

CITY OF WILKES-BARRE  
PENNSYLVANIA



# CITY COUNCIL AGENDA

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CITY COUNCIL

FEBRUARY 11, 2021

PLEDGE OF ALLEGIANCE

ROLL CALL

RESOLUTIONS

MINUTES

ORDINANCES

PRESENTATIONS BY COUNCIL MEMBERS

PUBLIC DISCUSSION

ADJOURNMENT

CITY COUNCIL  
FEBRUARY 11, 2021

**RESOLUTIONS**

Proclaiming the month of April 2021 as “Fair Housing Month”.

Appointing Zelenkofske Axelrod, LLC to conduct the audit of the City’s General Purpose Financial Statements and Single Audit for the year ending December 21, 2020 for a fee of \$59,500.00.

Authorizing the proper city officials to take any and all necessary actions related to a Master License Agreement for small wireless communication facilities with Northeast Pennsylvania SMSA Limited Partnership d/b/a/ Verizon Wireless.

**MINUTES**

Of the Zoning Hearing Board of December 16, 2020.

Of the Planning Commission of January 20, 2021.

Of the Wyoming Valley Sanitary Authority of December 15, 2020.

Of the Regular Session of City Council of January 28, 2020.

**ORDINANCES**

**FILE OF COUNCIL NO. 3 OF 2021** – AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 12 OF THE CITY OF WILKES-BARRE CODE OF ORDINANCES ENTITLED “RECYCLING”.  
(SECOND AND FINAL READING)

**FILE OF COUNCIL NO. 4 OF 2021** – AN ORDINANCE OF THE CITY OF WILKES-BARRE, PENNSYLVANIA ADOPTING A CABLE FRANCHISE AGREEMENT WITH COMCOAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC, TO INSTALL, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM, TOGETHER WITH OTHER SERVICES; PRESCRIBING TERMS AND CONDITIONS; AND OTHER LEGAL REQUIREMENTS. (FIRST READING)

**FILE OF COUNCIL NO. 5 OF 2021**- AN ORDINANCE OF THE CITY OF WILKES-BARRE, PENNSYLVANIA ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF WILKES-BARRE. (FIRST READING)



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, Fair Housing is a right emphasized by the U.S. Congress beginning with the Civil Rights Act of 1968 and most recently the amendments of 1988 to the Fair Housing Act; and

WHEREAS, this is the 5<sup>rd</sup> anniversary of the enactment of the civil rights act of 1968, as amended and strengthened in 1988; title viii of which guarantees the right to be free from housing discrimination based on race, color, national origin, religion, sex, familial status, and disability (including AIDS/HIV).

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF WILKES-BARRE HEREBY proclaims the month of April 2021, as "Fair Housing Month" in the City of Wilkes-Barre and encourages its citizens and organizations to celebrate diversity and value the harmonious communities of neighbors to support the goal of equal opportunities for all people.

Submitted by \_\_\_\_\_

**ROLL CALL**



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

THAT, Zelenkofske Axelrod, LLC is hereby appointed to conduct the audit of the City's General Purpose Financial Statements and Single Audit for the year ending December 31, 2020 for a fee of \$59,500.

Submitted by \_\_\_\_\_

**ROLL CALL**



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

THAT the proper city officials are hereby authorized to take any and all necessary actions related entering into a Master License Agreement for small wireless communications facilities with Northeast Pennsylvania SMSA Limited Partnership d/b/a Verizon Wireless.

Submitted by \_\_\_\_\_

**ROLL CALL**

## FILE OF COUNCIL

Presented in City Council on January 28, 2021

No. \_\_\_\_\_ of 2021

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### AN ORDINANCE AMENDING ARTICLE IV. OF CHAPTER 12 OF THE CITY OF WILKES-BARRE CODE OF ORDINANCES ENTITLED "RECYCLING."

WHEREAS, it is the desire and intention of the City Council to pass legislation within the City of Wilkes-Barre by amending Article IV. of Chapter 12 of the Wilkes-Barre Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF WILKES-BARRE THAT ARTICLE IV. OF CHAPTER 12 ENTITLED "RECYCLING" IS HEREBY AMENDED AS FOLLOWS:

#### **CHAPTER 12. GARBAGE AND REFUSE**

#### **ARTICLE VI. RECYCLING**

##### **Sec. 12-61. Definitions.**

*Permitted recyclable materials under dual-stream program:* Aluminum cans, aluminum foil, 1-7 plastics, cardboard, cereal boxes, color paper, detergent bottles, empty aerosol cans, envelopes [with or without window], file folders, glass jars and bottles, soft cover books, juice and milk cartons, junk mail, newspaper and inserts, magazines and brochures, multi-3 ply paper, white paper, paperboard boxes, phone books and catalogs, plastic milk jugs, plastic soda bottles, pots and pans, school papers, small metals, tin cans, and water bottles.

##### **Sec. 12-62. Disposal.**

- (a) All permitted materials under the dual stream recycling program will be deposited into two separate containers. One (1) container for mixed paper and a second (2<sup>nd</sup>) container for metal, plastic and glass. The dual system containers and will be collected separately on different collection days. The containers must be placed curbside and no items other than those in proper container will be collected.
- (b) The appropriate authorities are hereby authorized to designate, by regulation, the days and times for the collection of dual stream recycling materials and leaf waste.

- (c) The following materials are **not** allowed in recycling containers: Plastic bags, bagged recyclables, hoses, cords, chains, wire wrap, clothing, medical waste, garage waste such as filters and other car parts, plastic wrap, bubble wrap, sandwich bags, freezer bags, food scraps, diapers, Styrofoam, spray bottle pumps, deli containers, plastic disposable plates and cups, disposable silverware, napkins, copy paper wrappers, hard cover books, pizza boxes, 3-ring binders, compact discs (cd's) and video tapes.

#### SEVERABILITY.

The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Council of the City of Wilkes-Barre that this ordinance would have been adopted had such unconstitutional, illegal or invalid part not been included.

#### REPEALER.

All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed. All ordinances not specifically amended hereby remain in full force and effect.

Passed finally by the Council of the City of Wilkes-Barre on \_\_\_\_\_  
\_\_\_\_\_, 2021.

This ordinance shall become effective ten (10) days after final passage by the Council of the City of Wilkes-Barre.

Attest:

\_\_\_\_\_  
Jim Ryan, City Clerk

**FILE OF COUNCIL**

**Presented in Council on February 11, 2021**

**NO. \_\_\_\_\_ of 2021**

**AN ORDINANCE**

**OF THE CITY OF WILKES-BARRE, PENNSYLVANIA ADOPTING A CABLE FRANCHISE AGREEMENT WITH COMCAST OF COLORADO/PENNSYLVANIA/WEST VIRGINIA, LLC, TO INSTALL, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM, TOGETHER WITH OTHER SERVICES; PRESCRIBING TERMS AND CONDITIONS; AND OTHER LEGAL REQUIREMENTS.**

NOW, THEREFORE, IT IS HEREBY ORDERED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF WILKES-BARRE AS FOLLOWS:

- Section 1.** The proper City officials are hereby authorized to execute the Franchise Agreement attached hereto as Exhibit "1."
- Section 2.** The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Council of the City of Wilkes-Barre that this ordinance would have been adopted had such unconstitutional, illegal or invalid part not been included.
- Section 3.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed. All ordinances not specifically amended hereby remain in full force and effect.
- Section 4.** Passed finally by the Council of the City of Wilkes-Barre on \_\_\_\_\_, 2021.
- Section 5.** This ordinance shall become effective ten (10) days after final passage by the City Council of the City of Wilkes-Barre.

Attest:

\_\_\_\_\_  
Jim Ryan, City Clerk

## **EXHIBIT "1"**

### **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Wilkes-Barre (hereinafter, "City" or "Franchising Authority") and Comcast of Colorado/Pennsylvania/West Virginia, LLC hereinafter, "Grantee").

The City having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

### **SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 - 631 (the "Cable Act"), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, and words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined in the Cable Act or herein shall be given their common and ordinary meaning.

1.1. "Cable Service" or "Service" means the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. "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 which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. "Customer" or "Subscriber" means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee's express permission.

1.4. "Effective Date" means the date on which the City signs this Agreement, subject to all necessary parties executing this Agreement as

indicated on the signature page(s), unless a specific date is otherwise provided in the "Term" section herein.

1.5. "FCC" means the Federal Communications Commission, or successor governmental entity thereto.

1.6. "Franchise" means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.7. "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

1.8. "Franchise Area" means the present legal boundaries of the City of Wilkes-Barre, County of Luzerne, Pennsylvania, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.9. "Franchising Authority" means the City of Wilkes-Barre or the lawful successor, transferee, designee, or assignee thereof.

1.10. "Grantee" shall mean Comcast of Colorado/Pennsylvania/West Virginia, LLC.

1.11. "Gross Revenue" means revenue derived by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Service, calculated in accordance with generally accepted accounting principles ("GAAP"). Gross Revenue includes monthly basic cable, premium and pay-per-view video fees, installation fees and subscriber equipment rental fees. Gross Revenue shall not include refundable deposits, advertising revenue, advertising sales commissions, home shopping revenue, leased access fees, late fees, investment income, programming launch support payments, nor any taxes, franchise fees, or other fees or assessments imposed or assessed by any governmental authority. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with generally accepted accounting principles, provided however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in the Gross Annual Revenues in the period so collected.

1.12. "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, but shall not mean the Franchising Authority.

1.13. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court,

boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

1.14 "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial drop connection to the existing distribution system.

1.15 "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## **SECTION 2 - Grant of Authority**

2.1. Franchise Grant. The Franchising Authority hereby grants to the Grantee a non-exclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act [47 U.S.C. §546], as amended.

### **SECTION 3 – Construction and Maintenance of the Cable System**

3.1. Permits and General Obligations. The Grantee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. Notwithstanding the requirements herein, Grantee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

#### **3.2. Conditions of Street Occupancy.**

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify Grantee of such funding and make available such funds to the Grantee. If funds are not made available as described herein, Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i.) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii.) the Grantee is given not less than sixty (60) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee

disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

3.2.4. Safety Requirements. The Grantee shall undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations.

3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any collateral, real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not made available as described herein, Grantee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

## **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall have the authority to make Cable Service available within the Franchise Area and extend the Cable System in areas as determined by the Grantee.

4.2. Programming. The Grantee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Grantee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Grantee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Grantee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

## **SECTION 5 - Fees and Charges to Customers**

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

## **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

## **SECTION 7 - Oversight and Regulation by Franchising Authority**

### **7.1. Franchise Fees.**

7.1.1. The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to three percent (3%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other cable operator providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each first, second and third calendar quarter (i.e., May 15, August 15, November 15) and sixty (60) days after the close of the calendar year (last day of February). Grantee shall provide a report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period.

## 7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Final Settlement Amount." For purposes of this Section, the term "Final Settlement Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Final Settlement Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within sixty (60) days from the date the parties agree upon the "Final Settlement Amount." Once the parties agree upon a Final Settlement Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

7.3. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC.

## 7.4. Maintenance of Books, Records, and Files.

7.4.1. Proprietary Information. Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a Non-Disclosure Agreement, to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer

information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchising Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Grantee of such request and cooperate with Grantee in opposing such request.

### **SECTION 8 – Transfer of Cable System or Franchise of Grantee**

8.1. No transfer of control of the Grantee, defined as an acquisition of 51% or greater direct ownership interest in Grantee, shall take place without prior written notice to the Franchising Authority. No notice shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

### **SECTION 9 - Insurance and Indemnity**

9.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or property damage. The Grantee shall provide workers' compensation coverage in accordance with applicable law.

9.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, and employees, acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Grantee's construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to

indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchising Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Grantee's ability to defend the claim or action. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. Grantee shall not indemnify the Franchising Authority for any claims resulting from acts of willful misconduct or negligence on the part of the Franchising Authority.

## **SECTION 10 - System Description and Service**

10.1. System Capacity. During the term of this Agreement, the Grantee's Cable System shall be capable of providing Video Programming to its customers in the Franchise Area in accordance with the Cable Act.

### 10.2. Cable Service to Public Buildings.

10.2.1. Grantee shall provide a cable service drop and basic cable service with any necessary cable box to one outlet at each Public Building listed in Exhibit A. In accordance with applicable law, Grantee will charge the fair market value for each such account, which fair market value shall match the then current rate card for the level of service provided. The Borough shall notify Grantee whether it wants the amount due each month to be invoiced for payment or deducted from the next franchise fee payment. The Borough may upgrade the level of cable service received at then current rate card prices for the higher level of service. The Borough may elect in writing not to receive the service in which case it will not be invoiced and no deduction will be taken from the franchise fee.

10.2.2. In the event the FCC's Third 621 Order is reversed on appeal as to the issue of complimentary cable services as in-kind contributions in a cable franchise and such result becomes final, upon thirty (30) days written notice from the Borough, Grantee will discontinue the charge for basic cable service for the Public Buildings listed in Exhibit A and provide such service on a complimentary basis. Any additional levels of cable service, outlets, or service locations ordered by the Borough shall continue to be subject to standard rates.

10.2.3. During the term of the Franchise, the Borough may change the Public Building location listed in Exhibit A upon ninety (90) days written notice to Grantee, provided that the new location is within one hundred twenty-five (125) feet of existing Grantee cable distribution plant.

## **SECTION 11 - Enforcement and Revocation Proceedings**

11.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A.) to respond to the Franchising Authority, contesting the assertion of non-compliance or default; or (B.) to cure such default; or (C.) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

11.1.2. Public Hearings. In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

(i). seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

(ii). in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Grantee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising

Authority has not received a response from the Grantee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.

(b) At the designated public hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.

11.2. Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.2.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.2.2. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

11.3 No Removal of System. Grantee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Grantee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §621 (b)].

## **SECTION 12 – Competitive Equity**

### **12.1. Other Video Service Provider.**

12.1.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider ("VSP") (i.) enters into any agreement with the Franchising Authority to provide video services to subscribers in the City, or (ii.) otherwise begins to provide video services to subscribers in the City (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the City under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

12.1.2. If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the City.

12.2. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the City, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP providing video services to subscribers in the City, the Franchising Authority agrees that, notwithstanding any other provision of law, upon Grantee's written request the Franchising Authority shall: (i) permit the Grantee to provide video services to subscribers in the City on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity between the Grantee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the City. The Franchising Authority and the Grantee shall implement the provisions of this Section within sixty (60) days after the Grantee submits a written request to the Franchising Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Grantee's ability to take advantage of the changed law's provisions, the Grantee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.3. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the City under Sections 12.2 or 12.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

12.4. Video Service Provider. The term "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

### **SECTION 13 - Miscellaneous Provisions**

13.1. Force Majeure. The Grantee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, public health emergency, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, extraordinary make ready costs, failure of utility service or the failure of equipment or facilities not belonging to Grantee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. If for any reason of Force Majeure, Comcast is unable in whole or in part to carry out its obligations hereunder, Comcast shall not be deemed in violation of this Franchise Agreement during the continuance of such inability. Upon written (including electronic) request by the City, Comcast shall inform the City within thirty (30) days of receipt of the request whether or not Comcast has determined that a condition of Force Majeure exists.

13.2. Notice. All notices required by this agreement or law shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

City of Wilkes-Barre  
40 East Market Street  
Wilkes-Barre, PA 18711  
Attention: Mayor George Brown

To the Grantee:

Comcast of Colorado/Pennsylvania/West Virginia, LLC  
15 Summit Park Drive  
Pittsburgh, PA 15275  
Attention: Government Affairs Department

with a copy to:

Comcast Cable Northeast Division  
676 Island Pond Rd.  
Manchester, NH 03109  
Attention: Government Affairs Department

Comcast Cable  
One Comcast Center  
1701 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2838  
Attention: Government Affairs Department

13.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchising Authority and the Grantee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings – whether written or oral – of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Separability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Pennsylvania, and shall be governed in all

respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, as applicable to contracts entered into and performed entirely within the state.

13.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

13.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8 Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, which Grantee may have under federal or state law unless such waiver is expressly stated herein.

13.10 Incorporation by Reference. All presently and hereafter applicable conditions and requirements of federal, state and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the Commonwealth of Pennsylvania, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. No such generally applicable local laws, rules, regulations and codes, as amended, may alter the obligations, interpretation and performance of this Franchise Agreement to the extent that any provision of this Franchise Agreement conflicts with or is inconsistent with such laws, rules or regulations.

(b) Should the Commonwealth of Pennsylvania, the federal government or the FCC require Grantee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and Grantee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

13.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the

period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

REMAINDER OF PAGE LEFT BLANK UNTIL SIGNATURE PAGE.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

Attest:

Franchising Authority: City of Wilkes-Barre

\_\_\_\_\_  
City Clerk's Office

By: \_\_\_\_\_  
Mayor George C. Brown

\_\_\_\_\_  
Darren Snyder, City Controller

Date: \_\_\_\_\_

Attest:

Grantee:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_ Toni Murphy

Title: Senior Vice President- Keystone Region

Date: \_\_\_\_\_

**EXHIBIT A**  
**LOCATIONS FOR CABLE TELEVISION SERVICE**

**FILE OF COUNCIL**

**Presented in City Council on February 11, 2021**

No. \_\_\_\_\_ of 2021

**AN ORDINANCE**

**OF THE CITY OF WILKES-BARRE, PENNSYLVANIA ESTABLISHING  
STANDARDS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-  
WAY IN THE CITY OF WILKES-BARRE**

WHEREAS, the City of Wilkes-Barre ("City") desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband, and 9-1-1 services to homes, businesses, and schools within the City; and

WHEREAS, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, the City intends to fully comply with state and federal law to the extent it preempts local municipal control.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF WILKES-BARRE THAT THE CITY OF WILKES-BARRE CODE OF ORDINANCES IS AMENDED TO ADD THE FOLLOWING CHAPTER:

**CHAPTER 33 – SMALL WIRELESS FACILITIES**

**ARTICLE I. – STANDARDS FOR SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY OF WILKES-BARRE**

**Sec. 33-1. – Purpose and Scope.**

(A) Purpose. The purpose of this Chapter is to establish policies and procedures for the placement of small wireless facilities and associated utility poles in rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

(B) Intent. In enacting this Chapter, the City is establishing uniform standards to address issues presented by small wireless facilities, including, without limitation, to:

- (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;
- (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) limit interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;
- (4) limit environmental damage, including damage to trees;
- (5) respect the character of the neighborhoods and other areas in which facilities are installed; and
- (6) facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.

(C) **Zoning.** Applications to collocate a small wireless facility or install or modify an associated utility pole in the public rights-of-way shall be treated as a permitted use and exempt from local zoning regulation review.

(D) **Conflicts with Other Chapters.** This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(E) **Conflicts with State and Federal Laws.** In the event that applicable federal or State laws or regulations conflict with the requirements of this Chapter, the wireless provider shall comply with the requirements of this Chapter to the maximum extent possible without violating federal or State laws or regulations.

### **Sec. 33-2. – Definitions.**

In this article, the following definitions shall apply:

- (A) *Antenna* means an apparatus designed for the purpose of emitting radiofrequency (RF) signals, to be operated or operating from a fixed location for the provision of personal wireless service and any commingled information services.
- (B) *Applicable Codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address imminent threats of destruction of property or injury to persons, to the extent not inconsistent with this Chapter.
- (C) *Applicant* means a person or entity that submits a siting application, and the agents, employees, and contractors of such person or entity.

- (D) *Application* means a request submitted by an applicant (i) for a permit to install or collocate small wireless facilities; or (ii) to approve the installation or modification of a utility pole associated with a collocated small wireless facility.
- (E) *City* refers to the City of Wilkes-Barre.
- (F) *City Pole* means a utility pole owned, managed, or operated by or on behalf of the City.
- (G) *Code* means the City of Wilkes-Barre Code of Ordinances.
- (H) *Collocate* means the mounting or installing of an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (I) *Communications service provider* means a cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a Wireless Provider.
- (J) *Day* means calendar day.
- (K) *Emergency* is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the right-of-way to be unusable and result in loss of the services provided.
- (L) *FCC* means the Federal Communications Commission of the United States.
- (M) *Fee* means a one-time charge.
- (N) *Law* means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- (O) *Micro Wireless Facility* means a wireless facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and, (ii) any exterior antenna is no longer than 11 inches.
- (P) *Permit* means a written authorization required by an Authority to perform an action or initiate, continue, or complete a project.
- (Q) *Person* means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (R) *Rate* means a recurring charge.

- (S) *Rights-of-Way* or *ROW* means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the City.
- (T) *Small Wireless Facility* means a facility that meets each of the following conditions:
- a. The structure on which antenna facilities are mounted –
    - i. Is 50 feet or less in height, or
    - ii. Is no more than 10 percent taller than other adjacent structures, or
    - iii. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
  - b. Each antenna (excluding associated antenna equipment) are cumulatively no more than three cubic feet in volume; and
  - c. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
  - d. The facility does not require antenna structure registration under 47 CFR Part 17.
  - e. The facility is not located on Tribal lands, as defined under 36 CFR § 800.16(x); and
  - f. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).
- (U) *Utility pole* means a pole or similar structure that is used in whole or in part for the purpose of carrying or providing lateral support to electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting. Such term shall not include structures supporting only wireless facilities.
- (V) *Wireless facility* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include the structure or improvements on, under, or within which the equipment is collocated.
- (W) *Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless

communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

- (X) *Wireless provider* means a wireless infrastructure provider or a wireless services provider.
- (Y) *Wireless services* means any services, whether at a fixed location or mobile, provided to the public using wireless facilities.
- (Z) *Wireless services provider* means a person who provides wireless services.
- (AA) *Wireless support structure* means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

### **Sec. 33- 3. – Permitted Use; Application and Fees.**

- (A) Permit Required. No person shall place a small wireless facility or associated utility pole in the ROW, without first filing an application and obtaining a permit therefore, except as otherwise provided in this Chapter.
- (B) Application. All applications for permits filed pursuant to this Chapter shall be on a form, paper or electronic, provided by the City. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each page of such materials accordingly.
- (C) Application Requirements. An application shall be made by the wireless provider or its duly authorized representative, and shall contain the following:
  - (1) The wireless provider’s name, address, telephone number, and e-mail address;
  - (2) The applicant’s name, address, telephone number, and e-mail address, if different than the wireless provider, and its interest in the work;
  - (3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
  - (4) A general description of the proposed work and the purposes and intent of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

- (5) A site plan, with sufficient detail to show the proposed location of items the applicant seeks to install in the ROW, including any manholes or poles, the size, type, and depth of any conduit or enclosure.
- (6) An attestation that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless the City and the applicant agree to extend this period or delay is caused by lack of commercial power at the site.
- (7) An attestation that, to the best of the applicant's knowledge, the information contained in the application is true.
- (D) When Application Not Required. An application shall not be required for: (i) routine maintenance; (ii) the replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height; or (iii) for the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code.
- (E) Application Fees. All applications for permits shall be accompanied by a fee of \$500 for a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five; and \$1,000 in non-recurring fees for each new associated utility pole.
- (F) Consolidated Applications.
- (1) An applicant may submit a consolidated Application for up to fifteen Small Wireless Facilities, if all of the Small Wireless Facilities in the consolidated Application are substantially the same type.
- (2) If the City denies the application for one or more Small Wireless Facilities, or one or more Small Wireless Facilities, in a consolidated application, the City may not use the denial as a basis to delay the application process of any other Small Wireless Facility in the same consolidated Application.
- (3) A single permit may be issued for siting and collocating multiple Small Wireless Facilities spaced to provide wireless coverage in a contiguous area.

#### **Sec. 33- 4. – Action on Permit Applications.**

- (A) Review of Small Wireless Facility and Utility Pole Applications.
- (1) Within ten days of receiving an initial application, the City will determine and notify the applicant whether the application is materially complete. If an application is materially incomplete, the City will specifically identify the missing documents or

information, and the specific rule or regulation creating the obligation to submit such documents or information. The shot clock set forth in subsection (2) shall restart at zero on the date which the applicant submits all the documents and information identified by the City to make the application complete. If the applicant's supplemental submission fails to make the application complete, and the City notifies the applicant within 10 days of the supplemental submission and clearly and specifically identifies the missing documents or information, the applicable shot clock set forth in subsection (2) shall be tolled until the applicant provides the missing documents and information. The shot clock resumes (the date calculation does not restart) to run on the date when the applicant submits all the documents and information identified by the City to render the application complete.

(2) All applications shall be processed on a nondiscriminatory basis, and the City shall approve or deny an application for: (i) collocation of Small Wireless Facility on an existing structure within 60 days of receipt of the application, or (ii) within 90 days for applications to deploy a Small Wireless Facility using a new structure.

(3) An applicant and the City may enter into a written agreement to toll the time periods set forth in Subsection (2).

(4) If the City fails to issue a decision on an application for a Small Wireless Facility within the required time periods set forth in Section 4(A)(2) of this Chapter, it shall constitute a "failure to act" within the meaning of 47 U.S.C. § 332(c)(7)(B).

(5) A City may deny a proposed collocation of a small wireless facility or installation or modification of a utility pole only if the proposed application:

- (a) Materially interferes with the safe operation of traffic control equipment.
- (b) Materially interferes with sight lines or clear zones for transportation or pedestrians.
- (c) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- (d) Fails to comply with reasonable and nondiscriminatory spacing requirements that apply to other communications service providers and electric utilities in the ROW and that concern the location of ground-mounted equipment and new Utility Poles. Such spacing requirements shall not prevent a small wireless facility from serving any location.
- (e) Fails to comply with applicable codes.
- (f) Fails to comply with the requirements in Section 5 of this Chapter.

- (6) The City must document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the City denies an application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days of the denial without paying an additional application fee. The City shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (B) Permit Scope and Effect. Installation, modification, or collocation for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the City and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications facilities at the site. Approval of an application authorizes the applicant to:
- (1) Undertake the installation, modification, or collocation; and
  - (2) Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of not less than ten years, which the City/Town/Village must renew for equivalent durations so long as the facilities are in compliance with the criteria set forth in subsection 4(A)(3) and section 5 of this Chapter.
- (C) Authority Granted; No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the ROW.

**Sec. 33- 5. – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements.**

- (A) Technical Requirements. Small wireless facilities and utility poles installed to support small wireless facilities in the ROW shall comply with the following requirements:
- (1) Height of new small wireless facilities. New small wireless facilities in the ROW may not extend (i) more than ten feet above an existing utility pole in place as of the effective date of this Chapter; or (ii) for small wireless facilities on a new utility pole, above the height permitted for a new utility pole under this Chapter.
  - (2) Height of new or modified utility poles installed to support small wireless facilities. Each new or modified utility pole installed in the ROW shall not exceed the greater of (i) ten feet in height above the tallest existing utility pole in place as of the effective date of this Chapter located within 500 feet of the new pole in the same ROW; or (ii) 50 feet above ground level.

- (3) Maximum Size. The small cell facility must conform to the size and height limitations as defined for a small cell facility in this Chapter.
  - (4) Utility Poles. Utility pole installations, modifications, and replacements relating to small wireless facility collocations shall be fabricated from material having a degree of strength capable of supporting the small wireless facility and shall be capable of withstanding wind forces and ice loads in accordance with applicable standards. A modification, installation, or replacement shall be securely bound in accordance with applicable engineering standards.
  - (5) Color. Small wireless facilities shall be the color for the antenna and related equipment that is consistent with or most blends into the wireless support structure on which they are installed, unless a different color is needed for public safety or service reliability reasons.
  - (6) Wiring and Cabling. Wires and cables connecting the antenna and appurtenances serving the small cell facility shall be installed in accordance with the version of the National Electrical Code and National Electrical Safety Code adopted by the City and in force at the time of installation. In no event shall wiring and cabling serving the small wireless facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility, or telephone utility.
  - (7) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be attached to an existing utility pole that incorporated guy wires prior to the date of the small wireless application.
  - (8) Grounding. The small wireless facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the City regarding grounding of wireless facilities.
  - (9) Signage. Other than warning or notification signs required by federal law or regulations, or identification and location markings, a small wireless facility shall not have signs installed thereon.
  - (10) Access. Wireless providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures, and small wireless facilities in the ROW at all times for purposes consistent with this Chapter.
- (B) Other Requirements. A wireless provider that seeks to collocate small wireless facilities or install or modify a utility pole supporting small wireless facilities shall be subject to the following requirements:

- (1) Small wireless facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to, a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small wireless facilities shall not be installed directly over any water, sewer, or reuse main or service line.
  - (2) New utility poles installed to support small wireless facilities shall be made of the same or similar material as existing poles in the immediate area.
  - (3) Any tree-disturbing activity necessary for the installation or collocation of small wireless facilities and utility poles installed to support them shall comply with the City's ordinance related to the maintenance of trees in public rights-of-ways.
  - (4) Small wireless facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small wireless facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.
  - (5) A wireless provider shall repair, at its sole cost and expense, any damages, including, but not limited to, subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the ROW. The wireless provider shall restore such areas, structures, and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs.
  - (6) Small wireless facilities shall blend in with the surrounding environment or otherwise concealed to the extent practicable.
  - (7) No small wireless facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the City Code of Ordinances.
- (C) Underground Provisions. To the extent doing so would not result in an effective prohibition under federal law, the applicant shall comply with requirements that prohibit communications service providers from installing structures in the ROW in areas designated solely for underground or buried cable and utility facilities where the City has required all cable and utility facilities other than City poles and attachments to be placed

underground by a date certain that is three months prior to the submission of the application. The Director of Operations may authorize the replacement of City poles in the designated area upon good cause shown, as determined by the Director.

- (D) **Waivers.** A wireless provider may seek a waiver of the requirements in this section 5, which may be granted by the Director of Operations, upon good cause shown, as determined by the Director. Such waivers shall be granted in a nondiscriminatory manner.

**Sec. 33- 6. – Removal, Relocation, or Modification of Small Wireless Facility in the ROW.**

- (A) **Notice.** Within ninety days following written notice from the City, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any small wireless facilities or utility pole for which it has a permit hereunder whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the ROW.
- (B) **Emergency Removal or Relocation of Facilities.** The City retains the right to cut or move any small wireless facilities or utility poles located within the ROW, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide it an opportunity to move its small wireless facilities or utility poles prior to cutting or removing them, and in all circumstances shall promptly notify the wireless provider after cutting or removing a small wireless facility or utility pole.
- (C) **Abandonment of Facilities.** The City may require a wireless provider to remove an abandoned small wireless facility or utility pole permitted hereunder within 180 days of abandonment. Should the wireless provider fail to timely remove the abandoned small wireless facility or utility pole, the City may remove the small wireless facility or utility pole to be removed and may recover the actual cost of such removal from the wireless provider. A small wireless facility or utility pole shall be deemed abandoned at the earlier of the date that the wireless provider indicates in any way that it is abandoning the small wireless facility or utility pole, or the date that is 180 days after the date that the small wireless facility or utility pole ceases to be used, unless the wireless provider gives the City reasonable evidence that it is diligently working to place the small wireless facility or utility pole back in service.

**Sec. 33-7. – Collocation on City Poles.**

Applications to collocate small wireless facilities on City poles shall be processed under Section 4 of this Chapter. Applications shall not be denied unless they fail to meet the requirements of Sections 4 and 5, or unless there is insufficient capacity that cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the City, to be reimbursed by the wireless provider.

SEVERABILITY.

The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional, illegal, or invalid, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Council of the City of Wilkes-Barre that this ordinance would have been adopted had such unconstitutional, illegal, or invalid part not been included.

REPEALER.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed. All ordinances not specifically amended hereby remain in full force and effect.

Passed finally by the Council of the City of Wilkes-Barre on \_\_\_\_\_,  
\_\_\_\_\_, of 2021.

This ordinance shall become effective ten (10) days after final passage by the Council of the City of Wilkes-Barre.

Attest:

\_\_\_\_\_  
Jim Ryan, City Clerk

CITY OF WILKES-BARRE  
PENNSYLVANIA



# CITY COUNCIL AGENDA

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CITY COUNCIL

FEBRUARY 11, 2021

6:00 p.m. Jim Ryan, City Clerk

**-ORDINANCE FOR SECOND AND FINAL READING-**

**FILE OF COUNCIL NO. 3 OF 2021** – AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 12 OF THE CITY OF WILKES-BARRE CODE OF ORDINANCES ENTITLED “RECYCLING”.

6:10 p.m. Mayor George C. Brown (See Attached)

**WILKES-BARRE CITY COUNCIL**  
**WORK SESSION – FEBRUARY 11, 2021**  
**MAYOR’S AGENDA**

**RESOLUTIONS:**

Proclaiming the month of April, 2021 as “Fair Housing Month”.

Appointing Zelenkofske Axelrod, LLC to conduct the audit of the City’s General Purpose Financial Statements and Single Audit for the year ending December 31, 2020 for a fee of \$59,500.00.

Authorizing the proper city officials to take any and all necessary actions related to a Master License Agreement for small wireless communication facilities with Northeast Pennsylvania SMSA Limited Partnership d/b/a Verizon Wireless.

**ORDINANCES:**

Adopting a Cable Franchise Agreement with Comcast of Colorado/Pennsylvania/West Virginia, LLC, to install, operate and maintain a cable television, system, together with other services; prescribing terms and conditions; and other legal requirements. **(first reading)**.

Establishing standards for small wireless facilities in the Public Rights-Of-Way in the City of Wilkes-Barre. **(first reading)**