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City Of Willoughby

May 8, 2007

David E. Anderson
Mayor and Safety Director

State of Ohio Public Utilities
Docketing Division
180 East Broad Street – 19th Floor
Columbus, OH 43215

RE: Proposed Right-of-Way Ordinance
City of Willoughby, Ohio

Docketing Division:

07-605-TP-PWN

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2007 MAY 16 PM 3:38
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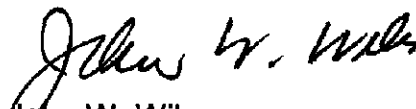
Section 4939.05 of the Ohio Revised Code entitled, "Levy of Public Way Fees by Municipal Corporation"; specifically, Subsection 4939.05(E) states:

At least forty-five days prior to the date of enactment of a public way ordinance by a municipal corporation, the municipal corporation shall file with the public utilities commission a notice that the ordinance is being considered.

Therefore, enclosed please find a copy of the City of Willoughby's proposed Right-of-Way Ordinance.

Please feel free to contact the undersigned at (440) 953-4128 if you have any questions.


Very truly yours,


John W. Wiles
Director of Law

JWW:sks
Enclosure

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"The Courtesy City"

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ORDINANCE NO. 2007-

**AN ORDINANCE ESTABLISHING THE RIGHTS-OF-WAY POLICY
OF THE CITY OF WILLOUGHBY BY ENACTING CHAPTER 953 OF
THE CODIFIED ORDINANCES OF THE CITY AND ADOPTING
REGULATIONS FOR RIGHTS-OF-WAY USE.**

WHEREAS, the City of Willoughby, Ohio ("City") is vitally concerned with the use of the Rights of Way and public property in the City, as such Rights of Way are a valuable and limited resource which must be utilized to promote the public health, safety and welfare; and

WHEREAS, changes in the public utilities and communication industries have increased the demand and need for access to Rights of Way and placement of facilities and structures therein; and

WHEREAS, it is necessary to comprehensively regulate access to structures and facilities in the Rights of Way to promote efficiencies, to discourage uneconomic duplication of facilities, to lessen the public inconvenience of uncoordinated work in the Rights of Way and to promote public safety; and

WHEREAS, the City has rights, under the laws and Constitution of the State of Ohio, including Chapter 4939 Of the Ohio Revised Code, to regulate public and private use of the Rights of Way.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY, THE COUNTY OF LAKE, AND THE STATE OF OHIO:

SECTION 1. The following is enacted as Chapter 953 of the Codified Ordinances of the City of Willoughby, Ohio:

CHAPTER 953

953.01 PURPOSE.

(a) The purpose of this Chapter is to establish predictable, enforceable, clear, and nondiscriminatory local regulations, guidelines, standards, and time frames for the exercise of local authority with respect to the regulations of Telecommunications Carriers and Cable Operators.

(b) This Chapter does not take the place of any franchise, license, or permit which may be additionally required by law. Each Permittee shall obtain any and all such additional franchises, licenses or permits necessary to the operations and conduct of its business.

(c) No Person shall use, occupy, own or operate facilities in, under or over any Rights of Way within the City unless such Person first obtains a Franchise and/or Permits conforming to the requirements set forth therein and in this Chapter.

(d) The policy of the City with regard to Rights of Way is hereby declared to be:

- (1) To promote public safety and protect public property;
- (2) To promote the utilization of Rights of Way for the public health, safety and welfare and to promote economic development in the City;
- (3) To promote the availability of a wide range of utility, communication and other services, including the rapid deployment of new technologies and innovative services, to the City's citizens and taxpayers at reasonable rates;
- (4) To promote cooperation among the City and Franchisees and Permittees in the occupation of Rights of Way, and work therein, in order to minimize public inconvenience during work in the Rights of Way and avoid uneconomic, unneeded and unsightly duplication of facilities;
- (5) To assure that the City's current and ongoing costs of granting and regulating private access to and use of the public Rights of Way and/or public property are fully compensated by the persons seeking such access and causing such costs;
- (6) To promote and require reasonable accommodation of all uses of Rights of Way and to establish the following priority of use of Rights of Way, when all requested usage of Rights of Way by Permittees cannot be accommodated:
 - A. Use by the City;
 - B. Use by another governmental entity with City's concurrence or other uses required by law;
 - C. Telecommunications and Utility and General Permittees and Franchisees shall have third priority;
 - D. Special Permittees shall have fourth priority; and
 - E. Residential Permittees shall have the fifth priority; provided, however, that the Service Director may reasonably require Rights-of-Way Permittees and Franchisees to cooperate to accommodate use by other Permittees and Franchisees and provided further that the Service Director may alter this priority when the Service Director reasonably determines a deviation herefrom to be in the public interest.

(e) Nothing in this Chapter should be construed to apply the provisions of this Chapter to facilities owned or operated by the City or any of its operations.

(f) Unless otherwise specifically stated in a Permit, all Permits or Franchises granted hereunder shall be non-exclusive.

953.02 DEFINITIONS.

For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this Section 953.02. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "Applicant" means any Person applying for a Permit hereunder.

(b) "Approved" means approval by the City pursuant to this Chapter or any Regulations adopted hereunder.

(c) "Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.

(d) "Community Television System," (as defined in Section 729.01(8) of the Codified Ordinances).

(e) "Chapter" or "this Chapter" means Chapter 953 of the Codified Ordinances of the City, as amended from time to time and any Regulations adopted hereunder.

(f) "City" means the City of Willoughby, Ohio, or, as appropriate in the case of specific provisions of this Chapter, any board, bureau, authority, agency, commission, department of, or any other entity of or acting on behalf of, the City of Willoughby, or any officer, official, employee, representative or agent thereof, the designee of any of the foregoing, or any successor thereto.

(g) "Council" means the Council of the City of Willoughby.

(h) "Director" means the Director of Public Service.

(i) "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies, or political subdivisions; riots, epidemics, landslides,

lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent the disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.

(j) "Franchise" means the nonexclusive right pursuant to the Constitution and laws of Ohio and/or the United States, granted by the City pursuant to this Chapter, to operate or provide cable television or services to consumers within the City.

(k) "Permit" means the non-exclusive grant of authority to use or occupy all or a portion of City's Rights of Way granted pursuant to this Chapter.

(l) "Permittee" means any person issued a Permit pursuant to this Chapter to use or occupy all or a portion of the Rights of Way in accordance with the provisions of this Chapter and said Permit.

(m) "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

(n) "Public Property" means any real property owned by the City, other than Rights of Way, except for the last sentence of Section 953.01(q) of this section.

(o) "Regulation" means any rule adopted by and pursuant to the authority of this Chapter.

(p) "Residential Related Purposes" shall mean residential use of Rights of Way for mailboxes, decorative purposes, curb cuts, driveways, irrigation systems and other uses permitted in the Rights of Way by ordinance.

(q) "Rights of Way" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or Right of Way now or hereafter held by the City which shall, within its proper use, entitle a Permittee or Franchisee, in accordance with the terms hereof and of any Permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any Franchise or any Permit. Rights of Way shall also include Public Property, but only to the extent the use or occupation thereof is specifically granted in a Permit or by Regulation.

953.03 TYPES OF PERMITS OR FRANCHISES: GRANT OF AUTHORITY.

(a) The following type of Permits and Franchises are available:

- (1) Cable Television Franchise – granted to providers of Cable Television Service;
- (2) Telecommunication and Utility Permit – Permit granted to Persons who desire and are granted authority to utilize Rights of Way to provide a public utility and/or telecommunications service, other than Cable Television Service.
- (3) Special Permit – Permit granted to Persons for a specific, limited use of the Rights of Way or a specific portion thereof; and
- (4) Residential Permit – Permit granted to an adjacent or proximate residential landowner to occupy or use a portion of the Rights of Way for Residential Related Purposes.

(b) All Permits shall specify the use or uses for which such Permits or Franchises are granted and contain such other non-discriminatory terms and conditions as are appropriate and as are set forth in this Chapter or conditions negotiated and agreed to by the City and the Permittee to provide for the public safety or welfare.

(c) Permits and the rights of Permittees thereunder are not transferable without the express written approval of the City.

953.04 PROCEDURE FOR PERMITS, TERMS.

(a) Applicants for Cable Television Franchises shall be granted a Cable Television Franchise pursuant to Chapter 729 of the Codified Ordinances; provided, however, that a Cable Franchise shall only entitle the Franchisee to utilize the Rights of Way, in accordance with Chapter 729, for purposes directly related to the provision of the Cable Television Service. Any other Rights of Way use by such Franchisee shall require a separate Permit.

(b) Applicants for Telecommunication and Utility Permits, or renewals thereof, shall file an application therefore, in such form as the Service Director may require, along with an application fee of One Thousand Dollars (\$1,000.00). The Service Director shall determine if the application is in order and, if so, forward the application to Council to determine whether or not, in accordance with the criteria set forth in Section 953.08 the Applicant should be granted a Permit hereunder. Council shall make a final determination as to whether or not such Permit should be granted and if so, upon what terms and conditions.

(c) Applicants for Special Permits, or renewals thereof, shall file an application therefore, in such form as the Service Director requires along with an application fee of Three Hundred Dollars (\$300.00). The Director shall determine if the application is in

order and if so, and if the Director also finds, in accordance with the criteria set forth in Section 953.05 of this Chapter, that the application should be granted, the Director shall grant or renew such a Permit. The terms of such Permits shall be determined by the Director of Service but shall in no event exceed ten (10) years.

(d) Applicants for Residential Permits shall file an application therefore, in such form as the Regulations require, along with an application fee of Ten Dollars (\$10.00). The Director, or the Director's designate, shall determine if the application is in order and, if so, shall grant the application so long as the Director also finds, in accordance with the criteria set forth in Section 953.05 of this Chapter, that the application should be granted. Residential Permits shall be valid until canceled by the Director upon sixty (60) days written notice to the Permittee; provided, however, that upon a finding by the Director that an emergency exists the Director may cancel any such Permit upon such lesser notice as is necessary under the circumstances.

(e) Any Applicant may appeal the failure of the Director to grant a Permit or to recommend it to be granted upon terms and conditions acceptable to the Applicant. In order to perfect such appeal, the Applicant shall file, within ten (10) days of the Director's determination or recommendation or ninety (90) days of the filing of the application if the Director has taken no action, an appeal to Council. Council shall then review the matter and render a final determination after affording the Applicant an opportunity to be heard either in person or in writing. Except to the extent otherwise appealable by law, Council's decision shall be final.

953.05 CRITERIA FOR GRANTING PERMITS OR FRANCHISES.

(a) Cable Television's Franchise shall be granted pursuant to Chapter 729 of the Codified Ordinances.

(b) Telecommunications and Utility and Special Permits shall be granted to Persons based upon a determination that the following criteria are met:

- (1) The granting of the Permit will contribute to the public health, safety or welfare in the City;
- (2) The granting of the Permit will be consistent with the policy of the City as set forth in Section 951.01(d) of this Chapter;
- (3) That the Permittee has and will continue to have liability insurance, which names the City as an additional insured, in effect in such amount and for such liability as the City may require or be self-insured pursuant to the terms of this Chapter; and
- (4) That the Applicant is a proper Person to hold a Permit and will fulfill all its obligations hereunder.

(c) Residential Permits shall be granted if not inconsistent with the public health, safety and welfare.

953.06 OBLIGATION OF PERMITTEES AND FRANCHISEES; CONDITIONS OF PERMITS AND FRANCHISES.

(a) In addition to the other requirements set forth herein each Telecommunication and Utility and Special Permittee shall:

- (1) Use its Best Efforts to cooperate with other Franchisees and Permittees and the City for the best, most efficient, most aesthetic and least obtrusive use of Rights of Way, consistent with safety, and to minimize traffic and other disruptions including street cuts;
- (2) Participate in joint planning and advance notification of Rights of Way work, excepting such work performed in emergencies or other exigent circumstances;
- (3) Cooperate with other non-Residential Permittees and Franchisees in utilization of, construction in and occupancy of private Rights of Way, but only to the extent the same is not inconsistent with the grant thereof or state or federal law;
- (4) Upon written notice of, and at the direction of, the Director and at the Permittees' sole cost, promptly remove or rearrange facilities as necessary, e.g. during any construction, repair or modification of any street, sidewalk, City utility or other governmental uses, or if additional or subsequent City or other public uses of Rights of Way are inconsistent with then current uses of Franchisees and Permittees or for any other reasonable cause as determined by the Director.
- (5) All Persons granted a Permit on or after the effective date of this Chapter shall provide maps or other information in such form and at such times as the City may reasonably require. Said maps and information shall locate, describe and identify all structures and facilities of such Permittee, of and in the Rights of Way;
- (6) Perform all work, construction, maintenance or removal of structures and facilities within the Rights of Way in accordance with good engineering and construction practice, including any appropriate safety codes and in accordance with the Best Efforts to repair and replace any street, curb or other portion of the Rights of Way, or facilities or structure located therein, to a condition materially equivalent to this condition prior to such work, and to do so in a manner which minimizes inconvenience to the Public,

the City and other Franchisee and Permittees, all in accordance with all applicable Regulations;

- (7) Register with all appropriate underground reporting services; and
- (8) Unless otherwise set forth in a Permit, not enter into leases or other agreements for physical space in or on Permittee's facilities located within the Rights of Way without prior notification of the City. Such notice to include a general description of the uses to be made of the facilities.

(b) Construction and Technical Standards.

- (1) Upon grant of the Permit and in order to construct, operate and maintain a telecommunications system or utility in the City, the Permittee may enter into contracts with any public utility companies or any other owner or lessee of any poles or underground areas located within or without the City; obtain Rights-of-Way permits from appropriate City, State, County, and Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a City, County, State or Federal agency may require.
- (2) In those areas of the City where telephone and electric services are provided by underground facilities, all new facilities shall be placed underground. In all other areas, the Permittee, upon request of the City, shall use its Best Efforts to place facilities underground. However, the term facilities as used in the preceding sentence shall not include equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities (e.g. splice and terminal pedestals, equipment cabinets and transformers.) Where not otherwise required to be placed underground by this Chapter, the Permittee's system shall be located underground at the request of the adjacent property owner, provided the placement of such system shall be consistent with the Permittee's construction and operating standards and provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable to be installed under the roadway shall be installed in conduit. In no circumstance shall new poles be located in any area of the City where it is not replacing an existing pole without written approval of the Service Director, which shall not be unreasonably withheld.
- (3) Permittee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements, FCC technical standards, and those standards are incorporated by reference herein. The system shall be

designed, constructed, operated and maintained for 24-hours-a-day continuous operation.

- (4) The Permittee shall comply with the City's normal permitting process prior to commencing any work in the Rights of Way except for emergencies and otherwise as provided in this Chapter. No work in the Rights of Way shall be commenced until such time as any and all required permits have been issued by the City. The City shall not unreasonably withhold the granting of any permit.
- (5) Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State, and all local ordinances. The Contractor's or Permittee's system and associated equipment erected by the Permittee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public ways by the Permittee shall be placed in such a manner as to interfere with normal travel on such public way.
- (6) The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public Rights of Way, where necessary, the location shall be verified by excavation.
- (7) Construction, installation, operation, and maintenance of the utility or telecommunications system shall be performed in an orderly and workmanlike manner, in accordance with the Permittee's then current corporate construction and maintenance practices. When consistent with the safety codes and standards set forth in Section 953.06(b)(8) of this Chapter, all cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
- (8) The Permittee shall at all times comply with applicable National Electrical Safety Code (National Bureau of Standards); applicable National Electrical Code (National Bureau of Fire Underwriters); and applicable FCC or other Federal, State and local regulations; and standards as set forth in the Permit.
- (9) In any event, the system shall not endanger or interfere with the safety of persons or property in the Permit area or other areas where the Permittee may have equipment located.
- (10) All worker facilities, conditions, and procedures that are used during construction, installation, operation, and maintenance of the utility or

telecommunications system shall comply with the applicable standards of the Federal Occupational Safety and Health Administration.

- (11) The Franchisee or Permittee shall provide either a Performance Bond (of self bonding by Permittee having capitalization in excess of Fifty Million Dollars [\$50,000,000], as determined by the Service Director), an Irrevocable Letter of Credit acceptable to the City, or a Certified Check in an amount determined by the Director to pay the cost of restoration of the Rights of Way should the Permittee fail to perform restoration required by this Chapter, or the Permittee to pay for the cost of removal or relocation of the system required by this Chapter should the Permittee fail to perform said removal or relocation.

(c) **Rights-of-Way Work Permit Required.** All Permittees shall obtain a Rights-of-Way Work Permit from the Director prior to beginning the erection, installation or maintenance including tree trimming, of any lines or equipment. Prior City approval shall not be required for emergency repairs, routine maintenance and repairs, operations which do not require excavation in the public Right of Way, blockage of any street or alley or material disruption to any landscaping or structures and/or irrigation systems. The Permittee, and/or its subcontractors shall leave the streets, alleys, and other public places where such work is done in as good condition or repair as they were before such work was commenced and to the reasonable satisfaction of the City. Such Right-of-Way Work Permit shall be issued in writing and is subject to conditions that may be attached by the Director including, but not limited to, requirements concerning traffic control, safety, scheduling, notification of adjoining property owners, and restoration with seed, sod or specific plant materials as directed by the City of Willoughby. The Permittee, and/or its subcontractors shall endeavor to complete, in a timely manner, repairs to the Right of Way. All workmanship and materials used by the Permittee, and/or its subcontractors to repair the streets and roadways shall be subject to the inspection and approval of the Director or his authorized agent and shall be warranted for a period of one (1) year from the date of completion for any failure due to workmanship or quality of materials.

953.07 PERMIT FEES AND AUDITING.

(a) Telecommunication and Utility Permittees shall pay an annual fee determined by the following:

- (1) Permittees utilizing equal to or greater than thirty (30) miles of Rights of Way shall pay a fee of Three Thousand Dollars (\$3,000) per year.
- (2) Permittees utilizing less than thirty (30) miles of Rights of Way shall pay a fee of One Thousand Dollars (\$1,000) per year.

Such fee shall be paid in advance for each year prior to January 31. Partial year permits shall be prorated.

(b) Special Permittees shall pay an annual fee of Ten Cents (\$.10) per linear foot of Rights of Way used or occupied. Such fee shall be paid in advance for each year prior to January 31 of such year. Partial year permits shall be prorated.

(c) Residential Permittees shall pay no annual fee.

(d) In addition to the annual fees set forth in Subsection (a) of this section, permittees shall pay a work permit fee in the amount of Twenty-Five Dollars (\$25) for each street opening or cut and shall post a performance bond in an amount determined by the Director. Said fees are payable at the time the notice set forth in Subsection (a) of this section is filed. Fees for work done without a Section 953.08 prior notice shall be made within seven (7) business days of the initiation of any such work.

953.08 NOTICE OF RIGHT OF WAY WORK, JOINT PLANNING.

(a) All applicants for Right-of-Way Work Permits under Section 953.04 of this Chapter shall file a written notice with the Director at least seven (7) days before working in or on the Right of Way, unless waived by the Director, except in the case of emergency as determined by the Director. In addition to such other information this Chapter shall require, this notice shall contain or indicate, to the extent applicable:

- (1) The Right of Way affected;
- (2) A description of any facilities to be installed, constructed or maintained;
- (3) Whether or not any street will be opened or otherwise need to be restricted, blocked or closed;
- (4) An estimate of the amount of time needed to complete such work;
- (5) A description and timetable of any remedial measures planned to close any street opening or repair any damage done to facilitate such work;
- (6) A statement verifying that other affected or potentially affected Permittees and Franchisees have been notified; and
- (7) A statement that any consumers of any utility, cable television, communications or other service which will be adversely affected by such work have been or will be notified in conformance with applicable rules and regulations of the Public Utilities Commission of Ohio.

(b) All applicants for Right-of-Way Work Permits under Section 953.06(11) shall submit a bond guaranteeing completion of all restoration work as required by the Director.

(c) Permittees may, under emergency or other exigent circumstances, work in the Rights of Way so long as the Permittees use "best efforts" to provide the City the notice required by this section at the earliest possible time.

953.09 USE OF PERMITTEE FACILITIES.

The City shall have the right to install and maintain, free of charge, upon any poles and within any underground pipes and conduits or like facilities of any Telecommunication and Utility or Special Permittee, Communications Facilities ("City Facilities") solely for governmental use desired by the City unless (i) such installation and maintenance unreasonably and materially interferes with existing and future operations of the Permittee, or (ii) that such installation and maintenance would be unduly burdensome to such Permittee. Each Permittee and Franchisee shall cooperate with the City in the planning and design of its facilities so as to accommodate the City's reasonably disclosed governmental requirements. Neither the City Facilities nor the capacity of bandwidth thereon shall be leased, licensed or otherwise made available to third parties. The City's use and occupancy of a Permittee's conduit shall be limited to the right to occupy a single innerduct in any given conduit and a single attachment to any given pole. The City's right to use and occupancy of a Permittee's poles or conduit shall be subject to any and all reasonable terms and conditions the Permittee requires of other third party users of its poles and conduit. The City shall pay the Permittee the reasonable cost to make the poles or conduit ready for the City's use and occupancy. Nothing herein shall be construed to require a Permittee to construct poles or conduits where none exist or to rearrange, modify or alter its facilities on a pole or conduit in order to provide space for City Facilities where space is not otherwise available.

953.10 INDEMNIFICATION.

(a) To the fullest extent permitted by law, all Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims, (including without limitation worker's compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the City in connection therewith):

- (1) To persons or property, in any way arising out of or through the acts or omissions of Permittee, its subcontractors, agents or employees attributable to the occupation by the Permittee of the Rights of Way, to which Permittee's negligence shall in any way contribute, and regardless of whether the City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage.
- (2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Permittee, but excluding claims arising out of or related to City programming.

- (3) Arising out of Permittee's failure to comply with the provisions of any federal, state, or local statute, ordinances or regulations applicable to Permittee in its business hereunder.
- (b) The foregoing indemnification is conditioned upon the City:
 - (1) Giving Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;
 - (2) *Affording the Permittee the opportunity to participate in and fully control any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and*
 - (3) Fully cooperating in the defense of such claim and making available to the Permittee all pertinent information under the City's control.
- (c) The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Permittee shall pay the reasonable fees and expense of such separate counsel if employed with the approval and consent of the Permittee or if representation of both Permittee and the City by the same attorney would be inconsistent with accepted canons of professional ethics.
- (d) Each Permittee shall maintain insurance coverages (or self-insurance coverage by Permittees having capitalization in excess of Fifty Million Dollars, as determined by the Service Director) in accordance with the following:
 - (1) General Liability Insurance. The Permittee shall maintain, and by its acceptance of any franchise granted hereunder specifically agrees that it will maintain throughout the term of the Permit, general liability insurance insuring the Franchisee in the minimum of:
 - A. \$2,000,000 per occurrence;
 - B. \$2,000,000 annual aggregate;
 - C. \$2,000,000 excess general liability per occurrence and annual aggregate.Such general liability insurance must be written on a comprehensive coverage form, including the following: premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.
 - (2) Automobile Liability Insurance. The Permittee shall maintain, and by its acceptance of any Permit granted hereunder specifically agrees that it will

maintain throughout the term of the Permit, automobile liability insurance for owned, non-owned, or rented vehicles in the minimum amount of:

- A. \$2,000,000 per occurrence; and
- B. \$2,000,000 excess automobile liability per occurrence.

- (3) **Worker's Compensation and Employer's Liability Insurance.** The Franchisee shall maintain and by its acceptance of any Franchise granted hereunder specifically agrees that it will maintain throughout the term of the Franchise, Worker's Compensation and employer's liability, valid in the State of Ohio, in the minimum amount of:

- A. Statutory limit for Worker's Compensation;
- B. \$2,000,000 for employer's liability per occurrence; and
- C. \$2,000,000 excess employer liability

953.11 REMOVAL OF FACILITIES.

(a) In the event any non-Residential Permittee intends to remove, excluding normal repairs and maintenance, or abandon any facilities within the Rights of Way, such Permittee shall submit a notice to the Director describing the portion of the facilities to be removed or abandoned and the date of removal or abandonment, which date shall not be less than thirty (30) days from the date such notice is submitted to the Director. The Permittee may not remove, destroy or permanently disable any such facilities after such notice without the written approval of the Director. The Permittee shall remove and secure such facilities as set forth in the notice unless directed by the Director to abandon such facilities in place.

(b) Upon such abandonment, the City may elect to accept title to the abandoned facility. Such acceptance shall be in writing and upon such acceptance, full title and ownership of such abandoned facilities shall pass to the City without the need to pay compensation to the Permittee or Franchisee. The Permittee shall, however, continue to be responsible for all taxes on such facilities or other liability associated therewith, until the date the same was accepted by the City.

953.12 REMEDIES AND REVOCATION.

(a) In case of any failure of Permittee's physical plant, whether due to damage, age, lack of maintenance or any other cause, the City shall notify Permittee or Franchisee who shall, within a reasonable time stipulated by the City, respond and repair such failed plant. Should the Permittee fail to act as required, or in cases where protection of public safety requires an immediate response, the City may take any required, corrective action and recover the costs of same from the Permittee.

(b) The Director shall give the Permittee sixty (60) days prior written notice of City's intent to revoke the Permit under the provisions of this Chapter stating the reasons for such action. If the Permittee cures the stated reason within the thirty (30) day notice period, or if the Permittee initiates efforts satisfactory to the City to remedy the stated violation, the City shall not revoke the Permit. If the Permittee does not cure the stated violation or undertake efforts satisfactory to the City to remedy the stated violation then, after granting the Permittee an opportunity to be heard in person or in writing, the Council may revoke the Permit.

(c) In the event the Permit is revoked, all facilities located in the Rights of Way or located upon Public Property pursuant to this Permit shall be removed from the streets and public places of the City at the sole expense of the Permittee.

953.13 RESERVATION OF RIGHTS.

(a) Nothing in this Chapter shall be construed to prevent the City from constructing, maintaining, repairing or relocating any City utility, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street or Rights of Way; or constructing, maintaining, relocating or repairing any sidewalk or other public work or improvement.

(b) Nothing in this Chapter should be construed so as to grant any right or interest in any Rights of Way or Public Property other than that explicitly set forth herein or in a Permit.

953.14 STREET VACATION.

Unless preempted by state or federal law, in the event any street or Rights of Way used by a Permittee or Franchisee shall be vacated by the City during the term of any Permit granted pursuant to this Chapter, the Permittee shall, at the Permittee's expense forthwith remove its facilities therefrom unless specifically permitted by the City to continue the same or such continuance of use is permitted by state law, and upon the removal thereof, restore, repair, or reconstruct the area where such removal has occurred to a condition materially equivalent to that existing before such removal took place. In the event of failure, neglect, or refusal of the Permittee after thirty (30) days written notice by the City to remove the facilities or to repair, restore, reconstruct, improve or maintain such vacated area, the City may, if in accordance with applicable law, do such work or cause it to be done, and the cost thereof as found and declared by the City shall be paid by the Permittee as directed by the City and collection may be made by any available remedy.

953.15 TEMPORARY MOVEMENT OF FACILITIES.

In the event it is necessary temporarily to move or remove any of the Permittee's wires, cables, poles or other facilities placed pursuant to this Chapter, in order to lawfully move a

large object, vehicle, building or other structure over the streets of the City, upon two (2) weeks written notice by the City to the Permittee, the Permittee shall, at the expense of the Person requesting the temporary removal of such facilities, comply with City's request.

953.16 FORECLOSURE AND RECEIVERSHIP.

(a) Foreclosure. Upon the foreclosure or other judicial sale of the Permittee's facilities located within the Rights of Way, the Permittee shall notify the City of such fact and its Permit shall be deemed void and of no further force and effect.

(b) Receivership. The City shall have the right to cancel any Permit granted pursuant to this Chapter subject to any applicable provisions of law, including the Bankruptcy Act, One Hundred Twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Permittee 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 and Twenty (120) days, or unless:

- (1) Within One Hundred and Twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Chapter and the relevant Permit and remedied all defaults thereunder; and
- (2) Such receiver or trustee, within said One Hundred and Twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Chapter and the relevant Permit.

953.17 NONENFORCEMENT AND WAIVERS BY CITY.

The Permittee or Franchisee shall not be relieved of its obligation to comply with any of the provisions of this Chapter by reason of any failure of the City or to enforce prompt compliance. However, the Director may in individual instances and upon a request in writing establishing hardship and for good cause shown waive, in writing, any requirements of this Chapter.

953.18 CONTROLLING LAW.

This Chapter shall be construed and enforced in accordance with the Constitution and laws of the State of Ohio.

953.19 CAPTIONS.

The captions and headings in this Chapter are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Chapter.

953.99 PENALTIES.

(a) In addition to any other penalties set forth in this Chapter, and the remedy of specific performance for failure to comply with any other provision of this Chapter, the penalty shall be a civil forfeiture, payable to the City, in the amount of One Hundred Dollars (\$100) per day for each day of violation.

(b) Any Permittee may be excused for violations of this Chapter and it's Permit for reasons of Force Majeure.

SECTION 2 It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were conducted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such actions were conducted in meetings open to the public in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby.

SECTION 3 That this Ordinance shall be in full force and take effect immediately upon its passage by Council and its approval by the Mayor, or at the earliest period allowed by law.

Passed: _____
President of Council

Attest: _____
Clerk of Council

Date: _____ Approved: _____
Mayor

Submitted to the Mayor for his approval on this _____ day of _____, 2007.

Clerk of Council