

**COUNTY OF UNION,
ILLINOIS**

CABLE TELEVISION ORDINANCE

WHEREAS, pursuant to 55 ILCS 5/5-1095 and 55 ILCS 5/5-1096, a county board may license, tax or franchise the business of operating a community antenna television system or systems within the unincorporated portions of the county; and

WHEREAS, certain cable television providers are currently providing community antenna television system service in certain unincorporated portions of Union County, Illinois

WHEREAS, the Board of Commissioners of the County of Union, Illinois finds that the regulation and franchising of community antenna television system service within Union County will provide protection to consumers and ensure that such service is provided in an orderly, competitive and economically sound manner.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF UNION, ILLINOIS, AS FOLLOWS:

SECTION 1: All ordinances and resolutions, or parts thereof, in conflict with this Cable Television Ordinance are hereby repealed.

SECTION 2: The Code of Ordinances of the County of Union, Illinois is hereby amended by the addition of the following Chapter:

ARTICLE 1

SHORT TITLE

1-1 This Chapter shall be known as the Union County Cable Television Ordinance.

ARTICLE 2

DEFINITIONS

2-1 For purposes of this Chapter, the following terms shall be given these definitions:

- (a) Act means the Federal Communications Act of 1934, as amended.
- (b) Board means the Board of Commissioners of the County.
- (c) Cable Service means
 - (1) the one-way transmission to Subscribers of video programming or other programming service; and

- (2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- (d) Cable System means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service to Subscribers within the County; provided, however, Cable System does not include the following:
 - (1) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; and
 - (2) a facility that serves only Subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any Public Right-of-Way; and
 - (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Act; provided, however, that such a facility shall be considered a Cable System (other than for purposes of Section 621(c) of such Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; and
 - (4) an open video system that complies with Section 653 of Title VI of the Act; and
 - (5) a facility of an electric utility used solely for operating its electric utility system.
- (e) County means the County of Union, Illinois.
- (f) Franchise means an initial authorization, or renewal of such authorization, by the County which authorizes the construction or operation of a Cable System within the Franchise Area by a Franchisee.
- (g) Franchise Agreement means a written agreement by and between the County and a Franchisee regarding a Franchise.
- (h) Franchise Area means the unincorporated portions of the County.
- (i) Franchise Fee means any tax, fee or assessment imposed by the County on a Franchisee solely because of such Franchisee's status as a Franchisee; provided, however, Franchise Fee shall not include the following:
 - (1) Any tax, fee or assessment of general applicability; and
 - (2) Capital costs incurred by a Franchisee associated with the installation or maintenance of PEG Access Facilities required under this Chapter or a Franchise Agreement; and
 - (3) Requirements or charges incidental to the awarding or enforcing of a Franchise as provided for or required under this Chapter or a Franchise Agreement including, but not limited to, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; and
 - (4) Any fee imposed pursuant to federal law.
- (j) Franchisee means any Person holding a Franchise pursuant to this Chapter and any lawful successor or assign of such Person.
- (k) Gross Revenues means all revenues of a Franchisee derived from the operation of a Cable System within the County; provided, however, Gross Revenues shall not include any Franchise Fee collected by a Franchisee from Subscribers.

- (l) PEG Access Facilities means
 - (1) Channel capacity for public, educational or governmental use; and
 - (2) Facilities and equipment for the use of such channel capacity.
- (m) Person means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.
- (n) Public Right-of-Way means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the County in the Franchise Area.
- (o) Subscriber means a Person who lawfully receives Cable Service from a Franchisee.

ARTICLE 3

GRANTING AND SCOPE OF FRANCHISE

-3-1 Franchise Required. No Person shall provide Cable Service within the Franchise Area without a Franchise Agreement.

-3-2 Granting of Franchise. The Board may grant one or more non-exclusive Franchises for the use of the Public Right-of-Way within the Franchise Area for the construction, operation and maintenance of a Cable System.

-3-3 Franchise Non-Exclusive. Any Franchise granted pursuant to this Chapter shall be non-exclusive.

-3-4 Franchise Application. The County may require that any Person seeking a Franchise under this Chapter provide the County with a written application in a format prescribed by the County.

-3-5 Term, Expiration, Renewal and Transfer.

- (a) Any Franchise granted pursuant to this Chapter shall be for a term no longer than fifteen years.
- (b) Any Franchise granted pursuant to this Chapter shall terminate upon the expiration of the term of the Franchise unless renewed pursuant to this Section.
- (c) Any Franchise granted pursuant to this Chapter may renewed by mutual agreement of the County and a Franchisee pursuant to federal law.
- (d) Any right, title, or interest in a Franchise granted pursuant to this Chapter shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with a Franchisee, without prior written notice to the County. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of a Franchisee in the Franchise or Cable System in order to secure indebtedness.

-3-4 Franchise Area. The geographic area covered by any Franchise granted pursuant to this Chapter shall be the unincorporated portions of the County.

-3-5 Use of Public Right-of-Way Non-Exclusive. Any use of the Public Right-of-Way granted pursuant to this Chapter and any Franchise Agreement shall be non-exclusive and the County may grant similar use of the Public Right-of-Way to any other Person at any time.

-3-6 Use of County Property. Nothing in this Chapter or any Franchise Agreement shall grant a Franchisee any right to property owned by the County.

-3-7 Revocation of Franchise.

- (a) The County may revoke a Franchise and any and all rights and privileges of a Franchisee under this Chapter, and under any Franchise Agreement, upon the occurrence of any substantial breach of this Chapter or of any Franchise Agreement. For purposes of this Chapter, and any Franchise Agreement made pursuant to this Chapter, substantial breach shall include the following:
- (i) Failure, after notice and an opportunity to cure, of a Franchisee to pay any portion of a Franchise Fee; or
 - (ii) Failure, after notice and an opportunity to cure, of a Franchisee to comply with any material provision of this Chapter or any Franchise Agreement; or
 - (iii) Material fraud or misrepresentation by the Franchisee in obtaining the Franchise; or
 - (iv) Insolvency or bankruptcy of the Franchisee.
- (b) Upon the occurrence of any substantial breach, the County shall provide the Franchisee with written notice describing the nature of the substantial breach and, if applicable, requiring that the Franchisee correct the substantial breach within thirty days. Within thirty days of delivery of such written notice, the Franchisee shall respond in writing either contesting the County's notice of substantial breach or outlining correction measure being undertaken by the Franchisee. The Franchisee may file a written request for a hearing on the matter. The County shall hold such hearing within thirty days of any such request filed by the Franchisee. The Board shall preside at any such hearing and determine whether a substantial breach has occurred. The Board shall render a record of its proceedings and of its findings.

ARTICLE 4

REGULATION OF FRANCHISE

-4-1 Franchise Fee. A Franchisee shall pay the County a Franchise Fee of five percent (5%) of Gross Revenues. In accordance federal law, the twelve (12) month period applicable under the Franchise for the computation of such Franchise Fee shall be a calendar year. Payment of the Franchise Fee shall be due annually and payable within ninety (90) days after the close of the calendar year. Each annual payment shall be accompanied by a report from the Franchisee showing the basis for the computation of the Franchisee Fee payable for the applicable calendar year.

-4-2 Regulation of Rates. The County may regulate rates for the provision of Cable Service to the extent permitted by federal law.

SECTION 3: This Union County Cable Television Ordinance shall be in effect upon its passage, approval and publication as provided by law.

PASSED AND APPROVED at a regular meeting of the Union County Board of Commissioners this ___ day of _____, 2010.

Chairman: Brandy Lumb voting yes.

County Commissioner: John Gann voting YES.

County Commissioner: Donald Derry voting Yes.

Subscribed and Sworn to me this 1 day of March, 2010

County Clerk: Bobby Toler Jr.