

CHAPTER 8

CABLE TELEVISION

ARTICLE I – CABLE/VIDEO SERVICE PROVIDER FEE
AND PEG ACCESS FEE

8-1-1 **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 5/22-501.
- (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 5/22-501.
 - (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 5/22-501 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 5/22-501) 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 5/22-501.

(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 5/22-501.

(F) **"Service Provider Fee"** means the amount paid under this Article and 220 ILCS 5/22-501 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.

8-1-2 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 **five percent (5%)** 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 5/22-501 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 5/22-501(c) with credit to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under the law.

8-1-3 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 8-1-2(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 8-1-2(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 5/22-501** 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 8-1-3(B)**.

8-1-4 APPLICABLE PRINCIPLES. All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

8-1-5 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.

8-1-6 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.

8-1-7 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 5/22-501)

ARTICLE II - CABLE AND VIDEO CUSTOMER PROTECTION LAW

8-2-1 CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.

(A) **Adoption.** The regulations of 220 ILCS 5/22-501 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 City'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.

8-2-2 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.

8-2-3 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 5/22-501(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.

8-2-4 PENALTIES. The City, pursuant to 220 ILCS 5/22-501(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).

ARTICLE III - CABLE TELEVISION FRANCHISE

8-3-1 SHORT TITLE. This franchise shall be known and may be cited as the City of Newton Cable Television Franchise.

8-3-2 DEFINITIONS. For the purpose of this franchise the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(A) **"Basic Cable Service"** shall mean any service tier which included the retransmission of local television broadcast signals as defined by Section 76.5(ii) of the Rules and Regulations of the Federal Communications Commission.

(B) **"City Council"** is the City Council of the City of Newton.

(C) **"Cable Service" or "Cable Television Service"** means:

- (1) the one-way transmission to subscribers of video programming or other programming services;
- (2) subscriber interaction, if any, which is required for the selection of such programming; and
- (3) any other communications or other electronic services which the Company proposes, now or in the future, to provide to its subscribers over its cable system.

(D) **"Cable Television System", "Cable System" or "CATV System"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community.

(E) **"Company"** is the grantee of rights under this franchise and is known as Telecommunications Management, LLC d/b/a NewWave Communications.

(F) **"FCC"** is the United States federal agency known as the Federal Communications Commission.

(G) **"Gross Annual Receipts"** shall mean any and all compensation and other consideration received by the Company from cable television subscribers in payment for receipt of normal monthly cable service within the City of Newton; provided, however, that gross annual receipts shall not include one-time revenues such as charges for installation, reconnection, relocation, modification of installation, inspection or repair, system revenue not earned from subscribers, the amount of any franchise or copyright fees passed on to subscribers or any taxes, fees, or charges on or for services furnished by the Company herein imposed directly or indirectly on any subscriber by any state, city or other governmental unit or third party and collected by the Company on behalf of such entity.

(H) **"Municipality"** is the City of Newton, in Jasper County in the State of Illinois.

(I) **"Optional Channel(s)"** shall mean such other channel or channels, not included in basic service, which may be made available to subscribers by the Company at an additional charge on an optional basis.

(J) **"Person"** is an individual, firm, partnership, association, corporation, company or organization of any kind.

(K) **"Premium Channel(s)"** shall mean specialized service such as Home Box Office and/or other premium entertainment services that may be made available by the Company.

8-3-3 GRANT OF AUTHORITY.

(A) The Company is granted the non-exclusive right to construct on, through, along, under and over the streets, highways, easements, sidewalks, rights-of-way, and all other public places and public ways of the City of Newton, Illinois, a distribution system for a cable television service which system is to include, but not necessarily to be limited to, line or lines of wire, cables, or other conductors,

together with all necessary feeders or service wires, poles and other attachments, devices or apparatus necessary to or usually used in connection with such a system; to maintain and keep said system in proper condition after its construction; and to operate said system in the usual and customary manner.

(B) This franchise includes the right for the Company to make such contracts as it deems necessary and proper and is able to negotiate with those public utilities and public service corporations, permitting it to use the existing utility poles, conduit, and facilities for its installation and to erect any necessary poles, conduit, and facilities for its use.

(C) This grant and privilege is made upon the terms and conditions hereinafter set forth.

(D) The Municipality shall not grant any franchises or other types of authorizations for cable service to other persons on terms or conditions any more favorable or less burdensome than those in its existing franchise agreement with the Company or any amendment thereto.

8-3-4 CONSTRUCTION STANDARDS.

(A) All work performed in the construction, operation, maintenance and repair of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All construction, including installation, shall conform to all applicable federal and state laws and regulations, ordinances, local laws and regulations and the National Electric Safety Code. The Company shall provide to the Municipality, on request, all maps, plans and specifications as to proposed installations and shall keep the Municipality informed as to any proposed changes or alterations in same.

(B) Any municipal property damaged or destroyed by Company shall be repaired or replaced by Company and restored to serviceable condition to the reasonable satisfaction of the Municipality.

(C) The Company shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and other public places so as to prevent the branches of such trees from coming into contact with the facilities of the Company.

(D) The Company shall, upon **seventy-two (72) hours** advance written notice from any person holding an appropriate permit issued by the Municipality, temporarily raise or lower its lines to permit the moving of any building or structure. The actual expense of such temporary removal shall be paid by the person requesting the same and the Company shall have the right to require payment in advance for such temporary removal.

8-3-5 LINE EXTENSION POLICY. It shall be the obligation of the Company to serve all residents of the City, without regard to the income level of the residents of the local area in which any group of potential subscribers resides, to the extent that the density of homes, terrain and other factors render providing service economically compensatory, practicable, and technically feasible.

8-3-6 INDEMNIFICATION AND INSURANCE.

(A) The Company shall at all times defend, indemnify and save harmless the said City of Newton, members of its City Council and its officers and employees from and against any and all actions, suits, damages, costs, charges and expenses by reason of the location, maintenance and operation of the cable system in any streets, highways or other public places of the City of Newton, by the Company in connection with the operation of its cable system in the City of Newton.

(B) The Company shall at all times maintain in continuous effect throughout the term of this franchise a general liability insurance policy covering claims for liability and damages. It shall include, at a minimum, the following types of insurance coverage:

- (1) property damage -- not less than **One Million Dollars (\$1,000,000.00)** for each occurrence;
- (2) personal and bodily injury -- not less than **One Million Dollars (\$1,000,000.00)** for each occurrence.

(C) A Certificate for the above required minimum insurance, in form satisfactory to the City Attorney, shall be submitted to the City of Newton, upon the execution of this Agreement. The policy shall require that the insurance carrier must give written notice to the Company and the Municipality **thirty (30) days** prior to a cancellation of or a material change in the policy.

8-3-7 FRANCHISE FEE.

(A) The Company shall pay to the City of Newton, a franchise fee of **three percent (3%)** of its basic and premium TV revenue from its cable television operations in the City of Newton.

(B) The aforesaid payments shall be made to the City of Newton, without demand, on or before the **seventy-fifth (75th) day** after the end of the quarter. The Company shall keep accurate records of its gross annual receipts during the **twelve (12) months** period preceding the aforesaid payments and shall submit a summary of said records in the form of Exhibit A to the City of Newton along with its payments.

(C) The Company shall keep its books and records open for inspection during normal business hours, upon reasonable notice, to the duly authorized officials or agents of the City of Newton. Any information coming into the possession of the City as a result of this Agreement shall be treated as confidential and shall not be subject to public disclosure.

8-3-8 RATES AND CHARGES. A schedule of the current rates and charges currently imposed by the Company shall:

(A) be on file at all times during the term of this franchise with the City Council;

(B) furnished to each subscriber upon initial connection to the Company's cable system.

8-3-9 COMPLAINT PROCEDURES. The Company shall maintain a toll-free telephone, for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. The Company shall give notice to each subscriber at the time of initial connection to the cable system of the established complaint procedures, that is, the address and telephone number to which inquiries or complaints are to be addresses. Notwithstanding circumstances beyond the Company's control, all service calls will be completed in a prompt and diligent manner and all system related outages will be responded to within a **twenty-four (24) hour** period.

8-3-10 BOOKS AND RECORDS.

(A) The Municipality reserves the right to inspect all pertinent books, records, maps, plans, financial statements and other like materials of the Company which pertain to the cable system, upon reasonable notice and during regular business hours. Such information shall be treated as confidential and shall not be disclosed by the Municipality or its agents to the public or to any third party.

(B) The Municipality shall abide by federal laws applicable to the Company or the cable system governing subscriber privacy with respect to any personally identifiable subscriber information that comes into its possession pursuant to its right to inspect the Company's books and records under this franchise.

8-3-11 DURATION AND RENEWAL. This agreement shall remain in full force and effect for a period of **ten (10) years** from the date of this Agreement. Thereafter renewal of the franchise shall be governed by applicable federal law.

8-3-12 GOVERNING LAW. This agreement is subject to all applicable provisions of the Communications Act of 1934, as amended, and regulations promulgated by the FCC pursuant thereto, as well as state laws or regulations governing cable television operations not inconsistent therewith.

8-3-13 SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this franchise agreement is for any reason held invalid by any court or agency of competent jurisdiction, such portion shall be deemed a separate, distance and independent provision and such holding shall not affect the validity of the remaining portions of the franchise agreement.

8-3-14 SUCCESSORS AND ASSIGNS. The rights and privileges and all of the obligations, duties and liabilities created by this agreement shall pass to and be binding upon the successors of the City and the successors, transferees, representatives and assigns of the Company, however, the Company shall not sell assign or otherwise transfer this contract without written consent of the City.

8-3-15 NONCOMPLIANCE. The City shall notify the Company in writing of any alleged violation/breach or failure to meet any of the material terms or provisions in this agreement. The Company shall have **thirty (30) days** from the date of receipt of the written notice to correct or remedy the violation/breach or failure to meet any of the material terms or provisions of the contract.

If not corrected or remedied within said **thirty (30) day** period, the City will give **ten (10) days** prior written notice to Company of a public hearing to be conducted by the City to determine if the Company is diligently pursuing reasonable actions to cure the alleged violation/breach or to determine if there are circumstances beyond its control which prevent the Company from curing the alleged violation/breach. The Company will have the right to be represented by attorneys and to present such evidence as it shall desire concerning the alleged violation/breach and related issues at such public hearing.

If, following the public hearing the City determines that the Company remains in violation/breach and is not diligently pursuing reasonable actions to cure the violations/breaches, the City may so declare and terminate this contract without further notice, hearing or other procedural requirement of or by the City to effect termination of this contract.

The Company shall have the right to appeal the City's action to the appropriate state or federal judicial or administrative forum in the manner and within the time as provided by the law of such forum.

8-3-16 NOTICES. All official correspondence should be sent certified mail, return receipt requested. The Company should be notified at:

J. Keith Davidson
Chief Financial Officer NewWave Communications
One Montgomery Plaza, 4th Floor
Sikeston, MO 63801
573-481-2403

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