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BILL NO. _____

SUMMARY – An ordinance to amend Title 5, Chapter 5.02, Subsection 5.02.010 (7) as to definitions; amend Title 5, Chapter 5.02 and Title 6, Chapter 6.120 by adding Subsections 5.02.025 and 6.120.025 as to applicability of the chapter; and amend Title 6 by adding a new Chapter 6.135 as to definitions, license and reporting requirements, franchise fees, audit of records, conditions for use of rights-of-way, requiring insurance and security for performance.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO AMEND TITLE 5, CHAPTER 5.02, OF THE CLARK COUNTY CODE BY AMENDING SUBSECTION 5.02.010 (7), ADDING SECTION 5.02.025 AND TO AMEND TITLE 6, CHAPTER 6.120, OF THE CLARK COUNTY CODE BY ADDING SUBSECTION 6.120.025 REGARDING THE DEFINITION OF “CABLE COMPANY” AND THE APPLICABILITY OF THE CHAPTERS; TO AMEND TITLE 6 OF THE CLARK COUNTY CODE BY ADDING A NEW CHAPTER 6.135 FOR VIDEO SERVICE PROVIDERS ADDING DEFINITIONS, REQUIRING PROPER LICENSURE, ESTABLISHING REPORTING REQUIREMENTS, FRANCHISE FEES, INSURANCE AND SECURITY FOR PERFORMANCE REQUIREMENTS, ALLOWING FOR AUDITS OF FINANCIAL RECORDS, ESTABLISHING CONDITIONS FOR USE OF RIGHTS-OF-WAY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

WHEREAS, the Nevada State Legislature passed Assembly Bill 526 in the 2007 Legislative Session that limited the regulatory powers of local government regarding video service providers established a new regulatory structure involving the Secretary of State, while allowing local governments to retain some powers regarding the management of its rights-of-way and the collection of franchise fees for the use of local rights-of-way, and

WHEREAS, this Ordinance is necessary to establish new regulations of video service providers that comply with state law and that maintain a non-discriminatory affect on all private users of the County’s rights-of-way.

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THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK,
STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 5, Chapter 5.02, Subsection 5.02.010 (7) of the Clark County Code is hereby amended as follows:

“Cable company” means a person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a cable franchise or cable service permit by the county, that was current as of June 4, 2007, and that has elected to continue to operate within its service area pursuant to their cable franchise or cable service permit with the County, as provided for in NRS 711.490.

SECTION 2. Title 5, Chapter 5.02, Subsection 5.02.025 of the Clark County Code is hereby added as follows:

5.02.025 Applicability of this Chapter.

The provisions of this Chapter shall apply to any cable company that, as of June 4, 2007, held a current cable franchise or cable service permit with the County and elected to continue to operate within its service area pursuant to their cable franchise or cable service permit with the County, as provided for in NRS 711.490.

SECTION 3. Title 6, Chapter 6.120, Subsection 6.120.025 of the Clark County Code is hereby added as follows:

6.120.025 Applicability of this Chapter.

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The provisions of this Chapter shall apply to any cable company that, as of June 4, 2007, held a current cable franchise or cable service permit with the County and elected to continue to operate within its service area pursuant to their cable franchise or cable service permit with the County, as provided for in NRS 711.490.

SECTION 4. Title 6 of the Clark County Code is hereby amended by adding a new chapter designated as Chapter 6.135 and titled “Video Service Providers” to read as follows:

6.135.005 Applicability of this Chapter.

The provisions of this Chapter shall apply to any video service provider that has applied for and obtained a certificate of authority from the Nevada Secretary of State, pursuant to NRS Chapter 711, to construct and operate a video service network within the County or to provide video service to subscribers within the County.

6.135.010 Definitions.

(a) For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Chapter 711 of the NRS or Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

(1) “Board” means the Board of Clark County Commissioners as the legislative body of the

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County.

- (2) “Cable operator” has the same meaning as that term is defined in NRS 711.024, as amended.
- (3) “Cable service” has the same meaning as that term is defined in NRS 711.025, as amended.
- (4) “Cable system” has the same meaning as that term is defined in NRS 711.026, as amended.
- (5) “Certificate of authority” and “certificate” have the same meanings as those terms are defined in NRS 711.027, as amended.
- (6) “Code” means the official code of all of the County’s ordinances of a general and permanent character, as may be adopted and amended by the Board of County Commissioners.
- (7) “Community antenna television company” has the same meaning as that term is defined in NRS 711.030, as amended.
- (8) “Community antenna television system” has the same meaning as that term is defined in NRS 711.040, as amended.
- (9) “County” means the County of Clark, a political subdivision of the State of Nevada, and, unless otherwise indicated, that portion of Clark County outside the incorporated cities and towns, both within and without the unincorporated cities and towns.
- (10) “County Manager” means the County Manager appointed by the Board of County Commissioners, or his or her designee.
- (11) “Facility” has the same meaning as that term is defined in NRS 711.060, as amended.

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- (12) “Franchise fee” means a franchise fee imposed by the County on a video service provider for the privilege of providing video service.
- (13) “Gross revenue” has the same meaning as that term is defined in NRS 711.066, as amended.
- (14) “Holder of a certificate” or “holder” has the same meaning as that term is defined in NRS 711.071, as amended.
- (15) “Incumbent cable operator” has the same meaning as that term is defined in NRS 711.072, as amended.
- (16) “Information service” has the same meaning as that term is defined in NRS 711.0723, as amended.
- (17) “Interactive computer service” has the same meaning as that term is defined in NRS 711.0726, as amended.
- (18) “Public Works Director” means the Director of the County’s Public Works Department, or his or her designee.
- (19) “Right-of-way” or “rights-of-way” means public property including air space dedicated, granted, held or prescriptively used, or authorized by patent of the United States of America, for county public street and public utility purposes, except as limited by any underlying grant and except public streets predominantly used for public freeway or expressway purposes including, without limitation, the Clark County 215 Bruce Woodbury Beltway, and except for any property owned, operated, maintained and/or administered by the department of aviation, including, without limitation, airport roadways, sidewalks and streetlights.

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(20) “Service area” has the same meaning as that term is defined in NRS 711.105, as amended.

(21) “Street” means the surface, the air space above the surface and the area below the surface of the full width of the right-of-way, including sidewalks and thoroughfares, places or ways of any kind used by the public or open to the public as a matter of right for the purposes of vehicular traffic or vehicular and pedestrian traffic, except for those on property owned, operated, maintained and/or administered by the department of aviation.

(22) “Subscriber” has the same meaning as that term is defined in NRS 711.115, as amended.

(23) “Telecommunication” has the same meaning as that term is defined in NRS 711.125, as amended.

(24) “Telecommunication provider” has the same meaning as that term is defined in NRS 711.131, as amended.

(25) “Telecommunication service” has the same meaning as that term is defined in NRS 711.135, as amended.

(26) “Video service” has the same meaning as that term is defined in NRS 711.141, as amended.

(27) “Video service network” has the same meaning as that term is defined in NRS 711.145, as amended.

(28) “Video service provider” and “provider” has the same meaning as that term is defined in NRS 711.151, as amended.

6.135.020 Purpose.

The purpose of this chapter is to:

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- (a) Establish rules and regulations governing those aspects of the operations of video service providers over which the county has legal jurisdiction to the extent of federal and state law, and ensure that these rules are applied in a nondiscriminatory manner to all video service providers.
- (b) Ensure that video service providers fairly compensate the county for occupation and use of valuable local rights-of-way.
- (c) Establish the county’s policy concerning right-of-way management for all video service providers.

6.135.030 Compliance with applicable laws.

A provider shall at all times comply with all applicable Federal, State and local laws, rules and regulations concerning the provision of video service, including all applicable Federal Communications Commission, Public Utilities Commission of Nevada and Nevada Secretary of State rules, regulations and orders.

6.135.040 Certificate of authority required.

It is unlawful for any provider to construct or operate a video service network within the County or to provide video service to subscribers within the County unless the provider is a holder of a certificate of authority issued by the Nevada Secretary of State that includes service areas within the County.

6.135.050 Provider that provides telecommunication services or interactive computer services.

A provider that provides telecommunication service or interactive computer service within the County, pursuant to the provider’s certificate of authority and over the provider’s video service network, shall not be required to obtain a separate franchise agreement from the County for such telecommunication service or interactive computer service.

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6.135.060 Reports of service locations and confidentiality of reports.

If a provider that was not an incumbent cable operator prior to June 4, 2007, intends to construct facilities within the County pursuant to a certificate of authority, the provider shall, until it has constructed all the facilities intended for the County, prepare and submit to the County a semiannual report which describes the number of service locations within the County that are capable of receiving video service from the provider. The provider shall submit such report no later than the tenth business day in January and July of each year. Pursuant to Section 711.600 of the NRS, the information contained in such report submitted to the County is confidential and proprietary information of the provider, is not a public record and must not be disclosed to any person other than an officer or employee of the County unless the provider consents to the disclosure.

6.135.070 Public information.

Information and reports submitted to the County pursuant to this Chapter that are not mentioned in Section 6.135.060 of this Chapter shall, if required by Nevada’s Public Records Law, NRS Chapter 239, as amended, be subject to public inspection and copying.

6.135.080 Business license required.

(a) At all times during which a provider is authorized to provide video service within the County pursuant to a certificate of authority, the provider shall maintain a valid unexpired business license specific to its video service business. The business license fee for a provider for providing video services shall be included in the franchise fees from the providing of video services by the provider.

(b) At all times during which a provider provides telecommunication service within the County, the provider shall maintain a valid unexpired business license specific to its

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telecommunication business as provided in Chapter 6.13 of this Code. The provider shall pay all business license fees due from its telecommunication service business separately from the payment of the franchise fees due from its video service business.

(c) In addition to the business licenses required by Subsections (A) and (B) of this Section, a provider shall at all times maintain all other business licenses specific to any of the provider’s business activities other than those of providing video service and telecommunication service, as such other business activities are specified in this Code; provided that nothing in this Section shall be construed to require a separate business license for the provision of “information service” or “interactive computer service.” The provider shall pay all license fees due from such other businesses separately from the payment of fees due from its video service and telecommunication service businesses.

(d) In addition to payment of the fees specified in Subsections (a) through (c) of this Section, a provider shall pay all lawful property taxes, ad valorem taxes and local improvement district assessments, and all exactions, fees and charges that are generally applicable during the provider’s real property development or use as required by this Code.

(e) Acceptance by the County of any payment due under this Section shall not be deemed to be a waiver by the County of any breach of the provider’s obligations under its certificate of authority or applicable law, and such acceptance shall not preclude the County from later establishing that a larger amount was actually due or from collecting such balance.

6.135.090 Franchise fee.

(a) A provider shall pay, on a quarterly basis, a franchise fee of five percent of the provider’s gross revenue from its video service subscribers within the County. Each payment shall be for the preceding calendar quarter and shall be due no later than the fifteenth day of the second

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month following the quarter for which the payment is being made. Payment is considered received timely when officially postmarked or, if hand delivered, received by the Department by the due date.

(b) A provider shall submit a written report with each quarterly payment of franchise fees providing in reasonable detail a summary of its revenue categories for that quarter and how the franchise fees were calculated.

(c) If a provider fails to pay a franchise fee as required by this Section, the provider shall pay a penalty of two percent per month (or fraction thereof) of the delinquent amount until such time as payment is received in full by the County.

(d) A provider may pass the franchise fee through to its subscribers within the County based on the gross revenue received from each such subscriber and may designate the amount of the franchise fee as a separate line item on the subscriber's bill.

6.135.100 Audit of provider's records.

(a) Not more than once every three years, the County may, upon forty-five days' written notice to a provider, review and audit the business records of a provider to ensure payment of all franchise fees due pursuant to the provider's certificate of authority and this Chapter. If the results of such a review and audit identify an underpayment of franchise fees in an amount that requires corrective action, the County may perform a subsequent compliance review and audit to determine whether the provider has corrected the underpayment of fees. The compliance review and audit must be performed not later than twelve months after the date on which the results of the initial review and audit are finalized.

(b) A provider shall keep complete and accurate business records concerning the franchise fees due pursuant to its certificate of authority for a period of at least four years or,

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longer if requested by the County until such time as the County has completed any pending audit through the payment of all fees determined by the County to be due or through the resolution of any disputed amounts. The County may review and audit all records concerning the provider's revenue that may reasonably be considered by the County to be subject to a franchise fee. The provider shall make the requested records available to the County for purposes of conducting its review and audit within forty-five days after receiving the County's written request for such books and records.

(c) If the County determines that any amounts are due as a result of a review and audit pursuant to this Section, it shall give the provider written notice of the amounts determined to be due and the basis for determining such amounts were due. The provider shall pay all such amounts in full within thirty days following receipt of the County's notification, subject to the provider's rights to contest the County's determination pursuant to NRS 711.680, as amended.

(d) The County and the provider shall each pay its own costs and fees relating to a review and audit of the provider pursuant to this Section; provided that if the provider elects to have the County review and audit the requested business records at a location outside the County, the provider shall pay the per diem allowances and travel expenses incurred by the County to perform the review and audit at that location.

6.135.110 Right-of-way provisions applied to providers.

The requirements set forth in Sections 6.135.120 through 6.135.160 of the Code shall be construed and applied by the County in a competitively neutral manner that does not discriminate among provider's, including cable companies as regulated under Chapter 5.02 of the Code, or as between provider's and any other users of the rights-of-way, as regulated under Chapter 5.01 of the Code, for the construction and operation of facilities.

6.135.120 Installation of facilities in compliance with ADA.

A provider shall install all of its facilities in the rights-of-way in a manner consistent with the Americans with Disabilities Act (“ADA”), including any reconstruction or modification of existing facilities. Following notice by the County of an ADA violation or construction problem caused directly or indirectly by a provider, the provider shall, within thirty days or such other time as the Public Works Director reasonably determines to be appropriate, remedy the ADA violation or problem.

6.135.130 Conditions of right-of-way occupancy and facilities installation.

(a) A provider shall comply with this chapter and the improvement standards adopted in Title 30 of this code, as adopted by the county commission and in effect at time of construction completion, except where retroactive application of new standards is required by federal or state law.

(b) The County may require a provider to obtain a construction, encroachment or occupancy permit for any work in the rights-of-way, may inspect any construction, installation, maintenance or repair work in the rights-of-way, and may charge a provider a fee to issue permit or to perform such inspection. The County shall act upon any request by a provider for a permit no later than ten business days after the date on which the request is made. The amount of any permit or inspection fee under this Section or Title 30 of the Code shall not exceed the actual costs incurred by the County in administering the process of issuing such permits and performing such inspections.

(c) If there is an emergency requiring immediate response work or repair in, on, under or over any rights-of-way, a provider may begin such work or repair without first obtaining a permit; provided that the provider shall notify the Public Works Director as promptly as is reasonably

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possible after learning of the need for the emergency work, shall subsequently obtain any permit that otherwise would have been required for non-emergency work, shall pay all applicable fees for such permit, and shall restrict any work performed in the rights-of-way prior to obtaining a permit to emergency work and repairs.

(d) Except as provided for in Subsection 6.135.130 (B), prior to any work within the rights-of-way, the provider shall obtain an encroachment permit pursuant to applicable provisions of Title 30 of this code.

(e) All construction work in the rights-of-way performed by or on behalf of a provider shall be performed in a safe manner subject to the approval of the public works director and in accordance with all applicable laws, rules, regulations and permitting requirements related to public safety or the use of rights-of-way. When the public improvement designs prepared by the provider are more detailed than, or are not covered by, the improvement standards adopted in Title 30 of this code, plans and specifications for construction, reconstruction, installations, and repairs of public improvements shall be sealed by a Nevada registered professional engineer.

(f) Except in the case of an emergency, and except as provided in subsection (g) of this section, a provider who is the initiator of a project in a street or easement along which residential yards are located and maintained that will result in disruption of such yards or result in the installation of new exposed surface facilities shall notify residents who are located adjacent to the proposed project at least two days prior to the date that the provider proposes to commence the proposed project. Such notice shall be by written notice in person, by posted notice on the street where the proposed project is scheduled to be built (which notice is to be large enough to be clearly read by passing motorists), by door hanger, or by mail, with a description of the proposed project, the

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name of the provider together and a telephone number at which the provider can be reached twenty-four hours per day.

(g) Before placing a facility in an easement within a single-family residential property, a provider shall provide the homeowner with written notice no less than five days before such installation. Such notice shall advise the homeowner of:

(1) The location within the easement where the provider plans to locate the facility;

(2) The homeowner’s right to select another place within the easement to locate the facility, if such location is technically feasible for the provider;

(3) The provider’s obligation to camouflage the facility, either by landscaping or by some other method reasonably acceptable to the homeowner.

(h) All public improvement work performed by the provider in rights-of-way shall be inspected, completed and accepted in accordance with this chapter and the improvement standards adopted in Title 30 of this code.

(i) In the case of damage caused by the provider to any rights-of-way, the video service provider shall at no cost or expense to the county repair, replace and restore the damaged area in accordance with current improvement standards adopted in Title 30 of this code.

(j) The provider shall not acquire any vested right or interest in any particular right-of-way location for any of its facilities constructed, operated, or maintained in any existing or proposed rights-of-way, even though such location was approved by the county.

(k) Reconstruction, removal or relocation of a provider’s facilities to accommodate a public improvement shall be provided for in the following manner:

(1) The county or Las Vegas Valley Water District, Kyle Canyon Water District, Big Bend Water District or Clark County Water Reclamation District shall issue to a provider written

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notice of a need to reconstruct, remove, or relocate any of provider's facilities which may be in conflict with an existing or proposed public improvement in order to accommodate the installation, maintenance, or use of the public improvement. Such written notice shall include project information equivalent in detail to fifty percent or more of final design for the public improvement. The provider shall, within thirty days after receiving such written notice from the county or district, as described in this paragraph, present to the director of public works a notice of intent to reconstruct, remove, or relocate said facilities, and shall, within six months after receipt of written notice from the county or district, or such shorter time period as may be reasonable, reconstruct, remove, or relocate said facilities. Upon request from a provider identifying a recommended location for its facilities, the director of public works shall provide that location or an alternate location within the right-of-way for the provider if space is available.

(2) Within thirty days after receipt of such written notice from the county or district, as described in subsection (i)(1) of this subsection, the provider may present a written application and supporting documentation to the director of public works for an extension of time in which to complete reconstruction, removal or relocation of its facilities. The director of public works may grant additional time beyond the time period provided if the additional time requested is due to service, equipment, or material delivery constraints beyond the control and without the fault or negligence of the provider, or if the project described in the written notice is of such a size that the work to be performed by the provider cannot be completed within the allowable time.

(3) If after the issuance of the initial written notice the county or district, as described in subsection (i)(1) of this subsection, makes a substantial change in the design of the public improvement project, including but not limited to changes in elevation, changes affecting public right-of-way alignment and widths of alignment, the county or district, as described in subsection

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(i)(1) of this subsection, shall notify the provider of the details of the substantial change. If the provider determines that such change would cause a delay in reconstruction, removal or relocation of its facilities beyond the time period provided, the provider may, within fourteen days from receipt of notice of such change, petition the director of public works for an extension of time in which to complete reconstruction, removal or relocation of facilities. If the additional time is requested due to service, equipment, or material delivery constraints beyond the control of the provider, or if the public improvement design change is of such a scope that the work to be performed by the provider cannot be completed within the time period allowed, the director may grant an extension of time. If the request for extension of time is denied, the provider may appeal the denial to the county commission within fourteen days from receipt of notice of denial. The decision of the county commission shall be final.

(4) The county or district, as described in subsection (i)(1) of this subsection, shall provide the provider with a final design of the public improvement as soon as it becomes available.

(5) If a provider fails to reconstruct, remove, or relocate its facilities as required by this section within the time period agreed upon, the county may reconstruct, remove, or relocate said facilities and charge the cost of reconstruction, removal, or relocation to the provider. The county will not be held liable for any losses or damages due to reconstruction, removal, or relocation of such facilities.

(l) The provider shall, on request of any person holding a permit to move a building, temporarily raise or lower its wires or cables to permit the movement of the building. The expense of temporary removal of raising or lowering of wires shall be paid by the person requesting it, and the provider shall have the authority to require such payment in advance. The provider shall be given not less than thirty days' advance notice to arrange temporary wire or cable alterations.

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(m) Whenever, in case of emergency, it becomes necessary to remove any of the provider's facilities, no charge shall be made by the provider against the county for loss, damage, restoration, and repair.

(n) A provider shall maintain and provide to the county, upon request and at no cost, as-built plans indicating the location of its facilities. A provider may provide, on a voluntary basis, electronic plans showing the general location of its facilities in rights-of-way.

(o) A provider shall participate in "Call Before You Dig" or any other such programs active in its service area within the County with regard to giving and receiving notice of the location of facilities and excavations.

(p) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Uniform Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(q) If any removal, relaying, or relocation of a provider's facilities is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the rights-of-way, a provider shall, after thirty days' advance written notice, take action to effect the necessary changes requested by the responsible entity.

(r) Neither the county nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to a provider as a result of or in connection with the protection, movement, removal, alteration, or relocation of any part of a video service network by or on behalf of a provider or the county in connection with any emergency, public work,

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public improvement, alteration of any publicly owned structure, any change in the grade or line of any right-of-way.

(s) A provider shall place its system lines underground in localities where both telephone and power lines are underground, and shall replace aerial facilities with underground facilities concurrently with telephone and power utilities when both types of utilities are required by the county to place facilities underground. Where undergrounding is required, system passive or active electronics may be housed only in low-profile, above-ground pedestals, as approved by the county.

(t) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under laws of the state and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the provider would have if the work were performed by the provider. A provider must ensure that contractors, subcontractors and all employees who will perform work for it are trained. A provider shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors performed within the scope of their work for the provider, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(u) A provider shall not attach any of its facilities to any County-owned facilities unless the provider has entered into a written agreement with the County for the rights of attachment and use.

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(v) After an excavation is made and after any excavation work is completed, a provider shall, as soon as practicable but not later than seventy-two hours, remove all surplus material; except that if the surplus material is blocking a public street or sidewalk, the provider shall remove such material no later than twenty-four hours after the excavation is made or the excavation work completed.

(w) A provider shall reconstruct, replace or restore any landscaping, street or alley, or any water, sewer, sanitary sewer, storm drainage, traffic signal or street light facilities, or any other facility of the County disturbed by the provider, within thirty days of written notice by the County, to a condition acceptable to the Public Works Director, consistent with specifications, requirements and regulations of the County in effect at the time of such restoration. Any such improvements so disturbed by the provider shall be reconstructed, replaced or restored only under the supervision of County personnel. All costs incurred in surplus material removal and restoration, whether done with the County's work forces and equipment or otherwise, shall be paid by the provider, including the cost of any inspectors the County may assign to the project.

(x) All of a provider's facilities shall be placed so that they do not interfere with the use of the rights-of-way by the County and shall only be placed after approval of the location by the Public Works Director, in accordance with any generally applicable specifications adopted by the County governing the location of facilities.

(y) Whenever the County excavates or performs any non-emergency work in the rights-of-way and such excavation or work may disturb but not require the removal or relocation of a provider's facilities, the County shall notify the provider seventy-two hours in advance of the excavation or work to enable the provider to take such measures as it may deem necessary to protect its facilities from damage and inconvenience, or from injury or damage to the public or

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the rights-of-way. If the provider cannot take such measures, the provider shall be required to relocate its facilities in accordance with this Section, in which case, the provider shall, upon request, furnish field markings to the County showing the location of all of its facilities in the area involved in such proposed excavation or work.

(z) The County may require a provider to relocate its facilities to accommodate another rights-of-way user, if the provider’s and other user’s facilities can both be located in the rights-of-way without interfering with the provider’s operations, subject to the following:

(1) The other user shall pay the provider the costs of any relocation occasioned by such user.

(2) The provider shall remove and relocate its facilities upon receipt of payment of the provider’s estimated costs from the other user.

(3) If the provider’s estimated costs do not cover all of the provider’s final costs of the removal or relocation, the provider shall bill the other user for the balance of the costs following completion of the work benefiting the other user, and the other user shall pay the provider any balance owed within thirty days of receipt of the billing statement; and

(4) If the provider’s estimated costs exceed the provider’s final costs of the removal or relocation, the provider shall refund any overpayment to the other user within thirty days after completion of the work benefiting the other user.

(aa) When the County proposes to improve the rights-of-way, including but not limited to work related to streets, sidewalks, landscaping, traffic signalization, street lights, water lines, storm drainage or sanitary sewers, and such improvements include excavation and the placement of underground utilities vaults and conduit sufficient for a provider’s facilities by and at the expense of someone other than the provider, then upon notification by the County to the provider and

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such reasonable scheduling as may be required by the County, the provider shall replace its then-existing overhead facilities within the affected rights-of-way with underground facilities within such area. The provider shall pay all costs of such underground placement. The conversion from overhead to underground shall be conditioned upon the County requiring the undergrounding in the area in which both the existing and new facilities are and will be located and on the County requiring all existing overhead communication and utility facilities in such area to be removed.

6.135.140 Security for performance.

(a) As security for performance of its rights-of-way obligations under this Chapter, a provider shall, at all times during which it holds a certificate of authority permitting the provider to provide video service within the County, provide, and maintain at the minimum level herein specified, security to the county manager, in the form of either cash deposited with the county manager, made payable to the Clark County treasurer, an irrevocable pledge of certificate of deposit, an irrevocable letter of credit, or a performance bond, in the amount of two hundred thousand dollars, or an amount agreed to by the county commission, any or all of which may be claimed by the county as payment for fees and penalties, and to recover losses resulting to the county from the provider's failure to perform.

(b) If a provider has already posted an irrevocable pledge of certificate of deposit, an irrevocable letter of credit, or a performance bond for \$200,000 or more in connection with its use of the County's right-of-way for other purposes, the provisions of Subsection (A) of this Section shall not apply to the provider provided that such existing security is in full force and effect during all times of provider's use of the right-of-way for video service purposes and the terms of such

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security are made applicable to the provider’s use of the right-of-way for video service purposes in accordance with the terms of Subsections (C), (D) and (E) of this Section.

(c) If bonds are used to satisfy these security requirements, they shall be in accordance with the following:

(1) All bonds shall, in addition to all other costs, provide for payment of reasonable attorneys’ fees.

(2) All bonds shall be issued by a surety company authorized to do business in the state of Nevada, and which is listed in the Department Circular 570 of the U.S. Department of the Treasury Fiscal Service (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, Current Revision).

(3) The provider shall require the attorney-of-fact who executes the bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.

(4) All bonds prepared by a licensed non-resident agent must be countersigned by a resident agent per Nevada Revised Statutes, Section 680A.300.

(d) The following procedures shall apply to drawing on the security required in this Section:

(1) If a provider fails to make timely payment of any amount due to the County, or fails to compensate the County within thirty days of written notification that such amount is due for any damages, costs or expenses the County suffers or incurs by reason of any act or omission of the provider, or fails after thirty days’ written notice to comply with any provision of its certificate or this Code that can be remedied by drawing on the security, the County may withdraw the amount thereof, with applicable interest and penalties, from the security.

(2) Within three days of a withdrawal from the security, the County shall personally deliver or send by certified mail written notification to the provider of the amount, date and

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purpose of such withdrawal.

(3) If at the time of a withdrawal from the security by the County, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the provider to the County until it is paid.

(4) No later than thirty days after the delivery or mailing of notification to the provider of a withdrawal from the security, the provider shall restore the security to the total amount specified in Subsection (A) of this Section.

(e) Recovery by the County of any amount from the security required by this Section does not limit a provider’s obligation to provide insurance or to indemnify the County as otherwise required by this Chapter.

6.135.150 Insurance.

(a) A provider shall, at all times during which it holds a certificate of authority permitting the provider to provide video service within the County, provide and maintain all insurance coverage amounts, or demonstrate the ability to self-insure, for at least the minimum limits required herein and no provider shall commence work in rights-of-way or utility easements or provide video service to subscribers within the county until all insurance requirements have been met.

(b) All primary and excess insurance obtained for meeting the requirements of this section must be provided in compliance with Nevada Revised Statutes, Title 57, and any commercial insurance carrier providing any required coverage must have an A.M. Best rating of A-VII or higher; and

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(1) The provider shall provide a certificate of insurance naming Clark County, Nevada, as an additional insured, and stating that the policy will not be canceled, terminated or materially altered by the insurer, nor will the insurer state an intention not to renew until thirty days after providing written notification of such to the county manager; and

(2) The provider shall be solely responsible for payment of all premiums for insurance policies required herein.

(c) Prior to commencement of work in rights-of-way or utility easements or provide video service to subscribers within the county, the provider shall provide proof of insurance to the county manager, the following minimum insurance coverage amounts, insuring against all damages arising out of or resulting from the installation, construction, operation, and maintenance of the system:

(1) General liability insurance, with minimum limits of two million dollars per occurrence, which includes coverage for products, completed operations, blanket contractual liability, independent contractor hazard, broad form property damage, including but not limited to coverage for explosion, collapse and underground hazard.

(2) Automobile liability insurance, with a minimum combined single limit per occurrence of two million dollars, and which includes coverage for non-owned and hired automobile liability. Automobile liability insurance may be included as part of general liability insurance.

(3) Workers' compensation insurance in accordance with Nevada Revised Statutes, Chapters 616A, 616B, 616C, 616D and 617.

(d) The minimum limits may be provided for through a single primary insurance policy providing such coverage or through addition of an umbrella liability policy written in excess of the general liability, and automobile liability policies.

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(e) If insurance coverage is obtained on a claims-made form, the provider shall provide proof of coverage for “prior acts” and proof of coverage form claims reported within two years of any occurrence.

(f) The required insurance may be provided in the form of conventional insurance, self-insurance, or a combination of conventional insurance and self-insurance retention.

(g) The county commission may approve a plan of self-insurance as meeting the requirements of this section. The provider may apply for such approval by written request to the county manager, which shall include a detailed plan of self-insurance, including retention limits, named excess insurance carrier, if any, and a copy of audited financial statements. The county commission may impose conditions or requirements, including posting of security. Such conditions or requirements may be unique from one provider to another. The county commission may, at any time during the term of an agreement, revoke approval of a plan or self-insurance, or impose requirements or conditions for continued approval. Failure to comply with the conditions or requirements imposed by the county commission shall be deemed as failure to meet the requirement for insurance under this section, and as a violation of a condition of an agreement.

6.135.160 Indemnification.

(a) A provider shall, at its sole cost and expense, defend, indemnify and hold the County harmless from and against all claims for damages to persons or property in any way related, directly or indirectly, to the construction, maintenance and operation of its facilities or its use of the rights-of-way, when or to the extent injury or damage is caused or alleged to be caused, wholly or in part, by any act, omission, negligence or misconduct of the provider or any of the provider’s contractors, subcontractors, officers, agents or employees, or by any person for whose act, omission, negligence or misconduct the provider is by law responsible. This Section is

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intended to require the provider to indemnify the County to the maximum extent allowed by law for claims related to the provider's use of the rights-of-way and is not intended to create liability for the benefit of any party other than the County.

(b) If any claim is made against the County that is covered by Subsection (A) of this Section, and if a court of competent jurisdiction shall adjudge by final decree that the County is liable therefor, the provider shall indemnify and hold the County harmless from any such liability, including any court costs, expenses and reasonable attorney's fees incurred by the County in defense thereof and incurred at any stage of the proceedings.

(c) Upon commencement of any suit, proceeding at law or in equity against the County relating to any matter covered by Subsection (A) of this Section, the County shall give the provider prompt notice of such suit or proceeding; whereupon the provider shall provide a defense to such suit, including any appellate proceedings brought in connection therewith, and pay any settlement, costs and judgments that may be rendered against the County by reason of such suit.

(d) If the provider fails to comply with its obligations under Subsection (C) of this Section, after reasonable notice to the provider by the County, the County shall have the right to defend any claims against it and, in addition to being reimbursed for any settlement or judgment that may be rendered against the County, the provider shall reimburse the County's reasonable attorney's fees and all expenses incurred by the County by reason of undertaking the defense of such suit, regardless of whether such suit is successfully defended or settled, or fully adjudicated. If the County is required to defend any such suit because of the provider's failure to do so, the County shall have the right to enter into any settlement as the County may deem in its best interest, without the prior approval of the provider.

6.135.170 Customer service requirements.

A provider shall comply with all customer service requirements specified in NRS 711.620, as amended.

6.135.160 Severability.

If any provision, section, paragraph, sentence, clause, or phrase of this chapter of the code is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter of the code or any part thereof. It is the intent of the county commission in adopting this chapter of the code that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end, all provisions of this chapter of the code are declared to be severable.

6.135.160 Force majeure.

In the event a provider’s performance of any of the terms, conditions or obligations required by this chapter of the code or its certificate of authority is prevented by a cause or event beyond the control of the provider, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof.

PASSED, ADOPTED and APPROVED this _____ day of _____,
2009.

APPROVED:

By _____

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RORY REID, Chairman
Clark County Board of Commissioners

ATTEST:

SHIRLEY B. PARRAGUIRRE
County Clerk

APPROVED AS TO FORM:

MARK E. WOOD Date
Deputy District Attorney