

Effective date: October 23, 2007

9/26/2007

**93-O-07**

**AN ORDINANCE**

**Amending the City Code  
by Enacting a New Title 3, Chapter 34,  
“Cable and Video Service Provider and PEG Fees”**

**WHEREAS**, the City has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety, and welfare of its citizens; and

**WHEREAS**, this Ordinance is adopted pursuant to the provisions of the Illinois Cable and Video Competition Law of 2007, Public Act 95-0009 (the “Act”); and

**WHEREAS**, this Ordinance is intended to establish the service provider fee and the public, education, and government (“PEG”) access support fee the Act authorizes municipalities to impose on a holder under 220 ILCS 5/21-801,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1:** That Title 3 of the Evanston City Code of 1979, as amended, is hereby further amended by enacting a new Chapter 34, Cable and Video Service Provider Fee, to read as follows:

**3-34-1: TITLE:**

This Chapter shall be titled and referred to as "Cable and Video Service Provider and PEG Fees."

**3-34-2: PURPOSE AND INTENT:**

The purpose of this Chapter is to promote the public health, safety, and welfare of the residents of Evanston by requiring cable and video service providers to pay fees in accord with the terms of this Chapter.

**3-34-3: DEFINITIONS:**

As used in this Chapter, the following terms are defined as follows:

ACT: 220 ILCS 5/21, as amended.

CABLE OPERATOR: As defined in 47 U.S.C. 522(5), as amended.

CABLE SERVICE: As defined in 47 U.S.C. 522(6), as amended.

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 City's jurisdiction.

(1) Gross revenues shall include the following:

- a. Recurring charges for cable service 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 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 City's jurisdiction. The allocation shall be based on the number of subscribers in the City 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;
- 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 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 Section 21-801(b) of the Act, as amended.

(2) Gross Revenues do not include any of the following:

- a. Revenues not actually received, even if billed, such as bad debt, subject to Section 21-801(c)(1)(vi) of the Act, as amended;
- 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 or video service, including, without limitation, revenue received from telecommunications 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 noncable service or nonvideo 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 service 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 City's jurisdiction and pay the fee permitted by Section 21-801(b) of the Act, as amended, with respect to the service;
  - e. Any tax or fee of general applicability imposed upon the subscribers or the transaction the 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 Section 21-801(b) of the Act, as amended, 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 Section 21-401 of the Act, as amended.

**INCUMBENT CABLE OPERATOR:** A person or entity that provided cable services or video services in a particular area under a franchise agreement with the City pursuant to Section 11-42-11 of the Illinois Municipal Code (65 ILCS 5/11-42-11, as amended) on January 1, 2007.

**PEG:** Public, education and governmental.

**PEG ACCESS FEE:** The amount paid under Section 21-801(d) of the Act, as amended, by a holder to the City for the service areas within the City's territorial jurisdiction.

**PUBLIC RIGHTS-OF-WAY:** The area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.

**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 Section 21-401 of the Act.

**SERVICE PROVIDER:** A person or entity that provides cable service or video service.

**SERVICE PROVIDER FEE:** The amount paid under Section 21-801 of the Act, as amended, by a holder to the City, for service areas within the City's territorial jurisdiction.

**VIDEO PROGRAMMING:** As defined in 47 U.S.C. 522(20), as amended.

**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 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), as amended, 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.

**3-34-4: PAYMENT OF SERVICE PROVIDER FEE REQUIRED:**

- (A) Pursuant to the Act, any holder offering cable service or video service on a commercial basis shall be liable for and pay a service provider fee to the City.

- (B) The service provider fee shall be five percent (5%) of gross revenues, or the same as the fee paid to the City by an incumbent cable operator providing cable service.
- (C) Any holder shall notify the City at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the City.
- (D) The holder shall be liable for and pay the service provider fee to the City. The holder's liability for the fee shall commence on the first day of the calendar month following thirty (30) days after receipt of the ordinance adopting this Chapter by the holder. The ordinance adopting this Chapter shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6), as amended, to the City.
- (E) The payment of the service provider fee shall be due on a quarterly basis, forty-five (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) The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the City pursuant to which a fee is paid.
- (G) An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c), as amended, with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes pursuant to this Section.

**3-34-5: PAYMENT OF PEG ACCESS FEE REQUIRED:**

- (A) Pursuant to the Act, any holder offering cable service or video service on a commercial basis shall be liable for and pay a PEG access fee.
- (B) The PEG access fee shall be no less than (i) one percent (1%) of gross-revenues, or (ii) if greater, the percentage of gross revenues that incumbent cable operators pay to the City or its designee for PEG access support in the City's jurisdiction. For the purposes of subsection (ii) above, the percentage of gross revenues that all incumbent cable operators pay shall be equal to the annual sum of the payments that incumbent cable operators in the service area are obligated to pay by franchises and agreement or by contracts with the City designee for PEG access in effect on January 1, 2007, including the total of any lump sum payments required to be made over the term of each franchise or

agreement divided by the number of years of the applicable term, divided by the annual sum of such incumbent cable operator(s)'s gross revenues during the immediately prior calendar year. The sum of payments includes any payments that an incumbent cable operator is required to pay pursuant to Section 21-301(c)(3) of the Act, as amended.

- (C) The PEG access fee shall be due on a quarterly basis and paid forty-five (45) days after the close of the calendar quarter. Each payment shall include a statement explaining the basis for the calculation of fees. 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.
- (D) An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c), as amended, shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been terminated pursuant to that section. All payments made by an incumbent cable operator pursuant to the previous sentence may be credited against the fees that that operator owes pursuant to this Section.

**3-34-6: 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 City, 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 City'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.

**3-34-7: AUDITS OF CABLE/VIDEO SERVICE PROVIDER:**

- (A) The City 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 City 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 City. If all local franchises between the City and cable operator terminate, the audit requirements shall be those adopted by the City pursuant to the Local

Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq*, as amended. No acceptance of amounts remitted should be construed as an accord that the amounts are correct.

- (B) Any additional amount due after an audit shall be paid within thirty (30) days after the City's submission of an invoice for the sum.

**3-34-8: PENALTIES:**

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

**3-34-9: SEVERABILITY:**

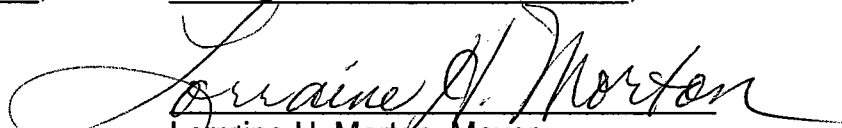
The provisions and Sections of this Chapter shall be deemed separable, and the invalidity of any portion of this Chapter shall not affect the validity of the remainder.

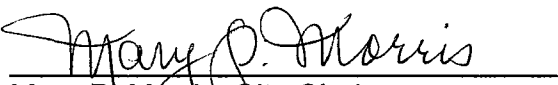
**SECTION 2:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

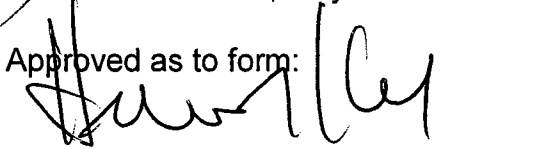
**SECTION 3:** This Ordinance shall be in force and effect from and after its passage, approval, and publication in the manner provided by law, by the City Council.

Introduced: October 8, 2007      Approved:

Adopted: October 8, 2007      October 9, 2007

  
Lorraine H. Morton, Mayor

Attest:  
  
Mary P. Morris, City Clerk

Approved as to form:  
  
Corporation Counsel