

**ORDINANCE NO. 26-05**

**AN ORDINANCE RELATING TO COMMUNICATIONS SERVICES**

AN ORDINANCE ESTABLISHING THE TERMS AND CONDITIONS OF A GRANT OF USE OF THE CITY OF SOMERSET RIGHTS-OF-WAY FOR COMMUNICATION PROVIDERS WHO ARE GRANTED FRANCHISE TO PROVIDE CABLE AND OTHER WIRED COMMUNICATIONS IN THE CITY. THE ORDINANCE SHALL SERVE AS AN EXHIBIT TO A SUBSEQUENT CONTRACT AWARD TO A NAMED PROVIDER WHO IS CHOSEN BY A PROCESS UNDER FEDERAL LAW.

**WHEREAS** the City of Somerset (“City”) seeks to enact the following ordinance relating to Communications Services so that all Communications Service providers are treated equally and subject to the same rights and obligations when operating in the City’s Rights-Of-Way.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY AS FOLLOWS:**

**SECTION I.** Table of Contents. Each such section below referred to herein as a “Section,” subdivisions of such Sections as “subsections,” and such Sections collectively referred to herein as “this Ordinance”:

- § 1 General provisions
- § 2 Franchise requirements and characteristics
- § 3 Rights-Of-Way management and Facilities requirements
- § 4 Miscellaneous
- § 5 Transitional provisions
- § 6 Franchisees providing Communications Service to Customers
- § 7 Private Communications Facilities
- § 8 Liabilities and penalties
- § 9 Remedies not exclusive

§10 Review, termination, and cancellation

§11 Foreclosure-receivership

§12 Reports

§13 Books and records of the Franchise

§14 Time of essence

§15 Equal employment opportunity

§16 Aesthetic standards

§17 Violations

**§ 1 GENERAL PROVISIONS.**

(A) *Declaration of findings.* The City hereby declares as a legislative finding that the Rights-Of-Way controlled by the City:

- (1) Are a unique and physically limited resource;
- (2) Are critical to the travel and transport of persons and property in the City;
- (3) Are intended for public uses and must be managed and controlled consistent with that intent;
- (4) Can be partially occupied by the Facilities of providers of Communications Service, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
- (5) Should be subject to specific additional regulations imposed in a competitively neutral, non-discriminatory, and non-discretionary manner as established by this Ordinance to ensure coordination of providers of Communications Service, maximize available space, and facilitate entry of a maximum number of providers of Communications Service and other services in the public interest.

(B) *Title.* This Ordinance may be referred to and cited as the “Communications Service Franchise Ordinance.”

(C) *Applicability.* The requirements of this Ordinance shall apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable federal or State law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Ordinance shall be disregarded pursuant to this subsection except on express application to and determination by the City to such effect based on the specific factual circumstances demonstrated. The provisions of this Ordinance shall be deemed incorporated in each Franchise granted.

(D) *Preservation of authority.* Any rights granted pursuant to this Ordinance and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce generally applicable ordinances and regulations necessary to the health, safety, and welfare of the public, as may be amended from time to time (to the extent not in conflict with State or federal law, or Franchisee’s Franchise). Nothing in this Ordinance shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, State, or local law currently in effect or as may hereinafter be amended.

(E) *Public inspection of records.* Certain information required to be filed with the City pursuant to this Ordinance is subject to inspection and copying by the public pursuant to the provisions of the Kentucky Open Records Act, KRS 61.870 *et seq.*

(F) *Indemnification.* As a condition of use of the Rights-Of-Way, each Franchisee at its sole cost and expense, shall indemnify, protect, defend and hold harmless the City, its

elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of or in relation to the City's award of the Franchise to that Franchisee, the rights granted to the Franchisee, or the activities performed, or failed to be performed, by such Franchisee under the Franchise or use of the Rights-Of-Way, except to the extent such acts or use arise from or are caused by the negligence or willful misconduct of the City, its elected officials, officers, or employees. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-Of-Way. The City shall give Franchisee written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this subsection. In the event any such claim arises, the City shall tender the defense thereof to the Franchisee and the Franchisee shall have the right to defend, settle, or compromise any claims arising thereunder and the City shall cooperate fully with Franchisee's efforts. If the City determines in good faith that its interests cannot be represented by the Franchisee, the Franchisee shall be excused from any obligation to indemnify the City.

(G) *Compliance with laws.* In performing activities and exercising rights and obligations under any Franchise, each Franchisee and other holder of a Franchise shall comply with all applicable federal and State laws, and, consistent with subsection 1(D), local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of Rights-Of-Way.

(H) *Enforcement; attorneys' fees.* The City shall be entitled to enforce this Ordinance and any Franchise granted hereunder through all remedies lawfully available, and each Franchisee shall pay the City its costs of enforcement, including but not limited to reasonable attorneys' fees, in the event that Franchisee is determined judicially to have violated the terms of this Franchise.

(I) *Relationship of the parties.* Under no circumstances shall any Franchise authorized by this Ordinance be construed to create any relationship of agency, partnership, joint venture, or employment between the City and the Franchisee.

(J) *Defined terms.* For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this subsection, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the singular number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

**AFFILIATE** means, as to any Person, each Person, directly or indirectly, controlling, controlled by, or under common control with such Person.

**ANTENNA** has the same meaning as in 47 C.F.R. 1.6002(b), an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services.

**COMMUNICATIONS** means the transmission via the Facilities, in whole or in part, of video, audio, data, writings, signs, signals, pictures, sounds or other forms of information

or intelligence through wire, wireless or other electronic means, regardless of the federal or State statutory or regulatory scheme to which such transmissions may be subject.

**COMMUNICATIONS SERVICE** means the transmission of Communications via Facilities, to a Customer, or to any other Person, including a Private Communications System Owner's provision of Communications via a Private Communications System, that is within or outside the territorial limits of the City. Communications Service includes, but is not limited to, "telecommunications service," "enhanced service," "information service," "Internet access service," "broadband service," "cable service," "video programming service," "other programming service," and Internet-based or "over the top" video service offerings, as those terms are now, or may in the future be, defined under federal law. The term also includes the use of all instrumentalities, Facilities, conduits, apparatus and services or functionalities (among other things, the receipt, forwarding, storage, generation or delivery of Communications), incidental to or designed to directly or indirectly facilitate or accept Communications.

**CUSTOMER** means a Person located within the territorial limits of the City who ultimately uses or is intended to ultimately use Communications Service provided by a Franchisee and is the ultimate last user of a Communications Service.

**FACILITIES** mean any portion of a System located in, along, over, upon, under, or through the Rights-Of-Way.

**FCC** means the Federal Communications Commission of the United States of America or any successor thereto.

**FRANCHISE** means a Franchise granted under this Ordinance, or any other Franchise granted by the City pursuant to Sections 163 and 164 of the Kentucky

Constitution, or by the Kentucky General Assembly prior to the adoption of Sections 163 and 164 of the Kentucky Constitution, which permits a Franchisee to install or operate any Facilities in the Rights-Of-Way to provide Communications Service. Use of this definition in this Ordinance is not intended to include any license or permit for the privilege of transacting and carrying on a business within the City, as may be required by any other ordinance or laws of the City or the State.

**FRANCHISE FEE** means the fee imposed by the City on Franchisee for use of the Rights-Of-Way pursuant to a Franchise granted under this Ordinance.

**FRANCHISEE** means the Person to whom a Franchise is granted, or its successors, assigns, or transferees.

**LESSEE** means a Person who provides Communications Service within the City solely by leasing Facilities and who has no control over what, where or how any Facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

**PERSON** means individual, partnership, association, corporation, joint venture, legal entity or organization of any kind.

**POLE** means a utility, lighting, or similar Pole made of wood, concrete, metal, or other material, located or to be located within a public Right-Of-Way. The term does not include a Tower or Support Structure.

**PRIVATE COMMUNICATIONS SYSTEM** means a System used for delivering Communications by a Person solely in connection with the internal Communications needs of such Person's business, provided that such Person does not use, or permit the

use of, such System to provide Communications Service to a Customer or any other Person.

**PRIVATE COMMUNICATIONS SYSTEM OWNER** means a Person that owns or leases a Private Communications System.

**RESELLER SERVICE PROVIDER** means a Person who provides Communications Service within the City solely by reselling Communications Service and who has no control over what, where or how any Facilities are erected, installed, maintained, operated, repaired, removed, restored or otherwise used.

**RIGHTS-OF-WAY** means the surface and space on, above, and below every street, alley, road, highway, lane or other property dedicated or commonly used now or hereafter for utility purposes and Facilities in the City. Rights-Of-Way shall not include public property owned or leased by the City and not intended for Rights-Of-Way use, including, but not limited to, parks, public works property, buildings or overhead lighting.

**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 Facilities associated with the structure, including the Wireless Facilities associated with the Antenna and any associated equipment on the structure, including colocations, 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.

**STATE** means the Commonwealth of Kentucky.

**SUPPORT STRUCTURE** means a structure in the Right-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.

**SYSTEM** means any and all equipment, structures, materials or tangible components located in the Rights-Of-Way and used to provide Communications Service, including without limitation all plant (whether inside or outside), cabinets, surface location markers, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, Antennas, lines, pipes, mains, conduit, ducts, regenerators, repeaters, vaults, pedestals, manholes, handholds, pull boxes, splice closures, wires, cables, towers, wave guides, and anything else designed and constructed for the purpose of producing, receiving, amplifying or distributing Communications Service.

**TOWER** means any structure in the public Right-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.

**WIRELESS FACILITY** means a portion of a 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 Facilities 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.

**WIRELESS SERVICES** means any personal wireless services (which includes any of the technologies as defined by Section 704(a)(7)(c)(i) of the Federal Telecommunications Act of 1996, including cellular, personal communications services (PCS), enhanced specialized mobile radio (ESMR), specialized mobile radio (SMR), and paging), using a licensed or unlicensed radio frequency (RF) portion of the electromagnetic spectrum, whether at a fixed location or mobile, provided to the public.

## **§ 2 FRANCHISE REQUIREMENTS AND CHARACTERISTICS.**

(A) *Unlawful to operate without a Franchise.* Unless otherwise specifically authorized under applicable federal or State law, it shall be unlawful for any Person to own, erect, install, maintain, operate, repair, replace, remove or restore any Facilities in the Rights-Of-Way in the City that are used to provide Communications Services without a valid, unexpired Franchise from the City. Unless otherwise provided hereinafter by City Ordinance, Reseller Service Providers and Lessees shall not be required to obtain a

Franchise. Private Communication Systems shall not require a Franchise but shall be licensed pursuant to Section 7.

(B) *Franchises nonexclusive.* The authority granted by the City in any Franchise shall be for the nonexclusive use of the Rights-Of-Way. The City specifically reserves the right to grant, at any time, such additional Franchises or other rights to use the Rights-Of-Way for any purpose to any other Person, including itself, as it deems appropriate, subject to all applicable laws.

(C) *Nature of rights granted by any Franchise.* Franchises shall not convey title, equitable or legal, in the Rights-Of-Way, and shall give only the right to occupy Rights-Of-Way, for the purposes and for the period stated in this Ordinance and as may be further modified by the Franchise in a nondiscriminatory and competitively neutral manner. No Franchise may excuse Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on another Person's Facilities. All Franchises shall be deemed to incorporate and be limited by the provisions of this Ordinance.

(D) *Application and application fee required.*

(1) Applications for an original Franchise granted hereunder shall be filed with the City pursuant to the advertisement. 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:

(a) *Application fee.* Applications shall be accompanied by a non-refundable application fee of \$10,000 payable to the City. The application fee shall be established at the rate set forth above, effective upon final passage of this Ordinance. Thereafter, the

application fee shall be altered every two (2) years, to the nearest ten (10) dollar increment, if required, in proportion change to the most recently-published Consumer Price Index (CPI) for communications services at the time. The application fee shall defray in whole or part the City's costs to process any application filed under this Ordinance and negotiate, award and administer any Franchise.

(b) *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 reasonably available at all times; and information regarding how to contact the local representative in an emergency.

(c) *Description of proposed System.* Applicants for an original Franchise to construct a new System shall provide a description of the proposed System. At a minimum, the description shall include:

1. General description of the project by geographical area.
2. Provide a description of the proposed System components to include but not be limited to:
  - a. Anticipated number and general location of small cell Antennas;
  - b. Location (aerial/underground) of fiber. Where possible, provide estimated percent aerial and percent underground;
  - c. Anticipated ground level elements (GLE's) and general locations.
3. For underground fiber installation, discuss proposed installation methodologies. The narrative shall address compliance with FCC standards as related to

applicable equipment such as small cell Antennas and current acceptable RF design standards currently in practice as well as to those standards found in local ordinances and/or regulations.

4. Discuss anticipated project phasing based on geographic and/or right of way limitations, limitations imposed by local events and those internal limitations affected by finance and project logistics.

(d) *Communications Service.* The applicant shall provide a statement setting forth a general description of the Communications Service the applicant plans to provide over the System.

(e) *Applicant organization.* The applicant shall be a corporation or limited liability company, partnership or other Person authorized to do business in the State, as certified by the Secretary of State. The applicant must fully disclose the ownership of the proposed Facilities and System.

(f) *Additional requirements.*

1. 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 and submitted with three (3) of copies. The City may, at its discretion, consider such additional information as part of the application.

2. 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.

3. A copy of the applicant's certificate of authority from the Public Service Commission ("PSC") where the applicant is lawfully required to have such certificate from the PSC.

4. A copy of the applicant's certificate of authority from the FCC where the applicant is lawfully required to have such certificate from the FCC.

5. A copy of all insurance certificates required under this Ordinance.

6. A statement signed by the applicant that the applicant agrees to be bound by all provisions of the Franchise and agrees to obtain all applicable permits and authorizations prior to constructing, installing, or operating a System in the Rights-Of-Way.

7. 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.

(g) *Supplementation to applications.* The City reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determinations.

(h) *The City's rights reserved.* The City reserves the right to waive all formalities and/or technicalities where the best interest of the City may be served, provided that it shall exercise this right in a nondiscriminatory and competitively neutral manner.

(E) *Standards and procedures for approval or renewal of Franchises.* Franchises shall be granted in accordance with Kentucky Constitution Sections 163 and 164. The City shall grant Franchises or renewals to any eligible Franchisee for the right and privilege to construct, own, operate, repair, replace and maintain Facilities in, through and along the

City's Rights-Of-Way for the purposes of providing Communications Service on a nonexclusive basis within the City, subject, however, to the standards, terms and conditions herein set forth within this Ordinance, and any special conditions as may be provided for in the Franchise. All Franchisees shall be required to obtain and maintain any necessary and lawful permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC and the PSC. The City may establish standard Franchises setting forth the minimum requirements for all Franchisees. Renewals, cancellations, terminations or expirations of Franchises granted to cable operators shall be governed by and comply with the provisions of Section 626 of the federal Cable Act, 47 U.S.C. § 546, or any such successor statute, and applicable law, including judicial review and appeals.

(F) *Acceptance and effective date of Franchise.* Any Franchise granted hereunder, together with the rights, privileges and authority granted thereby, shall take effect and be in force from and after the effective date of a resolution granting a Franchise hereunder, provided that on or before that date Franchisee shall:

(1) Enter into and execute such agreements and documents as required by the City that are consistent with the terms and provisions of this Ordinance and applicable law;

(2) File such bond or bonds as required by this Ordinance; and

(3) Advise the City in writing of Franchisee's address for mail and official notifications from the City.

(G) *Use of Rights-Of-Way; police powers; Franchisee's use subordinate.* A Franchisee shall construct and maintain its Facilities in accordance with all applicable federal, State and local laws, including all permit requirements and associated fee payments, and all

other City codes and ordinances in effect as of the date of the award of its Franchise or thereafter adopted or amended, to the extent permitted by State or federal law, subject to subsection 1(D). The grant of a Franchise does not in any way affect the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of Rights-Of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-Of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Without limiting the generality of the foregoing:

(1) All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to regulate the construction, operation, and maintenance of Franchisee's System, subject to subsection 1(D), including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the City shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations concerning the Rights-Of-Way and utility standards. Notwithstanding the foregoing, the City will administer and enforce the provisions of this Ordinance and any Franchises granted pursuant thereto in a nondiscriminatory and competitively neutral manner, including with respect to any governmental entity providing or seeking to provide Communications

Service (whether directly or pursuant to an agreement with any Person) using the Rights-Of-Way.

(2) The City reserves the right to exercise its police powers. Any conflict between the provisions of this Ordinance or a Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the police powers.

(3) Franchisee shall not be excused from complying with any of the requirements of this Ordinance or any subsequently adopted and lawfully binding amendments to this Ordinance by any failure of the City on any one or more occasions to seek, or insist upon, compliance with such requirements or provisions.

(H) *Emergencies.*

(1) Franchisee shall assign a management level individual to coordinate with, and assist the City in the development of emergency plans.

(2) If at any time, in case of fire or disaster or other emergency situation in the City, it shall become necessary in the reasonable judgment of the City to cut raise, lower, or relocate any Facilities, such cutting raising, lowering, or relocating may be done, and any repairs rendered necessary thereby shall be made by Franchisee, at its sole expense. Nothing in this Ordinance shall prohibit or limit any rights of a Franchisee under applicable law to recover its reasonable costs incurred pursuant to this subsection (H)(2) to cut, raise, lower, or relocate Facilities from the Person(s) responsible for the fire, disaster, or other emergency situation.

(I) *Term.* A Franchise shall be for a term not to exceed ten (10) years.

(J) *Franchise Fees.* During any period of time which the City opts to forego imposing a Franchise Fee and to instead participate in the Multichannel Video Programming and

Service Tax system set forth under KRS 136.600 et seq., a Franchisee shall not be required to pay Franchise Fees. Before imposing Franchise Fees, the City will provide at least ninety (90) days' prior written notice to current Franchisees. If at any time the City elects to exercise its constitutional right to impose and collect Franchise Fees, Franchisee's first Franchise Fee payment under this Ordinance shall be paid to the City the later of one hundred twenty (120) days after such election, or forty-five (45) days after the last day of the first calendar quarter expiring after Franchisee received written notice from the City that the City has opted to exercise its constitutional right to impose and collect Franchise Fees. The percentage of Franchise Fee and method of calculation imposed on any Franchisee shall be equal when compared to the percentage or method of calculation of the Franchise Fee applicable to any other Franchisee authorized by the City to provide the same Communications Service. If the Franchise Fee is based on gross revenues, the Franchise Fee shall not exceed five percent (5%) of gross revenues received by Franchisee for services upon which such Franchise Fee can be lawfully assessed under federal law, as determined in accordance with generally accepted accounting principles, and gross revenues will not include (1) any taxes, fees or assessments collected by the Franchisee for pass-through to a government agency, including the Franchise Fee or any FCC user fee; (2) bad debt; (3) credits, refunds and deposits paid to Customers; and (4) any exclusions available under applicable State law.

(K) *Timing of payment of Franchise Fees.* Unless otherwise agreed to in writing, all Franchise Fees shall be due and payable on a quarterly basis and payment shall be made on or before the date which is forty-five (45) calendar days after the last day of the calendar quarter for which the payment applies (the "Due Date"); provided, however, that

in the event that a Franchisee ceases to provide Communications Service for any reason (including as a result of a sale or transfer of the Franchisee's System), such Franchisee shall make a final payment of any amounts owed to the City on or before the date which is thirty (30) calendar days after the date on which its operations in the City cease (which shall be deemed a "Due Date" for purposes of this Ordinance).

(L) *Interest on late payments and under payments.* If any Franchise Fee, or any portion thereof, is not received by the City on or before the due date, interest thereon shall accrue from the due date until received, at the rate of the lesser of 1.5 percent per month or 2 percent above the published Prime Rate, unless such other maximum rate is established by applicable law.

(M) *Fee statement.* In the event that the City imposes a Franchise Fee, any Franchise Fee payment shall be accompanied by a statement (a "Fee Statement") showing the manner in which the Franchise Fee was calculated. If the Franchise Fee is based on linear feet in the Rights-of-Way, within ninety (90) calendar days following the end of any calendar year in which the City imposes a Franchise Fee, each Franchisee shall submit a statement, certified as true, setting forth the amount of linear feet of Rights-Of-Way occupied by its Facilities, provided, however, that in the event that a Franchisee ceases to provide Communications Service for any reason (including as a result of a transfer), such Franchisee shall provide such a statement within thirty (30) calendar days after the date on which its operations in the City cease. In calculating the amount of linear feet of Rights-Of-Way occupied by its Facilities, a Franchisee shall include all Facilities, including Antenna and other Wireless Facilities, and all Facilities whether installed underneath the Rights-Of-Way or on Poles.

(N) *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. Notwithstanding the foregoing, Franchisees shall not be required to maintain any books and records related to its calculation of the Franchise Fee or any other payment longer than three (3) years.

(O) *Description of Communications Service.* During the term of the Franchise, Franchisee shall either include the material types of Communications Services offered over its Facilities in the Rights-Of-Way within the City on a publicly available website, or provide the City with a description of any material changes to the types of Communications Service offered over its Facilities in the Rights-Of-Way within the City during the prior year. Any individual Communications Service or item for which the Franchisee has a separate charge shall be considered a separate Communications Service.

(P) *Franchise Fee not a tax; payment of taxes.* The Franchise Fee is compensation for the use of the Rights-Of-Way and shall in no way be deemed a tax of any kind. The Franchise Fees required herein shall be in addition to, not in lieu of, any and all taxes, charges, assessments, licenses, fees and impositions otherwise applicable to Franchisee that are or may be imposed by the City. A Franchisee shall be fully responsible for the payment of all applicable taxes.

(Q) *Assignment of Franchise.* A Franchisee shall provide the City with written notice of any transfer or assignment of the Franchise. A Franchisee shall not sell, assign, sublet, dispose of or otherwise transfer a Franchise (or any of the rights or privileges granted by

such Franchise), Franchisee's System, or control of Franchisee to another entity other than by operation of law or to an entity controlling, controlled by, or under common control with the Franchisee, without the prior written consent of the City. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or System to secure indebtedness. The City's consent to such a transfer shall not be withheld if the acquiring entity would have qualified for an original Franchise had it applied and if the acquiring entity demonstrates it has the same or equivalent insurance coverage and bonds in place as is required of the original Franchisee. Nothing in any approval by the City of any transfer pursuant to this subsection shall be construed to waive, release or delegate any rights or powers of the City to hold the original Franchisee liable for any violation of its Franchise.

(R) *Forfeiture of Franchise and privilege.* In case of failure on the part of a Franchisee, its successors and assigns, to comply with any of the material provisions of this Ordinance or its Franchise, or if the Franchisee, its successors and assigns, should do or cause to be done any material act or thing prohibited by or in violation of this Ordinance or the terms of its Franchise, the Franchisee, its successors and assigns, shall forfeit all rights and privileges permitted by this Ordinance and its Franchise, and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the proceedings specified in subsection 10(B).

(S) *Security for payment of fees.*

(1) In the event that the City imposes a Franchise Fee, a Franchisee may be required to provide to the City an irrevocable letter of credit in the amount of \$25,000, or one half

of the annual Franchise Fee owed, whichever is less, to secure the payment of the Franchise Fee for the first two (2) years in which the Franchisee is subject to a Franchise Fee. If there has been no default in paying the Franchise Fee nor any late payment of the Franchise Fee during such two (2) year period, the letter of credit shall be released, and if there has been no default nor any late payment of any payment due to the City by any incumbent Franchisee for the past two (2) years, no letter of credit shall be required.

(2) This subsection is inoperative during any period of time during which the City elects to participate in the state baseline and local growth funds under KRS 136.600 *et seq.*, and to have Franchisees taxed accordingly.

(T) *Special rules for governmental entities.* Nothing herein shall be read to require a governmental entity to comply with this Ordinance where the City cannot enforce the Ordinance against such entity as a matter of law. The City is authorized to enter into agreements with other governmental agencies to facilitate the City's use and management of the Rights-Of-Way, and such agreements shall be enforceable according to their respective terms and notwithstanding any provision of this Ordinance.

### **§ 3 RIGHTS-OF-WAY MANAGEMENT AND FACILITIES REQUIREMENTS.**

(A) *Encroachment permit.* A Franchisee shall be subject to and comply with the additional or supplementary terms and conditions of any encroachment on Rights-Of-Way permit, as may be amended from time to time, subject to subsection 1(D).

(B) *Removal of Facilities.* Upon expiration of a Franchise, whether by lapse of time, by agreement between the Franchisee and the City, or by forfeiture thereof, the Franchisee shall remove, at its sole cost, from the Rights-Of-Way any and all of its Facilities that are the subject of such Franchise within a reasonable time after such expiration, not to exceed

ninety (90) days, and, it shall be the duty of the Franchisee immediately upon such removal to restore the Rights-Of-Way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, the City may allow Facilities to be left in place when the City determines in its sole discretion that it is not practical or desirable to require removal.

(C) *Relocation of Facilities.* Whenever the City shall in its exercise of the public interest request of the Franchisee to relocate or reinstall any of its Facilities, the Franchisee shall, within ten (10) days remove, relocate, or reinstall any such Facilities as may be reasonably necessary to meet the request. Unless otherwise provided by applicable law, the cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of the Franchisee subject to the provisions of this subsection. Upon request of any other Person requesting relocation of Facilities and holding a validly issued building or moving permit of the City, a Franchisee shall, within ten (10) days, temporarily raise, lower, or relocate its wires or other Facilities as may be required for the Person to exercise the rights under the permit; provided, however, that the Franchisee may require such permit holder to make payment to Franchisee in advance for any expenses incurred by the Franchisee to temporarily move its Facilities pursuant to such Person's request. Notwithstanding the foregoing, a Franchisee shall not be required to underground its aerial Facilities in a particular area unless the City imposes a similar undergrounding obligation upon all other Franchisees and users of the Rights-of-Way in that area. To the extent that any utility or other Right-of-Way occupant is required to remove or relocate its Facilities as part of the same, or related, Right-of-Way alteration, route or location change affecting Franchisee, Franchisee shall not be treated in a discriminatory manner relative

to such utilities. Franchisee shall receive no less advance notice and shall be provided the same right to reimbursement for removing or relocating its Facilities as any utility receives from the City.

(D) *Franchisee responsible for costs.* A Franchisee shall be responsible for all reasonable costs incurred by the City that are directly associated with the Franchisee's erecting, installing, maintaining, operating, repairing, replacing, removing or restoring its Facilities in the Rights-Of-Way. Except as provided in Section 3(c), a Franchisee shall be responsible for its own costs incurred in removing or relocating its Facilities when required by the City due to the City requirements relating to maintenance and use of the Rights-Of-Way for the City purposes.

(E) *Insurance and bonds.* During the term of any Franchise, a Franchisee shall obtain and maintain at its sole expense, all insurance and bonds required by this Ordinance. It is expressly understood that the City does not in any way represent that the specified limits of liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Franchisee.

(1) Each Franchisee shall file with the City a Franchise bond in the amount of \$15,000 which shall be required to be in place for the entire term of the Franchise. In addition, a Franchisee seeking to construct or install a System in the City shall file with the City a performance bond in an amount to be determined by the City. In no event shall the amount of the performance bond required by the City exceed the reasonable costs of repairing the Rights-Of-Way in the event of non-performance by the Franchisee. The performance bond shall provide for the faithful performance of construction and installation of Franchisee's System. Two (2) years after demonstration of the completion

of the construction of the System by Franchisee to the City, the City shall release the performance bond.

(2) The performance bond shall indemnify the City in its own right and as trustee, from any damages or losses arising out of the failure of Franchisee to faithfully perform and satisfactorily complete construction of the System in accordance with this Ordinance.

(3) The failure of Franchisee to comply with its obligations under this Ordinance or the Franchise as determined by the City shall entitle the City to draw against either or both of the Franchisee's bonds, subject to subsection 10(B).

(4) The rights reserved to the City with respect to the performance and Franchise bonds required hereunder are in addition to all other rights of the City, whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such performance or Franchise bonds shall affect any other rights the City may have.

(5) Unless otherwise released by the City, the performance and Franchise bonds required hereunder shall not expire or be materially altered without thirty (30) days written notice and without securing and delivering to the City a substitute, renewal and replacement bond in conformance with this Ordinance. In the event the City does draw monies against the performance bond required hereunder, within ten days thereafter, Franchisee shall pay such funds to the bonding company as necessary to bring said performance and/or Franchise bonds back to the applicable principal, where it shall continue to be maintained. The performance and Franchise bonds required hereunder shall contain the following endorsements:

"It is hereby understood and agreed that this bond may not be reduced, altered or canceled by Franchisee or Surety without thirty (30) days written notice, by certified mail, to the City of Somerset. Such termination or cancellation shall have no effect on any liability incurred or accrued under this bond prior to the effective date of such termination or cancellation."

(6) Immediately upon the effective date of the resolution granting a Franchise under this Ordinance, Franchisee shall file with the City the following proof of liability insurance issued by a company(ies) authorized to do business in the Commonwealth with an AM Best Rating of A- or better:

(a) General Liability Insurance, via an occurrence form, covering bodily injury, including death, personal injury and property damage, and including completed operations, contractual liability, independent contractors protective liability and personal injury liability protection. The minimum acceptable limit of liability amount is \$5,000,000 per occurrence and aggregate under a combined single limit, which may be satisfied by any combination of primary and umbrella/excess insurance. This policy must include the City, including its Mayor and City Council members, as additional insureds as respects all operations of the insured Franchisee. The City reserves the right to make reasonable increases in the required amount of insurance coverage herein at any time, subject to subsection 5(A)(2). Nothing herein is intended as a limitation on the extent of any legal liability of the Franchisee.

(b) Automobile Liability, insuring all owned, non-owned and hired motor vehicles. The minimum coverage liability limit is \$3,000,000 combined single limit for any one accident, which may be satisfied by any combination of primary and umbrella/excess

insurance. The limit of liability may be subject to increase according to any applicable State or federal transportation regulations.

(c) Workers' Compensation (if applicable), insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at statutory limits.

(7) Franchisee shall maintain on file with the City a certificate of insurance certifying the coverage required under this Ordinance, which certificate shall be subject to the approval of the City as to the adequacy of the certificate and of the insurance certified under the requirements of this Ordinance. Such certificate shall be identified on its face by the name of Franchisee, and shall be submitted to the City, in accordance with the terms and conditions of this Ordinance. Failure to maintain adequate insurance as required under this Ordinance shall be deemed a breach of the Franchise.

(8) The City reserves the right to make increases in the amount of insurance coverage referred to in this subsection at any time, subject to subsection 5(A)(2).

(9) The following clause shall be added to Franchisee's Commercial General Liability Policies:

"The City of Somerset, its elected and appointed officials, employees, agents and successors are added as an "additional insured" as respects operations of the Named Insured performed relative to the contract."

(F) *Permits*. Prior to performing any construction or installation work in the public Rights-Of-Way, Franchisee shall apply to the City for any necessary permit, and shall include descriptive information about the specific location of any lines, Facilities, boxes, or related equipment. All terms and conditions of the permit application shall apply and

be adhered to. In the case of an emergency, the Franchisee can perform critical work and at its soonest opportunity seek the required permit and submit any applicable fees.

(1) Franchisee shall furnish detailed plans of the work to be done within the Rights-Of-Way and provide other such information as required by the City.

(2) Franchisee shall coordinate any construction work within the Rights-Of-Way with the City and shall begin construction work only after approval of the City unless such work is being performed for an emergency situation.

(3) All permits issued by the City shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by City personnel.

(G) *Notification.* Franchisee shall notify the City, in writing, at least fifteen (15) days prior to non-emergency construction. Such written notification shall contain the location of the construction, the starting date and the estimated completion date.

(H) *Standards.* Any work required or performed pursuant to this Ordinance shall be done in accordance with federal, State and local law, and the National Electric Safety Code.

(1) In the event that Franchisee leases space on the Poles or in the conduits of an electric or other utility, Franchisee shall abide by the construction and other requirements of that utility, and the granting of a Franchise by the City shall not be construed or interpreted in any way to alleviate Franchisee's responsibilities and obligations to the Pole or conduit owner.

(2) Franchisee, its contractors, sub-subcontractors and anyone directly or indirectly employed by Franchisee shall conduct such operations so as to promote and preserve the public safety and general welfare of the citizens of the City.

(3) All construction, installation or maintenance by Franchisee shall be completed with diligence and with respect to all interests and rights of the public.

(I) *Traffic.* Franchisee's work in the Rights-Of-Way shall be accomplished with a minimum of disruption and interference to the free flow of vehicular and pedestrian traffic on the Rights-Of-Way or public land.

(1) Franchisee shall maintain lanes of vehicular traffic in each direction at all times during construction, installation or maintenance activity.

(2) Traffic control devices to protect and control pedestrian and vehicular traffic in any construction, maintenance or installation areas may be prescribed by the City in accordance with the Manual on Uniform Traffic Control Devices.

(J) *Delay.* Improvements to City Rights-Of-Way conducted by the City or its contractors shall not be delayed by any Franchisee work authorized by this Ordinance.

(K) *Special exceptions.* The City may grant a special exception to the requirements of this Ordinance if a Franchisee, upon application, demonstrates with written evidence that:

(1) The exception will not create any threat to the public health, safety or welfare;

(2) The increased economic burden and the potential adverse impact on Franchisee's construction schedule resulting from the strict enforcement of the requirement would actually or effectively prohibit the ability of Franchisee to provide Communications Service in the City; and

(3) The requirement unreasonably discriminates against Franchisee in favor of another comparable Communications Service provider.

(4) Any special exceptions shall be granted in a non-discriminatory manner.

(L) *Inspections.* All construction, installation and operation of Franchisee's System in the Rights-Of-Way are subject to inspection by the City.

(M) *Repair of sunken pavement over excavation.* In case the pavement or the surface of the Rights-Of-Way over any excavation should become depressed or broken at any time within five (5) years after the excavation has been completed and before resurfacing of the Rights-Of-Way, natural wear of the surface excepted, Franchisee shall, upon written notice from the City, immediately proceed to inspect the depressed or broken area over the excavation to ascertain the cause of the failure. Franchisee shall make repairs to the installation or backfill and have the pavement restored as specified by the City, within such time period as may be specified by the City, provided that such time period shall not be less than ten (10) calendar days. If the pavement is not restored as specified by the City within the time period specified by the City, and unless delayed by a strike or conditions beyond Franchisee's control, the City may cause the work to be done after giving Franchisee twenty four (24) hours final notice. The cost thereof, including, but not limited to, any inspection costs and administrative overhead incurred by the City, shall be assessed against Franchisee.

(N) In the event that the use of any part of the System is discontinued for any reason by any Franchisee for a continuous period of twelve (12) months, or in the event such System or Facility has been installed in Rights-Of-Way without complying with requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, the Franchisee shall promptly remove from the Rights-Of-Way all such Facilities of such System, other than any which the City may permit to be abandoned in place. In the event of such removal, the Franchisee shall promptly restore

the Rights-Of-Way from which such Facilities have been removed to a condition satisfactory to the City. Any Facilities of a Franchisee to be abandoned in place, shall be abandoned in such manner as the City may prescribe. Upon a permanent abandonment of the Facilities of a Franchisee in place, the Franchisee shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such Facilities.

(O) During any phase of construction, installation, maintenance, or repair of the System, the Franchisee shall use materials of good and durable quality. All such work shall be performed in a safe, thorough and reliable manner and in compliance with City ordinance and regulations, as amended.

#### **§ 4 MISCELLANEOUS.**

(A) *Administration of Franchise.* The City shall be responsible for the continued administration of this Ordinance and any Franchises granted hereunder.

(B) *Non-enforcement by the City.* A Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.

(C) *Publication of notices.* A Franchisee shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments or renewals thereto.

(D) *Severability.* If any material provision of this Ordinance or of any Franchise granted pursuant to this Ordinance is held by a court or other competent governmental authority of competent jurisdiction to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be

modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of this Ordinance or the Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions herein or therein.

## **§ 5 TRANSITIONAL PROVISIONS.**

### *(A) Existing Franchises.*

(1) Franchises previously granted shall be deemed to continue through their current expiration date, incorporating this Ordinance, and they shall be automatically deemed to have complied with all application and qualification requirements hereunder, unless, within sixty (60) days of passage of this Ordinance, a Franchisee indicates in writing it does not accept this Ordinance as part of its Franchise. Upon such notice of non-acceptance, said Franchisee and the City may renegotiate or terminate the Franchisee's Franchise pursuant to all local, State and federal law.

(2) Further amendments of this Ordinance shall be subject to subsection 1(D) and deemed accepted by a Franchisee unless, within sixty (60) days of receiving written notice of such further amendments from the City, a Franchisee indicates in writing it does not accept the amendments as part of its Franchise. Upon such notice of non-acceptance, said Franchisee and the City may renegotiate or terminate the Franchisee's Franchise pursuant to all local, State and federal law.

*(B) Transitional provisions to be narrowly interpreted.* It is the intent of the City to apply the provisions of this Ordinance to all owners or operators of Communications Systems with Facilities, including local exchange carriers, that now occupy or may in the future

occupy Rights-Of-Way, except to the extent federal or State law prevents the City from doing so.

**§ 6 FRANCHISEES PROVIDING COMMUNICATIONS SERVICE TO CUSTOMERS.**

All Franchisees providing Communications Service to Customers shall to the greatest extent applicable:

(A) At all times comply, at a minimum, with the FCC requirements for Emergency Alert System applicable to their Communications Services.

(B) Have a publicly listed telephone number.

(C) Employ an operator or maintain a telephone answering device twenty-four (24) hours per day, each day of the year to receive Customer complaints.

(D) Upon Customer's termination of the Communications Services, permit Customers to return any equipment that Franchisee requires to be returned upon such termination at no expense (other than incidental costs incurred by the Customer in returning such equipment, such as transportation to a Franchisee location) and advise Customers of this option when Customers inquire about returning equipment. These expenses do not include the cost for use of the equipment before termination of the Communications Services.

(E) Shall indemnify the City, pursuant to subsection 1(F), against any alleged infringement of patent or copyright or any other legal infringement in the transmission of materials through the System, except to the extent any infringement arises from or is caused by the City's or another Person's use of the System. Nothing herein is intended as a limitation on the extent of any legal liability of the Franchisee.

**§ 7 PRIVATE COMMUNICATIONS FACILITIES.**

(A) *Application for license.* A Person wishing to erect, install, maintain, operate, repair, replace, remove or restore a Private Communications System in the Rights-Of-Way must obtain a license therefore from the City. Such license shall only authorize placement of the Private Communications System in a specific portion of the Rights-Of-Way for a limited period of time and for a specific purpose in connection with the Person's business and shall not permit the use of the Private Communications System to provide Communications Service to any other Person or to the public. Such Person shall submit an application to the City on such form as may be developed by the City, accompanied by such application fee as may be determined by the City.

(B) *Conditions of license.* Any license shall be subject to such conditions as the City may from time to time establish, shall be expressly subordinate to the use of the Rights-Of-Way by the City and Franchisees, and shall otherwise conform to the requirements of this Ordinance.

(C) *Compensation.* A Private Communications System Owner shall pay a fee established by the City from time to time to reflect the fair market value of the Rights-Of-Way used.

**§ 8 LIABILITIES AND PENALTIES.**

Except as expressly stated in this Ordinance, the express or implied repeal or amendment of the ordinances replaced by this Ordinance or any other ordinance or part thereof shall not affect any liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this Ordinance. Those liabilities and penalties are continued, and

penalties shall be imposed and enforced under the repealed or amended ordinance as if this Ordinance had not been adopted.

#### **§ 9 REMEDIES NOT EXCLUSIVE.**

The rights and remedies of the City and the Franchisee as set forth in their Franchise, or in this Ordinance, shall be in addition to and not in limitation of, any other rights and remedies provided by law or in equity.

#### **§ 10 REVIEW, TERMINATION, AND CANCELLATION.**

(A) To provide for technological changes in the state of the art of Communications Services, to facilitate renewal procedures, and to achieve continuing, advanced, modern Systems for the City, the Franchisee shall comply with the following review provisions:

(1) The City may hold review sessions which shall be open to the public and notice shall be given by advertisement in a newspaper of general circulation at least one week before each session.

(2) Either the City or the Franchisee may select additional topics for discussion at any regular or special review session.

(3) Any topic proposed for discussion at any regular or special review session by a resident of the City and supported by a petition bearing the signature of thirty (30) City residents shall be included in the list of topics for discussion.

#### **(B) *Termination.***

(1) The City may terminate any Franchise in accordance herewith in the event of the violation of any material provision hereof or of any rule or regulation promulgated pursuant here to or of any applicable federal, State, or local law, or the breach or other failure, refusal or neglect by the Franchisee to perform its obligations under the material terms

and conditions of this Ordinance or of any ordinance or agreement awarding a Franchise in accordance herewith, except when such violation, breach, failure, refusal or neglect is caused by any of the following:

(a) Act of God;

(b) Riot, insurrection, civil disturbance, sabotage or vandalism, tampering or interference, act of public enemy, public health emergency, accident, fire, flood, strike, unavailability of materials or equipment, war or act of war, all of which are beyond the control of the Franchisee; or

(c) An emergency declared by the President of the United States of America, the Governor of the Commonwealth of Kentucky or the Mayor.

(2) In the event that the City determines that the Franchisee has violated any material provision of this Ordinance, any rule or regulation promulgated pursuant hereto, any applicable federal, State or local law, or any material term of an agreement or ordinance awarding a Franchise, the City shall make a written demand on the Franchisee that it comply with the law or said agreement or ordinance. The written demand shall set forth the exact nature of the noncompliance. The Franchisee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objections and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Franchisee, or the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the City within sixty (60) days following such demand, the City shall determine whether or not, in its sole discretion, any violation, breach, failure, refusal, or neglect by the Franchisee was excusable or inexcusable as provided subsection 10(B)(1).

(a) If the City determines such violation, breach, failure, refusal or neglect by the Franchisee was excusable as provided in subsection 10(B)(1), the City shall direct the Franchisee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as are just and reasonable and as the City may direct.

(b) If the City determines such violation, breach, failure, refusal, or neglect by the Franchisee was inexcusable, then City Council, by ordinance, may seek to revoke the Franchisee's Franchise at a public hearing, and the City Council may provide a time period for the Franchisee to become compliant. If the City seeks to revoke Franchisee's Franchise, it shall provide Franchisee with at least twenty (20) days written notice prior to conducting a hearing. The hearing shall be on the record and transcribed, if Franchisee so elects and at Franchisee's cost, and shall provide Franchisee full due process rights, including the right to state its position on the matter, present evidence, and question witnesses. Franchisee may appeal any decision made by the City after the hearing to an appropriate court. Nothing in this Ordinance, including the provisions set forth in this Section 10, shall prevent Franchisee from filing at any time a legal action in any permissible court or tribunal seeking a declaration or enforcement of Franchisee's rights or obligations under the Franchise, this Ordinance, or applicable law. The Franchisee may continue to operate the System until all avenues and procedures of judicial review have been fully and finally exhausted.

(3) If the City declares a breach pursuant to subsection 10(B)(2)(b), and the Franchisee either does not challenge the City's decision or City's decision is affirmed in a final, non-appealable court order, the City may pursue any remedies available to it

pursuant to this Ordinance, the Franchise, or any other remedy, legal or equitable, available to the City.

(C) In the event that the Franchise is terminated, the Franchisee shall follow the procedure in subsection 3(N).

#### **§ 11 FORECLOSURE-RECEIVERSHIP.**

(A) Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Franchisee shall notify the City of such foreclosure. Franchisee's notification shall be treated as a notification that a change in control of the Franchisee has taken place, and the provisions of this Ordinance governing the consent of the City to such change in control of the Franchisee shall apply.

(B) The City shall have the right to cancel the Franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, 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 one hundred twenty (120) days, or unless:

(1) Within one hundred twenty (120) days after his or her election of appointment, the receiver or trustee shall have fully complied with all of the provisions of this Ordinance and the agreement and ordinance awarding a Franchise hereunder, and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said one hundred twenty (120) days shall have executed an agreement, duly approved by the court having jurisdiction over same, whereby such receiver or trustee assumes and agrees to be bound by each and every

provision of this Ordinance and the agreement and ordinance awarding a Franchise hereunder.

## **§ 12 REPORTS.**

Upon the City's request, the Franchisee shall submit a written report to the City, including, but not limited to, the following information:

(A) A summary of the previous year's or, in the case of the initial reporting year, the initial year's activities in development of the System, including, but not limited to, Communications Service begun or discontinued;

(B) If the City exercises its constitutional right to collect Franchise Fees, a statement of revenues;

(C) A list of officers and members of the Board of Directors of the Franchisee, and its parent, subsidiary, or Affiliate corporations, if any;

(D) It shall be unlawful for the Franchisee to refuse, fail or neglect to file the reports required under this Ordinance. The refusal, failure, or neglect of the Franchisee to file any of the reports required under this Ordinance or as the City may direct, shall be deemed a violation of this Ordinance and shall subject the Franchisee to the provisions of Section 10, shall be deemed a material breach of any agreement or ordinance awarding a Franchise in accordance herewith, and shall subject the Franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the City.

(E) Any material misrepresentation made knowingly by the Franchisee in any report required under this Ordinance shall subject the Franchisee to the provisions of Section

10 and shall subject the Franchisee to all penalties and remedies prescribed therein and to all other remedies, legal or equitable, which are available to the City.

**§ 13 BOOKS AND RECORDS OF THE FRANCHISE.**

(A) Subject to subsection 2(N), the Franchisee shall keep complete and accurate books of account and records of its business and operations in connection with any Franchise granted under this Ordinance.

(B) Subject to subsection 2(N), upon request, the City shall have access to all books of account and records of the Franchisee for the purpose of auditing Franchise Fee payments and of ascertaining the correctness of any and all reports and may examine its officers and employees in respect thereto, provided that no audit shall occur more often than once in any twelve (12) month period of time.

(C) Any false entry in the books of account or record submitted to the City, or false statements in reports to the City, as to material fact, knowingly made by the Franchisee, shall constitute a breach of a material provision of this Ordinance and any Franchise agreement or ordinance hereunder, for which the remedies provided in this Ordinance may be invoked.

**§ 14 TIME OF ESSENCE.**

Whenever this Ordinance, or any ordinance or agreement awarding a Franchise hereunder, shall set forth any time for any act to be performed by or on behalf of a Franchisee, such time shall be deemed of the essence, and any failure of a Franchisee to perform within the time set forth shall constitute a material breach of the terms of this Ordinance and shall entitle the City to invoke all penalties and remedies prescribed in this Ordinance as well as all other legal or equitable remedies available to the City.

**§ 15 EQUAL EMPLOYMENT OPPORTUNITY.**

(A) Franchisees shall comply in all respects with the FCC's regulations governing equal opportunity. Franchisees shall also comply with all other applicable equal opportunity government regulations whether federal, State or local.

(B) Franchisees shall afford equal opportunity in employment to all qualified Persons, and no Person shall be discriminated against because of race, color, religion, national origin, handicap, sex, or age.

**§ 16 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 large, above-ground 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 Right-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 to be attached to a new or replaced Tower, Pole or Support Structure placed in the Right-of-Way shall be contained inside such new or replacement Tower, Pole, or Support Structure, to the extent consistent with industry standards. On existing Poles, Towers, or Support Structures, or new wooden Poles, where it is impossible or inconsistent with industry standards to place such wiring

inside the Pole, Tower or Support Structure, all coaxial, fiber-optic, or other cabling and wires shall, to the extent technically and commercially feasible, be flush-mounted and covered with a metal, plastic, or similar material matching the color of the Pole, Tower or Support Structure.

(D) No Tower shall be placed in the Right-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 other large, above-ground 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 other large, above-ground Facility on the property line would obstruct sight distance, the Pole, Support Structure or Tower, or other large, above-ground Facility 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 above-ground 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 all utilities has occurred, all new Facilities shall be placed underground, provided that the Facilities to be placed

underground shall not include any traditionally ground-mounted appurtenances such as taps, line extenders, system passive devices (splitters, directional couplers), nodes, amplifiers, power supplies, and pedestals.

(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.

(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 Right-Of-Way.

(Q) All Facilities, Poles, Towers, and Support Structures shall comply with such additional design standards adopted by the City pursuant to subsection 1(D).

(R) All Poles, Towers, Support Structures, and other lines and equipment installed or erected by a Franchisee under this Ordinance shall be located so as to minimize any interference with the proper use of the Right-Of-Way with the rights and reasonable convenience of property owners whose property adjoins or abuts any affected Right-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.

## **§ 17 VIOLATIONS.**

(A) It shall be unlawful for any Person to establish, operate or to carry on the business of distributing to any Persons in the City, any Communications Service by means of a

System in the Rights-Of-Way unless a Franchise therefore has first been obtained from the City, and unless such Franchise is in full force and effect. The penalty for violation of this subsection 17(A) shall be two hundred fifty dollars (\$250.00) per day or part thereof that the violation continues.

(B) It shall be unlawful for any Person to own, erect, install, maintain, operate, repair, replace, remove or restore within any public street in the City, equipment or Facilities for distributing any Communications Service through a System, unless a Franchise authorizing such use of such Rights-Of-Way has first been obtained from the City, and unless such Franchise is in full force and effect. The penalty for violation of this subsection 17(B) shall be two hundred fifty dollars (\$250.00) per day or part thereof that the violation continues.

**SECTION II.** This Ordinance shall take effect immediately upon its passage and publication as required by law.

**First Reading      MARCH 9, 2026**

**Second Reading    MARCH 23, 2026**

**Passed and Approved      MARCH 23, 2026**

**City of Somerset, KY**

**Mayor**  \_\_\_\_\_ **Date** \_\_\_\_\_

**Attest:**  \_\_\_\_\_ **City Clerk**