

CHAPTER 7

CABLE COMMUNICATIONS ENABLING ORDINANCE

6-7-1: Short Title:

This Chapter shall be known and may be cited as the “Village of Holiday Hills Cable Television Franchise Ordinance”.

6-7-2: Definitions:

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein:

“Additional Service” means any subscriber service provided by the grantee for which a special charge is made based on program or service content, time, or spectrum space usage.

“Basic Service” means all subscriber services provided by the Grantee in one (1) or more service tiers, which includes the delivery of local broadcast stations, and public, educational and government access channels. The Basic Service does not include optional program and satellite service tiers, a la carte services (to the extent such services are not Basic Service under FCC rules), per channel, per program, or auxiliary services for which a separate charge is made. However, Grantee may include other satellite signals on the Basic Service.

“Cable Mile” means any extension of feeder or trunk measured from the nearest point of distribution with adequate signal strength to allow for expansion.

“Cable System” or “System” or “Cable Television System” means a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing, audio, video, data and other forms of electronic, electrical or optical signals, which includes cable television service and which is located in the Village. The definition shall not include any such facility that serves or will serve only subscribers without using Village rights-of-way.

“Channel” means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

“Control” and/or “Controlling Interest” shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any Person or Entity (except underwriters during the period in which they are offering securities to the public) of holding twenty percent (20%) or more of a Cable

System or the Franchise under which the System is operated. A change in the control or controlling interest of an Entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one Person or Entity.

“Converter” means an electronic device which converts signals to a frequency within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view more than twelve (12) channels delivered by the system at designated converter dial locations.

“FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

“Franchise Fee” means the fee that a company is required to pay to the Village pursuant to this Chapter. This fee includes any tax, fee or assessment of any kind imposed by the franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such. The term “franchise fee” does not include:

- A. any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators, or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);
- B. in the case of any franchise in effect on the date of enactment of Cable Communications Policy Act of 1984, 47 U.S.C. sec. 609 et seq. (hereinafter, the “1984 Cable Act”), payments which are required by the franchise to be made by the Grantee during the term of such franchise for, or in support of the use of, public, educational or governmental access facilities;
- C. in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the Grantee for public, educational, or governmental access facilities;
- D. requirements or changes incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- E. any fee imposed under Title 17, United States Code.

“Grantee” means a person or entity to whom or which a Franchise under this Chapter granted by the Village, along with the lawful successors or assigns of such person or entity.

“Gross Revenues” means all revenue collected by the Grantee from the operation of the Cable System to provide cable service within the Village including, but not limited to: periodic fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; franchise fees; installation and reconnection fees; leased channel fees; converter rentals and/or sales; program guide revenues; late or administrative fees; upgrade, downgrade or other change-in-service fees; advertising revenues; revenues from home shopping channels; provided, however, that Gross Revenues shall not include any taxes on services furnished by the Grantee herein imposed directly upon any subscriber or user by the state, local or other governmental unit and collected by the Grantee on behalf of the governmental unit, any uncovered bad debt and any PEG capital support recovered from subscribers. The term Gross Revenues also includes revenues collected from high-speed cable modem/cable Internet service as long as and to the extent that such service is deemed a cable service under applicable federal or state law.

“Initial Grantee” means the entity and its lawful successor who was granted a cable television franchise by the Village of Holiday Hills in 1989 and proceeded to construct the first cable television system in the Village; “Initial Grantee” also includes the person who may obtain a renewal of the above referenced cable television franchise.

“Initial Service Area” means all areas of the Village zoned and classified as part of the R-1 Residential Zoning District pursuant to the Village of Holiday Hills Official Zoning Map.

“Installation” means the connection of the system from feeder cable to subscribers’ terminals.

“May” is permissive.

“Normal Business Hours”, as applied to the Grantee, shall mean those hours during which similar businesses in the Village are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and some weekend hours.

“Normal Operating Conditions” shall mean those service conditions that are within the control of the Grantee. Those conditions that are not within the control of the Grantee include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee 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 Cable System.

“Renewed Franchise” means any franchise renewed pursuant to the franchise renewal procedures in Section 626 of the 1984 Cable Act, as amended.

“Shall” is mandatory.

“Service Interruption” means the loss of picture or sound on one or more cable channels.

“Street” means the surface of and all rights-of-way and the space above and below any dedicated right-of-way, which shall include, but not be limited to, public streets, roads, highways, freeways, lanes, paths, sidewalks, alleys, courts, boulevards, parkways, drives or easements now or hereafter held by the Village for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the Village which shall, within their proper use and meaning entitle the Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, pedestals, and other property as may be ordinarily necessary and pertinent to a cable television system. Streets shall not include property of the Village which is not a dedicated public right-of-way.

“Subscriber” shall mean any person, firm, corporation, entity (including but not limited to any public or private entity including units of federal, state and local government and any and all of their units, subdivisions, or agencies), or association lawfully receiving any service provided by a Grantee pursuant to this Chapter.

“User” means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

“Village” means the Village of Holiday Hills, McHenry County , State of Illinois, its Village Board of Trustees, officers, agents, employees, committees, and/or commissions unless otherwise specifically designated, and all the area within the territorial limits of the Village, its future corporate boundaries, and including any area over which the Village exercises its jurisdiction.

6-7-3: Rights and Privileges of Grantee:

Any franchise granted by the Village pursuant to Illinois Municipal Code (65 ILCS 5/11-42-11) shall grant to the Grantee, subject to the terms and conditions of the franchise agreement between the Village and the Grantee, the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets now in existence and as may be created or established during its terms any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System.

6-7-4: Agreement and Incorporation of Application by Reference:

- A. Upon approval of any franchise agreement by ordinance as provided in this Chapter and execution thereof by the Grantee, the Grantee shall be bound by all the terms and conditions contained in this Chapter.
- B. Any Grantee also agrees to provide all services specifically set forth in its application, if there is one, and to provide cable television service within the confines of the Village; and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the franchise, except that the Grantee may from time to time change its services in response to market and financial decisions.

6-7-5: Franchise Territory:

Any franchise granted by Ordinance pursuant to this Chapter shall be deemed to be for the current territorial limits of the Village and for any area henceforth added thereto during the term of the franchise.

6-7-6: Duration and Acceptance of Non-Exclusive Franchise:

- A. Any franchise and the rights, privileges and authority hereby authorized shall take effect and be in force from and after the signing of a franchise agreement by the Village, as provided by law, and shall continue in force and effect for a term of no longer than fifteen (15) years, provided that the Grantee shall file acceptance of the franchise and its promise to comply with and abide by all its provisions, terms and conditions. Such franchise shall be non-exclusive and revocable only under the terms herein or in the franchise agreement with Grantee.
- B. In the event the Village enters into an additional franchise agreement to use and occupy the public right-of-way for the purpose of operating a cable system, said additional franchise agreement should only be granted if the terms, conditions, and requirements relating to payments, facilities, equipment and services to be provided by the subsequent cable operator satisfy the applicable requirements set forth in the Illinois Municipal Code (65 ILCS 5/11-42-11), as now or hereafter amended. Notwithstanding the applicability or repeal of Section 11-42-11, to maintain a competitively neutral and nondiscriminatory environment as required by the Telecommunications Act of 1996, any additional Grantee shall provide terms, conditions, and requirements relating to the payments, facilities, equipment and services and regulatory requirements for use of the public right-of-way that are substantially equivalent to the payments, facilities, equipment and services and regulatory requirements imposed on the Grantee previously granted a franchise pursuant to this Chapter.

6-7-7: Franchise Renewal:

Franchise renewal shall be prescribed by applicable law. The Village and any Grantee by mutual consent may enter into informal renewal negotiations at any time during the term of the franchise.

Pursuant to 47 U.S.C. §546, the following procedure shall apply:

- A. The Village may, on its own initiative, during the six-month period which begins with the thirty-six (36) month before the Franchise expiration, commence a proceeding which affords the public in the Village appropriate notice and participation for the purpose of (1) identifying the future cable-related community needs and interests and (2) reviewing the performance of the Grantee under the Franchise. If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such proceeding, the Village shall commence such proceeding not later than six (6) months after the date such notice is submitted.
- B. Upon completion of the proceeding under Paragraph A above, the Grantee may, on its own initiative or at the request of the Village, submit a proposal for renewal. The Village may establish a date by which such proposal shall be submitted.
- C. Upon submittal by the Grantee of a proposal to the Village for the renewal of the Franchise, the Village shall provide prompt, public notice of such proposal and renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed, and at the request of the Grantee or on its own initiative, commence an administrative proceeding, after providing prompt, public notice of such proceeding.
- D. The Village shall consider in any administrative proceeding whether: (1) the Grantee has substantially complied with material terms of the existing Franchise and with applicable law; (2) the quality of the Grantee's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix or quality of cable services or other services provided over the System, has been reasonable in the light of community needs; (3) the Grantee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the Grantee's proposal; and (4) the Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.