

VILLAGE OF CHAPIN

ORDINANCE NO. 2014- 8

AN ORDINANCE OF THE VILLAGE OF CHAPIN, MORGAN COUNTY
ILLINOIS, ESTABLISHING A CABLE AND VIDEO SERVICE PROVIDER FEE, PEG
ACCESS SUPPORT FEE, AND ADOPTING THE CABLE AND VIDEO CUSTOMER
PROTECTION LAW

FOR THE

VILLAGE OF CHAPIN, MORGAN COUNTY, ILLINOIS

ADOPTED BY THE

PRESIDENT AND BOARD OF TRUSTEES

OF THE

VILLAGE OF CHAPIN, MORGAN, COUNTY, ILLINOIS

THIS 12 DAY OF November, 2014

ORDINANCE NO. 2014- 8

**AN ORDINANCE OF THE VILLAGE OF CHAPIN
ESTABLISHING A CABLE AND VIDEO SERVICE PROVIDER FEE
AND A PEG ACCESS SUPPORT FEE
AND ADOPTING THE CABLE AND VIDEO CUSTOMER PROTECTION LAW**

WHEREAS, the Village of Chapin 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;

WHEREAS, this Ordinance is adopted pursuant to the provisions of the Cable and Video Competition Law of 2007, 220 ILCS 5/21-100 *et seq.*, and the Cable and Video Customer Protection Law, 220 ILCS 5/70-501 *et seq.*;

WHEREAS, the corporate authorities of Chapin find it is in the best interests of the Village to establish a service provider fee and PEG access fee, as provided in 220 ILCS 5/21-801, *et seq.*; and

WHEREAS, the corporate authorities of Chapin find it is in the best interest of the Village to adopt customer service and privacy protection standards as provided in 220 ILCS 5/22-501, *et seq.*

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHAPIN, MORGAN COUNTY, ILLINOIS, as follows:

SECTION 1. CABLE AND VIDEO SERVICE PROVIDERS

The following rules, procedures, and fees relating to cable and video providers are hereby adopted by the corporate authorities of the Village of Chapin, Morgan County, Illinois.

CABLE AND VIDEO SERVICE PROVIDERS

Article 1: Cable and Video Service Provider Fee and PEG Access Support Fee

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ARTICLE 1: CABLE AND VIDEO SERVICE PROVIDER FEE AND PEG ACCESS SUPPORT FEE

1. DEFINITIONS.

As used in this Article, the following terms shall have the following meanings:

“Cable service” means that term as defined in 47 U.S.C. § 522(6).

“Commission” means the Illinois Commerce Commission.

“Gross revenues” means 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.

(A) Gross revenues shall include the following:

- (1) Recurring charges for cable or video service.
- (2) Event-based charges for cable service or video service, including without limitation pay-per-view and video-on-demand charges.
- (3) Rental of set top boxes and other cable service or video service equipment.
- (4) Service charges related to the provision of cable service or video service, including without limitation activation, installation and repair charges.
- (5) Administrative charges related to the provision of cable service or video service, including without limitation service order and service termination charges.
- (6) Late payment fees or charges, insufficient funds check charges and other charges assessed to recover the costs of collecting delinquent payments.

(7) 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.

(8) 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 (9).

(9) 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.

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

(B) Gross revenues do not include any of the following:

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

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Security deposits collected from subscribers.

(7) 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.

(C) 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" means 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.

"PEG" means public, educational and governmental.

"PEG access support fee" means the amount paid under this Article and 220 ILCS 5/21-801(d) by the holder to the Village for the service areas within its territorial jurisdiction.

"Service" means 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" means the amount paid under this Article and 220 ILCS 5/21-801 by the holder to the Village for the service areas within its territorial jurisdiction.

"Video service" means 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, as 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.

2. CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED.

(A) Fee Imposed. A fee is hereby imposed on any holder providing cable service or

video service in the Village.

(B) Amount of Fee. The amount of the fee imposed hereby shall be five percent (5%) of the holder's gross revenues, provided, however, that such amount shall be no greater than the fee paid to the Village by an incumbent cable operator providing cable service.

(C) Notice to the Village. The holder shall notify the Village at least ten (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 thirty (30) days after receipt of the ordinance adopting this Article by the holder. The ordinance adopting this Article 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) to the Village.

(E) Payment Date. 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) Exemption. The fee hereby 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 Subsection (B) above.

3. PEG ACCESS SUPPORT FEE IMPOSED.

(A) PEG Fee Imposed. A PEG access support fee is hereby imposed on any holder providing cable service or video service in the Village in addition to the cable and video service fee set forth above.

(B) Amount of Fee. The amount of the PEG access support fee imposed hereby shall be one percent (1%) of the holder's gross revenues or, if greater, the percentage of gross revenues that incumbent cable operators pay to the Village or its designee for PEG access support in the Village.

(C) Payment. The holder shall pay the PEG access support fee to the Village or to the entity designated by the Village to manage PEG access. The holder's liability for the

PEG access support fee shall commence on the same date as the payment of the service provider fee set forth above.

(D) Payment Due. The payment of the PEG access support 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.

(E) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) 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 under this paragraph 3.

4. APPLICABLE PRINCIPLES.

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

5. NO IMPACT ON OTHER TAXES DUE FROM HOLDER.

Nothing contained in this Article shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including without limitation 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 Village's 911 or E911 fees, taxes or charges.

6. 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 thirty (30) days after the Village's submission of an invoice for the sum.

7. 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.*

ARTICLE 2: CABLE AND VIDEO CUSTOMER PROTECTION LAW

8. CUSTOMER SERVICE AND PRIVACY PROTECTION

(A) Adoption. The regulations and provisions of the Cable and Video Customer Protection Law, 220 ILCS 5/22-501, are hereby adopted by this 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 Article shall be incorporated into this Article 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 Article by reference without formal action by the corporate authorities of the Village.

9. ENFORCEMENT.

The Village does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Customer Protection Law with respect to complaints received from residents within the Village.

10. PENALTIES.

The Village, pursuant to 220 ILCS 5/22-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Customer Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed seven hundred fifty dollars (\$750.00) for each day of the material breach, and shall not exceed twenty-five thousand dollars (\$25,000.00) for each occurrence of a

material breach per customer.

(A) "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.

(B) 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 thirty (30) days from the receipt of the notice to remedy the specified material breach.

(C) A material breach, for the purposes 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 expiration of the period specified in the Notice sent pursuant to (B) above.

11. CUSTOMER CREDITS.

The Village hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 5/22-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit.

SECTION 2. SEVERABILITY

This Ordinance, and every provision thereof, shall be considered severable. In the event that any court of competent jurisdiction may find and declare any word, phrase, clause, sentence, paragraph, provision or section or part of a phrase, clause, sentence, paragraph, provision or section of this Ordinance is void or unconstitutional, the remaining words, phrases, clauses, sentences, paragraphs and provisions and parts of phrases, clauses, sentences, paragraphs, provisions and sections not ruled void or unconstitutional shall continue in full force and effect.

SECTION 3. REPEALER

All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance shall be, and the same are hereby repealed to the extent of the conflict.

SECTION 4. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED by the President and Board of Trustees on

November 12, 2014.

Kenneth L. Drake
Village President

Ayes: 5
Nays: 0
Absent: 1

(SEAL)

ATTEST:


Shea Drake
Village Clerk

STATE OF ILLINOIS)
)
COUNTY OF MORGAN) SS CERTIFICATION

I, Rhea Drake, the duly elected Village Clerk of the Village of Chapin, Morgan County, Illinois, do hereby certify that the attached copy of Ordinance No. 2014-8 is a true and correct copy of an Ordinance passed and approved by the President and Board of Trustees of the Village of Chapin, at a regular meeting of said Village Board held on the 12 day of November, 2014, all as the original of the same remains in the official records of my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Village of Chapin, this 12 day of November, 2014.

(SEAL)



Village Clerk

STATE OF ILLINOIS)
)
COUNTY OF MORGAN) SS

I, Rhea Drake, certify that I am Clerk of the Village of Chapin, Morgan County, Illinois.

I further certify that on the 12 day of November, 2014, the President and Board of Trustees of the Village of Chapin, Illinois, passed and approved Ordinance No. 2014-8, entitled:

AN ORDINANCE OF THE VILLAGE OF CHAPIN ESTABLISHING A CABLE AND VIDEO SERVICE PROVIDER FEE AND A PEG ACCESS SUPPORT FEE AND ADOPTING THE CABLE AND VIDEO CUSTOMER PROTECTION LAW

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2014-8, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted at the Village Hall, commencing on the 12 day of November, 2014, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request in the Office of the Village Clerk.

DATED at Chapin, Illinois, this 23 day of November, 2014.

Rhea Drake
Village Clerk