

Chapter 31
CABLE/VIDEO SERVICE PROVIDER FEE

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31.01 **DEFINITIONS**

In addition to those terms defined in Section 1.02, Definitions, of this Code, the following terms shall have the following meanings in this Chapter:

Cable service: As defined in 47 U.S.C. § 522(6).

Commission: The Illinois Commerce Commission.

Gross revenues: All consideration of any kind or nature, including, without limitation, cash, credits, property and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the Village.

1. Gross revenues shall include the following:
 - A. Recurring charges for cable or video service.
 - B. Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
 - C. Rental of set top boxes and other cable service or video service equipment.
 - D. Service charges related to the provision of cable service or video service, including but not limited to activation, installation and repair charges.
 - E. Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
 - F. Late payment fees or charges, insufficient funds check charges and other charges assessed to recover the costs of collecting delinquent payments.
 - G. A *pro rata* portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any

products or services derived from the operation of the holder's network to provide cable service or video service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

H. Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to paragraph 1-H herein.

I. In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities or applications, the portion of the holder's revenue attributable to the other services, capabilities or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

J. The service provider fee permitted by 220 ILCS 5/21-801(b).

2. Gross revenues do not include any of the following:

A. Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).

B. Refunds, discounts or other price adjustments that reduce the amount of gross revenues received by the holder of the state-issued authorization to the extent the refund, rebate, credit or discount is attributable to cable service or video service.

C. Regardless of whether the services are bundled, packaged or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement and electronic publishing or any other revenues attributed by the holder to non-cable service or non-video service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards or orders.

D. The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.

E. Any tax or fee of general applicability imposed upon the subscribers or the transaction by

a city, state, federal or any other governmental entity and collected by the holder of the state-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.

- F. Security deposits collected from subscribers.
 - G. Amounts paid by subscribers to “home shopping” or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
3. Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

Holder: A person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

Service: The provision of “cable service” or “video service” to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

Service provider fee: The amount paid under this Chapter and 220 ILCS 5/21-801 by the holder to a Village for the service areas within its territorial jurisdiction.

Video service: Video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail or other services offered over the public Internet.

31.02 **CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED**

A. Fee Imposed: A fee is imposed on any holder providing cable service or video service in the Village.

B. Amount of Fee: The amount of the fee imposed shall be 5 percent of the holder’s gross revenues.

C. Notice to the Village: The holder shall notify the Village at least 10 days prior to the date on which the holder begins to offer cable service or video service in the Village.

D. Holder’s Liability: The holder shall be liable for and pay the service provider fee to the

Village. The holder's liability for the fee shall commence on the first day of the calendar month following 30 days after receipt of the ordinance adopting this Chapter by the holder. The ordinance adopting this Chapter shall be sent by first class mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the Village.

E. Payment Date: The payment of the service provider fee shall be due on a quarterly basis, 45 days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.

F. Exemption: The fee imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the Village in which a fee is paid.

G. Credit for Other Payments: An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 31.02-B.

31.03 APPLICABLE PRINCIPLES

All determinations and calculations under this Chapter shall be made pursuant to generally accepted accounting principles.

31.04 NO IMPACT ON OTHER TAXES DUE FROM HOLDER

Nothing contained in this Chapter shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A state-issued authorization shall not affect any requirement of the holder with respect to payment of the Village's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A state-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

31.05 AUDITS OF CABLE/VIDEO SERVICE PROVIDER

A. Audit Requirement: The Village will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit of its books and records. The holder shall comply with the same requirements the Village imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to recompute any amounts determined to be payable under the requirements of the Village. If all local franchises between the Village and cable operator terminate, the audit requirements shall be those adopted by the Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* No acceptance of amounts remitted should be construed as an accord that the amounts are correct.

B. Additional Payments: Any additional amount due after an audit shall be paid within 30

days after the Village's submission of an invoice for the sum.

31.06 **LATE FEES, PAYMENTS**

All fees due and payments which are past due shall be governed by ordinances adopted by the Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*

CERTIFICATION

I, CLAUDETT E. PETERS, do hereby certify that I am the duly appointed, acting and qualified Clerk of the Village of Johnsburg, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the President and Board of Trustees of said Village of Johnsburg.

I do further certify that at a regular meeting of the President and Board of Trustees of the Village of Johnsburg, held on the 3rd day of June, 2008, the foregoing Ordinance entitled *An Ordinance Establishing Chapter 31, Cable/Video Service Provider Fee, in the Village of Johnsburg Municipal Code*, was duly passed by the President and Board of Trustees of the Village of Johnsburg.

The pamphlet form of Ordinance No. 2008-09-02, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was available in the Village Hall, commencing on the 3rd day of June, 2008, and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said Village for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and seal of the Village of Johnsburg, this 3rd day of June, 2008.

Claudett E. Peters, Village Clerk
Village of Johnsburg,
McHenry County, Illinois

(SEAL)