

Addendum to add section Section 18 Scavenging to Chapter Trash/Refuse Ordinance

SCAVENGING

Purpose - The common council of the Town of Glasgow, West Virginia recognizes that scavenging is a problem because those who scavenge quite often scatter trash and trash bags throughout the town leaving a mess for property owners and town personnel to clean up. Also many scavengers may be looking for sensitive personal information about citizens that can assist them in stealing their identity for various illegal purposes.

Scavenging Defined - The act or practice of removing, taking, scattering or disturbing refuse material (trash) which have been collected and assembled in containers or bags, whether stored on private or public property or placed by a roadway, street or curb for authorized collection. "Scavenging" shall not include the collection or picking up of scattered solid waste, litter, debri or trash from roadsides or public property with the intent of lawfully disposing of said solid waste, litter, debri or trash.

Prohibited Conduct - It shall be unlawful for any person or persons to rummage or scavenge through any public refuse container or any other person's refuse unless acting with proper permission or authority.

Penalty - Whoever violates any provision of this article or fails or refuses to abide by and comply with the rules and regulations promulgated to effectuate the provisions of this article shall be fined not more than fifty dollars (\$50.00), and costs for each offense.

Effective Date 10/7/2021

1st Reading 9/20/2021

2nd Reading 10/7/2021



Donald P. Fannin - Mayor


James K. Ward - Recorder

CHAPTER EIGHTEEN

ARTICLE I - Public Services in the Town Utilizing Wires or Cables Located on Any Street, Alley, Sidewalk, Public Recreation Area, or Other Public Place Within the Town.

18.1.1 Definitions – As used in this Chapter, the following terms shall have the following meanings, to-wit:

a. “Person” shall mean an individual person, association, partnership, firm, or corporation.

b. “Public Place” shall mean any street, sidewalk, alley, public recreation area, or other public place in the Town of Glasgow.

c. “Public Service” shall mean a service provided or offered by a person in the rendition of which wire or cables, located overhead or underground in any public place or places are utilized in providing to the public electrical, telephone, telegraph, cable television, or cable moving picture service.

18.1.2 Franchise Required for Persons Providing Public Services; Exception – No person shall, and it shall be unlawful for any person to, offer or provide any public service in the Town until such person shall have first obtained from the Council of the Town a franchise authorizing him so to do: Provided, that the requirements of this Section shall not apply to any public utility which holds a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia authorizing him to offer or provide such public service, or the rendition of which

service is supervised, and the rates charged by which are fixed, by the Public Service Commission of West Virginia.

18.1.3 Compliance with Franchise, Ordinances, Rules, and Regulations

Required – Any person offering or providing any public service in the Town who is required, under the provisions of Section 18.1.2 of this Chapter, to hold a franchise for the offering or providing thereof shall offer and provide such public service strictly in accordance with the provisions of such franchise, of the ordinances of the Town, and of the rules and regulations pertaining thereto which may be adopted from time to time by the Council.

18.1.4 Proceedings for Obtaining Franchise; Terms and Conditions; Rates –

Any person desiring to obtain a franchise from the Town shall file his written application therefore with the Recorder of the Town. All proceedings for the consideration of such application and for the granting or denial of such franchise shall be conducted in accordance with the requirements of Chapter 8, Article 31 of the Code of West Virginia of 1931, as amended. In issuing any franchise, the Council may prescribe such terms and conditions and shall fix therein such reasonable rates and charges, as the Council shall determine to be lawful and proper.

18.1.5 Safety Requirements – Any person offering or providing any public service in the Town shall, in the erection, construction, or use on or within any public place of any wire, cable, or other apparatus through which electrical current shall pass, shall have the same, at all times, equipped with all necessary and reasonable appliances and devices for the protection of life and property against the escape from such wire, cable, or other apparatus of any electrical current, and for the protection of any

individual or property which shall come in contact with any such wire, cable, or other apparatus against injury from such current.

18.1.6 Rules and Regulations – The Council hereby reserves the right and power from time to time to promulgate and revise any reasonable rules and regulations relating to the offering or providing of any public service within the Town as it shall deem to be necessary or proper for the protection of the safety of individuals and property, but no such rule or regulation shall contradict or be in conflict with any rule, regulation, or order of the Public Service Commission of West Virginia or of any appropriate federal agency, or law of the State of West Virginia or of the United States.

18.1.7 Violations; Penalties; Compelling Compliance – Any person, the members of any association, partnership, or firm, and the officers of any corporation, which shall violate any provision of this Chapter or any rule or regulation of the Council promulgated hereunder shall be fined not less than Ten (\$10.00) Dollars or more than Five Hundred (\$500.00) Dollars or imprisoned not to exceed thirty days, or both fined and imprisoned. Each day's continued violation of any provision of this Chapter after ten (10) day's notice from the Council shall be deemed a separate offense.

In addition to any fine and imprisonment under this Chapter, the Council may order the removal from any public place of any wire, cable, pole, or other apparatus placed or maintained in violation of this Chapter or any rule or regulation of the Council promulgated hereunder, and in the event of such removal, the Recorder may collect the expense of the removal from the owner, lessee, or user of any such wire, cable, pole, or other apparatus.

In addition to any other provision of this Section, the Town may compel compliance with the provisions of any franchise granted under Section 18.1.2 of this Chapter or heretofore granted by the Town to any person offering or providing a public service by mandamus in accordance with the provisions of Chapter 8, Article 31, Section 2, of the Code of West Virginia of 1931, as amended.

In further addition to any other provision of this Section, the Town may compel compliance with the provisions of this Chapter, and may restrain and prohibit the violation of any provision of this Chapter, by any person as in this Chapter defined by means of an injunction obtained by the Town in the Circuit Court of Kanawha County, West Virginia, or in the Supreme Court of Appeals of West Virginia.

18.1.8 Severability – If any provision of this Chapter or the application thereof to any person be held invalid, such invalidity shall not affect the other provisions or applications which can be given effect without the invalid provision or application, and to this end its provisions are declared to be severable.

ARTICLE II - Granting Nonexclusive Franchise to Cedar Grove Cablevision Associates, L.P.

18.2.1 To the extent that the same may be lawfully given, and subject to the conditions herein set forth, the nonexclusive right be and the same is hereby granted by the Town of Glasgow to Cedar Grove Cablevision Associates, L. P., (the “Company”), to construct, operate, and maintain transmission and distribution facilities, including, but not limited to, the erection of poles, cables, wires and other appurtenances and additions thereto, in, under, over, along, across and upon the streets, lanes, alleys, avenues, sidewalks, bridges, tunnels, highways, parking lots and other

public places in the Town of Glasgow (the "Town"), for the purpose of transmission by cable and distribution of television impulses and television energy for sale to the inhabitants of the Town and other purposes, under the terms and conditions hereinafter set forth (the "CATV System").

18.2.2 The company shall procure any and all easements, rights of way, covenants, grant, certificates of approval and permits which may be required from any private persons or corporation or from any federal, state, municipal or other governmental authority and from the utility companies operating in the Town for or in connection with the placing, maintaining or using of the attachments and the television cable herein referred to or the granting of this right.

18.2.3 (A) The Company agrees to maintain and keep in full force and effect at all times during the term of this Ordinance sufficient liability insurance coverage to protect the Town against any such claims, suits, judgments, executions, or demands in a sum not less than \$250,000 per person in any one claim; \$250,000 as to any one accident or occurrence; and not less than \$250,000 for property damage as to any one accident or occurrence, provided, however, that the Town shall notify the Company in writing within thirty (30) days after notice or presentation of any claim or demand, either by suit or otherwise, made against the Town on account of or arising out of any act or omission connected with the operation of this Ordinance.

(B) The Company shall also maintain in full force and effect throughout the duration of this Ordinance sufficient Worker's Compensation Insurance coverage to adequately and fully protect its agents and employees as required by law.

18.2.4 All the Company's attachments and installations shall be made and maintained at the Company's sole expense, in safe conditions and thorough repair and in such place and manner as shall be approved by the Town. Upon receipt of written notice at any time from the Town that said attachments interfere with Town property, endanger its employees or the public, or interfere with the primary use and purpose of said Town property or highways, the Company shall at its own expense remove, alter, rearrange, improve or repair such attachments in such manner as the Town may reasonably direct.

18.2.5 The Company shall indemnify and save harmless the Town at all times during the term of this Ordinance from and against any and all losses resulting from injuries or damage to persons or property including injuries to the employees of the Town or damage to the property of the Town arising out of negligence from or in any manner by actions or omissions of the Company or its agents while engaged in the work or construction, operating or maintaining the CATV System; and such loss shall include all payments made by the Town to any of its injured employees or to their relatives or representatives, pursuant to any statute or ordinance, whether based on negligence on the part of the employer or not. Further, the Company agrees to defend, fully indemnify and save harmless the Town from and against any and all claims and demands by third parties on account of or arising out of any act or omission connected with the operation of this Ordinance, including any claims or demands from any source whatsoever on account of license or copyright infringements or violations of any transmittal rules and regulations of the Federal Communications Commission (the "FCC") or other governmental regulatory bodies; provided, however, that the Town

shall notify the Company in writing within thirty (30) days after notice or presentation of any claim or demand, either by suit or otherwise, made against, the Town on account of or arising out of any act or omission connected with the operation of this Ordinance.

18.2.6 Upon the written request of the Town, the Company shall furnish free installation and free basic service for one (1) outlet in the Town Hall and Town Firehouse, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service the Town Hall and/or Town Firehouse. Upon the written request of any school in the Town, the Company shall furnish free installation and free basic service for one (1) outlet in each such school in the Town, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service such school.

18.2.7 The Company is hereby authorized to extend the distribution facilities within the franchise areas to the extent that such extension is or may become economically feasible. As used herein, “economically feasible” shall mean that there are at least 30 homes per mile of cable television system distribution plant.

18.2.8 (A) The Company shall pay to the Town a franchise fee of 0 percent (0%) of the Company’s gross subscriber revenue from any television service including hook-up fees; application fees, pay television channels, but not limited to such services. The Town shall have the right to levy its usual Business & Occupation Tax fee, or any tax that may be a successor to the Business and Occupation Tax. No other tax, levy or charge shall be imposed upon the Company by the Town unless authorized by this franchise.

(B) All franchise fees and Business and Occupation Taxes shall be paid by the company within thirty (30) days after the end of the calendar quarter. The Company shall make its books and records pertaining to gross subscriber revenues from all cable television service and fees available for inspection at all reasonable times to the Town. At the end of each two-year period during this franchise, the Town shall have the right to review the franchise fee but may raise said fee by no more than five percent (5%) in the aggregate during the full term of the original franchise. The amount of the franchise fee to be paid to the Town shall be reviewable at the option of the Town upon the third, sixth and ninth annual anniversary dates of the date of the granting of the franchise, and upon such date the Town shall have the right to change the amount and method of calculating the franchise fee; provided however, that such changes are in conformity with federal and state law. If the franchise is extended as set forth in Section 13 herein, this provision for adjustment of the franchise fee shall remain in effect during said extension.

18.2.9 (A) The Company shall expeditiously investigate and resolve all subscriber complaints concerning the operation of the CATV System, normally within twenty-four (24) hours but not later than forty-eight (48) hours, except in cases of emergencies. A record shall be made of all complaints received showing the name of the complaining party, the complaint and the action taken to rectify the complaint.

(B) After having received reasonable notice by certified mail of at least seventy-two (72) hours prior to the move, the Company shall comply with all moving permits issued by the Town by temporarily raising or lowering its wires to permit the moving of structures or high loads. The cost to the Company of complying

with the moving permit shall be borne by the entity that obtained the moving permit and the Company shall have the right to request payment in advance.

(C) The Company shall abide by all provisions set forth in local municipal ordinance and shall abide by all regulations of the FCC and other governmental regulatory bodies, as now enacted or as subsequently amended, and the same are incorporated herein by reference.

(D) Subscribers to the Company's service shall not be required to assure the Company that they will subscribe to the Company's service for any length of time and subscribers may terminate service at any time.

(E) All poles, ducts and other facilities of the Company shall be erected, constructed and maintained so as not to interfere with the traffic over public highways and to cause minimum interference with the rights and reasonable convenience of the property owners who adjoin any public highway. The Company shall have reasonable authority to trim trees upon, abutting and overhanging all streets, alleys, easements, sidewalks, and other areas where the CATV System may from time to time be located in public places of the Town so as to prevent the branches of such trees from coming into contact with or otherwise interfering with the facilities and service of the Company.

(F) The Town shall have the right to approve the location of any poles or underground cable line required to be erected or installed by the Company.

(G) If, at any time, the Town shall elect to alter or change the grade of the street, sidewalk, alley or other public way, the Company shall remove, relay and

relocate its poles, wires, cable, underground conduits, manholes and other fixtures at the Company's sole cost and expense.

(H) The Company shall grant to the Town, free of charge, the joint use of any and all poles owned by the Company for any proper municipal use so long as such use by the Town does not interfere with the operations and maintenance of the CATV System.

(I) The Company, during the installation, maintenance and operation of its television transmission, and distribution systems, must guard and protect any opening or obstruction in the street or other public places by placing adequate barriers, fences or boarding, the bounds of which shall be clearly designated by warning lights during periods of dusk and darkness.

(J) The Company agrees to restore to as good a condition as before entry, any pavement, sidewalk or other improvement of any street, avenue, alley or other public place disturbed by the Company.

18.2.10 The Town shall give written notice by certified mail to the Company of any alleged violation of any covenant in this Ordinance specifying the nature of the violation and the specific section or sections of this Ordinance which have allegedly been violated. The Town shall allow the Company at least ninety (90) days to remedy the condition complained of prior to cancellation by the Town of this franchise for breach of any covenant hereunder, provided that such cancellation or forfeiture shall first be declared by a court of competent jurisdiction after a hearing and upon appropriate full and final findings of fact pursuant to law.

18.2.11 The Town shall not permit any individual or company to provide services in the franchise area similar to those of the Company without first having secured a franchise from the Town. The Town shall not grant a franchise to individuals or companies offering or furnishing services similar to those of the Company on terms and conditions more favorable to such individuals or companies than those contained herein, unless this Ordinance is amended to provide for such more favorable terms and conditions.

18.2.12 With respect to any subdivision plan which requires the approval of the Town, the Town shall require the developer to locate and identify on such plan easements which have been dedicated or are to be dedicated to public use, in order to provide the Company with the right to construct, install and maintain, on the land identified in such plan, any equipment necessary to provide CATV service to each dwelling unit in the subdivision.

18.2.13 Upon continuing full and complete performance by the Company of each and every term of this Ordinance, the right herein granted shall continue for a term of ten (10) years from the date this Ordinance was adopted. At the expiration of such ten (10) years, this Ordinance shall automatically continue in full force and effect for an additional term of five (5) years unless: (1) the Company notifies the Town at least ninety (90) days prior to the expiration date of the Company's intention not to renew this Ordinance; or (2) the Town notifies the Company at least ninety (90) days prior to the expiration date that the Company is not in compliance with all of the material terms and conditions hereof, and a court of competent jurisdiction, after a hearing and upon appropriate full and final findings of fact pursuant to law, subsequently rules that the

Company is not in compliance with all of the material terms and conditions hereof. All of the terms, conditions and provision herein shall continue to apply in any such extension period or during the aforementioned court proceeding.

18.2.14 This franchise including the rights, privileges and obligations thereof may not be assigned, sold, leased, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including a transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval of the Town. The form of application for transfer shall be prescribed by the West Virginia Cable TV Advisory Board.

18.2.15 All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

TO THE TOWN:

Town of Glasgow

Glasgow, WV 25086

TO THE COMPANY:

Tele-Media Corporation

1156 Alum Creek Drive

PO Box 09768

Columbus, OH 43209

And

Robert L. Herral, Jr.
Cedar Grove Cablevision
PO Box 370
Cabin Creek, WV 25035

Any party to this Ordinance may change the address to which all communications and notices may be sent by addressing notices of such change in the manner provided hereunder.

18.2.16 Any and all ordinances or parts of ordinance conflicting with the provisions of this Ordinance are hereby repealed.

18.2.17 The Company shall assume the cost of publication of this Ordinance, if such publication is required by law.

18.2.18 In the event that future legislation or regulation is enacted at the federal or state level, the Company and the Town agree to abide by such new legislation or regulation, and the Town will have all rights and privileges provided for in such new legislation or regulation.

18.2.19 If any section, subsection, sentence clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Town hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared illegal, invalid or unconstitutional. The invalidity

of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Company.

18.2.20 This Ordinance is hereby declared to be a measure in the interest of public peace, health, welfare and safety, and shall therefore go into immediate effect upon the passage and adoption of this Ordinance.

18.2.21 To the extent permitted by federal law, the West Virginia Cable TV Advisory Board shall regulate basic cable service rates to ensure that they are just and reasonable both to the public and to the cable operator and are not unduly discriminatory.

To the extent permitted by federal law, the West Virginia Cable TV Advisory Board reserves the right to regulate charges other than those related to rates for the provision of basic cable service to ensure that they are just and reasonable and not unduly discriminatory.