

AN ORDINANCE DETERMINING THE VIDEO SERVICE PROVIDER FEE TO BE PAID BY A VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE VILLAGE PURSUANT TO A STATE AUTHORIZATION; AUTHORIZING THE MAYOR TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE FEE; AND DECLARING AN EMERGENCY

WHEREAS, the Ohio General Assembly enacted Ohio Revised Code, §§1332.21 through 1332.34, to be effective September 24, 2007, to provide a statewide “uniform regulatory framework” for the provision of cable television and/or other video service, which will substantially reduce the Village of Minerva Park’s traditional franchising authority to regulate cable and/or video service offered in the Village using facilities located in the Village’s public rights-of-way; and

WHEREAS, the Village has a cable television franchise agreement with Ameritech New Media, Inc. (now known as Wide Open West, LLC) that expires by its own terms on or about August 11, 2012 and pursuant to which Wide Open West, LLC pays franchise fees in the amount of three percent (3%) of gross revenues; and

WHEREAS, the Village has a cable television franchise agreement with Time Warner Cable that expires by its own terms on or about August 11, 2012 and pursuant to which Time Warner Cable pays franchise fees in the amount of three percent (3%) of gross revenues; and

WHEREAS, AT&T plans to offer its new video service called U-verse in the Village and will therefore pay franchise fees in the amount of three percent (3%) of gross revenues, which includes ad revenues as part of the definition of gross revenues as defined in S.B. 117; and

WHEREAS, pursuant to O.R.C. §1332.23, any new video service provider intending to provide video service to subscribers in the Village must apply for and obtain a video service authorization from the Director of the Ohio Department of Commerce; and

WHEREAS, O.R.C. §1332.23 also permits a cable operator with an effective franchise agreement to terminate its franchise with the Village, at its option, by applying for a state-issued video service authorization when a competitive video service provider either gives notice that it will begin providing service to subscribers in the Village or actually begins providing service to subscribers in the Village, or if the F.C.C. determines that the cable operator is subject to “effective competition” in the Village pursuant to 47 C.F.R. 76.907; and

WHEREAS, under O.R.C. §1332.32, a video service provider that is providing service to subscribers in the Village pursuant to a state-issued video service authorization must pay the Village a video service provider fee (“VSP Fee”) based on a percentage of the provider’s “gross revenues” derived from providing video service in the Village, not to exceed five percent (5%) of such revenues; and

WHEREAS, O.R.C. §1332.32 requires that the percentage of gross revenues on which VSP Fee is paid must be the same as the percentage of gross revenues that a cable operator pays pursuant to a franchise agreement that is in effect, or, if there is no effective franchise agreement under which franchise fees are payable for a given calendar quarter, the VSP Fee shall be zero percent (0%) of gross revenues, unless the Village determines by ordinance that the VSP Fee will be a percentage of gross revenues not to exceed five percent (5%) of gross revenues; and

WHEREAS, O.R.C. §1332.32(C)(2) further requires the Village to provide all video service providers offering service in the Village with notice of the VSP Fee requirements within ten (10) days of receiving notice from the video service provider that it will begin offering service in the Village, or the video service provider is not required to pay the VSP Fee to the Village; and

WHEREAS, O.R.C. §1332.32(B)(2)(g) provides that the VSP Fee is paid on a base of gross revenues consisting of revenues received from subscribers only, unless the Village specifically determines, by ordinance uniformly applicable to all video service providers, that advertising revenues also be included in the base of gross revenues on which the VSP Fee is paid; and

WHEREAS, O.R.C. §1332.32(B)(2)(g) requires the Village to promptly notify affected video service providers of the ordinance determining to include advertising revenues in the base of gross

revenues on which the VSP Fee is paid, but provides that the requirement to include advertising revenues in the base of gross revenues does not take effect until the first day of the first calendar quarter that begins more than thirty (30) days after giving such notice; and

WHEREAS, to minimize the negative financial impact on the Village, it is the intent of this Council that the Video Service Provider Fee shall be a replacement funding source to compensate for any loss of franchise fees that are presently required by the Village's current franchises with Wide Open West LLC and Time Warner Cable; and

WHEREAS, to provide timely notice to a video service provider of the VSP Fee, it is necessary for this Council to determine now that the percentage of gross revenues that shall be paid as a VSP Fee is three percent (3%) and that advertising revenues shall be included in the base of gross revenues on which the VSP Fee is paid, and to authorize the Mayor to provide notice of the VSP Fee to a video service provider within ten (10) days of the Village receiving notice that a video service provider will begin providing service in the Village.

NOW, THEREFORE, be it ordained by the Council of the Village of Minerva Park, Ohio that:

Section 1. In accordance with the requirements of O.R.C. §1332.32, all video service providers providing video service in the Village pursuant to a video service authorization obtained from the Director of the Ohio Department of Commerce shall pay the VSP Fee in the amount of three percent (3%) of gross revenues received from providing video service in the Village, which gross revenue base shall include advertising revenues. The VSP Fee shall be paid quarterly, not sooner than forty-five (45) days nor later than sixty (60) days after the end of each calendar quarter.

Section 2. Upon receipt of notice from a video service provider that it will begin providing video service in the Village pursuant to a state-issued video service authorization, the Mayor is authorized and directed to provide such video service provider with notice of the VSP Fee as determined by this Council in Section 1 above, which notice shall be delivered in a manner that provides for proof of timely delivery.

Section 3. It is found and determined that all formal actions of the Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and all deliberations of the Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. This ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and urgent benefit and protection of the inhabitants of the Village of Minerva Park, such emergency being for the reason to ensure that the Village continues to receive appropriate fees from people providing video and/or cable service in the Village using the Village's rights-of-way, it is necessary that the within ordinance become effective at the earliest possible time; wherefore, provided this ordinance receives the affirmative vote of two-thirds or more of the members elected or appointed to this Council, this ordinance shall take effect and be in force immediately upon its passage.

Lynn Eisentrout, Mayor, Village of Minerva Park

First Reading: Waived January 14, 2008
 Second Reading: Waived January 14, 2008
 Third Reading: Waived January 14, 2008
 Passed: January 14, 2008

Attest Suzanne Coulter, Clerk-Treasurer,
 Village of Minerva Park

Reviewed by Counsel