acceptance by the Board of Commissioners.
- (b) The franchise created by this Ordinance creates no vested rights in the Grantee other than those provided by this Ordinance or at law, and any installation or placement of Facilities by the Grantee in the Rights-of-way is at the Grantee's risk.

Sec. 108-40. – Penalties.

- (a) If, after the Grantee is provided the opportunity to appear and present evidence before the Board of Commissioners, the Board of Commissioners finds that the Grantee has violated any of the following provisions of this Ordinance, the following penalties shall be recoverable. The decision of the Board of Commissioners shall be the final administrative decision and shall be in writing and provide the basis for the decision. The decision may be appealed to a court of competent jurisdiction.
 - 1) For failure to complete or remove any construction project by no later than the ending term of any franchise awarded pursuant to this Ordinance or any extension thereof, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues;
 - 2) For failure to provide data and reports requested by the City and as required by this Ordinance the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
 - 3) For failure to pay a permit fee or Franchise Fee when due pursuant to local law, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (b) If the Grantee fails to comply within thirty (30) days of any Board of Commissioners resolution directing compliance with any other provisions of this Ordinance, the Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues. The decision of the Board of Commissioners may be appealed to a court of competent jurisdiction.
- (c) The Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the City, upon any one or more occasions, to insist upon the Grantee's performance or to seek the Grantee's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse non-performance under this Ordinance. The right of the City to seek and collect penalties as set forth in this section is in addition to its right to terminate and cancel as set forth in Section 108-42 of this Ordinance.

Sec. 108-41. – Maintenance of Telecommunication System.

The Grantee shall maintain its Telecommunication System in reasonable operating condition at all normal times during the term of its Franchise. An exception to this is automatically in effect

when Telecommunications Service furnished by the Grantee is interrupted, impaired or prevented by fires, strikes, riots or other occurrences beyond the control of the Grantee, or by storms, floods or other casualties, in any of which events the Grantee shall do all things reasonably within its power to restore normal Telecommunications Service within a reasonable period of time.

Sec. 108-42. – Right to Terminate and Cancel the Franchise.

- (a) In addition to all other rights and powers pertaining to the City by virtue of this Ordinance or otherwise, the City, by and through its Board of Commissioners, reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:
- 1) Willfully violates any provision of this Ordinance, the franchise or any material rule, order, or determination of the City made pursuant to the franchise, except where such violation is without fault or through excusable neglect or due to a force majeure act;
 - 2) Willfully attempts to evade any provision of this Ordinance or the franchise or practices any fraud or deceit upon the City;
 - 3) Fails to begin or complete construction as provided under this Ordinance or the franchise;
 - 4) Knowingly makes a material misrepresentation of any fact in the Application, proposal for renewal, or negotiation of the franchise; or
 - 5) In the event of entry of a final and non-appealable order by the PSC which revokes any authority of the Grantee to provide Telecommunications Service in the City of Paducah, Kentucky.
- (b) The City may make a written demand that the Grantee do or comply with any such provision, rule, order or determination. The Grantee will be provided the opportunity to appear and present evidence before the City Manager or his or her designee, whose decision shall be the final administrative decision, and shall be in writing and provide the basis for the decision. If the violation by the Grantee continues for a period of thirty (30) days following such a decision by the City Manager or his or her designee without written proof that the corrective action has been taken or is being actively and expeditiously pursued by the Grantee, the City may place its request for termination of the franchise as early as the next regular Board of Commissioners meeting agenda. The City shall cause to be served upon Grantee, at least ten (10) days prior to the date of such Board of Commissioners meeting, a written notice of intent to request such termination and the time and place of the meeting and shall publicly notice the same.
- 1) It shall be a defense to any attempt to terminate and cancel the franchise that the Grantee was relying on federal law, state law, or a valid tariff in acting or not acting on the issue in dispute.
 - 2) The Board of Commissioners shall consider the request of the City and shall hear any Person interested therein, and shall determine in its discretion, whether or not any violation by the Grantee was with just cause.
 - 3) If such violation by the Grantee is found to have been with just cause, the Board of Commissioners shall direct the Grantee to comply therewith within such time and manner and upon such terms and conditions as are just and reasonable within the City's lawful authority.
 - 4) If the Board of Commissioners determines such violation by the Grantee was without just cause, then the Board of Commissioners may, by resolution, declare that the franchise of the Grantee shall be terminated and forfeited unless there is compliance by the Grantee within such reasonable period as the Board of Commissioners may fix. Any such determination by the Board of Commissioners is a final appealable action to a court of competent jurisdiction.

Sec. 108-43. – Foreclosure or other Judicial Sale.

The Grantee shall provide the City, in the form and manner required by the appropriate court or judicial body, at least thirty (30) days advance written notice, if at all possible, of the foreclosure or other judicial sale of all or a substantial part of the Grantee's Facilities within the City of Paducah, or upon the termination of any lease covering all or a substantial part of its Facilities, and such notification shall be treated as a notification that a Transfer or assignment of the franchise has taken place.

Sec. 108-44. – City’s Rights after the Appointment of a Receiver or Trustee.

The Board of Commissioners shall have the right to cancel a Grantee's franchise thirty (30) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said thirty (30) days, unless:

- (a) Within thirty (30) days after his election of appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; and,
- (b) Such receiver or trustee, within said thirty (30) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance and the franchise granted to the Grantee.

Sec. 108-45. – Advertising for Bids.

It shall be the duty of the City Manager or his designee to offer the terms of this Ordinance to the public. In the event that additional interested bidders are identified or express an interest in obtaining a franchise after this initial offering, the additional offering and advertisement to accommodate such bidders is hereby authorized. Said franchise and privilege shall be sold to the highest and best bidder or bidders at a time and place fixed by the City Manager or his or her designee after due notice thereof by advertisement or publication as required by law.

Sec. 108-46. – Bid Process.

- (a) Bids and proposals for the purchase and acquisition of the franchise hereby created shall be in writing and shall be delivered to the City Manager or his/her designee upon the date(s) and at the time(s) fixed by the City Manager in said advertisement(s) for receiving same. An opening time for each bid shall be stated in any advertisement and invitation for bids. The time set for opening of bids shall be established by a clock in the office of the City Clerk. It is the bidder's responsibility to ensure the bidder's bid is in the office before the time set for bid openings. At the set time, the City Clerk shall declare bids to be closed. All bids shall be opened publicly and read aloud when the structure of the invitation for bids permits. The City Manager or his/her designee shall with reasonable promptness prepare a tabulation of all bids received and make the documents available to the public upon reasonable request.
- (b) After bids are opened, the City Manager or his/her designee shall review all bids for compliance with specifications, terms and conditions. If, in the judgment of the City Manager or designee, a portion of a bid is uncertain or unclear, the bidder shall be required to clarify all such portions which are in question. Any clarification of this nature shall be sent to the City Manager's office in written form.
- (c) The City Manager reserves the right to reject any and all bids, and to waive technicalities and minor irregularities in bids. Grounds for the rejection include, but are not limited to:
 - 1) Failure of a bid to conform to established requirements of an invitation for bids;
 - 2) Failure to conform to specifications contained in or referred to in any invitation for bids, unless the invitation authorized submission of alternative bids, and the alternative proposal meets the requirements specified in the invitation for bids;
 - 3) Failure to conform to a delivery schedule established in an invitation for bids;
 - 4) Determination that a bid was submitted by a bidder determined to be not responsible;
 - 5) Failure to furnish a bid guarantee when a guarantee is required by an invitation for bids; or
 - 6) Imposition of conditions which would modify the terms and conditions of the invitation for bids, or which would limit the bidder's liability to the City under terms of the contract awarded, on the basis of such invitation for bids.
- (c) Thereafter, the City Manager shall report and submit to the Mayor and Board of Commissioners, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval.

- (d) The Board of Commissioners reserves the right, for and on behalf of the City, to reject any and all bids for said franchise; and, in case the bids reported by the City Manager shall be rejected by the Board of Commissioners, it may direct said franchise and privilege to be again offered for sale, from time to time.
- (e) Each bid made by a Person not already holding a franchise within the territorial limits of the City of Paducah sufficient to render the Telecommunications Service required by this Ordinance, shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank, equal to the lesser of five percent (5%) of the fair estimated cost of the Telecommunications System required to render the Telecommunications Service or One Hundred Thousand Dollars (\$100,000.00). Said check or cash shall be forfeited to the City in case the bid should be accepted and the bidder should fail, for thirty (30) days after the confirmation of the sale, to give a good and sufficient performance bond in favor of the City in accordance with Section 108-36.
- (f) Bids made by a Person not already holding a franchise within the territorial limits of the City of Paducah shall include such documentation as is necessary to support the bidder's determination of the fair estimated cost of the Telecommunications System and compliance with all applicable state, federal and local statutes, ordinances and regulations.

Sec. 108-47. – Compensation.

- (a) The Franchise fee imposed under this Ordinance is not in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, permit fees and business license taxes are not waived and remain applicable as provided by law. Additionally, the City may at any time impose any fees or taxes consistent with state or federal law, including, but not limited to property taxes, and occupational license fees.
- (b) Grantee shall pay a ~~quarterly~~ Franchise Fee to the City, which shall be equal to the greater of (a) the Minimum Annual Franchise Fee as defined herein and amended from time to time (“Minimum Annual Franchise Fee”); or (b) an amount equal to either (i) five percent (5%) of Grantee’s Gross Revenues, which shall be payable quarterly and may be passed through to Grantee’s Customers, if Grantee provides Telecommunications Service to Customers within the City of Paducah (“Gross Revenue-based Franchise Fee”), or (ii) an amount equal to two dollars (\$2.00) per lineal foot of Facilities plus three thousand dollars (\$3,000.00) per each Wireless facility (other than Small wireless facilities) and two hundred seventy dollars (\$270.00) per each Small wireless facilities if Grantee does not provide Telecommunications Service to end-users within the City of Paducah (“Facilities-Based Franchise Fee”);
- ~~(c) Grantee’s first Franchise Fee payable under this Ordinance shall be paid to the City forty-five (45) days after the City gives notice to the Grantee that the City has exercised its constitutional right to collect Franchise Fees. Such payment will be prorated for the remaining calendar year (rounded to the nearest month). Thereafter, Grantee shall pay each Franchise Fee (as applicable) in accordance with the schedule below.~~
- (d) Grantee’s first Minimum Annual Franchise Fee payment, if applicable, shall be paid in lump sum forty-five (45) days after execution of the Franchise Agreement. All Subsequent Minimum Annual Franchise Fee payments, if applicable, to the City shall be in lump sum paid on or before April 15th of each calendar year during the term of the franchise.
- (e) Gross Revenue-Based Franchise Fee payments, if applicable, to the City shall be computed based on Grantee’s Gross Revenues from each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31). ~~and paid~~ Grantee’s first Gross Revenue-Based Franchise Fee payment shall be paid on or before the forty-fifth (45th) day following the first full calendar quarter after execution of the Franchise Agreement. All subsequent Gross Revenue-Based Franchise Fee payments shall be paid on or before the forty-fifth (45th) day following each calendar quarter period during the term of the franchise.
- (f) Facilities-Based Franchise Fee payments, if applicable, to the City shall be computed based on Grantee’s ~~lineal~~ lineal foot of Facilities in the City of Paducah as of January 1 of each calendar year, ~~and paid~~ Grantee’s first Facilities-Based Franchise Fee Payment shall be paid on or before the forty-fifth (45th) day following the execution of the Franchise Agreement. All subsequent Facilities-Based Franchise fee payments shall be paid on or before April 15th of each calendar year during the term of the franchise.

- (g) Payment not received by the City by the due date shall be assessed interest equal to the lesser of (i) one percent (1%) per month, or (ii) the highest rate permitted by law. Interest shall be compounded annually. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives payment.
- (h) ~~Prior to making each payment to the City;~~ Upon making each payment to the City, Grantee shall file with the City a written report, in the form as provided by the City, containing an accurate statement in summarized form, as well as in detail, of its calculation of the amount of the payment, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. ~~Such reports shall be in form satisfactory to the City.~~
- (i) If any Franchise Fee is owed to the City, upon reasonable notice, the City shall have the right to inspect the Grantee's income records, the right to audit and to re-compute any amounts determined to be payable under any Franchise granted pursuant to this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. If, as a result of such audit or review, the City determines that Grantee has underpaid its fees to the City in any twelve (12) month period by ten percent (10%) or more, then, in addition to making full payment of the relevant obligation, Grantee shall reimburse the City for all expenses incurred as a result of an audit or review and such payments shall be paid within the thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report and copies of all invoices for which the City seeks reimbursement.
- (j) If any Franchise Fee is owed to the City, in the event that any Franchise Fee payment or recomputed amount is not made to the City on or before the applicable dates heretofore specified, interest shall be charged from such date as defined in this Ordinance.
- (k) No accord and satisfaction. No acceptance by the City of any Franchise Fee or any other payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee or any other payment be construed as a release of any claim of the City
- (l) The City reserves the right to require the Grantee to collect any consumer or other tax or other fee that may be imposed by the City, the Commonwealth of Kentucky, or the federal government on Telecommunications Services.
- (m) Notwithstanding any other provision of this Ordinance, the Grantee shall be required to pay the Government an amount intended to adequately compensate it for its permitting and inspection of the Grantee's construction activities in the Rights-of-way pursuant to the Code and all attorney's fees that the Government may incur relating to the franchising process, including but not limited to any attorneys' fees incurred relating granting of the franchise and any transfer, renewal or modification of the franchise.

Sec. 108-48. – Aesthetic standards.

Unless otherwise approved by the City in order to prevent an effective prohibition of service in accordance with federal regulations, as applicable, no Person shall locate or maintain a Facility, Pole, Tower, or Support structure, except in accordance with the following design standards:

- (a) All Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from Rights-of-way.
- (b) All new or replacement Poles, Towers, or Support structures placed in the Rights-of-way shall be the same color, shape, material, and general height as those existing Poles, Towers or Support Structures adjacent to the location of the new or replacement Pole, Tower, or Support structure.
- (c) All coaxial, fiber-optic, or other cabling and wires shall be contained inside any new or replacement Tower, Pole, or Support structure. On existing Poles, Towers, or Support structures, or new wooden Poles, where it is impossible to place wiring inside the Pole, Tower or Support structure, all coaxial, fiber-optic, or other cabling and wires shall be flush-mounted and covered with a metal, plastic, or similar material matching the color of the Pole, Tower or Support structure. All coaxial, fiber-optic, or other cabling and wires shall be contained inside any new Tower, Support structure or Pole placed in the Rights-of-way.
- (d) No Tower shall be placed in the Rights-of-way within two hundred fifty (250) feet on the same street of an existing Tower. Replacing an existing Tower with a Tower, or a

lighted Pole with another lighted Pole housing Wireless facilities, in the same location shall not violate this provision.

(e) All new Towers, Support structures and Poles should be located on the same side of the street as existing Towers, Poles, or Support structures. However, this does not preclude an applicant from locating its Wireless facilities on existing lighted Poles under a decommissioning agreement in which the applicant takes ownership of the lighted Pole.

(f) The centerline of any new Pole, Support structure or Tower shall be aligned with the centerline of adjacent Poles or trees, unless the new structure's height conflicts with overhead power utility lines. Replacing an existing Pole, Support structure, or Tower with another Pole, Support structure, or Tower in the same location shall not violate this provision.

(g) All new Poles, Towers, Support Structures or Facilities proposed to be fronting a dwelling shall be placed on property lines, unless it would obstruct sight distance at driveways or other accesses to roadways. In those instances where placement of a new Pole, Support structure, Tower, or Facilities on the property line would obstruct sight distance, the Pole, Support Structure or Tower, or Facilities shall be placed in such a location as to prevent the obstruction of sight distance at driveways or other accesses to roadways. Replacing an existing Pole, Support structure, Tower or Facility with a Pole, Support structure, Tower, or Facility in the same location shall not violate this provision.

(h) New Poles, Support Structures, Towers, or Facilities shall not be placed in front of store front windows, walkways, entrances or exits, or in such a way that would impede deliveries. Replacing an existing Pole, Support structure, Tower, or Facility with a Pole, Support structure, Tower, or Facility in the same location shall not violate this provision.

(i) No new Poles, Support Structures or Towers shall be placed in front of driveways, entrances, or walkways. Replacing an existing Pole, Support structure, or Tower with a Pole, Support Structure, or Tower in the same location shall not violate this provision.

(j) No applicant shall locate or maintain a Pole, Support structure, Tower, or equipment associated with a Wireless facility, as to interfere with the health of a tree.

(k) In areas where the undergrounding of utilities has occurred, but lighted Poles are present, the applicant shall locate its Wireless facilities on existing lighted Poles or seek to decommission the lighted Pole to replace it with a lighted Pole to house its Wireless facilities.

(l) If the applicant elects to decommission an existing lighted Pole in order to install a Wireless facility in its location, the applicant shall comply with this Ordinance, including these aesthetic standards, and any decommissioning agreement between the applicant and the City or its equivalent.

(m) In those locations where the undergrounding of utilities has occurred, all Facilities shall be placed underground.

(n) No equipment associated with any Facility shall impede, obstruct, or hinder ADA access, or pedestrian or vehicular access, or block driveways, entrances, or walkways. The installation of new ground furniture is prohibited.

(o) To protect the health and safety of the public from the harms of noise pollution, all Facilities shall have a low noise profile.

(p) Within twenty-one (21) calendar days from the date the operator receives notice thereof, operator shall remove all graffiti on any of its Facilities located in the Rights-of-way.

(q) All Facilities, Poles, Towers, and Support structures shall comply with such additional design standards as may be set forth in any written policies or guidelines issued by the City.

(r) All Poles, Towers, Support structures, and other lines and equipment installed or erected by Grantee under this Ordinance shall be located so as to minimize any interference with the proper use of the Rights-of-way with the rights and reasonable convenience of property owners whose property adjoins or abuts any affected Rights-of-way. Subject to applicable codes, overhead drops shall be as close as possible to other utility drops in order to concentrate the drops in as small an area as possible to minimize visual clutter and interference with the use of private property.

Sec. 108-49. – Additional Requirements.

(a) Operation of Telecommunications System – Excavation of the Rights-of-way.

- 1) The Telecommunications System shall, at all times, be installed operated and maintained in good working condition as will enable the Grantee to furnish adequate and continuous service to all of its residential, commercial, and

industrial Customers. The Telecommunications System shall be designed installed, constructed, and replaced in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance, and operation of a Telecommunications System.

- 2) The Grantee shall have the right to disturb, break, and excavate in the Rights-of-way of the City as may be reasonable and necessary to provide the service authorized by the franchise subject to the provisions of this Ordinance and the provisions of the applicable City Code of Ordinances.
- 3) Grantee agrees to give prior notification to the City of any construction work by Grantee on or in any Rights-of-way that will necessarily involve the cutting of any blacktop or concrete on the Rights-of-way, or any other excavation or work in the Rights-of-way that is reasonably expected to interrupt the flow of traffic on the Rights-of-way. In the event a Street, sidewalk, curb or gutter is to be cut, the Grantee agrees to obtain the applicable permit from the City. Grantee's notice to the City shall include traffic control plans to be implemented during the construction work and specific traffic control devices to be utilized. Additionally, Grantee shall notify the City of the hours the construction will take place at least seven (7) days prior to beginning construction.

Nothing in the above provisions is intended to require Grantee to give a notification for any routine maintenance or repair work not involving the cutting of the Rights-of-way, curb, or gutter or not involving an interruption of traffic flow on a City Street. Nothing in the above is intended to impose on Grantee any obligation to give notification or obtain a City permit for work on Customers' service lines, unless such work extends into the Rights-of-way. However, Grantee shall be required to give advance notification to the City of the installation of a new service line within the City limits and provide a copy of the plans for the new service line.

- 4) To the extent reasonably practicable, Grantee agrees to notify the City and to schedule and coordinate installation, construction, maintenance, replacement, or repairs of its Telecommunications System with proposed improvements to the Rights-of-way that have been designated (and which Grantee has been specifically advised of) for improvement, resurfacing, or repair prior to the commencement thereof. In the event Grantee develops a written program for the replacement or repair of its Telecommunications System located in the Rights-of-way, Grantee shall provide a copy of that written program to the City's Public Works Department. Any replacement or repair program shall, to the extent reasonably practical, be developed to coincide with the City's pavement program.
- 5) The Grantee agrees to provide the City and other emergency response officials on an annual basis the names, addresses, and phone numbers of emergency 24-hour on-call personnel. After being notified of an emergency by the City, the Grantee shall cooperate with the City and make every effort to respond as quickly as possible with actions to minimize damage and to protect the health and safety of the public and property.

(b) Degradation/Restoration of Rights-of-way.

- 1) In the event Grantee enters upon any Rights-of-way for the purposes of constructing, erecting, installing, operating, maintaining, repairing and/or removing any part of its Telecommunication System, it shall promptly and diligently prosecute the work to completion at its sole expense and shall repave, cover, and restore all trenches and exposed areas as quickly as circumstances permit and shall leave all Rights-of-way in as good a condition as existed when Grantee entered upon them. Grantee agrees to perform such restoration work in compliance with all applicable City standards. Any repairs to Rights-of-way necessitated by reason of Grantee's failure to comply with City standards shall be performed by Grantee, at its expense, for a twelve (12) month period following the date Grantee completed the particular restoration work. However, notwithstanding the foregoing requirements, Grantee shall upon the request of the City and at its sole expense, repave all Street pavement located within an entire Street block if Grantee, its employees, contractors, or agents undertook an authorized excavation of Rights-of-way that has been repaved within two (2) years of the excavation where Grantee knew or should have known that it would need to excavate the pavement within two (2) years of the City notifying Grantee

of the Streets that will be repaved. The above provisions shall not apply to the extent the excavation was necessitated by an act of the City or by an act of God or by an act of a third party with whom Grantee is not in privity or contract or over whom Grantee has no control or, in order to fix or repair a potentially or actual dangerous condition or to accommodate a request for service by a new Customer. In the event Grantee is required to repave an entire Street block of pavement or Rights-of-way and the work by the Grantee is determined to be in compliance with the applicable City requirements, the City shall assume responsibility for the maintenance of the improved Rights-of-way. All restorations or repairs of Rights-of-way shall be performed in compliance with applicable City requirements and may be subject to inspection by the City at any time. In the event Grantee fails, refuses, or neglects to comply with the applicable City provisions, or to repair to restore the affected Rights-of-way, the City may undertake such repairs and the costs and expenses incurred by the City shall be paid to the City by the Grantee within ten (10) days from the date on which an itemized bill is submitted to the Grantee.

- 2) In the construction, installation, maintenance, repair, or removal of any of its Telecommunications System, or any part thereof, Grantee shall exercise due regard for the rights of the City, pedestrians, and motorists and shall not unreasonably or unnecessarily interfere with or injure City property or the private property of others. Grantee shall comply with all applicable laws with respect to signalization, placement of lights, danger signals, or warning signs. All work performed by Grantee shall be done in a workmanlike manner and shall not unnecessarily interfere with the public use of the Rights-of-way.
 - 3) Grantee shall, upon request by the City, remove, move, modify, relocate, reconstruct, or adjust any of its Telecommunications System located within the Rights-of-way, at its own expense, if the City, in its sole discretion, constructs, reconstructs, widens, alters, excavates, repairs, changes, or improves any Rights-of-way as part of any public improvement project and such work requested by the City shall be accomplished by Grantee within thirty (30) days after notice by the City; provided, however, if the work requested of Grantee cannot be reasonably completed within that time period, Grantee shall have such additional time to complete its work as may be mutually agreed upon between Grantee and the City.
 - 4) If the City requires the Grantee to adapt or conform its Telecommunications System or to in any way construct, reconstruct, remove, alter, relocate, adjust, or its Telecommunications System to enable any other Person, firm, corporation, entity, whether public or private, other than the City, to utilize Rights-of-way, Grantee shall be reimbursed for all costs incurred by the Grantee from the Person, firm, Grantee, corporation, or entity requesting or required by the City to perform such change, construction, removal, repair, maintenance, alteration, or relocation.
 - 5) In the event that the Grantee is a party to a Poles, Towers, or Support structures attachment agreement, and the owner of such Poles, Towers, or Support structures elects to replace its Poles, Towers, or Support structures, the Grantee shall be required to remove its Facilities and Equipment and apparatus from the affected Poles, Towers, or Support structures immediately. If the Grantee fails to remove its Facilities and Equipment and apparatus from the affected Poles, Towers, or Support structures within thirty (30) days of the Poles, Towers, or Support structures owner's removal of its own Facilities or Equipment and apparatus from the Poles, Towers, or Support structures the Grantee shall be assessed a fine of up to One Thousand Dollars (\$1,000.00) per day until such Facilities and Equipment and apparatus are removed or relocated.
- (c) Unless otherwise provided an extension by the Board of Commissioners, the Grantee must make Telecommunications Services available within the City of Paducah within ~~one hundred eighty (180)~~ three hundred and sixty-five (365) days from the date of the award of the franchise. This requirement shall not apply to a Grantee that does not provide, or has no intention of providing, any Telecommunications Services to the City of Paducah Customers.
- (d) The Grantee shall maintain accurate Telecommunications System design drawings, maps and improvement plans of the Telecommunications System, in a form acceptable to the City, in a manner consistent with industry construction standards. The Grantee shall furnish the City, without charge, with a complete set of "as-built" drawings within sixty

(60) days of completion of construction of the Telecommunications System. Such maps and improvement plans shall also be furnished to City in digital form and shall be provided pursuant to a lawful protective agreement.

- (e) The City shall have the right, during the term of any franchise granted pursuant to this Ordinance, to install and maintain, free of charge, upon the Poles, Towers, or Support structures owned by Grantee and located in the Streets, any wire or fiber optic cables, pole fixtures and antennas that do not unreasonably interfere with the Telecommunication System operations of Grantee.

Sec. 108-50. – Discontinuing Use of Facilities.

If Grantee decides to discontinue use of Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the City may direct Grantee to remove the Facilities or may permit the Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding Grantee's request that any such Facility remain in place, the City may require Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City. Until such time as Grantee removes or modifies the Facility as directed by the City, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Sec. 108-51. – Governing Law.

This Ordinance and any franchise awarded pursuant to it shall be governed by the laws of the Commonwealth of Kentucky, both as to interpretation and performance. The venue for any litigation related to this Ordinance or any franchise shall be in the court of competent jurisdiction in McCracken County, Kentucky.

Sec. 108-52. – Non-enforcement by the City.

Grantee shall not be relieved of its obligations to comply with any of the provisions of this Ordinance by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Ordinance by reason of such failure or neglect.

Sec. 108-53. – Agent.

The Grantee shall designate in writing a local agent to oversee and manage all activities required pursuant to this Ordinance to accept service of any legal proceeding initiated by the City.

Sec. 108-54. – Third Parties.

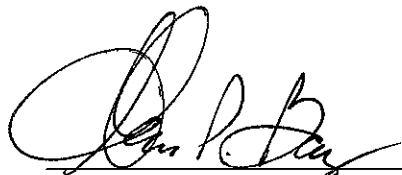
This Ordinance and any franchise awarded pursuant to it does not create a contractual relationship with or right of action in favor of a third party against either the City or the Grantee.

SECTION B. SEVERABILITY. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION C. COMPLIANCE WITH OPEN MEETINGS LAWS. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.


SECTION D. CONFLICTS. Upon the publication and on the effective date of this Ordinance, the following Chapter shall be repealed in its entirety and superseded with this Ordinance: Chapter 108.

SECTION E. EFFECTIVE DATE. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.



GEORGE BRAY, MAYOR

ATTEST:



Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, February 13, 2024
Adopted by the Board of Commissioners, February 27, 2024
Recorded by City Clerk, February 27, 2024
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Prepared by Denton Law Firm and Linda Ain, Attorney at Law