On motion of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, seconded by \_\_\_\_\_\_\_\_\_\_\_\_\_\_, the following ordinance was offered:

**SUMMARY NO. 24905**   **ORDINANCE NO.**

An ordinance adopting Chapter 35.6, Wireless Telecommunications Franchises of the Jefferson Parish Code of Ordinances as it relates to wireless franchise agreements and to provide for related matters. (Parishwide)

**WHEREAS**, the Federal Communications Commission has adopted statutory requirements applicable to local governments in their review of wireless infrastructure siting applications; and

**WHEREAS**, these requirements place constraints on local governments when reviewing requests for wireless infrastructure siting applications; and

**WHEREAS,** Jefferson Parish is receiving an increasing number of requests for wireless telecommunications franchises in order to facilitate the siting of wireless infrastructure; and

**WHEREAS,** Jefferson Parish needs to codify a uniform and comprehensive set of standards for the development, siting, installation, operation, and maintenance of wireless telecommunications facilities in the public rights-of-way or on public property in order to process and regulate said requests.

**THE JEFFERSON PARISH COUNCIL HEREBY ORDAINS:**

 **SECTION 1.** That Chapter 35.6 of the Jefferson Parish Code of Ordinances is hereby enacted to read as follows:

Chapter 35.6 – WIRELESS TELECOMMUNICATIONS FRANCHISE ORDINANCE

Article I – Wireless Telecommunications Franchises Generally

Sec. 35.6-1 Purpose and legislative intent.

(a) The purpose and intent of this Wireless Telecommunications Franchise Ordinance is to provide a uniform and comprehensive set of standards for the development, siting, installation, operation, and maintenance of wireless telecommunications facilities in the public rights-of-way or on public property. These regulations are intended to protect and promote the public health, safety, and welfare of the residents of the unincorporated areas of Jefferson Parish and to preserve and protect community character and aesthetic quality. These regulations are intended to govern the installation, construction, or other use of all wireless telecommunications facilities, including, but not limited to, distributed antenna systems and small cell facilities, in the public right-of-way or on public property. These regulations are intended to reduce the visual and land use impacts associated with wireless telecommunications facilities while allowing for the orderly and efficient progression of wireless telecommunications networks to develop in accordance with Federal Communications Commission rules and regulations and the Telecommunications Act of 1996, as may be amended.

(b) All franchises granted under or governed by this article shall also be subject to the provisions of Article II and Article III of this chapter.

(c) In the event of conflict between the provisions set forth in this chapter and any other provision of the Jefferson Parish Code of Ordinances, including but not limited to Section 2-877.3 and/or Chapter 35.5, the provisions of this chapter shall apply.

(d) The requirements of this chapter represent the present intention of the grantor. The grantor reserves the right to amend or revise this chapter in the future as deemed necessary by the grantor.

Sec. 35.6-2 Applicability.

(a) *In general.* This chapter shall be generally and immediately applicable to any person occupying, or intending to occupy, the public rights-of-way or public property for the installation, maintenance, repair and/or operation of wireless telecommunications systems and for the purpose of determining compensation payable to the grantor under existing indeterminate or perpetual franchises, permits and privileges granted by the grantor.

(b) *Cable television providers and electric, gas and other utilities*. This chapter shall apply to cable television providers and electric, gas and other utilities, including their subsidiaries, affiliates, assignees, lessees, or partners, in the event such persons desire to provide wireless telecommunications systems in Jefferson Parish.

(c) *Cellular towers*. This chapter shall not apply to guyed towers or lattice towers. Such facilities shall comply with the provisions of Section 2-877.3.

(d) *Existing franchises*. Notwithstanding any other provision of this chapter to the contrary, nothing in this chapter shall alter the terms, including rates of compensation, of any valid wireless franchise existing on the date on which this chapter first becomes effective.

(e) *Emergency Requirements.* In case of emergency or disaster, grantee shall, upon request of the grantor, cooperate with grantor to the greatest extent reasonably feasible to render such assistance as may be required, which may include but shall not be limited to the usage of grantee's equipment, facilities, and plant, in accordance with the provisions of the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq.

Sec. 35.6-3 Franchise for use of public right of way by persons for the purpose of wireless transmission or communication of data, information, intelligence, or digital, video, voice and/or other signals.

(a) No person shall construct, erect, mount, install, or otherwise attach a wireless radio, node or antenna or such other comparable, related, or accessory equipment or facilities on any of the parish’s street lights, poles or other parish property or in or on any rights-of-way of the parish, for the purpose of wireless transmission or communication of any data, information, intelligence, or digital, video, and/or voice signals, without first having obtained the necessary approvals of the appropriate parish departments and a franchise in accordance with this chapter. Nor shall any person make any cuts or excavations and/or any constructions or erections of equipment, facilities, or works of any sort, or do any act, including the placement of equipment or facilities, and/or the cutting, trimming, destruction or damaging any trees or shrubs, in anticipation of, or preparation for, the construction or placement of wireless telecommunications equipment or facilities in, on, or under any of the places described in this subsection, without first having obtained the approvals required above and a franchise expressly authorizing such activity.

(b) Upon the expiration or termination of a franchise or any existing grant of authority to use public property or the public rights-of-way to perform any of the acts identified in this chapter, a new franchise shall be required before any additional, continued, or new occupancy or use of public rights-of-way or property may lawfully occur.

(c) Access to certain parcels of public rights-of-way or public property by a grantee hereunder may be denied by the grantor when, in the grantor's sole discretion, it is determined that placement of equipment or facilities on such public property or rights-of-way will be detrimental to the public health, safety, or welfare, including community character and aesthetic quality, or will unreasonably impair or impede the normal use thereof.

(d) It shall be unlawful for any person to commit any act described in Sec. 35.6-3(a) without first obtaining the approvals and franchise required by this chapter. Whoever commits, or participates in the commission of, any act made unlawful by this subsection, shall be in violation of Sec. 20-43 – *Injury to or destruction of parish property prohibited*. In the event of any such violation by any association, corporation, partnership or other entity, the executive officers thereof shall be liable to the punishment prescribed by law.

(e) Nothing contained herein shall restrict or prohibit grantee's use of contractors or otherwise require any grantee contractor to obtain a franchise.

Sec. 35.6-4 Definitions.

For the purposes of this article, and for the purposes of Article II and III of this chapter, where not separately defined or inconsistent with the purposes of said articles, the following words, terms, phrases, and their derivations shall have the meanings given herein:

 *Antenna* means any system of wires, poles, rods, reflecting discs or devices used to collect or radiate electromagnetic waves for the provision of wireless services including, but not limited to, cellular, paging, personal communications services (PCS), microwave, telephonic, radio, facsimile, data or television communications. Such devices include, but are not limited to, directional antennas (such as panels), microwave dishes and commercial satellite dishes, and omnidirectional antennas (such as whips and canisters). This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes intended for residential or non-commercial purposes.

 *Antenna height* means the vertical distance measured from the ground surface to the tip of the highest point of the proposed structure.

 *Applicant* means a person who applies for a wireless facility franchise.

 *Application* or *franchise application* means the documents submitted by a potential grantee, in the form required by the grantor, requesting permission to occupy the rights-of-way in the Parish of Jefferson outside of the limits of municipalities for the purpose of providing wireless telecommunications services.

*Application fee* means the fee required of all potential grantees under the provisions of this article.

 *Camouflaged* is a telecommunications facility that is designed to blend into the surrounding environment. Examples of camouflaged facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, and antennas and support structures made to look like trees, light poles, or other items compatible with the existing environment.

 *Co-location* means locating wireless telecommunications equipment from more than one provider on a single site.

 *Community character* means those unique attributes including, but not limited to, architecture, historical and cultural features, historical development patterns, landscape, hardscape and the size, scale and spacing of buildings and other structures that define a community's identity.

*Council* shall mean the parish council or its successor as the governing authority of the Parish of Jefferson.

*Dark fiber* means unused strands of fiber-optic cable.

*Day* or *days* means a calendar day or days.

 *Distributed antenna system* (*DAS*) means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. For purposes of this chapter, a small cell system is a distributed antenna system.

*Emergency* means a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

*Equipment, facilities and plant* means equipment, plant, fixtures, apparatus, facilities, cabinets, shelters, buildings, appliances, and appurtenances common to and used now and in the future by wireless telecommunications systems and includes cables, wires, lines, conduits, wave guides, optic fiber (including dark fiber), microwave, laser beams, and any associated converters, or equipment, as well as the upgrades or successors to such items, that are designed, constructed or used to produce, receive, amplify or distribute audio, video, or any other forms of electronic signals or data.

*FCC* means the Federal Communications Commission, its functional successor in the United States government or a designated representative.

*Facade mounted antenna* means an antenna architecturally integrated into the facade of a building or structure.

 *Facility* - See *Wireless Telecommunications Facility*.

*Fair market value* means, with regard to wireless telecommunications services provided by a grantee, the price of such services as shown in grantee's tariff, if any, on file with the Louisiana Public Service Commission. If the wireless telecommunications services provided are not tariffed services, the fair market value of those wireless telecommunications services means the price that would be obtained therefore in an arms-length transaction. Fair market value is subject to verification by grantor.

*Franchise* means the authority granted by ordinance to occupy public property or the public rights-of-way in the Parish for the use, installation, maintenance and/or repair of wireless telecommunications systems. Each franchise shall consist of referenced specifications, franchise applications, and other related material.

*Franchise fee* means the compensation payable by a grantee to the grantor as consideration for the grantor's permission for the grantee to occupy public property or the public rights-of-way of the Parish and as compensation for the deterioration in the overall condition of the public property or rights-of-way, the diminution of the life expectancy and the degradation of the useful life of the public property or rights-of-way, the cost of the administration of the franchise, and the premature expenditure of public funds for the repair and replacement of such public property or rights-of-way.

*Grantee* means any person to whom a franchise is granted by the grantor. This term shall not include affiliates, subsidiaries or entities otherwise related to grantee.

*Grantor* means the Parish of Jefferson or/and department or agency thereof, or any special district or agency governed or acting by and through the Council of Jefferson Parish.

*Gross receipts* means all revenues collected by the grantee for wireless telecommunications services provided by the grantee, its affiliates, successors, agents, subsidiaries, partners, or assigns to customers located within unincorporated Jefferson Parish, and includes, but is not limited to:

(a) All revenues from the lease or sale of equipment or plant, including but not limited to, the lease or sale of any portion of grantee's wireless telecommunications system that is located on public property or in the public right-of-way, or capacity in that system, including dark fiber, that is leased to subscribers, other telecommunications service providers or any other entities;

(b) All revenues from the resale of wireless telecommunications services;

(c) Franchise fees, whether or not identified as a "pass through" to the consumer shall be included in gross receipts;

(d) Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts related to the wireless telecommunications system. Such unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenues;

(e) If grantee participates in the provision of wireless telecommunications services with another person whereby grantee does not receive reasonable monetary compensation, then the fair market value of the services or assets provided to grantee shall be imputed to grantee's gross receipts for the purpose of calculating franchise fees due to the grantor.

Without limitation of the foregoing, the fair market value of grantee's transactions resulting in gross receipts is subject to verification by grantor.

Not included in gross receipts:

(a) Gross receipts shall not include any sales or excise taxes that are the legal obligation of the grantee's customer and are collected by the grantee for direct pass through to local, state, or federal governments. However, parish franchise fees are the responsibility of the grantee, even if identified as a "pass through" to the grantee's customer, and shall be included in gross receipts;

(b) Gross receipts is not intended to cover revenue of any other franchisee or licensee of the grantor; provided that the grantee has the burden to provide documentation to the grantor that such revenue has been included by the other franchisee. Such documentation may be a report filed with the grantee by the other franchisee or licensee evidencing such inclusion of revenue.

 *Guyed tower* means a telecommunications tower that is supported, in whole or in part, by guy wires and ground anchors.

 *Hazardous Material* means dangerous goods which are usually subject to stringent regulatory and statutory restrictions or may cause or significantly contribute to an increase in mortality or otherwise harm human health or the environment because of its quantity, concentration, or physical, chemical, or infectious characteristics.

 *Lattice tower* means a guyed or self-supporting three or four sided, open, steel frame support structure used to support telecommunications equipment.

*Lease* means the right, however, framed or structured, and the document or agreement evidencing such right, granted by grantee to a third party to occupy any of grantee's equipment, facilities and plant for the transaction of the third party's business. The term does not include (i) the provision of grantee's wireless telecommunication services to a reseller (a non-facilities based provider), or (ii) the sale by the grantee to a third party of any grantee's tariffed wireless telecommunications services.

*LPSC* means the Louisiana Public Service Commission or its functional successor in the government of the State of Louisiana or a designated representative.

 *Monopole* means a wireless communication facility consisting of a single pole constructed without guy wires and ground anchors.

*Network* means any part of a wireless telecommunications system which may be in operation at any given time.

*Occupy, install, maintain, repair and/or operate and upgrade* or *occupancy, installation, maintenance, repair and/or operation* means to locate, relocate, erect, string, hang, pull, push, install, dismantle, construct, reconstruct, take down, take off, put, place, replace, move, remove, dispose of, lay, take up, bury, dig up, retain, enlarge, extend, expand, operate, service, repair, install, maintain and/or upgrade.

*Panel antenna* means an antenna or array of antennas designed to concentrate a radio signal in a particular area. Also called directional antennas.

*Parish* means Jefferson Parish as well as all of the agencies, districts and sub-districts thereof under the authority of the Council of Jefferson Parish. When used in reference to geographical areas, “parish” means the unincorporated areas of Jefferson Parish.

*Person* means an individual, firm, partnership, association, corporation, company or organization of any kind or any lawful successor, transferee or assignee of said individual, firm, partnership, association, corporation, company or organization.

*Public property* means any movable or immovable property owned or controlled by Jefferson Parish or any department, agency, or subdivision thereof.

*Public* or *Parish right-of-way* or *rights-of-way* means the space in, upon, above, below, along, across, and over any public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements including poles, towers or other facilities located thereon of any type, as the same now or may hereafter exist, that are under the jurisdiction of Jefferson Parish.

 *Roof mounted antenna* means any antenna with its support structure placed directly on the roof of any building or structure.

 *Small cell system* means a collection of interrelated compact, low-powered radio access nodes, including, but not limited to, femtocells, picocells, microcells, and metrocells, that are used to densify a wireless telecommunications system by adding more cell sites to increase the amount of available capacity. For purposes of this chapter, a distributed antenna system is a small cell system.

Street light poles mean street light poles, arms, and other related equipment and land rights under its street light poles or arms.

*Subscriber* or *customer* means any person who or which elects to subscribe to or purchase, for any purpose, a service provided by the grantee by means of, or in connection with, the grantee's wireless telecommunications system.

 *Telecommunications* means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

 *Telecommunications tower* means any mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support antennas.

 *Tower* - See Telecommunications tower.

 *Wireless* means telecommunications that are performed and delivered wirelessly, i.e. where there is no physical wired connection between sender and receiver.

*Wireless telecommunications services* means services offered by means of a wireless telecommunication system, including, but not limited to, paging, voice calls, text messaging, and internet access.

Wireless service provider, also referred to herein as wireless communication system provider, means a company that offers transmission services via a wireless communication system to users of wireless devices such as handheld computers, cellular telephones, and other wireless devises, through radio frequency signals rather than through end-to-end communication.

 *Wireless telecommunications facility* means the equipment, facilities and plant essential necessary to provide wireless transmission of voice, data, images or other information, including, but not limited to, cellular telephone services, personal communications services (PCS), paging services, and internet services, by the transmission and/or reception of electromagnetic waves, including, but not limited to, antennas, dish antennas and other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting said equipment, equipment buildings, parking area and other accessory development.

 *Year* means a full calendar year.

Sec. 35.6-5 Grant of franchise.

(a) *Grant.* In the event that grantor shall grant to a grantee a franchise to occupy or attach to public property or the public rights-of-way to install, maintain repair, and/or operate a wireless telecommunications system, such a franchise shall include those provisions of the grantee's franchise application that are finally negotiated and accepted by the grantor and grantee and set forth in writing.

(1) A franchise shall be granted under the terms and conditions contained herein, which terms and conditions shall be incorporated in a franchise by reference as if fully set forth at length therein. In the event of conflict between the terms and conditions of any franchise and the terms and conditions on which the parish can grant a franchise as set forth herein, this chapter shall control, unless the franchise specifically and expressly modifies the terms of this chapter.

(2) The franchise shall be subject to the Home Rule Charter of the parish, the provisions of the general ordinances of the Parish of Jefferson, and any applicable federal or state laws or regulations. Nothing in the franchise shall be deemed to waive the requirements of the various codes and ordinances of the grantor regarding permitting, permit fees to be paid, manner of construction, or the zoning and land use regulations.

(b) *Occupation of public property and public rights-of-way.* For the purpose of operating and maintaining a wireless telecommunications system, a grantee may occupy, install, maintain and/or repair such equipment, facilities and plant as is necessary and appurtenant to the operation of a wireless telecommunications system on public rights-of-way or public property within the parish. In installing, maintaining and/or repairing a wireless telecommunications system, the grantee shall comply with all applicable rules, regulations and laws, including but not limited to all permitting, zoning and land use regulations.

(c) *Duration.* The term of the franchise and all rights, obligations and restrictions pertaining thereto shall be for a period of five (5) years together with two (2) optional five (5) year renewal periods as set forth in the franchise itself. The effective date of the franchise shall be the date of acceptance of the franchise by the grantee after passage by the council.

(d) *Franchise non-exclusive.* The franchise shall be non-exclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for wireless telecommunications systems as it deems appropriate.

(e) *Non-transferability.*

(1) *Grantee's prior consent required for sale or lease.* Except for sales, assignments, or transfers of franchises by reason of (i) any corporate reorganization, assignment or transfer of the franchise herein granted to any person which controls, is controlled by, or is under the common control with grantee, or any person with which or into which grantee may merge or consolidate, or (ii) transfers, sales or assignments of material interests in or changes of control of grantees, franchises shall not be sublet or assigned, nor shall any of the rights therein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the grantee, without the prior written consent of the grantor expressed by ordinance. Such consent shall not be unreasonably withheld. The grantor shall be deemed to have consented if the grantor has not acted within 120 days after receipt of grantee's request for approval unless grantor and grantee agree to an additional period of time for grantor's review. The granting of such additional period shall not render unnecessary any subsequent consent. For the purpose of determining whether it will consent to such change, transfer, or assignment of the franchise, the grantor may inquire into the qualifications of the prospective holder of the franchise, including, but not limited to proof of such person's compliance with the insurance and security fund requirements of this article, and grantee shall assist the grantor in any such inquiry.

(2) *Written notice.* A grantee shall provide the grantor with written notice of any transfer, sale, or assignment of any material interest in, or a change in control of, grantee within 60 days after the completion of such transfer, sale, or assignment. Grantee shall provide grantor with copies of any and all petitions, applications, communications, and reports submitted by the grantee to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency or commission having jurisdiction over any aspect of such transfer, sale or assignment.

(3) *Transfer documents must be furnished to grantor.* Within 60 calendar days after completion of the transfer, sale, or assignment of the franchise, grantee shall file with the grantor a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, transfer or assignment, certified and sworn to as correct by the grantee.

(4) *Change in control.* For the purpose of this chapter, a change in control of grantee occurs: (a) when a 51 percent ownership interest in the grantee is acquired; (b) when an ownership interest changes from 51 percent or more to 50 percent or less; (c) when substantially all of the assets of the grantee are acquired by a third party; or (d) when control, as defined by the regulations of the securities and exchange commission, is acquired.

(f) *Franchise required for any lessee.* The grantee shall not and is not authorized to lease to any person the right to occupy, attach to, or use public property or the public rights-of-way or grantee's equipment, facilities, or plant located on public property or the public rights-of-way for the conduct of any wireless telecommunications service unless such person has obtained a franchise from the parish for such occupancy.

(g) *Penalty for unauthorized sale or lease.* Should the grantee sell, lease, assign, transfer, convey or otherwise dispose of any of its rights or its interests under its franchise, in violation of the above requirements, the grantor may revoke that grantee's franchise for default, in which event all rights and interests of that grantee shall cease and no such purported sale, lease, assignment, transfer, conveyance or disposition shall be effective as to the grantor.

Sec. 35.6-6 Compensation and other consideration.

(a) As fair and reasonable compensation for the occupancy by the grantee of public property and/or the public rights-of-way for the construction, operation, maintenance, and the reconstruction of a wireless telecommunications system within the parish, the value of such rights and privileges granted by the franchise, the fact that the public rights-of-way contain limited and finite capacity, the administration of the franchise by the grantor, the usage and interference with the public's use of public property and public rights-of-way, the reduction in the useful life of public property and the public rights-of-way and other costs and obligations undertaken by the grantor herein, the grantee shall pay to the grantor the compensation stated below:

(1) *Initial franchise fee*. The initial franchise fee due from a grantee shall be $25,000.00 for an initial 15-square-mile deployment area to be increased by $500.00 for each additional square mile in which the wireless network is to be deployed (together the “initial franchise fee”). In no event, however, shall the initial franchise fee exceed $100,000.00. Payment of the initial franchise fee shall be due within 30 days of the date grantee’s acceptance of the franchise is filed in accordance with Sec. 35.6-11(a).

(2) *Annual franchise fee*. Following the conclusion of the calendar year in which the ordinance granting a franchise under this chapter was passed by the council, the annual franchise fee due from a grantee shall be the greater of (i) an amount equal to the initial franchise fee, or (ii) five (5) percent of grantee's gross receipts from the operation of a wireless network within the unincorporated areas of the parish during the preceding calendar year (the “annual franchise fee”). A grantee’s annual franchise fee shall be paid in advance by January 31 of each year. Concurrently with its annual franchise fee payment, a grantee shall provide the grantor with its annual report in conformity with subsection (b) below.

(3) *Pole attachment charge.* Grantee shall pay to the grantor a pole attachment charge of $4.00 per month for each wireless radio, antenna, node or other comparable equipment attached to parish-owned street lights, poles or other property during that month. Pole attachment charges shall be payable monthly and shall be in addition to the franchise fee and other charges called for in this chapter. Grantee shall be responsible for obtaining separately-metered electrical service for its equipment.

(4) *Late payments*. If any payments due under this chapter are not received by the due date, grantee shall add to its payment a late penalty in the amount of 10 percent of the amount due. Additionally, interest in the amount of 10 percent per annum shall accrue on all payments and penalties until paid in full.

(5) *Failure to pay.* If the grantee fails to pay to the grantor any amounts due within 30 days of the due date, then the grantee shall have committed a material violation of the franchise and in that event the grantor shall be entitled to immediately withdraw the amount thereof from the security fund. Upon such withdrawal, the grantor shall notify the grantee of the amount and date thereof. In addition, such failure to pay may be considered grounds for termination of the franchise under Article III of this chapter.

(6) *Nature of franchise fees*. The compensation and other payments to be made pursuant to the franchise are in addition to any and all taxes and fees or charges which the grantee or any affiliated person shall be required to pay to the grantor or to any other governmental authority. Neither the grantee nor any affiliated person shall have or make any claim for any deduction or other credit of all or any part of the amount of compensation or other payments made pursuant to the franchise against any other fees or charges, including ad valorem taxes and/or any taxes which the grantee or any affiliated person is required to pay to the grantor.

(b) *Annual reports.* On an annual basis and concurrently with its annual franchise fee payment set forth in subsection (a) (2) above, grantee shall present the following written reports to the grantor, each of which shall be certified by an appropriate representative of the grantee:

(1) A financial report for the previous calendar year including gross revenues from the operation of its wireless network within the unincorporated areas of the parish;

(2) A report specifying the exact location(s) and extent of the grantee's wireless telecommunications system in the parish;

(3) A report on completed and projected construction in the parish;

(4) To the extent that grantee is subject to the self-insurance provisions of this article, grantee shall provide proof that grantee's self-insurance program is sufficiently liquid to cover all losses in the amount shown in Sec. 35.6-7(i);

(5) A report which identifies each person or provider using grantee's system or facilities in the parish.

(c) *Audit of books and* records. After reasonable notice, grantor shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, income tax return, financial statements, and other like materials of grantee of and relating to grantee's services and system in the parish in accordance with the provisions of this article and the franchise. Access to the aforementioned records shall not be denied by the grantee on the basis that said records contain "confidential" or "proprietary" information. To the extent permitted by law, the grantor shall preserve the confidentiality of information so designated by grantee, and the auditor conducting the audit on behalf of grantor may execute a confidentiality agreement, subject to the approval of the grantor and grantee, for the protection of confidential or proprietary documents made available for review under this section. To aid in its analysis and/or audit, the grantor shall be entitled to employ the services of attorneys, auditors and/or consultants as the grantor, in its sole discretion, considers necessary. In the event such an audit reveals that grantee has underpaid its franchise fees, grantee shall promptly reimburse the grantor for such underpayment. In the event that the underpayment is in the amount of 5 percent or more, grantee shall promptly reimburse the grantor for such underpayment as well as the grantor's reasonable costs associated with the conduct of the audit.

Sec. 35.6-7 Security fund/construction bond and insurance requirements.

(a) *Franchise security.* No later than the date of the grantee's execution of the acceptance of the franchise, the grantee shall (1) deposit into a bank account, established by the Parish of Jefferson and maintain on deposit through the term of the franchise, the sum of up to $100,000.00; or, (2) post a performance bond in accordance with the applicable procedures, in an amount of up to $100,000.00; the bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew be exercised by the surety until 60 days after receipt by the Parish of Jefferson, by registered or certified mail, of written notice of such intent;" or (3) provide such other guaranty, instruments, letter of credit or security, which is acceptable to the grantor. Said franchise security shall be established in an amount of up to $100,000.00, unless a different amount is specified in the franchise and have a value sufficient to effectuate the following purposes:

(1) The faithful performance by the grantee of all the provisions of the franchise; and

(2) Compliance by grantee with all orders, permits and directions of any agency of the grantor having jurisdiction over grantee's acts or defaults pursuant to this Chapter; and

(3) The payment by the grantee of any claims, liens, fees and/or taxes due the grantor which arise by reason of the construction, operation or maintenance of the system.

The maintenance of such security shall be a continuing obligation of grantee until the grantee has satisfied all of its obligations with the grantor that may have arisen from the acceptance of the franchise by the grantee or from its exercise of any privilege or right granted thereby. Posting the security for the franchise does not fulfill the separate requirements for a completion and restoration bond that may be required for the issuance of a utility construction permit for construction related to a franchise.

(b) *Failure to pay.* If the grantee: (1) fails to pay to the grantor any fees due and unpaid; or (2) fails, after 10 days’ notice, to repay to the grantor any damages, costs or expenses which the grantor shall be compelled to pay by reason of any act or default of the grantee in connection with the franchise; or (3) fails to pay the grantor any fees due as a result of any transactions which have the effect of circumventing payment of such required fees and/or the evasion of any such payment by non-collection or non-reporting of gross receipts, bartering, or any other means which evades the actual collection of revenues for business pursued by the grantee; or d) fails, after 30 days’ notice of such failure, to comply with any provisions of the franchise which the grantor reasonably determines can be remedied by any expenditure of security fund; grantor may withdraw from the security fund or demand payment on the bond, guaranty, instrument, letter of credit or security of a sufficient sum in satisfaction of same.

(c) *Restoration of security.* Within 30 days after notice to grantee that any amount has been withdrawn by the grantor from the security fund or other franchise security pursuant to this section, the grantee shall deposit a sum of money sufficient to restore such security fund, or otherwise replenish the franchise security in whatever form it was posted, to the original amount.

(d) *Return upon expiration.* In the event that the franchise is terminated by reason of default by grantee, to the extent that such default is for non-payment of any amount due and payable pursuant to the franchise, an amount of the security fund equal to the amount of the non-payment shall become the property of the grantor. The grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the franchise, or upon termination of the franchise at an earlier date, provided that there is then no outstanding default on the part of the grantee.

(e) *Rights of grantor.* The rights reserved to the grantor with respect to the security fund are in addition to all other rights of the grantor whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the grantor may have.

(f) *Construction bond.* Grantor may require a reasonable construction bond from grantee based on the length and type of construction (aerial or underground).

(g) *Hold harmless.* The grantee shall hold the grantor harmless for all damages and penalties suffered as a result of, or arising out of, the grantee's use, installation, maintenance, repair and/or operation of a wireless telecommunications system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise absent liability caused by the negligent or willful misconduct of the Grantor, its officers, agents, boards, employees, or any third party. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the grantor and the grantee. In the event any claim is made against the parish that falls under this section and a court of competent jurisdiction should adjudge, by final decree, that the grantor is liable therefor, the grantee shall indemnity and hold the grantor harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the grantor in defense thereof. Upon commencement of any proceeding at law or in equity against the grantor relating to or covering any matter covered by this section, wherein the grantee has agreed, by accepting the franchise, to indemnify and hold the grantor harmless, or to pay said final judgment and costs, as the case maybe, the grantor shall give the grantee immediate notice of such suit or proceedings brought in connection therewith, and pay as aforesaid, any final judgment or judgments that may be rendered against the grantor by reason of such damage suit. Upon failure of the grantee to comply with the "defense of suit" provisions of this franchise, after reasonable notice to it by the grantor, the grantor shall have the right to defend the same and in addition to being reimbursed for any such judgment that may be rendered against the grantor, together with all court costs incurred therein; the grantee shall further reimburse the grantor for attorney's fees, including those employed by the grantor in such case or cases, as well as all expenses incurred by the grantor by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the grantor.

(h) *Defense expense.* The grantee shall pay all expenses incurred by the grantor in defending itself with regard to all damages and penalties mentioned in subsection (g) above and for all claims against grantor arising out of the franchise. These expenses shall include all reasonable out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employee of the grantor. In the event the grantor is compelled to undertake the defense of any such suit by reason of the grantee's failure to perform as here and above provided, the grantor shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the parish attorney shall deem in the best interest of the grantor, this without the prior approval or consent of the grantee with respect to the terms of such compromise or settlement. Grantee need not indemnify, defend or hold grantor harmless for the tortious acts or omissions of the grantor, its officers, agents or employees.

1. *Grantor not liable.* With the exception of negligence or willful misconduct of the grantor, as described above, Grantor shall not be liable for any damage occurring to the Grantee’s system caused by the Grantor, its officers, agents, employees or independent contractors, in the performance of their duties in connection with public works, nor shall the Grantor be held liable for the interruption of service by actions of the grantor, its officers, agents, employees or independent contractors, in the performance of their duties in connection with public works. When reasonably possible, Grantee shall be consulted prior to any public work affecting its telecommunications system, but the Grantor shall have no liability to the Grantee in the event it does not so consult the Grantee.

(j) *Liability insurance and indemnification.*

(1) The grantee shall fully indemnify the parish for any damage to parish property as well as damage to third parties that is related in any way to the installation, maintenance or operation of the grantees' franchise or equipment and shall provide at its own expense, proof of the following insurance coverage by insurance companies authorized to do business in the State of Louisiana. With the exception of the Worker's Compensation Insurance policy, Jefferson Parish and its Special Districts, its boards and commissions and its officers, agents and employees, jointly and severally, shall be listed as additional insureds on all of the above insurance policies for the entire period during which the equipment of the grantee remains on the sites related to this permit. All policies shall be endorsed to give the grantor at least 30 days’ written notice of the intent by either the grantee or the insurer to amend or cancel the policy. Insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI. and shall be in the following minimum amounts and in accordance with the following provisions. Certificates of insurance shall state all coverages required by this chapter; see special provisions below regarding self-insured grantees.

a. Worker's Compensation Insurance: As required by the Louisiana State Statute exception, employer's liability limit shall be $1,000,000.00 per occurrence when work is to be over water and involves maritime exposures, otherwise this limit shall be no less than $500,000.00 per occurrence;

b. Commercial general liability insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance shall include coverage for bodily injury and property damage, and indicate on the following coverages on the certificate of insurance: premises-operations, broad form contractual liability, products and completed operations, use of contractors and subcontractors, personal injury, broad form property damage and explosion, collapse and underground (XCU) claims. Combined single limit (CSL) amount of insurance required and each occurrence/minimum limits shall be $1,000,000.00;

c. Business automobile liability insurance with a combined single limit of $500,000.00 per occurrence for bodily injury and property damage, unless otherwise indicated. This insurance shall include coverage for bodily injury and property damages for any automobiles, whether owned; hired, or non-owned automobiles;

d. Said policies shall apply as primary insurance and shall stipulate that no other insurance in effect by the parish will be called on to contribute to a loss covered thereunder;

e. The parish has the right but not the obligation to review and approve all insurance policies and certificates of insurance prior to the issuance of a permit for the requested installation;

f. An umbrella policy or excess may be used to meet minimum requirements. All property losses to the parish's property for which the grantee is responsible, shall be payable to the parish and adjusted with the Jefferson Parish Risk Management Department;

g. Should there be a material change in the grantee's insurance policies during the term of the permit, the grantee shall give the parish 30 days’ notice as to said changes and will submit a replacement certificate of insurance naming the parish as an additional insured;

h. Failure of the grantee to take out and/or maintain insurance shall not relieve the grantee from any liability under this permit, nor shall the insurance requirements be construed to conflict with the obligations of the grantee concerning indemnification;

i. The maximum deductible for any of the insurance coverage required under this agreement may not exceed $10,000.00 without prior approval of the Director of Jefferson Parish Department of Risk Management and the Office of the Parish Attorney. All deductibles shall be assumed by the grantee and the grantee's insurers shall have no recourse against the Parish of Jefferson for the payment of any premiums, state insurance assessments or deductibles; these provisions shall be stated on the certificate of insurance. Proof of self-insurance, after approval by the Director of Jefferson Parish Department of Risk Management and the Office of the Parish Attorney, may be accepted in lieu of a certificate of insurance.

(2) In the event the grantee is insured through a captive insurance company or is self-insured, then in lieu of the certificates of insurance required herein, the grantee shall provide with the permit application, proof that the grantee's self-insurance program is sufficiently liquid to cover all losses in the amounts shown above in this section. The grantee shall immediately notify the parish of all changes in its self-insured status and of any changes in the ability of grantee to cover the losses specified above.

Sec. 35.6-8. Rights reserved to the grantor.

(a) *Right to purchase the system.* Grantor may, in any lawful manner and upon the payment of fair market value lawfully ascertained, purchase, condemn, acquire, take over and hold the equipment, facilities and plant of the grantee, in whole or in part, through the exercise of its powers of eminent domain. In such event, the actions of the grantor and the grantee shall be governed by state law.

(b) *Right to require removal of property.* At the expiration or termination of any franchise the grantor shall have the right to require the grantee to remove, within 90 days, at its own expense, all portions of the telecommunications system from the rights-of-way and restore the surface to its previous condition or better.

Sec. 35.6-9. Miscellaneous provisions.

(a) *Compliance with laws.* The grantee shall comply with all federal and state laws, as well as all ordinances, resolutions, rules, and regulations of the grantor heretofore or hereafter adopted or established during the entire term of the franchise including but not limited to all zoning and subdivision regulations.

(b) *Severability.* If any provisions of this article or franchise adopted hereunder is held to be invalid or preempted by federal or state regulations or laws, such findings or pre-emption shall not affect the remaining provisions of this article which can reasonably be given effect, except as provided in subsection (f) below.

(c) *Captions.* The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

(d) *Public purpose.* All of the provisions this chapter are hereby declared to be for a public purpose and the health, safety, and welfare of the general public, consistent with the maximum permissible exercise of the parish's general, home rule charter and police powers. Any member of the governing body or parish official or employee charged with the enforcement of this chapter, acting for the grantor in the discharge of his or her duties, shall not thereby render himself personally liable; and he or she is hereby relieved from all personal liability or any damages that might accrue to persons or property as a result of any act required or permitted in the discharge of his or her said duties.

(e) *Nonenforcement by the grantor.* The grantee shall not be relieved of its obligation to comply with any of the provisions of the franchise by reason of any failure of the grantor to enforce prompt compliance.

(f) *Subsequent action by state or federal agencies.* Should the State of Louisiana, the LPSC, the FCC or any other agency of the state or federal government subsequently require the grantee to perform or cease to perform any act which is inconsistent with any provisions of the franchise, the grantee shall so notify the grantor. Upon receipt of such notification, the grantor, after consultation with the grantee, shall determine if a material provision of the franchise is affected. Upon such determination, the grantor in consultation with the grantee shall have the right to modify or amend any of the sections of the franchise to such reasonable extent as may be necessary to carry out the full intent and purpose of the franchise. The grantor may terminate the franchise in the event the grantor determines that substantial and material compliance with the original proposed terms of the franchise has been frustrated by such state or federal requirements. In such event, grantee's rights are reserved to pursue whatever remedies it may have, and to comply with the duties and obligations which may be imposed upon it by such state or federal law.

(g) *Causes beyond reasonable control.* In the event grantee's performance of any of the terms, conditions, obligations, or requirements of the franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as result thereof. Such causes beyond grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes. Grantee shall notify the director whenever performance is prevented or impaired.

(h) *Non-waiver of regulatory authority.* Nothing in this article shall be deemed to constitute waiver or limitation of any powers of supervision, regulation and control of the Parish of Jefferson.

(i) *Communications with regulatory agencies.* Grantor shall have the right to request and receive copies of all petitions, applications, communications, and reports submitted by the grantee to the LPSC, the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the operation of the telecommunications system located in the parish authorized pursuant to the franchise. Grantor likewise reserves the right to request and receive copies of responses from the said regulatory agencies to the grantee.

(j) *Expense of moving wireless telecommunications facilities*. Should it become necessary to relocate, raise, lower or reroute any wireless telecommunications facility occupying public property or the public rights-of-way to accommodate parish projects, all costs and fees necessitated by the relocation, raising, lowering and/or rerouting of said facility shall be at the expense of grantee. The provisions of this subsection shall be deemed to be included in all wireless franchise, servitude and/or right-of-way agreements, as though written there in full.

(k) *Equal opportunity policy and local employment and procurement practices*. Grantee shall be an equal opportunity employer adhering to all applicable federal, state, parochial, or other laws and regulations. Whenever practicable all services, personnel, hardware and supplies for the construction, maintenance and operation of the wireless telecommunications system shall be procured from businesses located in the parish when cost and prices are equal to or lower than sources outside the parish. If grantor has a rational basis for believing that a grantee has failed to comply with this subsection, then grantor shall, after reasonable notice, have the right to inspect at any time during normal business hours, all books, records, financial statements and other like materials of the grantee.

Article II – Application and Construction Requirements

Sec. 35.6-10 Franchise applications.

(a) *Application.* Applicants for a wireless telecommunications franchise shall submit applications in accordance with the terms and conditions herein designated. The parish may formulate all applications and other documents required herein and may implement appropriate procedures to receive and process franchise applications herein, as may be governed by the Home Rule Charter.

(b) *Content of applications.* Applicants for a wireless telecommunications franchise shall submit to the parish’s Department of Streets written applications for a *Permit for Utility Installations on Parish Rights of Way, Servitudes and Other Parish Property* (as may be amended from time to time), including the information identified in subsection (e) below, a description of the wireless services to be provided, a construction schedule, an operations schedule, proof of required insurance coverages, the certificate of the applicant's corporate secretary or other appropriate document confirming the authority of person(s) who will sign the franchise and permit related documents to bind the applicant, and any other requested information as may be required by the parish. The Director of the Department of Streets may waive any of the submittal requirements or require additional information based upon specific project factors.

(c) *Application fee.* An applicant for a wireless telecommunications franchise shall pay an initial non-refundable application fee of $2,500.00. The application fee shall be submitted at the time that all application documents are submitted for the grantor's review and is intended to partially offset the cost of grantor to review the application

(d) *Publication costs.* The grantee shall pay the costs of publication of the wireless telecommunication franchise; as such publication may be required by law.

(e) All applicants for wireless telecommunications franchise shall provide the following information to the parish:

1. *Geographic Service Area*. Identify the geographic service area for the subject installation, including a plan of the proposed installation of equipment, facilities, and plant and showing all of the applicant's existing sites in the local wireless service network associated with the gap the facility is meant to close. Describe how this service area fits into and is necessary for the applicant’s service network.

(2) *Visual Impact Analysis*. A visual impact analysis shall be provided showing the maximum silhouette, viewshed analysis, color and finish palette, and proposed screening. The analysis shall include photo simulations and other information as necessary to determine visual impact of the facility. A map depicting where the photos were taken shall be included.

(3) *Narrative*.

a. Height. Show the height of the facility. Applicants must provide evidence that establishes that the proposed facilities have been designed to the minimum height required from a technological standpoint for the proposed site. If the facility will exceed the maximum permitted height limit, as measured from grade, a discussion of the physical constraints (topographical features, etc.) making the additional height necessary shall be required.

b. Maintenance. Describe the anticipated maintenance and monitoring program for the antennas, back-up equipment and landscaping.

c. If the site is not a preferred site as described in Sec. 35.6-12(a), provide the information required in Sec. 35.6-12(b).

d. Concept Landscape Plan. Provide a plan showing all proposed landscaping, screening, and proposed irrigation with a discussion of how the chosen landscaping material will screen the site at maturity.

e. Hazardous Materials. Listing of all hazardous materials to be used onsite.

f. A letter stating the applicant's willingness to allow other carriers to co-locate on their facilities wherever technically and economically feasible and aesthetically desirable.

Sec. 35.6-11 Acceptance by Grantee.

(a) *Filing.* Grantee shall, within 30 days after the approval of a wireless telecommunication franchise by the grantor, file with the clerk of council, with copies filed with the parish attorney, a written acceptance of the franchise. Said acceptance shall be signed and acknowledged by an authorized officer of the grantee and attested to by its secretary. Said acceptance shall be substantially in the following form:

"TO THE COUNCIL OF THE PARISH OF JEFFERSON, The Grantee, \_\_\_\_\_\_\_\_\_\_\_\_ , a \_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under and by virtue of the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_ does hereby accept the Franchise approved by the Parish of Jefferson in Ordinance \_\_\_\_\_\_\_\_\_\_\_\_ enacted the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2\_\_\_\_\_\_\_\_\_\_\_\_ , granting \_\_\_\_\_\_\_\_\_\_\_\_ a Franchise to erect, construct, maintain and/or operate a Wireless Telecommunications System on the public property and/or public rights-of-way of the Parish of Jefferson, subject to certain terms, conditions and limitations as set forth therein.

|  |  |
| --- | --- |
|  | \_\_\_\_\_\_\_\_\_\_\_\_ NAME  |
|  | BY: \_\_\_\_\_\_\_\_\_\_\_\_  |
|  | ITS: \_\_\_\_\_\_\_\_\_\_\_\_  |
| ATTEST  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_ SECRETARY  |  |

Dated at \_\_\_\_\_\_\_\_\_\_\_\_, this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2 \_\_\_\_\_\_\_\_\_\_\_\_ ."

(b) *Failure to file.* In event grantee’s acceptance is not filed in accordance with subsection (a) above or if the initial franchise fee is not paid timely in accordance with Sec. 35.6-6(a)(1), the grantee’s wireless telecommunications franchise and the rights and privileges granted therein shall be null and void.

Sec. 35.6-12 Preferred sites.

(a) The parish has determined that the following locations are preferable to others for siting wireless facilities on public property and/or public rights-of-way:

(1) Existing structures, including, but not limited to, water tanks, utility towers and poles, traffic lights, street lights, and roadway overpasses;

(2) Commercial and industrial buildings; and

(3) Parish of other government facilities.

(b) Each application shall identify the location preference that the proposed facilities are meeting. If the proposed facility is not in a preferred location, then the applicant shall provide a map of the geographical area and a discussion of preferred sites that could potentially serve the same area as the proposed site and describe why each preferred site was not technologically or legally feasible.

(c) Projects in a non-preferred location may be rejected when siting in a preferred location is feasible unless a finding is made that the proposed site is preferable due to aesthetic and community character compatibility.

Sec. 35.6-13 Design regulations

 The parish has determined that the following design characteristics and requirements are necessary to protect and promote the public health, safety, and welfare of the residents of the unincorporated areas of Jefferson Parish and to preserve and protect community character and aesthetic quality:

(a) In all cases, the applicant shall use the least visible antennas possible to accomplish the coverage objectives.

(b) All facilities shall be designed to accommodate co-location of other antennas and accessory equipment unless the applicant demonstrates that such design would be economically and technically unfeasible.

(c) All facilities shall be designed to the minimum height needed to meet the service objectives of the applicant.

(d) Facilities in non-preferred sites shall be designed and located in such a manner as to minimize the visual impact to the greatest extent feasible and to visually and operationally blend into the surrounding area in a manner consistent with community character and existing development. The facility shall also be appropriate for the specific site, i.e., it should not "stand out" from its surrounding environment. Such locations shall use design methods such as, but not limited to, type of facility, camouflaging, screening and landscaping and be compatible with existing architectural elements, building materials and other site characteristics.

(e) Facade-mounted antennas shall be architecturally integrated into the building design and otherwise made as unobtrusive as possible. If possible, antennas should be located entirely within an existing or newly created architectural feature so as to be completely screened from view. Facade-mounted antennas shall not extend more than 24 inches out from the building face.

(f) All buildings and structures containing equipment accessory to a facility may not exceed 10 feet in height measured from the base of the foundation unless a greater height is necessary to maximize architectural integration and shall be screened by landscaping. All cabinets visible to the public shall be treated with a graffiti-resistant coating. Cabinets and other equipment shall not impair pedestrian use of sidewalks or other pedestrian pathways.

(g) The use of chain link fences for security of equipment is permitted if the fence is fully screened by landscaping. No razor wire or barbed wire is permitted.

(h) All facilities shall be sited in such a manner as to cause the least detriment to the viewshed of adjoining properties.

(i) Roof-mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be set back as far from the edge of the building as possible or otherwise screened to minimize their visibility.

Sec. 35.6-14 Maintenance.

(a) All graffiti on any components of a wireless telecommunication facility shall be removed promptly upon receipt of notice from grantor.

(b) All landscaping shall be maintained at all times and shall be promptly replaced if not successful.

(c) If a flagpole is used for camouflaging a wireless telecommunication facility, flags must be flown and must be properly maintained at all times.

(d) All wireless telecommunications facilities shall be kept clean and free of litter.

(e) All equipment cabinets shall display a legible operator's contact number for reporting maintenance problems.

Sec. 35.6-15 Construction permit.

(a) *Permit required:* Except as otherwise provided in this section, a construction permit shall be required by all franchisees or other entities otherwise entitled to use public rights-of-way or other property owned by, or under the control of, the parish before the commencement of construction on public rights-of-way or any other property owned by, or under the control of, the parish.

(b) *Fees:* The minimum, non-refundable fee for a utility construction permit for the installation of wireless telecommunications system equipment, facilities, and plant on public rights-of-way or any other property owned by, or under the control of, the parish shall be $200.00 and the fee for a time extension of an issued construction permit shall be $100.00.

(c) *Insurance, indemnification and completion and restoration bond:* The applicant for such a permit shall provide: (a) indemnification for the parish, its districts and sub-districts for any damages to parish property or parish rights-of-way of any type and third party claims related to the installation, operation or maintenance of the equipment, facilities and plant of the applicant, and (b) insurance coverage of the same type and in the amounts and under the same conditions required in this chapter for a franchise. A completion and restoration bond in effect during the permitted work and terminating no sooner than 5 years after the parish accepts the permitted project as complete may be required at the discretion of the parish department of engineering; such a bond shall be in an amount determined by the parish department of engineering based on the size and type of project as well as the likelihood of damage to person or property as a result of the project. The permitted project shall not be accepted as complete until the required Geographic Information Systems ("GIS") submissions related to said completed project have been accepted by the parish as complete and compatible with the parish system.

(d) *Relocations:* A permit shall be required for any relocation of an existing installation on public rights-of-way and any other property owned by, or under the control of, the parish except for relocations required by a parish project for which the relocation plans have been approved by the parish. The fee shall be waived for such a permit whenever the relocation of an existing installation is requested by a local government, or state or federal agency. The owner of the equipment to be removed must provide written documentation to the appropriate parish permitting agency that the relocation is required by the parish, another local government, or state or federal agency.

(e) *Emergency Exception:* A permit shall not be required prior to the installation of wireless telecommunications system equipment, facilities, or plant under emergency conditions, but the owner of such equipment shall be required to notify the parish department of public works within 2 working days of such installations on parish rights-of-way or on any other property owned by, or under the control of, the parish and the owner of such equipment shall be responsible to indemnify the parish, its districts and sub-districts for any damages which may result from such an installation or operation.

(f) Except as otherwise provided below, the Department of Streets shall issue all permits for any work, excavation or activity required by this chapter.

(g) Whenever a permit for any work, excavation, or activity is required by this chapter, it shall be unlawful for any person to commence or continue said work, excavation or activity without having first obtained such permit. Whoever commits, or participates in the commission of, any act made unlawful by this subsection, shall be in violation of Sec. 20-43 – *Injury to or destruction of parish property prohibited*. In the event of any such violation by any association, corporation, partnership or other entity, the executive officers thereof shall be liable to the punishment prescribed by law.

(h) Whenever any person commences any such work without such a permit or continues any such work, excavation, or activity that threatens public safety, interferes with the operation or maintenance of streets, public utilities or other public works, or is in violation of this chapter or of the conditions of a permit issued under this chapter, the parish Department of Streets, the Department of Environmental Affairs or the parish Department of Inspection and Code Enforcement is authorized to immediately issue and enforce an order to cease and desist from said work, excavation, or activity. Said order shall be subject to review, and all of the procedures related to said order shall be conducted in the same manner as is provided for a cease and desist order for violation of the parish building code.

(i) In addition, any violation of this section shall be deemed a violation of a public health and environmental ordinance and shall be subject to civil administrative adjudication by the parish administrative hearing officer.

(j) *Environmental matters.* Notwithstanding the provisions of this section, the Department of Environmental Affairs shall issue permits for activities on parish right-of-way or other parish property that pertain to environmental activities such as soil or ground water sampling, installation and plugging and abandonment of ground water monitoring wells, and any other similar activity undertaken in fulfillment of an order or requirements of the Louisiana Department of Developments and Transportation or the Louisiana Department of Environmental Quality, or their successors or the United States Environmental Protection Agency or any other state or federal agency that has jurisdiction over environmental issues. The Department of Environmental Affairs is authorized to issue a cease and desist order and a violation citation regarding environmental permitting matters; such an order shall be subject to review, and all of the procedures related to said order shall be conducted in the same manner as is provided for a cease and desist order for violation of the parish building code. The Department of Environmental Affairs shall provide the application forms and related documentation for such permits and shall provide notice to the streets department when such a permit is issued.

(k) The provisions of this section shall be applied both retroactively and prospectively to all permits that have been, or will be, issued for utility and similar construction projects on parish servitudes, rights-of-way or other property owned by, or under the control of the parish, or its districts or sub-districts, as well as to any such projects that have been or will be commenced without a parish permit.

Sec. 35.6-16 Street light pole installation provisions.

(a) *Application to place communications equipment.* Whenever grantee desires to place wireless telecommunications equipment on any street light poles, grantee shall identify in its franchise application the specific street light poles or street light arms attached to utility poles that grantee proposed to utilize, and grantee shall describe the equipment to be attached.

(b) *Coordination with third parties.* Grantee shall coordinate directly with third-party users any work that may be required by the third-party users to accommodate grantee's proposed work. Any costs associated with such modification of third-party user's equipment are the responsibility of grantee.

(c) *Access.* For the term of the franchise, grantee is authorized to use any easements of grantor and public rights-of-way for access to street light poles to which grantee’s communications equipment is attached pursuant to the franchise so long as such use is not in conflict with grantor's present and future use. The right to access the street light poles granted by the franchise is non-exclusive.

(d) *Installation.* If, in the judgment of the grantor, the accommodation of any of grantee's communications equipment necessitates either the rearrangement of parish equipment located on a street light pole or the replacement of a street light pole, the grantor will notify grantee of the necessary changes and the estimated cost of the work required. At grantor's option, grantor may require grantee to perform the requested work on behalf of the grantor to grantor's specifications. Any services that grantee agrees to provide grantor shall be memorialized in a separate agreement. Alternatively, grantor may perform the work at grantee's sole expense, in which case, grantee shall reimburse grantor for the total cost of the work including all direct employee wage and benefit costs, cost of materials, and cost of equipment used. Grantor will make reasonable efforts to notify grantee of any extraordinary cost before such costs are incurred. Prior to commencing any work, grantor may require grantee to pay a deposit equal to the estimated total cost of the work. Grantor shall not be responsible to grantee for any loss sustained by grantee by reason of the failure of grantor or any third party to perform work contemplated by this section.

(e) *No right to use street light poles*. Nothing in this section or chapter agreement shall be construed to obligate grantor to grant grantee permission to use any part of the street light poles.

(f) *Additional attachments.* Grantee shall not have the right to place, nor shall it place, any additional communications equipment in contact with any street light poles without first making request for and receiving written permission to do so from grantor.

(g) *Installation and maintenance of attachments.* Grantee shall, at its own sole risk and expense, install and maintain communications equipment on street light poles in safe and good repair and in accordance with the requirements of the grantor and all municipal, state and federal laws, ordinances and regulations.

(h) *Identification of communications equipment.* Grantee shall identify the communications equipment newly installed or serviced at each contact point by means of a marking method mutually agreed upon by the parties. Such identification shall be visible. Grantee shall provide the grantor a 24-hour contact phone number to enable grantor to report any concerns regarding the communications equipment. In the event that grantor reports such concerns to grantee, grantee shall promptly respond to such call(s) and perform the required repair or correct any adverse impact to grantor's operations caused by such communications equipment at no cost to grantor unless caused by grantor.

(i) *Reservation of rights.* Grantor reserves the right to operate and maintain street light poles to fulfill its service requirements to its residents. Grantor shall not be liable to grantee for any interruption to grantee's service or for any interference with the operation of grantee's equipment arising in any manner except for gross negligence or willful misconduct from the use of street light poles by grantor in accordance with this agreement, provided that grantor shall give grantee 15 days (or such additional time as may be reasonably required) advance notice of any non-emergency work which affects grantee's communications equipment.

(j) *Grantorship or vested interest created.* No use of any street light poles under this agreement shall create or vest in grantee any ownership interest, tenancy, estate or any other interest in the street light poles and grantee's rights therein shall be and remain a license. Each party shall pay the cost of the installation and maintenance of its own facilities. Nothing in this agreement shall be construed to compel grantor to maintain any street light poles for a period longer than demanded by its own service requirements.

(k) *Damage to grantor property.* Grantee shall exercise special precautions to avoid causing damage to street light poles and/or any grantor property. Grantee shall assume responsibility for any loss from such damage caused by grantee. Grantee shall make an immediate report of the occurrence of any such damage to grantor and shall, on demand, reimburse grantor for the total cost incurred in making repairs including all direct employee wage and benefit costs, cost of materials, and cost of equipment used.

 (l) *Replacement of street light poles.* In the event any street light poles occupied by grantee under this agreement are to be replaced, repaired or altered, grantee shall, at its own sole risk and expense, upon notice from grantor, relocate or replace its communications equipment or transfer it to replacement street light poles or perform any other work in connection with said equipment that may be required by grantor. If grantee is required by grantor to remove any of its devices from any street light pole, grantor will specify an alternative street light pole on which grantee will be entitled to relocate its devices. In cases of emergency, grantor may, at grantee's sole expense, relocate, replace or renew the communications equipment, or transfer it to replacement street light poles or perform any other work required to serve the needs of grantor. Grantor shall make commercially reasonable efforts to notify grantee of the relocation of its communications equipment in the event of an emergency, prior to the relocation of that equipment.

(m) *Removal or vacation.* Should grantee remove its communications equipment from any of the parish’s street light poles, grantee shall, within ten days after such removal, give notice thereof to grantor, specifying the poles vacated and the location thereof, as well as the date of removal. Removal of all communications equipment from any street light poles without its replacement or substitution by grantee within 30 days shall constitute a termination of grantee's right to use such street light poles without making new request therefor.

(n) *Street light pole removal notice.* If grantor desires at any time to remove any street light pole, grantor shall, except in cases of emergency, give grantee notice, in writing, to that effect at least 30 days prior to the date on which it intends to remove such street light pole. If grantee cannot accommodate the removal of the communications equipment within the 30-day notice period then the parties will either (1) have the grantor remove and store grantee's equipment or (2) shall negotiate and mutually agree upon a longer timeframe for removal of the street light pole and grantee's equipment, on a case by case basis. The removal of the communications equipment shall be at the sole risk and expense of grantee. If grantor is required by law or ordinance to remove any street light pole or group of street light poles or for any reason desires that any particular street light pole be removed without replacement, grantor shall so inform grantee in writing. If grantor informs grantee of its desire to remove the street light pole, then grantee shall remove the communications equipment from the street light pole before grantor's intended removal date. The removal of the communications equipment shall be at the sole risk and expense of grantee. Grantor shall have no obligation to provide any alternate street light pole or any other facility for the relocation of grantee's communications equipment. In the event of an emergency, grantor may remove such street light pole and shall in such case immediately notify grantee of the action taken. Grantor shall make commercially reasonable efforts to notify grantee of the removal of its communications equipment, prior to the emergency removal of that equipment.

(o) *Right to inspect.* Grantor shall have the right to inspect each new installation of communications equipment attached to street light poles and to make periodic inspections at the grantor's discretion as conditions may warrant. Such inspections shall not relieve grantee of any responsibility, obligation or liability assumed under this agreement.

Article III – Termination, Amendment, And Renewal of Wireless Telecommunications Franchises

Sec. 35.6-17 Termination.

(a) In addition to any rights set out elsewhere in this chapter, the grantor reserves the right to seek termination of any wireless telecommunications franchise, and all rights and privileges pertaining thereto, in the event that any of the following occur (the “termination events”):

(1) *Failure to pay*. The grantee fails to timely pay the grantor any amounts due under its franchise or this chapter.

(2) *Violation of provisions.* The grantee violates any material provision of the franchise; or,

(3) *Construction delays.* The grantee's construction schedule is delayed for over eighteen (18) months; or,

(4) *Insolvency.* The grantee becomes insolvent, or is adjudged a bankrupt; or

(5) *Fraud.* The grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the grantor or subscribers.

(b) Upon the occurrence of a termination event identified in subsection (a) (1), the grantor shall provide the grantee with written notice of grantee’s delinquency. In the event grantee fails to pay grantor any amounts due within 30 days after notice of nonpayment, then the grantor may immediately terminate the franchise at issue.

(c) Upon the occurrence of a termination event identified in subsection (a) (2) above, the grantor may terminate the franchise in accordance with the procedures set forth in subsection (g) below.

(d) Upon the occurrence of any termination event identified in subsections (a) (3), (4), or (5) above, the grantor may immediately terminate the franchise at issue.

(e) *Termination by grantee*. A wireless telecommunication franchise may be terminated by the grantee, at its election and without cause, by delivering written notice thereof to grantor at least 180 days prior to the effective date of such termination.

(f) *Abandonment of franchise*. All wireless telecommunications franchises granted by the parish shall expire if not exercised for a period of 12 months.

(g) *Procedure for termination by grantor for violation of provisions*.

(1) The grantor, acting through the parish attorney, may give written notice to the grantee of a material violation or failure to comply with the franchise. Grantee shall have a period of 60 days after receipt of such notice of violation from the grantor in which to cease or remedy the violation. In the event grantee fails to cease or remedy the violation, then grantee's franchise is subject to termination under the following provisions. Provided, however, that, if the grantee commences work or other efforts to cure a termination event within 30 days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then any proceedings to terminate the franchise shall be temporarily suspended. If the curative work is not completed within 180 days of the written notice of violation from grantor, grantee shall report to grantor with respect to the progress made on such curative work and the anticipated completion date.

(2) Termination shall be declared only by a written decision of the Council after an appropriate public proceeding whereby the grantee is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The grantee shall be provided at least 30 days’ prior written notice of any public hearing concerning the termination of the franchise and, in addition, 30 days’ notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the grantee.

(3) Receivership. In addition to the ground for termination identified in subsection (a) above, the grantor shall have the right to terminate the franchise 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the grantee, 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 120 days or unless:

a. *Trustee compliance.* Within one hundred twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of the franchise and remedied all defaults thereunder; and

b. *Agreement to be bound.* Such receiver or trustee, within said 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 the franchise.

(h) Upon termination, abandonment, or expiration of any wireless telecommunications franchise granted by the parish, all rights of the grantee shall immediately be divested without further action by grantor. At grantor's option, grantor shall either purchase grantee's equipment, facilities and plant or grantor shall require grantee to remove its equipment, facilities and plant from the public property or public rights-of-way. If grantor requires removal, the grantee shall forthwith remove its equipment, facilities and plant from the public property or public rights-of-way and shall restore it to such condition as the grantor may require. Upon failure to do so, the grantor may perform the work and collect the cost thereof from the grantee. The cost thereof shall be a lien upon all equipment, facilities, plant and property of the grantee. Such lien shall not attach to property of grantee located on the poles of other utilities until removal of such property from the pole or poles.

Sec. 35.6-18 Amendment.

 A grantee’s occupation or use of public property or public rights-of-way for the installation, maintenance, repair and/or operation of a wireless telecommunications system shall be strictly limited to the specific facilities and geographic scope identified in the grantee’s franchise application. In the event that a grantee desires to increase its use of public property or the public rights-of-way, the grantee shall apply for an amended wireless telecommunications franchise from the grantor. To be awarded an amended franchise, a grantee must obtain the necessary approvals of the appropriate parish departments and the council applicable to new franchises under this chapter. The initial franchise fee due from a grantee in connection with an amended franchise shall be $5,000.00 due within 30 days of the date of acceptance of the amended franchise by the grantee after passage by the council (the “amended franchise fee”). Following the conclusion of the calendar year in which the ordinance granting an amended franchise under this chapter was passed by the council, the annual franchise fee due from a grantee shall be the greater of (i) an amount equal to the grantee’s initial franchise fee together with any fee increase provided for in Sec. 35.6-6(1) related to an increase in geographic scope of the amended franchise, or (ii) five (5) percent of grantee's gross receipts from the operation of a wireless network within the unincorporated areas of the parish during the preceding calendar year.

Sec. 35.6-19 Renewal or extension*.*

 Upon expiration of the initial term and options of the franchise, the grantor may, at its election, renew or not renew the franchise. Grantee shall give written notice of the grantee's intention to exercise its option for a renewal term to the grantor, in the manner and to the addressee stated in the grantee's franchise for notices, at least 60 calendar days in advance of the expiration of its initial franchise term and for each successive optional renewal franchise term for which the grantee may have a renewal option. Failure to give such timely notice may result in the loss of the renewal option(s) and the termination of the franchise. A franchise may be renewed by the grantor, upon application by the grantee, in accordance with then existing and applicable law. Nothing in this provision shall be construed to require such renewal by grantor.

 **SECTION 2.** That the Chairman of the Parish Council of Jefferson Parish, or in his absence the Vice Chairman, is hereby authorized, empowered and directed to sign all documents and acts necessary and proper in the premises to give full force and effect to this ordinance.

 The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

**YEAS**: **NAYS**: **ABSENT:**

The ordinance was declared adopted on the 21st day of, February 2018, and shall become effective as follows, if signed forthwith by the Parish President, ten (10) days after adoption; thereafter, upon the signature by the Parish President, or, if not signed by the Parish President, upon expiration of the time for ordinances to be considered finally adopted without the signature of the Parish President, as provided in Section 2.07b of the Charter. If vetoed by the Parish President and subsequently approved by the Council, this ordinance shall become effective on the day of such approval.