

**CHAPTER 119: CABLE/VIDEO SERVICE PROVIDER FEE,
AND
CABLE AND VIDEO CUSTOMER PROTECTION LAW**

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(Ord. (O)2007-11.60, passed 11-15-07; Am. Ord. (O)2008-05.28, passed 5-22-08)

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(Ord. (O)2007-11.61, passed 11-15-07; Am. Ord. (O)2008-05.29, passed 5-22-08)

CABLE/VIDEO SERVICE PROVIDER FEE

Article I. Cable/Video Service Provider Fee.

§ 119-I.01 Definitions.

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 or cable system 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 or cable system 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.

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- 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) and 65 ILCS 5/11-42-11.
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 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 Village, state, federal or any other governmental entity and collected by the Holder 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.

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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) or 65 ILCS 5/11-42-11 which would otherwise be paid by the Holder by virtue of the provision of 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, or that otherwise provides cable or video service within the Village using the Village's rights of way for this service regardless of whether such use is pursuant to a franchise agreement or not.

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, or that otherwise provides cable or video service within the Village using the Village's rights of way for this service regardless of whether such use is pursuant to a franchise agreement or not.

SERVICE PROVIDER FEE: The amount paid under this Chapter and 220 ILCS 5/21-801 or 65 ILCS 5/11-42-11 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

§ 119-I.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 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, or the absence of such application, to the last known contact address for the Holder.

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- 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, although, upon expiration of such franchise agreements, the existing cable or video service provider shall owe a fee pursuant to the terms of this Ordinance.
- G. **Franchise:** The cable service or video service operator's compliance with this ordinance, as well as the Customer Protection Law Ordinance and Franchise Fee for Cable Systems Ordinance shall constitute a franchise to operate within the Village, and provide its cable or video services within the Village. In addition, as a condition to such franchise, the Holder shall reserve one channel for educational and governmental cable casting to be provided to the Village.

§ 119-I.03 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.

§ 119-I.04 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. On an annual basis within one hundred twenty (120) days of the close of the calendar year, the Holder shall submit to the Village a financial statement reflecting the total amount of the revenue and all payments and computations for the previous year. Said statement shall be either audited or certified by an independent certified public accountant or certified by a financial officer of the Holder. Upon ten (10)

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days prior written notice, the Village shall have the right to conduct an independent audit of Holder's records related to the computation of the fee, in accordance with generally accepted accounting procedures. Such records regarding billing shall be retained by the Holder for five (5) years' time. If such audit indicates a fee underpayment of five percent (5%) or more, the Holder shall assume all reasonable costs of such an audit. No acceptance of amounts remitted shall 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.

§ 119-I.05 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.*

(Ord. (O)2007-11.60, passed 11-15-07; Am. Ord. (O)2008-05.28 passed 5-22-08)

Cable and Video Customer Protection Law

Article II. Cable and Video Customer Protection Law.

§ 119-II.01 Customer Service and Privacy Protection Law.

A. Adoption: The regulations of the Cable and Video Customer Protection Law, 220 ILCS 5/70-501 *et seq.*, are hereby adopted by reference and made applicable to the cable or video providers offering services within the Village's boundaries.

B. Amendments: Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to cable or video providers offering services within the Village's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Chapter by reference without formal action by the Village.

§ 119-II.02 Enforcement.

Pursuant to law, the Village declares its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law with respect to complaints received from residents within the Village.

§ 119-II.03 Penalties.

A. Penalty: In addition to the penalties provided by law, the schedule of penalties found in 220 ILCS 5/70-501(r)(1) shall be applicable for any material breach of the Cable and Video Protection Law by cable or video providers. The monetary penalties shall apply on a competitively neutral basis and shall not exceed \$750 for each day of the material breach and shall not exceed \$25,000 for each occurrence of a material breach per customer.

For purposes of this Section, material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the law.

A material breach, for the purpose of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice.

B. Notice: The Village shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least 30 days from the receipt of the notice to remedy the specified material breach.

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§ 119-II.04 Customer Credits.

The credits provided in 220 ILCS 5/70-501(s) shall be applied on the statement issued to the customer for the next billing cycle following a violation or the discovery of a violation of this Chapter. The cable or video provider shall be responsible for providing the credits and the customer is under no obligation to request the credit.

(Ord. (O)2007-11.61, passed 11-15-07; Am. Ord. (O)2008-05.29, passed 5-22-08)