

City of Barnesville Municipal Telephone Broadband Internet Access Services

ACCEPTABLE USE POLICY

Last Modified: 12/14/2021

1. Acceptance of this Policy

Welcome to City of Barnesville Municipal Telephone Broadband Internet ("Company", "we" or "us"). The following Acceptable Use Policy ("Acceptable Use Policy" or "AUP"), governs your access to and use of the high-speed Internet, IP/Ethernet, IP video and/or other data, video, or voice communications service, including any content, functionality and services offered on or through Barnesville Municipal Telephone Broadband Internet services. (the "service"). The terms and provisions of this AUP do not limit any rights to suspend or terminate service that Company otherwise possesses under your Service Contract, if any, our Standard Terms and Conditions of Service, our service guide and rate schedule, or applicable law.

Please read the Acceptable Use Policy carefully before you start to use the service. **By using the service, you accept and agree to be bound and abide by this Acceptable Use Policy and our Privacy Policy.** If you do not agree to this Acceptable Use Policy, you shall not access or use the service.

2. Applicability

This AUP applies to you as a customer and to any other person, authorized or unauthorized, using your service (collectively "User"). For purposes of this AUP, your use includes, and you are responsible for, the use of all Users who access service through your account. It is your responsibility to take precautions to limit access to service to approved Users.

By using the service, you certify that you are at least 18 years of age, or older, reside in the United States or any of its territories or possessions., and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you shall not access or use the service.

The Company permits use of the service by minors, subject, however, to your supervision and monitoring. You are solely responsible for actions taken by minors accessing the service through your account.

3. Changes to the Acceptable Use Policy

We may revise and update the Acceptable Use Policy from time to time in our sole discretion. All changes are effective immediately when we post them on our website at www.barnesvillemn.com, and apply to all access to and use of the service thereafter. However, any changes to the dispute resolution provisions set forth in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice on or prior to the date the change is posted on the service.

Your continued use of the service following the posting of a revised Acceptable Use Policy means that you accept and agree to the changes.

4. Accessing the Service and Account Security

We reserve the right to withdraw or amend this service, and any service or material we provide to the service, in our sole discretion, without notice. We will not be liable if, for any reason, all or any part of the service is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the service, or the entire service.

You are responsible for:

- Making all arrangements necessary for you to have access to the service.
- Ensuring that all persons who access the service through your internet connection are aware of this AUP and comply with its terms and conditions.
- Ensuring all information provided to register the service is correct, current and complete.
- Treat all usernames, passwords or other security information confidential, and agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security.
- Ensure that you exit from your account at the end of each session.

You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of this AUP.

5. Prohibited Uses and Activities

This AUP identifies certain uses and activities that Company considers to be unlawful or abusive and therefore strictly prohibited. The examples listed herein are non-exclusive and are provided solely for guidance to customers. Company, at its sole discretion, reserves the right to discontinue service for any unlawful, harmful, infringing, offensive, or interfering use. In the event of uncertainty as to whether any contemplated use or activity is permitted, please contact a customer service representative for assistance. In addition to any other illegal or abusive uses or activities, the following constitute violations of this AUP:

- **Unlawful Use:** Using service in any manner that violates local, state or federal law, treaty, court order, ordinance, regulation, or administrative rule, including, without limitation, using service to transmit any material (by e-mail or otherwise) whose transmission is unlawful under any local, state or federal law applicable to such transmission.
- **Copyright or Trademark Infringement:** Using service to transmit any material (by e-mail, file sharing software, direct download, FTP sites or otherwise) that infringes, misappropriates, or otherwise violates any copyright, trademark, patent, trade secret, trade dress, right of privacy, right of publicity, moral rights, or other proprietary rights of Company or any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, the digitization and distribution of copyrighted video or music, and the unauthorized transmittal of copyrighted software.
- **Violation of the Digital Millennium Copyright Act (DMCA):** Using service to circumvent any technological measures used by copyright owners to protect their works or using service to produce or disseminate technology primarily designed or produced to circumvent DMCA protections, that have only limited commercially significant purpose or use other than to circumvent; or that are marketed for use in circumventing DMCA protections. For additional information concerning your rights and responsibilities in connection with reporting or responding to claims of copyright infringement, see *Reporting Claims of Copyright Infringement*, below.
- **Harm to Minors:** Using service to harm, or attempt to harm, exploit, or attempt to exploit minors in any way; including but not limited to activities involving child pornography or the sexual exploitation of children.
- **Threats:** Using service to transmit any material (by e-mail or otherwise) that illegally threatens or encourages bodily harm or destruction of property.
- **Harassment and Cyberbullying:** Using service to transmit any material (by e-mail or otherwise) that unlawfully harasses another.
- **Fraudulent Activity:** Using service to make fraudulent offers to sell or buy products, items or services, or to advance any type of financial scam such as "pyramid schemes," "Ponzi schemes", unregistered sales of securities, securities fraud and "chain letters."
- **Forgery or Impersonation:** Adding, removing or modifying identifying network, message or article header information in an effort to deceive or mislead is prohibited while using service. Attempting to impersonate any person by using forged headers or other identifying information is prohibited.
- **Unsolicited Commercial E-mail/Unsolicited Bulk E-mail:** Using service to transmit any unsolicited commercial e-mail or unsolicited bulk e-mail without our prior written consent. Activities that have the effect of facilitating unsolicited commercial e-mail or unsolicited bulk e-mail, whether or not that e-mail is commercial in nature, are prohibited. Using deliberately misleading headers in e-mails sent to multiple parties is prohibited.
- **Intentional Network Disruptions, Abusive Activity and Bots:** Using service for any activity that adversely affects the ability of other people or systems to use service or third-party Internet-based resources. This specifically but without limitation includes excessive consumption of network or system resources whether intentional or unintentional. This also includes "denial of service" and "distributed denial-of-service" (DoS) attacks against another network host or individual user. Interference with or disruption of other network users, network services or network equipment is prohibited. The transmission of viruses, malware, or engaging in "mail bombing," "chat flooding," cybersquatting, and similar unlawful behavior is also prohibited. Attempting to circumvent user authentication or security of any host, network, or account on Company's systems or the Internet at large ("cracking"). This includes scanning or probing ports without the consent of the owner of the machine being scanned. Using any robot, spider or other automatic device, process or means to access the service for any purpose, including monitoring or copying any of the material on the service. Introduce any Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- **Unauthorized Access:** Using service to access, or to attempt to access without authority, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Company's or a third party's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in disruption of service or the corruption or loss of data. This includes unauthorized monitoring, scanning, or probing of the Company's or any third party's network or system and hacking, attacking, breaching, or circumventing the security of any host, network, server, personal computer, network access, software or data without express authorization of the owner.
- **Collection of Personal Data:** Using service to collect, or attempt to collect, personal information about third parties without their knowledge or consent in violation of applicable state or federal law.

6. Network Testing

In certain geographic service areas where the Company receives certain types of federal high-cost universal service support, we may be required by the FCC to measure and collect information concerning the speed and latency of broadband services provided to randomly-selected subscribers. Pursuant to applicable FCC guidelines, any required testing would be accomplished by using existing network management systems and tools. The FCC has adopted requirements regarding when tests would begin, when exactly we may perform the tests, and the number of active subscriber locations we would be required to test. Once testing begins, test results must be reported and certified to the Universal Service Administrative Company (USAC) and State Commission on an annual basis. As it relates to randomly-selected subscribers, this required performance testing is in addition to the automatic testing we may do to measure or monitor performance and improve our service levels generally.

7. Reporting Claims of Copyright Infringement

We take claims of copyright infringement seriously. We will respond to notices of alleged copyright infringement that comply with applicable law. If you believe a User of this service has infringed your copyright, you may report the alleged violation by submitting notification to our Copyright Agent that satisfies the requirements of the DMCA (designated below).

Upon Company's receipt of a satisfactory notice of claimed infringement for these works, Company will respond expeditiously to either directly or indirectly (i) remove the allegedly infringing work(s) stored on the service or the Personal Web Features or (ii) disable access to the work(s). Company will also notify the affected customer or user of the service of the removal or disabling of access to the work(s).

In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ("**DMCA**"), the notice (the "**DMCA Notice**") must include substantially the following:

- Your physical or electronic signature.
- Identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works, a representative list of such works.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow us to locate that material.
- Adequate information by which we can contact you (including your name, postal address, telephone number and, if available, e-mail address).
- A statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent or the law.
- A statement that the information in the written notice is accurate.
- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

Our designated Copyright Agent to receive DMCA Notices is:

Guy Swenson
tecmanager@barnesvillemn.com
218-354-2292

City of Barnesville
PO Box 550
102 Front St. N.
Barnesville, MN 56514

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective.

Copyright owners may use their own notification of claimed infringement form that satisfies the requirements of Section 512(c)(3) of the U.S. Copyright Act. Under the DMCA, anyone who knowingly makes misrepresentations regarding alleged copyright infringement may be liable to Company, the alleged infringer, and the affected copyright owner for any damages (including costs and fees) incurred in connection with the removal, blocking, or replacement of allegedly infringing material under Section 512(f) of the DMCA.

Counter-Notification Procedures

If you believe that material you placed on the service was removed or access to it was disabled by mistake or misidentification, you may file a counter-notification with us (a "**Counter-Notice**") by submitting written notification to our Copyright Agent (identified above). Pursuant to the DMCA, the Counter-Notice must include substantially the following:

- Your physical or electronic signature.
- An identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access disabled.
- Adequate information by which we can contact you (including your name, postal address, telephone number and, if available, e-mail address).
- A statement under penalty of perjury by you that you have a good faith belief that the material identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled.
- A statement that you will consent to the jurisdiction of the Federal District Court for Minnesota and that you will accept service from the person (or an agent of that person) who provided the DMCA Notice.

Upon receipt of a Counter Notice, Company shall promptly provide the complaining party with a copy of the Counter-Notice and inform the party we will replace the removed material or cease disabling access to it within 10 business days. The DMCA allows us to restore the removed content no less than 10, but not more than 14 business days after receipt of the Counter-Notice, if the party filing the original DMCA Notice does not file a court action against you.

Please be aware that if you knowingly materially misrepresent that material or activity was removed or disabled by mistake or misidentification, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

8. Enforcement and Notice

It is our policy to disable and/or terminate the accounts of users who violate the guidelines and terms of this AUP, including those who repeatedly infringe on another's proprietary interests, as determined in our sole and absolute discretion.

We reserve the right to act immediately and without notice to suspend or terminate your service in response to a court order or government notice that certain conduct must be stopped or when we reasonably determine that the conduct may: (1) expose us to sanctions, prosecution, civil action or any other liability, (2) cause harm to or interfere with the integrity or normal operations of our network or networks with which we are interconnected, (3) interfere with another of our customer's use of the service, (4) violate any applicable law, rule, or regulation, (5) present an imminent risk of harm to us or our customers, or (6) violates the terms of this AUP.

9. Trademarks

The Company name, the terms, the Company logo and all related names, logos, product and service names, designs and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs and slogans on this service are the trademarks of their respective owners.

10. User Contributions

The service may contain message boards, chat rooms, personal web pages or profiles, forums, bulletin boards, and other interactive features (collectively, "**Interactive Services**") that allow users to post, submit, publish, display or transmit to other users or other persons (hereinafter, "**post**") content or materials (collectively, "**User Contributions**") on or through the service. All User Contributions must comply with the Content Standards set out in this AUP.

Any User Contribution you post will be considered non-confidential and non-proprietary. By providing any User Contribution through the service, you grant us and our affiliates and service providers, and each of their and our respective licensees, successors and assigns the right to use, reproduce, modify, perform, display, distribute and otherwise disclose to third parties any such material for any purpose/according to your account settings.

You represent and warrant that:

- You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service providers, and each of their and our respective licensees, successors and assigns.
- All of your User Contributions do and will comply with this AUP.
- You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Company, have fully responsibility for such content, including its legality, reliability, accuracy and appropriateness.
- We are not responsible, or liable to any third party, for the content or accuracy of any User Contributions posted by you or any other user of the service.
- You will be solely responsible for taking prompt corrective action(s) to remedy a violation of this AUP in any of your User Contributions.

We have the right to:

- Remove or refuse to post any User Contributions for any or no reason in our sole discretion.
- Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, if we believe that such User Contribution violates the AUP, the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the service or the public or could create liability for the Company.
- Disclose your identity or other information about you in the event you violate a third party's rights, including their intellectual property rights or their right to privacy.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the service.
- Terminate or suspend your access to all or part of the service for any or no reason, including without limitation any violation of this AUP.

Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the service. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER THE FOREGOING PARTIES OR LAW ENFORCEMENT AUTHORITIES.

We cannot review all material before it is posted on the service, and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party.

11. Network Management Practices.

Current specific network management practices and service descriptions of Company's Network Service can be found at:
<https://www.barnesvillemn.com/wp-content/uploads/2018/06/Barnesville-Network-Management-Policy-6-2018.pdf>

12. Changes to the Service

We may update the content on this service from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the service may be out of date at any given time, and we are under no obligation to update such material.