

CITY OF BELLEVUE, KENTUCKY

RESOLUTION NO.: 2018-08-02

RESOLUTION OF THE CITY OF BELLEVUE AUTHORIZING: (1) THE REVOCATION OF THE CITY'S CERTIFIED PARTICIPATION IN THE STATE'S TELECOM DISTRIBUTION FUND ESTABLISHED PURSUANT TO KRS 136.650 *ET SEQ.*; (2) THE REESTABLISHMENT, IMPOSITION AND COLLECTION OF THE CITY'S LOCAL FRANCHISE AND/OR LICENSE FEES CHARGED OR THAT MAY BE CHARGED PROVIDERS FOR UTILIZATION OF THE CITY'S RIGHTS-OF-WAY, AS AUTHORIZED UNDER SECTIONS 163 AND 164 OF THE KENTUCKY CONSTITUTION; AND (3) THE GIVING OF NOTICE OF SUCH REVOCATION AND REESTABLISHMENT, IMPOSITION AND COLLECTION OF FRANCHISE AND/OR LICENSE FEES TO THE KENTUCKY DEPARTMENT OF REVENUE AND TO CABLE AND COMMUNICATIONS SERVICE PROVIDERS.

WHEREAS, the City of Bellevue (the "**City**") had issued a Franchise Agreement providing for the provision of cable television services within the incorporated jurisdiction of the City to: (1) Insight Kentucky Partners II, L.P, a subsidiary of Charter Communications Inc. ("**Insight/Charter**"), ; and (2) Cincinnati Bell Extended Territories LLC, a subsidiary of Cincinnati Bell Inc. ("**Cincinnati Bell**"), (collectively, the "**Franchise Agreements**" and singularly, a "**Franchise Agreement**"), each of which Franchise Agreement includes a provision for the payment of franchise related fees, as the same are specified in KRS 136.650(1)(b); and

WHEREAS, effective January 1, 2006 the Kentucky Legislature enacted laws which: (1) established a state-wide telecommunications tax of 5.4 % on cable television service and other Multi-Channel Programming Distributors ("**MVPD**"), as well as a 1.3% tax on other communications service providers (collectively, the "**State Telecom Tax**"; and (2) prohibited political subdivisions from levying or requiring the payment of any franchise fee or tax on multichannel video programming services or communications service, or collecting any franchise fee or tax from providers or purchasers of multichannel video programming service or communications service; and

WHEREAS, in adopting this legislation, the State agreed to share the proceeds or receipts of the State Telecom Tax with the municipalities from the State's telecom distribution fund through "**hold harmless**" payments or distributions established by the Kentucky Department of Revenue ("**DOR**") pursuant to KRS 136.650(1) and (2) and KRS 136.652(2), which proceeds or receipts were supposed to equal the amount of cable television franchise fees that the City (and other similarly situated municipalities) had received for the 2005 fiscal year; and

WHEREAS, these “*hold harmless*” payments from the State’s telecom distribution fund fell short for the City and other municipalities from the beginning of the Telecom Tax; and

WHEREAS, these “*hold harmless*” payments from the State’s telecom distribution fund also had the effect of freezing the City’s payments at the same level received in 2006, while the State Telecom Tax revenues or receipts received by the State grew significantly by virtue of increasing cable service and communications service rates; and

WHEREAS, On June 15, 2017, the Kentucky Supreme Court in *Kentucky CATV Association Inc. v. City of Florence*, 520 S.W.3d 355, (Ky. 2017) (the “**Telecom Tax Decision**”) confirmed a municipality’s authority to collect franchise fees from utilities, including cable and communications service providers, in exchange for the use of its rights-of-way and, in particular, the Court held that KRS 136.660(1)(a), (b) and (c), which specifically prohibited municipalities from levying franchise fees or taxes on cable and communications service providers for use of their rights-of-way, was unconstitutional and void, as that power was constitutionally granted to local municipalities pursuant to Kentucky Constitution §§ 163 and 164; and

WHEREAS, as a result of the ruling in the Telecom Tax Decision, the City intends to: (a) exercise its right to revoke its certified participation in the State’s telecom distribution fund, and reestablish, impose and collect local cable related franchise fees, as per the Franchise Agreements; (b) reestablish the City’s right to negotiate, establish, impose and collect franchise fees, license fees and such other fees or taxes on cable service and communications service providers (as such terms are defined in KRS 136.602(1), (2) and (12)), currently utilizing, or in the future making use of, the City’s streets and/or rights-of-way; and (c) provide all necessary notices and to take all actions necessary and appropriate to effectuate the intention and purposes of this Resolution; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLEVUE, KENTUCKY, AS FOLLOWS:

Section 1

Based upon the foregoing recitals and acting in accordance with (1) the ruling of the Kentucky Supreme Court in the Telecom Tax Decision, (2) guidance provided by the DOR, and (3) relevant provisions of KRS Chapter 136, including KRS 136.660(4), the City Council authorizes, approves, confirms, and directs the following actions, initiatives, or undertakings:

1. **Revocation of Certified Participation.** The City is hereby authorized and directed to revoke its certified participation in the State’s telecom distribution fund (as such fund and distribution payments are specified in KRS 136.650(1) and (2) and KRS 136.652(2)). This revocation shall become effective, as soon as reasonably possible and at a date to be determined by Campbell County Cable Board, the Mayor, and/or the City Administrator (the “**Effective Date**”), while taking into consideration the 90-day advance written notice requested by the DOR in the DOR Directive and any coordination and cooperation between the affected cable and communications service providers and the DOR necessarily required and/or convenient for the implementation or activation of the revocation and the

imposition, establishment, reestablishment, and collection of the franchise fees, license fees and/or taxes specified in Paragraph 2 of Section 1 of this Resolution.

2. Cable Services. As of the Effective Date and in accordance with KRS 136.660(4), the City will impose or otherwise reestablish and collect the cable related franchise fees set forth in the existing Franchise Agreements with Insight/Charter and Cincinnati Bell. The imposition, reestablishment and collection of these fees will continue with respect to (a) any renewal, extension, replacement, or other continuation of the aforesaid Franchise Agreements and (b) any future competitive franchise agreement(s) providing for cable services. Payments of cable related franchise fees will be made on a quarterly basis and in the manner provided in the Franchise Agreements and the Interlocal Cooperation Agreement (hereinafter defined).
3. Communications Services. As of the Effective Date and at all times thereafter, and in accordance with KRS 136.660(4), the City through the Campbell County Cable Board, will assert the City's right to: (a) impose and/or establish and collect franchise fees, license fees or other fees and taxes on communications service providers (as such terms are defined in KRS 136.602(2) and (12)) currently utilizing, or in the future making use of, the City's streets and/or rights-of-way; and (b) establish and impose, with respect to the utilization of or presence in the rights-of-way by communications service providers, terms and conditions of a franchise, a license agreement, and/or an ordinance.
4. Notice to Cable Providers. As soon as practical and not later than the date of the official notice to be given to the DOR pursuant to Paragraph 1 above, the City shall notify Insight/Charter and Cincinnati Bell of the City's intention to revoke its certified participation in the aforesaid State telecom distribution fund, and to reestablish and reimpose the cable related franchise fee provisions contained in their respective Franchise Agreements.

Section 2

That the Mayor, or his designee, is hereby authorized and directed to do or cause to be done all such acts and things as may be necessary or advisable or convenient and appropriate or proper to implement and/or put in place the resolves, actions, notices, and/or directives set forth in Section 1 of this Resolution, including, without limitation, the reservation of any rights or privileges arising under KRS Chapter 136.600 *et seq.* and federal law respecting cable and communications services, and to execute and deliver, or cause to be executed and delivered, all documents, instruments, agreements, notices and communications that may be reasonably required of this City in connection with or incidental to the consummation and carrying into effect the resolves, actions, initiatives, notices and/or directives set forth in Section 1 of this Resolution.

Section 3

That the Mayor, or his designee, in connection with their duties or obligations set forth in Section 2 of this Resolution and in carrying into effect the resolves, actions, initiatives, notices and/or directives set forth in Sections 1 and 2 of this Resolution, is/are hereby authorized to employ

the services and assistance of the Campbell County Cable Board, a government agency formed by the Member Campbell County cities and the Campbell County Fiscal Court, pursuant to the Interlocal Cooperation Act of Kentucky, who is also authorized, under the terms and conditions of the Franchise Agreements and the Interlocal Cooperation Agreement executed by the member Campbell County cities and the Campbell County Fiscal Court, to act for and on behalf of this City in matters pertaining to cable television service.

Section 4

The provisions of this Resolution are severable; and the invalidity of any provision of this Resolution shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect, so long as they remain valid in the absence of those provisions determined to be invalid.

Section 5

This Resolution shall take effect and be in full force when adopted or passed by this Council.

PASSED, ADOPTED, AND APPROVED by the City Council of the City of Bellevue, Kentucky this ____ day of _____, 2018.

By: _____

Name: _____
EDWARD RIEHL, MAYOR

ATTEST: _____

Name: _____
MARY SCOTT, CITY CLERK

I, the undersigned being duly appointed, qualified and acting as the Clerk of the City of Bellevue, Kentucky, here by certify that the foregoing Resolution No. _____ is a true, correct, and accurate copy as duly and lawfully passed, adopted, and approved by the City Council on the ____ day of _____, 2018.

Clerk