

ORDINANCE NO. 6098

**AN ORDINANCE AMENDING TITLE 11, CHAPTER 126
OF THE LOMBARD VILLAGE CODE IN REGARD TO
CABLE/VIDEO SERVICE PROVIDERS AND THE FEES
TO BE IMPOSED BY THE VILLAGE IN RELATION THERETO**

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations 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 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 President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

SECTION 2: That Title 11, Chapter 126 of the Lombard Village Code is hereby amended to read in its entirety as follows:

"CHAPTER 126: CABLE/VIDEO SERVICE PROVIDERS.

**§126.01 CABLE/VIDEO SERVICE PROVIDER FEE AND
PEG ACCESS SUPPORT FEE.**

(A) Definitions.

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

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

(2) "Commission" means the Illinois Commerce Commission.

(3) "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:

- (i) Recurring charges for cable or video service;
- (ii) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges;
- (iii) Rental of set top boxes and other cable service or video service equipment;
- (iv) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges;
- (v) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges;
- (vi) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments;
- (vii) 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;
- (viii) 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 subsection (ix) below;
- (ix) 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; and
- (x) The service provider fee permitted by 220 ILCS 5/21-801(b).

- (b) Gross revenues do not include any of the following:
- (i) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi);
 - (ii) 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;
 - (iii) 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 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;
 - (iv) 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;
 - (v) 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;
 - (vi) Security deposits collected from subscribers; and
 - (vii) 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.

(4) “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.

(5) “PEG” means public, education and governmental.

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

(7) “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.

(8) “Service provider fee” means the amount paid under this Section and 220 ILCS 5/21-801 by the holder to a Village for the service areas within its territorial jurisdiction.

(9) “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 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.

(B) Cable/Video Service Provider Fee Imposed.

(1) Fee Imposed. A fee is hereby imposed on any holder providing cable service or video service in the Village.

(2) Amount of Fee. The amount of the fee imposed hereby shall be five percent (5%) of the holder’s gross revenues.

(3) 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.

(4) 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 Section by the holder. The ordinance adopting this Section 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.

(5) 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.

(6) 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.

(7) 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)(2) above.

(C) PEG Access Support Fee Imposed.

(1) 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 fee imposed pursuant to subsection (B)(2) above.

(2) 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.

(3) 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 date set forth in subsection (B)(4) above.

(4) 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.

(5) 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 subsection (C)(2) above.

(D) Applicable Principles.

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

(E) No Impact on Other Taxes Due from Holder.

Nothing contained in this Section 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 any validly imposed 911 or E911 fees, taxes or charges.

(F) Audits of Cable/Video Service Provider.

(1) 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.* (See Section 98.110 of this Code). No acceptance of amounts remitted should be construed as an accord that the amounts are correct.

(2) 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.

(G) Late Fees / Payments.

All fees due and payments which are past due shall be governed by ordinances adopted by this Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* (See Section 98.110 of this Code)."

SECTION 3: If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

Passed on first reading this ____ day of _____, 2007.

First reading waived by action of the Board of Trustees this 18th day of October, 2007.

Passed on second reading this 18th day of October, 2007, pursuant to a roll call vote as follows:

AYES: Trustees Gron, Tross, O'Brien, Moreau, Fitzpatrick and Soderstrom

NAYS: None

ABSENT: None

APPROVED by me this 18th day of October, 2007.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk

Published by me in pamphlet form this 23rd day of October, 2007.

Brigitte O'Brien
Village Clerk