

CHAPTER 8

CABLE TELEVISION

ARTICLE I – FRANCHISE AGREEMENT

8-1-1 **DEFINITIONS.** Except as otherwise provided herein, the definitions and word usage set forth in **Section 8-1-2** of this Code are incorporated herein and shall apply in this Franchise Agreement. In addition, the following definitions shall apply:

- (A) **Cable Ordinance.** Ordinance 1641 as it may be amended from time to time.
- (B) **Franchise Agreement or Agreement.** This contract and any amendments, exhibits or appendices hereto.
- (C) **Franchisee.** Cable One, LLC d/b/a NewWave Communications, a Missouri limited liability.

8-1-2 **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS.**

(A) **Grant of Authority.** The Franchise issued to the Franchisee is subject to the terms and conditions of this Franchise Agreement and to the provisions of the Cable Ordinance as enacted. The Franchise grants the Franchisee the right to construct, operate, and maintain a Cable System along the public rights-of-way within the Franchise Area, for the purpose of providing cable service (including broadband service). No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as mandated by federal, state, or local law.

(B) **Franchise Area.** The Franchise is issued for the entire present territorial limits of the City of Chester, Illinois.

(C) **Term.** The Franchise and this Franchise Agreement shall expire at **12:01 A.M. on July 7, 2027**, unless the Franchise is earlier revoked or its term extended or shortened as provided herein or in the Cable Ordinance.

(D) **Grant Not Exclusive.** The Franchise and the right it grants to use and occupy the public rights-of-way are not exclusive and do not explicitly or implicitly preclude the issuance of other franchises to operate Cable Systems or other communications systems within the City, affect the City's right to authorize use of public rights-of-way by other persons to operate Cable Systems or other communications systems or for other purposes as it determines appropriate, or affect the City's right to itself construct, operate or maintain a Cable System or other communications system, with or without a Franchise.

(E) **Franchise Agreement Subject to Other Laws.** This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Cable Ordinance as enacted and any applicable provision of federal, state, and local law. However, the Franchise Agreement will be the prevailing document in the event of conflicts or inconsistencies between this Agreement and the City's Cable Ordinance. In the event of any conflicts between the requirements contained within this Franchise or the local Cable Ordinance and the requirements of federal law, rules, and/or administrative agency rulings, the requirements contained in federal law shall prevail and a Franchisee shall not be held in non-compliance when its actions are consistent with the prevailing requirements.

(F) **Franchise Agreement Subject to Exercise of Police Powers.** All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws to regulate the Franchisee and the construction, operation, and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the City shall find reasonably necessary in the exercise of its police powers, the right to adopt and enforce generally applicable zoning, building, permitting, and safety ordinances and regulations, the right to adopt and enforce generally applicable ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way,

telecommunications, utility, cable television consumer protection, service standards, or rate regulation provisions, consistent with federal and state law.

(G) **Incorporation of Cable Ordinance by Reference.** By acceptance of the Franchise, the Franchisee agrees to meet all requirements of the Cable Ordinance as enacted, which is hereby incorporated by reference into and made a part of this Franchise Agreement.

(H) **Approval and Effective Date.** This Franchise Agreement shall be effective as of **April 17, 2017**, upon its approval by the City Council and execution by the City and NewWave.

(I) **Effect of Acceptance.** By accepting the Franchise and executing this Franchise Agreement, the Franchisee:

- (1) acknowledges and accepts the City's legal right to grant the Franchise, to enter into this Franchise Agreement and to enact and enforce ordinances and regulations related to the Franchise;
- (2) agrees that it will not oppose participation by the City in any legal proceeding affecting the Franchisee's Cable System;
- (3) accepts and agrees to comply with each provision of this Agreement; and
- (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

(J) **Claims Related to Prior Franchise.** The Prior Franchise is hereby terminated and superseded prospectively.

(K) **Franchisee Bears Its Own Costs.** Unless otherwise expressly provided in this Franchise Agreement, all acts that the Franchisee is required to perform under the Cable Ordinance enacted, this Agreement or applicable law shall be performed at the Franchisee's own cost and expense, without reimbursement by the City.

(L) **No Waiver.**

- (1) The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Franchisee, unless such right or such compliance or performance has been specifically waived in writing.
- (2) Waiver of a breach of this Agreement shall not be a waiver of any other breach, whether similar to or different from that waived. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, including without limitation the power of eminent domain.

(M) **No Recourse.** The Franchisee and Guarantors shall have no recourse against the City for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by Franchisee pursuant to the Franchise, this Franchise Agreement or the Cable Ordinance, whether or not such action or non-action was required by the Franchise, the Agreement or the Cable Ordinance, arising out of the enforcement or non-enforcement by the City of any provision or requirement of this Agreement or the Cable Ordinance, or otherwise arising out of the Franchise, the Agreement or the Cable Ordinance, except as otherwise expressly permitted by federal law or this Agreement.

(N) **Construction of Franchise Agreement.** The provisions of this Franchise Agreement shall be liberally construed in accordance with generally accepted rules of contract construction and to promote the public interest. The express provisions of the Franchise Agreement constitute a valid and enforceable contract between the parties. In the event of a clear conflict between the Cable Ordinance and this Agreement, the Agreement shall prevail, except where the conflict arises from the lawful exercise of the City's police power.

(O) **Amendment of Franchise Agreement.** The City shall liberally amend this Franchise Agreement upon the application of the Franchisee whenever necessary to enable the Franchisee to take advantage of developments in the field of cable communications, which, in the City's opinion, will afford the Franchisee an opportunity to serve its Subscribers more efficiently, effectively, and

economically. Such amendments shall be subject to such conditions as the City determines are reasonably necessary to protect the public interest.

(P)

Periodic Review.

- (1) If the term is extended pursuant to **Section 8-1-5(B)**, the City shall conduct a review of the Cable System during the **six (6) month** period that begins **thirty-six (36) months** prior to the expiration date of this Agreement. Such review shall be completed during such **six (6) month** period, and in sufficient time to allow the City to exercise its options hereunder. Such review shall be conducted to enable the City to determine whether the Cable System should be upgraded or rebuilt. The determination under this paragraph shall be based upon the reasonable cable-related needs and interests of the community, considering all relevant factors including the costs to the Franchisee of meeting those needs and interests.
- (2) To assist in the City's review, the Franchisee may submit a report to the City describing advances in cable technology nationwide, the results of any testing of such technology by Franchisee or its Affiliates, the potential benefits and disadvantages of those advances for the system and its subscribers and potential subscribers, and its plan and timetable for instituting any such advances in technology. Additionally, upon request by the City, the Franchisee may testify before the City or provide oral analysis of Franchisee's review of the status of local cable competition.
- (3) The review may be conducted by the City Council or by such person(s) as it may designate. The review may be conducted in conjunction with other franchise authorities. If the City Council designates reviewers, such reviewers shall provide a written report to the City Council in sufficient time to allow the City Council to exercise its options hereunder.
- (4) After conducting such a review, unless the provisions of subparagraph (5) apply, the City Council may select one of the following courses of action:
 - (a) After complying with the Cable Ordinance provisions on franchise modification, extend the term of this Agreement by a period of time no less than **one (1) year**, and no more than **four (4) years**, unless the Franchisee gives written notice that it objects to such an extension. A written renewal notice from the Franchisee submitted during the aforesaid **six (6) month** period requesting commencement of a renewal proceeding under 47 USC § 546(a) shall not constitute an objection to extension unless it contains an express statement of such objection, but in the event of an extension, such renewal notice shall continue in effect through all additional extension cycles. In the event of such an extension, the City shall conduct another review of the cable system pursuant to this subsection (p) on a schedule based on the expiration date of this Agreement as extended. Such cycle of reviews and extensions may be repeated as often as deemed appropriate by the City subject to the terms of this Agreement and the Cable Ordinance. No extension shall affect the obligations of the Guarantors hereunder. No extension shall require payment of renewal fees by the Franchisee.
 - (b) Commence a franchise renewal proceeding under 47 USC § 546(a).
 - (c) Conduct informal franchise renewal negotiations under 47 USC § 546(h).

- (d) Conclude the review process (except the City shall comply with the Cable Act if the Franchisee submits a timely written renewal notice that is not withdrawn).

- (5) If the Franchisee submits an informal request for renewal of this Franchise on substantially the same terms and provisions but including a commitment to upgrade its cable system within the City so as to increase system channel capacity to a level acceptable to the City as of the commencement of the renewal term of the Franchise and thereafter, then the City and the Franchisee shall, after complying with the Cable Ordinance provisions on informal franchise renewal, enter into such franchise renewal agreement for a minimum term of **seven (7) additional years** (or longer if reasonably necessary to enable the Franchisee to obtain the financing required to make the upgrade) commencing on the expiration of this Franchise, which agreement shall include the foregoing commitment by the Franchisee to upgrade its cable system and such revisions as may be agreed upon by the City and the Franchisee. No renewal fee shall be required for such a renewal request.
- (6) This review process shall not override any remedies of the City, including but not limited to remedies of revocation or term reduction.

(Q) **Regional Equity.** In the event Franchisee or any of its Affiliates shall enter into any other cable franchise with any political subdivision in the County where City is located or any adjoining County in which Franchisee or its Affiliate commits to make service improvements or upgrades not currently available in the City, Franchisee shall upon written request, meet with City officials to review the technological capabilities of the City system in comparison to the other systems in question and to review its future plans for future service offerings in the City. If the City believes there is sufficient disparity between the services or technology being provided, the City may request the Franchisee to engage in informal negotiations to provide comparable services within a reasonable period of time. Upon such a request, Franchisee agrees to make a good faith effort to reach a mutually acceptable agreement with the City. In considering such matters, the City shall take into account the cable TV related needs and interests of the City, and the financial impact of implementing the services, as well as the potential impact on monthly rates to cable subscribers. The parties acknowledge that the Franchisee will be entitled to an extension of its existing Franchise of sufficient duration to permit it to recoup its costs and earn a reasonable return on its total investment.

8-1-3 REGULATION AND OVERSIGHT.

(A) **Severability.** In the event that a court or agency of competent jurisdiction declares by final decision that any provision of this Franchise Agreement is unenforceable according to its terms or is otherwise void, said provision shall be considered a separate, distinct and independent part of this Agreement, and such declaration shall not affect the validity and enforceability of all other provisions of this Agreement. Alternatively, the City may modify any such provisions to the reasonable extent necessary to make such provision enforceable if such modifications are consistent with the full intent and purposes of this Agreement.

(B) **Preemption.** In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then subject to the City's rights under the foregoing subsection, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City.

(C) **Notice.** As soon as reasonably practicable following knowledge thereof, the Franchisee shall notify the City of any point of conflict believed to exist between the Cable Ordinance or this Agreement and any other provisions of law. By executing this Agreement, Franchisee represents that it is not aware of any such conflict at the time of such execution.

8-1-4 PROVISION OF CABLE SERVICE.

(A) The Franchisee shall make cable service available to all persons within the Franchise Area who request service, so long as their financial and other obligations to the Franchisee are satisfied, and subject to reasonable construction standards and schedules and subject to availability of legal access to the location. Franchisee shall extend its system as required by the Cable Ordinance.

(B) Free cable service and discounted broadband services shall be provided to the locations listed on **Exhibit A**.

8-1-5 SYSTEM FACILITIES, EQUIPMENT AND SERVICES.

(A) **System.** The Franchisee's cable system shall at all times meet or exceed its capacity and quality as of the last day of the Prior Franchise and shall meet or exceed the following requirements by **July 1, 2009**:

- (1) The System shall have a capacity of at least 750 MHz activated with video programming options that will be available to all Subscribers.
- (2) The System should utilize fiber-optic cable as necessary to improve signal reliability and performance.
- (3) If fiber optic cable is deployed, there shall be no more than **ten (10)** active components in a cascade measured from the headend to the Subscriber.
- (4) The Franchisee shall provide, and install the necessary equipment for amplification, conversion, receiving, transmitting, switching and headend processing of signals to deliver one designated access channel for educational, government and public use.
- (5) The System shall be capable of continuous **twenty-four (24) hour** daily operation without severe material degradation of signal except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.
- (6) The System shall be capable of operating in temperatures as required by Federal Law or Federal standards.
- (7) The System shall meet all specifications as set forth herein or in the Cable Ordinance and any applicable Federal standards.
- (8) The System shall be operated in such a manner as to avoid causing interference with the reception of off-air signals by a Subscriber.
- (9) The upstream capacity of the System shall be such that there is only normal signal deterioration in the signal quality from the point of origin through the headend and Public, Educational, and Governmental production facilities.
- (10) The System shall use equipment generally used in high-quality, reliable, modern systems of similar design, including but not limited to, back-up power supplied capable of providing power for **two (2) hours** in the event of an electrical outage, plus adequate portable generators to cover longer outages. The obligation to provide back-up power supplies requires Franchisee to provide back-up power supplies at the headend and other relevant locations throughout the system. The obligation to provide backup power supplies requires the Franchisee to install equipment that will:
 - (a) cut in automatically on failure of commercial utility AC power;
 - (b) revert automatically to commercial power when it is restored; and
 - (c) prevent the standby power source from powering a "dead" utility line.

In addition, the design and construction of the System shall include modulators, antennae, amplifiers and other electronics that permit and

are capable of passing through the signals received at the headend without substantial alteration or deterioration.

- (11) The headend shall be capable of providing at least 74 channels in full configuration and shall develop signals of high quality throughout the service area, and the headend shall have adequate ventilation and space to be able to meet or exceed applicable design and technical requirements.
- (12) The System shall allow delivery of Internet, High Definition, DVR, and telephone type services.
- (13) The System shall allow all unscrambled channels on all service tiers to be received by cable-ready television sets, and shall minimize, to the maximum extent feasible, interference with consumer electronic equipment. This Section may no longer apply when the industry goes "all digital".
- (14) The capability must exist for non-subscribers to be able to block out audio and video at least on all premium and pay-per-view channels and video on all channels.
- (15) All closed-caption programming retransmitted by the System shall include the closed-caption signal.
- (16) All System connectors, external waterproofing, system expansion loops, and grounding shall be in compliance with the applicable NEC and NESC codes. Any variations in place from construction under the Prior Franchise shall be corrected during routine maintenance and replacement.

8-1-6 CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE.

(A) Access Channels.

- (1) The Franchisee shall continue to provide and maintain channels, facilities, personnel, and financial support for Public, Educational, and Governmental (PEG) use at least to the same extent as was being provided on the last day of the Prior Franchise, and existing studios and equipment and additionally within **one (1) year** of the effective date of this Franchise, Franchisee shall to the extent funds are available provide funding for equipment purchases for PEG use.
- (2) In the event Franchisee increases the channel capacity of its System beyond the minimum required hereunder, in addition to the requirements of subsection (a)(1), the City may require the Franchisee to make available **one (1)** additional standard (6 MHz) video channel for public, educational, or governmental programming, provided the City requests such channel within **ninety (90) days** of written notice from Franchisee of the capacity increase.
- (3) The Franchisee shall provide upstream channels for PEG use. Any reference to an upstream or downstream channel for PEG use refers to a 6 MHz channel; an access channel may be used to provide **one (1)** or more channels of service.

(B) **Equipment Repairs and Replacement.** Throughout the Franchise term, the Franchisee shall provide for the timely repair and replacement of all of its access equipment being used by the City, the School District serving the community, or any of their designated providers, in producing or providing public, educational or governmental programming, including equipment provided under or used during the Prior Franchise.

(C) **Access and Program Support.** The Franchisee shall provide sufficient staff support to provide to interested members of the public and City and School District personnel training in

the use of PEG access equipment and assistance in the production of PEG programming, to provide

community education and outreach, to maintain all PEG access equipment, to provide for the check-in and check-out of PEG access equipment, to schedule the use of the Franchisee's facilities by persons producing PEG programs, and to perform related matters.

(D) **Management of Channels.** The City may designate **one (1)** or more entities, including a non-profit access management corporation, to manage the use of all or part of the public, educational, and governmental access channels.

(E) **Governmental Programming Services.** Franchisee will work with the City and School District to explore alternatives to efficiently expand and better utilize PEG access. Possible enhancements might include cablecasting of City, School Board, and other key meetings, technical expertise to aid the City or School District in this regard, development of new programming on local issues, or the provision of a dedicated channel based on utilization and demand.

(F) **Costs and Payments Not Franchise Fees.** The parties for purposes of this Agreement agree that any costs to the Franchisee associated with the provision of support for public, educational or governmental access pursuant to this Franchise Agreement do not constitute and are not part of a franchise fee, and fall within **one (1)** or more of the exceptions to 47 U.S.C. § 542.

(G) **Editorial Control.** Except as expressly permitted by federal law, the Franchisee shall not exercise any editorial control over the content of programming on the designated access channels (except for Franchisee's own programming cablecast on those channels).

8-1-7 FRANCHISE FEE.

(A) **Payment of Franchise Fee.** The Grantee shall pay a Franchise fee for the use of the City's right-of-way and compensate the City for all costs associated with administering and regulating the cable system. The amount of the Franchise fee shall be **three percent (3%)** of the Grantee's annual Gross Revenues and such fee shall be paid on a calendar quarterly basis within **seventy-five (75) days** after the end of the quarter.

(B) Reporting and Auditing of Fee Payments.

- (1) The Grantee shall provide the Grantor with a revenue statement clearly showing the Gross Revenues covering the Franchise reporting period, and the amount of the Franchise fee due to the City for the calendar quarter within **seventy-five (75) days** after the end of the quarter.
- (2) Every year of the Franchise, the Grantee shall file with the City Clerk within **one hundred twenty (120) days** of the close of the Grantee's fiscal year, an annual report prepared and certified by an officer of the company, clearly showing the annual Gross Revenues attributable to the Chester Cable System. Extension of annual reporting requirement of such period up to **thirty (30) additional days** may be granted by the City Clerk.
- (3) The City shall have the right to audit the Grantee's financial records at the location where such records are maintained, for the purpose of re-computing any amounts to be payable to the City under this Code, provided, however, that such inspection shall take place within **thirty-six (36) months** following the receipt of such payment. Any audit made by the City shall be paid within **thirty (30) days** following written notice to the Grantee by the City of the amount due, and such notice shall include a copy of the audit report. The cost of said audit shall be borne by the Grantee, if an additional amount in excess of **five percent (5%)** of the Franchise fees due for the audit period are found to be due to the City.

8-1-8 INSURANCE, INDEMNIFICATION.

(A) **Insurance Required.** Franchisee shall maintain throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the City and the

Franchisee: worker's compensation and employer liability insurance to meet all requirements of Illinois

law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the Cable System, and the conduct of the Franchisee's business in the City, in the minimum amounts of:

- (1) **One Million Dollars (\$1,000,000.00)** for property damage resulting from any **one (1) accident**;
- (2) **Two Million Dollars (\$2,000,000.00)** for personal bodily injury or death resulting from any **one (1) accident**; and
- (3) **Two Million Dollars (\$2,000,000.00)** for all other types of liability.

Neither the provisions of this Section nor any damages recovered by the City shall be construed to limit the liability of Franchisee for damages under the Franchise.

(B) **Qualifications of Sureties.** All insurance policies shall be with sureties qualified to do business in the State of Illinois, with a B+7 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by the City.

(C) **Policies Available for Review.** All insurance policies shall be available for review by the City, and Franchisee shall keep on file with the City certificates of insurance.

(D) **Additional Insureds; Prior Notice of Policy Cancellation.** All general liability insurance policies shall name the City, its officers, boards, board members, commissions, commissioners, agents, and employees as additional insured and shall further provide that any cancellation or reduction in coverage shall not be effective unless **thirty (30) days** prior written notice thereof has been given to the City Clerk. Franchisee shall not cancel any required insurance policy without submission of proof that the Franchisee has obtained alternative insurance reasonably satisfactory to the City Council which complies with the Cable Ordinance and this Franchise Agreement.

(E) **Failure Constitutes Material Violation.** Failure to comply with the insurance requirements set forth in this Section shall constitute a material violation of the Franchise.

(F) **Indemnification.**

- (1) Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, board members, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgment for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the Cable System; the conduct of the Franchisee's business in the City; or in any way arising out of the granting of the Franchise or Franchisee's enjoyment or exercise of this Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Ordinance or this Franchise Agreement.
- (2) Specifically, but not by way of limitation on the scope of (1) above, Franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the City, and in their capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other similar right of any Person. This indemnity does not apply to programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 USC § 532, unless the Franchisee was in any respect engaged in determining the editorial content of the program, or

prescreened the programming for the purported purpose of banning or regulating indecent or obscene programming.

- (3) The indemnity provision includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding prior to Franchisee assuming such defense. The City shall notify Franchisee of claims and suits as soon as practicable, but failure to give such notice shall not relieve Franchisee of its obligations hereunder. Once Franchisee assumes such defense, the City may at its option continue to participate in the defense at its own expense.
- (4) Notwithstanding anything to the contrary contained in this Agreement, the City shall not be so indemnified or reimbursed in relation to any amounts attributable to the City's own negligence, willful misconduct, intentional or criminal acts, including in the performance of its obligations under the Cable Ordinance or this Franchise Agreement.

8-1-9 MISCELLANEOUS PROVISIONS.

(A) **Governing Law.** This Franchise Agreement was made in and shall be governed in all respects by the law of the State of Illinois.

(B) **Notices.** Unless otherwise expressly stated herein, notices required under this Franchise Agreement shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party, but each party may only designate one entity to receive notice.

- (1) Notices to the Franchisee shall be mailed to:

NewWave Communications
Attn: Andrew Paluga
One Montgomery Plaza, 4th Floor
Sikeston, MO 63801

- (2) Notices to the City shall be mailed to:

City Clerk
City of Chester
1330 Swanwick Street
Chester, IL 62233

(C) **Time of Essence.** In determining whether the Franchisee has substantially complied with this Franchise Agreement, the parties agree that time is of the essence.

(D) **Captions.** The captions and headings of this Agreement are for convenience and reference purposes only, and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

(E) **Integration.** This Agreement set forth the entire agreement between the parties respecting the subject matter hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby.

AGREED TO THIS 17TH DAY OF APRIL, 2017.

CITY OF CHESTER, ILLINOIS

CABLE ONE
D/B/A NEWWAVE COMMUNICATIONS

By: _____
Mayor

By: _____

Name: _____

ATTEST:

Title: _____

City Clerk

(Ord. No. 1641; 04-17-17)

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 City.

- (1) Gross revenues shall include the following:
 - (a) Recurring charges for cable or video service.
 - (b) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
 - (c) Rental of set top boxes and other cable service or video service equipment.
 - (d) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
 - (e) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
 - (f) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
 - (g) A *pro rata* portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the City. The allocation shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
 - (h) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (i).
 - (i) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
 - (j) The service provider fee permitted by 220 ILCS 5/21-801(b).
- (2) Gross revenues do not include any of the following:
 - (a) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
 - (b) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-

- issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.
- (c) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or non-video service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.
 - (d) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the City and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.
 - (e) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, state, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
 - (f) Security deposits collected from subscribers.
 - (g) Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

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

(E) **"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 City 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 City.

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

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

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

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

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

(C) **Payment.** The holder shall pay the PEG access support fee to the City or to the entity designated by the City 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 City, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the City'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 City 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 City 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 City. If all local franchises between the City and cable operator terminate, the audit requirements shall be those adopted by the City 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 City'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 City.

8-3-2 ENFORCEMENT. The City 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 City.

8-3-3 CUSTOMER CREDITS. The City 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 City, 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 City 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).

EXHIBIT A

Chester Community Grade School
Chester High School
St. John Lutheran School
St. Mary's Catholic School
Memorial Hospital of Chester
Western Egyptian Nutrition Site of Chester
Chester City Hall/Police Department
Chester Public Library
Chester Water Plant
Chester Fire Department
Chester Welcome Center

(Ord. No. 1641; 04-17-17)