

7. Customer Service.

7.1 AT&T shall comply with customer service requirements consistent with 47 C.F.R. § 76.309(c), as in effect as of the Effective Date and as hereafter amended, for its IP-enabled Video Services as described below.

7.2 AT&T will maintain a local, toll-free or collect call telephone access line that will be available to subscribers to its IP-enabled Video Services 24 hours a day, seven days a week. Trained AT&T representatives will be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

7.3 Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. AT&T will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards described in this Section unless an historical record of complaints indicates a clear failure to comply.

7.4 Under normal operating conditions, an AT&T customer will receive a busy signal less than three (3) percent of the time.

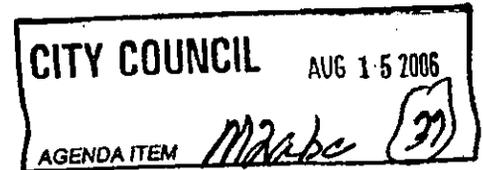
7.5 AT&T customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

7.6 Under normal operating conditions, each of the following four standards related to installations, outages and service calls will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

a. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

b. Excluding conditions beyond the control of AT&T, AT&T will begin working on "service interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. AT&T must begin actions to correct other service problems the next business day after notification of the service problem.

c. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (AT&T may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)



d. AT&T may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

e. If an AT&T representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.

7.7 Refund checks will be issued promptly, but no later than either (i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (ii) the return of the equipment supplied by AT&T if service is terminated.

7.8 Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

7.9 The following definitions shall apply to the terms listed below, as such terms are used in this Section 7:

a. "Normal business hours" means those hours during which most similar businesses in the CITY are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

b. "Normal operating conditions" means those service conditions that are within the control of AT&T. Those conditions that are not within the control of AT&T include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions that are ordinarily within the control of AT&T include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the IP Network.

c. "Service interruption" means the loss of picture or sound on one or more IP-enabled Video Service channels.

**8. Termination and Revocation of this Agreement.**

8.1 A verified and continuing pattern of noncompliance with the customer service standards set forth above shall constitute a material breach of this Agreement.

8.2 In addition to all other rights, powers, or remedies pertaining to the CITY in connection with this Agreement or otherwise, the CITY reserves the right to terminate this Agreement and all rights and privileges of AT&T's under this Agreement if any of the following events shall occur and not be cured in a timely manner.

a. Substantial failure on more than one occasion to comply with any material provision of this Agreement or any other local, state, or federal law or regulation of a nature such as to prevent AT&T from carrying out the terms of this Agreement for a period of more than one (1) month.

b. AT&T does not pay any portion of the fees, payments, or contributions required under this Agreement, when due and payable.

c. Any material representation or warranty made by AT&T in connection with this Agreement shall be false in any material respect when made.

d. AT&T shall repeatedly violate any other material covenant, agreement or condition of this Agreement and such violation shall not have been corrected, within such reasonable period of time to cure as granted to AT&T by the CITY pursuant to the provisions of this Section.

e. AT&T attempts to evade any of the provisions of this Agreement or practices any fraud or deceit upon the CITY or upon subscribers.

8.3 If the CITY believes that AT&T has failed to perform any obligations under this Agreement or has failed to perform in a timely manner, the CITY shall notify AT&T in writing, stating with reasonable specificity the nature of the alleged default. AT&T shall have thirty (30) days from the receipt of such notice to cure the default. If there is a finding that any fees, which AT&T extends to and collects from its consumers, may not be collected from its consumers, then AT&T shall be entitled to terminate this Agreement effective immediately.

9. Service Area.

9.1 AT&T, subject to the terms herein, will provide video services to all residences located within the Service Area (as of the Effective Date) within eighteen (18) months of the Effective Date. In an area annexed to the CITY to which AT&T provides service after the Effective Date ("Annexed Service Area"), AT&T will, subject to the terms herein, offer video services to all residences in the Annexed Service Area within two (2) years of the effective date of the annexation. Upon a showing of legal, technical or other valid causes that make it impossible or unreasonable for the services provided for in this Section to be furnished by AT&T, the City Manager may give time extensions. Any such extensions shall be in writing and in response to a request in writing by AT&T with detailed justification.

a. AT&T will not deny access to its IP-enabled Video Services within the CITY because of the income or minority status of the residents within the CITY. AT&T may, subject to the terms herein, satisfy its nondiscrimination, Service Area and Annexed Service Area obligations through the use of direct-to-home satellite service or another alternative technology that provides comparable content, service, and functionality.

b. AT&T's construction, operation, maintenance, repair and upgrade of its facilities within the Service Area and any Annexed Service Area is subject to the following technical and operational limitations: (A) for periods of Force Majeure; (B) for

periods of delay caused by the CITY; (C) for periods of delay resulting from AT&T's inability to obtain authority to access ROW in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that AT&T cannot access under reasonable terms and conditions after good faith negotiation, as determined by AT&T; (F) in areas, developments or buildings where AT&T is unable to provide video service for technical reasons or that require non-standard facilities that are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet average density (average density is equal to or greater than thirty (30) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active network trunk or feeder line) and other requirements.

10. **Emergency Message.** AT&T shall carry all federal, state and local alerts provided over the "Federal Emergency Alert System" through AT&T IP-enabled Video Services in the event of a public safety emergency, which at a minimum will include the concurrent rebroadcast of local broadcast channels.

11. **Obligations of the CITY.** During the term of this Agreement, the CITY will not attempt to nor subject the provision of AT&T's IP-enabled Video Services over the IP Network to regulation under a cable television franchise ordinance or similar ordinance, except under Title 9, Chapter 1, Article D of the Municipal Code of the CITY. In addition:

a. The CITY agrees to subject the construction and installation of the IP Network to the same process and review as it subjects the installation and construction of AT&T's existing telecommunications infrastructure.

b. The CITY agrees not to unreasonably block, restrict, or limit the construction and installation of the IP Network.

c. The CITY agrees to process any and all applicable permits for the installation, construction, maintenance, repair, removal, and other activities associated with the IP Network in a timely manner.

12. **Indemnification.**

12.1 AT&T shall be subject to the indemnification provisions of Section 9-1D-13 Title 9, Chapter 1, Article D of the Municipal Code of the CITY.

12.2 AT&T agrees to indemnify, defend and hold harmless the CITY, its officers, agents and employees in accordance with the provisions of Appendix B, which is made a part of this Agreement. In the event that any incumbent cable service provider(s) or consumer of the service in the CITY files a claim against the CITY in state or federal court arising out of the fact that the CITY entered into this Agreement, challenging the lawfulness of this Agreement and/or, in the case of a suit brought by an incumbent cable service provider, if said cable service provider seeks to modify its obligations under its existing cable franchise on the basis that the CITY entered into this Agreement, AT&T agrees to pay the full amount of any final judgment or award issued by a court against the CITY as a result of entering into this Agreement or any

*M. J. [Signature]*

settlement negotiated by AT&T with respect to the claim and all other expenses related to the resolution of the claim. AT&T's obligation to pay excludes an incumbent cable service provider's or consumer's costs, interests and attorneys' fees in bringing such action or claim unless otherwise agreed to by AT&T in any settlement agreement.

12.3 With respect to AT&T's indemnity obligations set forth above, AT&T shall provide the defense of any claims brought against the CITY by selecting counsel of AT&T's choice to defend the claim, subject to the consent of the CITY, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the CITY from cooperating with AT&T and participating in the defense of any litigation by its own counsel at its own cost and expense, provided, however, that after consultation with the CITY, AT&T shall have the right to defend, settle or compromise any claim or action arising hereunder, and AT&T shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the CITY does not consent to the terms of any settlement or compromise fully and completely releasing the CITY from all liability, then AT&T shall not settle the claim or action, but its obligation to indemnify the CITY shall in no event exceed the amount of such settlement.

12.4 The CITY shall hold AT&T harmless and shall be responsible for damages, liability or claims resulting from the negligence or willful misconduct of the CITY.

12.5 The CITY shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by the CITY for which the CITY is legally responsible, subject to any and all defenses and limitations of liability provided by law. AT&T shall not be required to indemnify the CITY for acts of the CITY that constitute willful misconduct or negligence on the part of the CITY, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

### 13. Insurance.

13.1 General Liability. AT&T shall maintain, through the term of this Agreement, adequate proof of self-insurance or Commercial General Liability Insurance using carriers licensed in the State of Illinois and maintaining a Best rating of at least A-IV. Such insurance shall include coverage for premises and operations, underground, collapse and explosion, and products and completed operations, and shall name as Additional Insureds the CITY, and its officers, boards, commissions, elected and appointed officials, agents and employees. Such insurance shall be in the amount of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate covering bodily injury, including death, and property damage. If AT&T employs independent contractors, AT&T shall insure that these contractors maintain appropriate levels of insurance and that the CITY is named as an additional insured under each policy.

13.2 Automobile Liability. AT&T shall maintain during the term of this Agreement Comprehensive Automobile Liability insurance with a limit of Three Million Dollars (\$3,000,000) per occurrence combined single limit for bodily injury, including death, and property damage covering owned, non-owned and hired automobiles used in conjunction with its operations under this Agreement. Such insurance shall name the CITY as an Additional Insured.

13.3 Workers' Compensation. AT&T shall maintain, during the course of this Agreement, Workers' Compensation coverage as prescribed by the laws of the State of Illinois and Employer's Liability coverage in an amount of not less than One Million Dollars (\$1,000,000).

13.4 Evidence of Insurance. On or prior to the Effective Date of this Agreement, AT&T shall furnish to the City Manager of the CITY Certificates of Insurance upon each policy renewal evidencing all of the aforementioned types and limits of insurance to be in effect.

13.5 Self-Insurance. AT&T maintains the option, at the Effective Date of this Agreement and at any time throughout the term of this Agreement, to self-insure any of the aforementioned types and/or limits of insurance coverage and shall provide the CITY with a statement certifying such self-insurance.

13.6 Maintenance of Insurance Policies. The liability insurance policies required under this Section shall be maintained by AT&T through the term of this Agreement. Each policy of insurance shall provide that it not be cancelled nor materially changed without sixty (60) days' written notice to the City Manager of the CITY.

13.7 Alteration of Minimum Limits. The CITY may, following the Effective Date, increase the minimum limitation(s) of the self-insurance or insurance policy(ies) required under this Section by a percentage not to exceed the percentage increase in the Consumer Price Index for the Chicago Metropolitan Statistical Area as of the Effective Date.

13.8 Umbrella Insurance. Should AT&T elect to maintain policies of umbrella insurance, the CITY shall be named as an additional insured under those policies.

13.9 No Limit of Liability. The legal liability of CITY to AT&T and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section, shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

14. Breach of Agreement. Should either Party claim that a breach of any part of this Agreement has occurred, that Party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other Party shall cure such breach within thirty (30) days.

15. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties and use of non-binding mediation when such discussions have failed. Each Party shall bear its own costs of mediation including attorney fees.

16. Modification. This Agreement may be amended or modified only by a written instrument executed by both Parties.

17. Entire Agreement. This Agreement constitutes the entire agreement between the CITY and AT&T with respect to the subject matter contained herein and supersedes all prior or

contemporaneous discussions, agreements, and/or representations of or between the CITY and AT&T regarding the subject matter hereof.

18. **Waiver.** Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

19. **Notices.** Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to the CITY:

City of Naperville  
400 South Eagle Street  
Naperville, Illinois 60568-7020  
Attn: \_\_\_\_\_

If to AT&T:

AT&T Illinois  
225 West Randolph Street  
Chicago, Illinois 60606  
Attn: \_\_\_\_\_

With a Copy to:

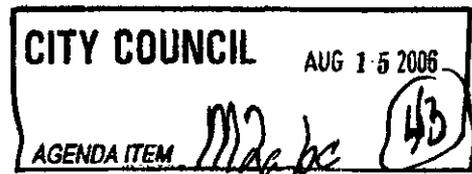
AT&T Illinois  
225 West Randolph Street  
Chicago, Illinois 60606  
Attn: Senior Vice President and General Counsel

20. **Miscellaneous.**

20.1 AT&T and the CITY each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

20.2 The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

20.3 AT&T and the CITY shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.



20.4 Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement, unless otherwise expressly set forth herein.

20.5 To the extent the provisions of this Agreement conflict with any of the provisions of Title 9, Chapter 1, Article D of the Municipal Code, the provisions of this Agreement shall control.

21. **Binding Effect.** This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

22. **Counterpart Execution.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

23. **Books and Records; CITY's Right of Inspection.**

23.1 AT&T shall maintain books of account and records adequate to enable AT&T to demonstrate that it is in compliance with the obligation to pay the fees described in Section 5.1 and Section 6.2 of this Agreement with respect to IP-enabled Video Services. AT&T shall not be required to maintain books and records for compliance purposes under this Agreement for a period longer than five (5) years.

23.2 Upon thirty (30) days' notice to AT&T, the CITY or its designated representative shall have the right to examine books and records directly related to AT&T's compliance with its obligations under this Agreement, including the fees described in Section 5.1 and Section 6.2 of this Agreement. The CITY shall have no right to examine any aspect of the books and records that does not directly relate to AT&T's obligations under this Agreement.

23.3 Notwithstanding any other provision of this Agreement, AT&T shall not be required to disclose information that it reasonably deems to be confidential or proprietary, nor disclose any of its or an affiliate's books and records not directly related to AT&T's compliance with its obligations under this Agreement. The CITY agrees to treat any information disclosed by AT&T and clearly marked by AT&T as confidential and/or proprietary in a manner that protects such confidential and proprietary information and to limit disclosure, to the extent permitted by law, to employees, representatives and agents of the CITY that have a need to know in order to enforce this Agreement.

23.4 No more than once per year, the CITY may perform reasonable audits of AT&T's calculations of the fees paid to the CITY during the preceding twelve (12)-month period only. All records reasonably necessary for the audits shall be made available by AT&T at the location where the records are kept in the ordinary course of business. The Parties shall each be responsible for their respective costs of the audits. Any additional amount due verified by the

Parties shall be paid within thirty (30) days of the CITY's submission of an invoice for the sum. If the sum exceeds five percent (5%) of the total fees which an audit determines should have been paid for the twelve (12)-month period, AT&T shall pay the CITY's reasonable costs of the audit.

23.5 Any claims by the CITY that fees have not been paid and any claims for refunds or other corrections to the remittance of AT&T, shall be made within three (3) years and forty-five (45) days of the end of the quarter for which compensation is remitted.

24. **Annual Meeting.** AT&T shall participate upon written request of the CITY in an annual meeting to be held each calendar year with representatives of the CITY to discuss AT&T's provision of IP-enabled Video Services within the CITY and other matters related to AT&T's obligations under this Agreement.

25. **Compliance with Laws.** Each Party shall comply with all applicable federal, state and local laws during the term of this Agreement, to the extent such laws apply to such Party and to its obligations under this Agreement.

26. **Furnishing of Information.** Each Party shall cooperate to make available or cause to be made available information requested by the other Party relating to this Agreement and each Party's obligations under this Agreement to the extent such information may be requested in writing by a Party and is in the possession or the control of the other Party. Any disputes between the Parties as to any information requested pursuant to this Section shall be subject to the dispute resolution process described in Section 15 of this Agreement. AT&T shall provide the CITY with information describing the location of AT&T's IP-video cross-connect boxes in the CITY. The Parties agree that such information is confidential, shall be exempt from inspection and copying under the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*, pursuant to the exemption provided for under 5 ILCS 140/7(1)(mm) and any other present or future exemptions applicable to such information and shall not be disclosed by the CITY to any third party without the written consent of AT&T.

27. **Taxes.** Nothing contained in this Agreement shall be construed to exempt AT&T from any tax, levy or assessment which is or may later be authorized by law; provided any tax, levy or assessment on any AT&T product is equally applicable to all other providers of comparable Competitive Video Service or cable service in the CITY, provided, however, that AT&T's payment of the fee described in Section 5.1 of this Agreement shall be reduced dollar for dollar by the amount of any such tax levied by the CITY and required to be paid by or through AT&T to the CITY with respect to Competitive Video Service.

28. **Privacy.** AT&T shall comply with all applicable federal and state privacy laws related to its IP-enabled Video Services.

29. **Compliance with this Agreement.** AT&T shall not be excused from complying with any of the terms, conditions, and provisions of this Agreement by any failure of the CITY upon one or more occasions to insist upon or to seek compliance with any such terms, conditions or provisions.

30. **Employment.** AT&T hereby agrees that it shall not refuse to hire or employ, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment, because of age, race, creed, color, national origin, handicap, religious faith or sex.

31. **Most Favored Nations Clause.** If AT&T enters into a Competitive Video Service Agreement with another municipality in the State of Illinois (other than the City of Chicago) and the fee percentage for the percentage fee payable under Section 5 of this Agreement is greater than the franchise fee percentage applicable to the incumbent cable service provider in such municipality, AT&T shall increase the percentage fee payable under Section 5 of this Agreement by the difference between the applicable fee percentage in AT&T's agreement with such municipality and the franchise fee percentage applicable to the incumbent cable service provider in such municipality. If AT&T enters into a Competitive Video Service Agreement with another municipality in the State of Illinois (other than the City of Chicago) and the fee percentage for the percentage fee payable under Section 6 of this Agreement is greater than 1%, AT&T shall increase the percentage fee payable under Section 6 of this Agreement by the difference between the applicable fee percentage in AT&T's agreement with such municipality and 1%.

If the CITY modifies its existing Cable Franchise Agreement with the incumbent cable service provider and the fee percentage for the percentage fee payable under Section 5 of this Agreement is greater than the franchise fee percentage applicable to the incumbent cable service provider in the CITY, the CITY shall decrease the percentage fee payable under Section 5 of this Agreement by the difference between the applicable fee percentage in AT&T's agreement with the CITY and the franchise fee percentage applicable to the incumbent cable service provider in the CITY.

32. **Choice of Laws.** This Agreement shall be construed and interpreted according to the laws of the State of Illinois (without applying the state's conflict of law principles). Venue with respect to state law claims arising under this Agreement shall be placed in the Circuit Court Of The Eighteenth Judicial Circuit, DuPage County, Illinois.

**CITY COUNCIL**      AUG 15 2006  
AGENDA ITEM *M2abc* *(46)*

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the Effective Date.

**AT&T ILLINOIS**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF NAPERVILLE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**City Of Naperville Comment on MB Docket No. 06-189  
Exhibit C-1**

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