

ORDINANCE NO. 01- 05

*Revised*  
*11-13-01*  
*Telecommunication*

**AN ORDINANCE TO PROVIDE FOR THE GRANTING OF ONE OR MORE NONEXCLUSIVE FRANCHISES AND REVOCABLE LICENSES FOR TELECOMMUNICATIONS SERVICES WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF FORT GAINES; TO PROVIDE FOR THE PROCESS UNDER WHICH SAID GRANTING OF FRANCHISES AND REVOCABLE LICENSES SHALL TAKE PLACE; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.**

The City Council of the City of Fort Gaines hereby ordains that:

**WHEREAS**, the Mayor and City Council have determined that it is in the best interests of and consistent with the convenience and necessity of the City to grant Franchises or Revocable Licenses (as hereinafter defined) to companies desiring to provide Telecommunications Services or Private Telecommunications Services (as hereinafter defined) within the territorial boundaries of the City and on the terms and conditions herein, and as may be further described in each franchise or license agreement; and

**WHEREAS**, the City has the authority to regulate the occupation and use of the Streets (as hereinafter defined) to the maximum extent permitted under applicable law, including, but not limited to, Section 253 of the Telecommunications Act of 1996, 47 U.S.C. § 253 ("1996 Act"); and

**WHEREAS**, in an effort to comply with applicable law, including the 1996 Act, the City has determined that a Person (as hereinafter defined) must obtain separate Franchises to provide Cable Services and Telecommunications Services; and

**WHEREAS**, the City desires to structure and implement a fair and orderly process for the grant of Franchises and Revocable Licenses (and renewals of such Franchises or Revocable Licenses) to occupy and use the Streets to provide Telecommunications Services or Private Telecommunications Services in the City, including the negotiation of franchise and license provisions to protect the public interest, to the maximum extent permitted by applicable law, including the 1996 Act; and

**WHEREAS**, the City intends to exercise, to the fullest extent permitted by applicable law, including the 1996 Act, its authority with respect to the regulation of the occupation and use of the Streets in connection with the provision of Telecommunications Services and Private Telecommunications Services; and

WHEREAS, Section 253 prohibits a local government from imposing a requirement that "may prohibit or have the effect of prohibiting the ability of any entity to provide interest or intrastate telecommunications service," and

WHEREAS, "telecommunications service" as defined by 47 U.S.C. § 153(46) of the Communications Act of 1934 means "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used;" and

WHEREAS, Private Telecommunications Service as defined in this ordinance does not include the provision of "telecommunications service" as defined by federal law, and, thus, Persons providing Private Telecommunications Services are not entitled to the protections of Section 253 of the Communications Act; and

WHEREAS, Facility Service as defined in this ordinance does not include the provision of "telecommunications service" as defined by federal law, and, thus, Persons providing Facility Services are not entitled to the protections of Section 253 of the Communications Act;

**NOW, THEREFORE, BE IT ORDAINED, that:**

**Section 1.** The Code of Ordinances of the City of Fort Gaines is hereby amended by creating a new Chapter 80, Articles 1-3, entitled "Telecommunications Services Franchises and Licenses," and shall hereafter read as follows:

## **Article 1 DEFINITIONS**

### **Section 1.1 Definitions.**

For purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number.

1.1.01 "Affiliated Person" means each Person who falls into one or more of the following categories: (1) each Person having, directly or indirectly, a Controlling Interest in the applicant; (2) each Person in which the applicant has, directly or indirectly, a Controlling Interest; (3) each officer, director, joint venturer, or joint venturer partner, of the applicant; and (4) each Person, directly or indirectly, controlling, controlled by, or under common Control with, the applicant; provided that "Affiliated Person" shall in no event mean the City or any creditor of the applicant solely by virtue of its status as a creditor and which is not otherwise an "Affiliated