

**CHAPTER 7
CABLE AND VIDEO SERVICE**

- 3-7-1 Definitions
- 3-7-2 Franchise and Service Fees
- 3-7-3 Audits
- 3-7-4 Acceptance of Payment by Village
- 3-7-5 Failure to Make Required Payment
- 3-7-6 Payment Schedule
- 3-7-7 Pass Through
- 3-7-8 Construction Bond
- 3-7-9 Insurance
- 3-7-10 Indemnification
- 3-7-11 Acknowledgement of Franchise by Village
- 3-7-12 Educational and Governmental Programming
- 3-7-13 Customer Service
- 3-7-14 Penalties
- 3-7-15 Cable Operator's and Holder's Rights Under State and Federal Law
- 3-7-16 Relocation of Cable or Video Service System

3-7-1 DEFINITIONS

Terms used in this Chapter shall mean as follows:

Holder: a person or entity that has received authorization to offer or provide Cable or Video Service from the Illinois Commerce Commission pursuant to Section 21-401 of Article XXI of the Public Utilities Act and which provides Cable Service and/or Video Service to or within the Village's corporate boundaries.

Cable Operator: means that term as defined in 47 U.S.C. §522(5) and which provides Cable Service to or within the Village's corporate boundaries.

Cable Service: means that term as defined in 47 U.S.C. §522 (7).

Cable System: means that term as defined in 47 U.S.C. §522(7).

Gross Revenue: shall have the same meaning as the term "gross revenue" as defined in 220 ILCS 5/21-801(c).

Franchise: The authorization by the Village as the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, certificate, or otherwise, which authorizes the construction or operation of a Cable System within the Village's corporate boundaries.

Franchise Area: The territory within the corporate boundaries of the Village.

Franchising Authority: The Village.

Other Programming Service: Information that a Cable Operator makes available to all subscribers generally.

Person: An individual, partnership, association, joint stock company, trust, corporation or governmental entity.

Video Programming: That term as defined in 47 U.S.C. §522(20).

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 wireless facilities located at least in part in the public rights-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.

Village: shall mean the Village of Hebron, an Illinois municipal corporation.

3-7-2 FRANCHISE AND SERVICE PROVIDER FEES

Any Holder or Cable Operator which operates a Cable System providing Cable Services or Video Services, as the case may be, within the corporate boundaries of the Village, and which utilizes Village or public right of way, is hereby granted a franchise, provided and contingent upon its compliance with Village ordinances, and shall pay to the Village a franchise fee of five percent of such Cable Operator's Gross Revenues derived from the operation of such Cable System providing Cable Services within the Franchise Area with respect to a Cable Operator while a Holder shall pay a service provider fee of five percent of such Holder's Gross Revenues derived from the provision of Cable Service or Video Services within the Village's corporate boundaries.

3-7-3 AUDITS

On an annual basis, within 120 days of the close of the calendar year, the Cable Operator 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 Cable Operator.

Upon 10 days prior written notice, the Village shall have the right to conduct an independent audit of Cable Operator's records related to the computation of the Fee. If such audit indicates a fee underpayment of five percent or more, the Cable Operator shall assume all reasonable costs of such an audit. Any additional amount due after an audit shall be paid within 30 days after the Village's submission of an invoice for the sum.

3-7- ACCEPTANCE OF PAYMENT BY VILLAGE

No acceptance of any payment of any franchise or service provider fees by the Village shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums payable as a fee or for the performance of any other obligations of the Cable Operator.

3-7-5 FAILURE TO MAKE REQUIRED PAYMENT

In the event that a franchise or service provider fee payment or recomputed amount is not made on or before the dates specified herein, the Cable Operator shall pay as additional compensation:

1. An interest charge, computed from such due date, of 10 percent per annum for the period for which payment was due.
2. If the payment is late by 45 days or more, a sum of money equal to 15 percent of the amount due in order to defray those additional expenses and costs incurred by the Village by reason of any delinquent payment.

3-7-6 PAYMENT SCHEDULE

The franchise or service provider fee set forth in Section 3-7-2 shall be paid to the Village on a quarterly basis, that is, on April 30, for the period encompassing January 1st to March 31st of each year, July 30th for the period encompassing April 1st to June 30th of each year, October 30th for the period encompassing July 1st to September 30th of each year, and January 30th for the period encompassing October 1st to December 31st of the immediate preceding calendar year. Time is of the essence.

3-7-7 PASS THROUGH

Any Cable Operator or Holder “pass through” or itemization of fee costs on any subscriber’s bills shall be in accordance with State or Federal law, if applicable.

3-7-8 CONSTRUCTION BOND

Each Cable Operator or Holder, as the case may be, shall provide a construction bond in the amount of \$100,000 prior to the commencement of a material upgrade or substantial rebuild of the Cable System.

The requirement for a construction bond shall extinguish upon the completion of the material upgrade or substantial rebuild of the Cable System. The Village may require a lesser bond to cover line extensions which may occur from time to time. The Cable Operator shall provide the Village with such bond written by a company in the State of Illinois and shall name the Village as a beneficiary.

3-7-9 INSURANCE

- A. General Requirements: The Cable Operator or Holder, as the case may be, shall maintain adequate insurance to protect against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with this Chapter or involve the Cable Operator, its agents, representatives, contractors, subcontractors and their employees.
- B. The Cable Operator or Holder, as the case may be, shall maintain insurance of the following types and in the amounts described below:
1. Commercial General Liability: No less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a minimum \$10,000,000.00 aggregate limit. Such insurance shall:
 - a. Include the Cable Operator, its officers and employees as additional insureds with respect to liability arising out of activities performed by or behalf of the Cable Operator, or in the construction, operation or repair, or ownership of its cable system; and
 - b. Be primary with respect to any insurance or self-insurance covering the Village, its officers or employees.
 2. Business Automobile Liability: Not less than \$1,000,000 per accident for bodily injury and property damage and such insurance shall include coverage for owned, hired and non-owned automobile; and
 3. Worker's Compensation: In accordance with statutory limits and Employer's Liability with limits not less than \$1,000,000 per accident.
- C. Additional Requirements: All policies shall contain, or shall be endorsed so that the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be effective by the Cable Operator except after 45 days prior written notice, return receipt requested, has been given to the Village.
- D. Acceptability of Insurers: The insurance obtained by the Cable Operator shall be placed with insurers with a Best's rating of no less than "A-Excellent."
- E. Verification of Coverage: The Cable Operator or Holder, as the case may be, shall furnish, on an annual basis, the Village with properly executed certificates of insurance which shall clearly evidence all insurance required in this Section. All required certificates and endorsements are to be on standard forms or such forms as are consistent with standard industry practices and are to be received and approved by the Village.

3-7-10 INDEMNIFICATION

To the fullest extent permitted by law, each Cable Operator or Holder, as the case may be, within the Franchise Area shall, at its sole cost and expense, indemnify, hold harmless, and defend the Village, and its officers, boards, commissions, agents, and employees, against any and all claims, including, but not limited to, third party claims, suits, causes of action, including reasonable attorney's fees and costs, proceedings, and judgments for damages or equitable relief arising out of the construction, installation, upgrade, dismantling, operation, maintenance or condition of its Cable System, or its provision of services as defined within this Chapter, regardless of whether the act or omission complained of was authorized, allowed, or prohibited by this Chapter except with respect to claims arising out of Village's sole negligence.

3-7-11 ACKNOWLEDGEMENT OF FRANCHISE BY VILLAGE

At the request of a Cable Operator operating a Cable System within the Village, if it is in compliance with all Village ordinances and has submitted all required documents, the Village shall present a letter acknowledging the Cable Operator's franchise within the Village.

3-7-12 EDUCATIONAL AND GOVERNMENTAL PROGRAMMING.

As a condition to operating a Cable System providing Cable Service or Video Service within the Village, each Cable Operator and Holder, as the case may be, shall reserve one channel for educational and governmental cable casting for the Village.

Each Cable Operator or Holder, as the case may be, shall provide one free service drop to each building or facility operated by the Village at the Village's request provided that only a standard installation is required.

Each Cable Operator or Holder, as the case may be, shall provide a free service line drop and free basic service to all current and future Village public buildings within their footprints including but not limited to all local units of government buildings, public libraries and public primary and secondary schools.

3-7-13 CUSTOMER SERVICE

- A. Adoption: The customer service standards of the Cable and Video Customer Protection Law, 220 ILCS 5/70-501, are hereby adopted by reference and made applicable to providers of Cable Service or Video Service to residents within the Village.
- B. Amendments: Any amendment to the Cable and Video Customer Protection Law's customer service standard in 220 ILCS 5/70-501 that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to Cable Operators offering services within the Village. However, any amendment that makes its provisions optional for adoption by units of local government shall not be incorporated into this Chapter by reference without formal action by the Village.
- C. Enforcement: 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 com-

plaints received from residents within the Village's corporate boundaries.

3-7-14 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 any Cable Operator or Holder, as the case may be. 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 Chapter, 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 Operator after the notice. The Village shall give the Cable Operator or Holder, as the case may be, written notice of any alleged material breaches of the Cable and Video Protection Law and allow such Cable Operator at least 30 days from the receipt of the notice to remedy the specified material breach.

- B. For any other violation of this Chapter not addressed in Section 3-7-14-A, the monetary penalty shall be \$500 for each day of the violation by the Cable Operator or Holder, as the case may be. For violations of this Chapter not within the scope of 220 ILCS 5/70-501 or 501 (r)(1) no advance written notice need be sent to the Cable Operator or Holder, as the case may be.

3-7-15 CABLE OPERATOR'S AND HOLDER'S RIGHTS UNDER STATE AND FEDERAL LAW

This Chapter is not intended, nor shall any provision herein be construed as to limit any rights of the Cable Operator or Holder, as the case may be, under State or Federal law including but not limited to the Cable Act of 1984.

3-7-16 RELOCATION OF CABLE OR VIDEO SERVICE SYSTEM

If the Village elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or undertake any other public works project which the Village or its staff determines the relocation of the Cable System is required, the Cable Operator or Holder, as the case may be, at its sole expense, shall relocate its Cable System or Video Service facilities as directed including but not limited to its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. The Village shall not be liable to the Cable Operator or Holder, as the case may be, for such costs. Reasonable advance written notice shall be mailed to the Cable Operator or Holder, as the case may be, advising the Cable Operator or Holder as the case may be of the dates that the relocation is to be undertaken. Such notice shall not be less than 30 days.