

**VILLAGE OF YELLOW SPRINGS, OHIO  
ORDINANCE #2008-06**

**AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE VILLAGE OF YELLOW SPRINGS, OHIO TO INCLUDE CHAPTER 840-COMPETITIVE VIDEO SERVICE AUTHORIZATIONS; OF TITLE TWO-BUSINESS REGULATION; OF PART EIGHT-BUSINESS REGULATION AND TAXATION CODE; BY ADDING PROVISIONS FOR COMPETITIVE VIDEO SERVICE AUTHORIZATIONS, ESTABLISHING FEES, DEFINING CERTAIN TERMS, AND AUTHORIZING THE VILLAGE MANAGER OR DESIGNEE TO PROVIDE CERTAIN NOTICES TO THE VIDEO SERVICE PROVIDERS OFFERING VIDEO SERVICE IN THE VILLAGE PURSUANT TO STATE AUTHORIZATION.**

**WHEREAS**, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code (“Ohio R.C.”), and such enactment provides for a “uniform regulatory framework” on a statewide basis for the provision of cable television and/or other video service,

**WHEREAS**, Ohio R.C. 1332.21 through 1332.34 became effective on September 24, 2007; and

**WHEREAS**, Ohio R.C. 1332.21 through 1332.34 will substantially reduce the Village of Yellow Springs’ (the “Village”) traditional franchising authority under the Cable Communications Policy Act of 1984 as amended by the Telecommunications Act of 1996 (47 U.S.C. 521 et seq.) to regulate cable and/or video service offered in the Village using facilities and equipment located in the Village’s public rights-of-way; and

**WHEREAS**, the Village has a current non-exclusive cable television franchise agreement with Time Warner Cable, a Division of Time Warner Entertainment Company, L.P. (“TWC”), which expires by its own terms on or about June 7, 2014 and pursuant to which TWC pays franchise fees in the amount of five percent (5%) of gross revenues which are defined by the franchise agreement to include, inter alia, advertising revenues; and

**WHEREAS**, pursuant to Ohio 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 (“VSA”) from the Director of the Ohio Department of Commerce (the “Director”); and

**WHEREAS**, upon being granted a VSA by the Director, the applicant shall be considered a competitive video service provider (“VSP”); and

**WHEREAS**, Ohio 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 VSA 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 Federal Communication Commission determines that the cable operator is subject to “effective competition” in the Village pursuant to 47 CFR 76.907; and

**WHEREAS**, under Ohio R.C. 1332.32, a VSP that is providing service to subscribers in the Village pursuant to a state-issued VSA 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**, Ohio R.C. 1332.32 requires that in any calendar quarter the percentage of gross revenues on which VSP Fees are paid must be the same as the percentage of gross revenues that the cable operator pays pursuant to a franchise agreement that is in effect (or alternatively, if multiple franchises are in effect in a jurisdiction, the lowest such percentage paid a cable operator pursuant to a franchise agreement that is in effect shall be paid), or, if there is no effective franchise agreement under which franchise fees are payable, the VSP Fee shall be zero percent (0%) of gross revenues, unless the Village determines by ordinance that the VSP Fee will be a higher percentage of gross revenues, not to exceed five percent (5 %) of gross revenues; and

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

**WHEREAS**, Ohio R.C. 1332.32(B)(2)(g) provides that the VSP Fee is paid on a base of gross revenue received from subscribers having service addresses within the jurisdiction that consists of revenues as are defined in Ohio R.C. 1332.32(B)(1)(a-e) but specifically excludes revenues as defined in Ohio R.C. 1332.32(B)(2)(a-h), unless the Village determines, by ordinance uniformly applicable to all VSPs, that advertising revenues as defined by Ohio R.C. 1332.32(B)(2)(g) are also to be included in the base of gross revenues on which the VSP Fee is paid; and

**WHEREAS**, Ohio R.C. 1332.32(B)(2)(g) requires the Village to promptly notify affected VSPs 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**, in order to provide timely notice to a VSP 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 five percent (5%) and that advertising revenues in accordance with Ohio R.C. 1332.32(B)(2)(g) shall be included in the base of gross revenues on which the

VSP Fee is paid, to authorize the Village Manager or designee to provide notice of the VSP Fee to a VSP within ten (10) days of the Village receiving notice that a VSP will begin providing service in the Village; and

**WHEREAS**, Ohio R.C. 1332.30(A)(2) requires that the Village provide written notice to a VSP that it shall be required within one-hundred and twenty (120) days of receipt of that notice to provide the same number of public, educational, and government access (“PEG”) channels under the same service tier conditions and subject to the same channel reclamation conditions as may be proscribed by Ohio R.C. 1332.30(A)(1)(a-b) for the current incumbent cable provider of video or cable service with the most recent obligation in the Village; and

**WHEREAS**, Ohio R.C. 1332.30(A)(1)(b) requires that if one (1) or two (2) PEG channels are required to be provided to the Village by an incumbent cable provider or VSP, pursuant to a franchise, competitive video service agreement, ordinance, or resolution or otherwise, then the person providing the those channels shall continue to provide the channel or channels, with one (1) PEG channel on the person’s basic cable service and, as applicable, the second (2) PEG channel on the person’s basic cable service or on any service tier viewed by more than fifty percent (50%) of the subscribers in the VSA; and

**WHEREAS**, it is the desire of the Village that all payments of VSP Fees be made directly to the Village, quarterly, no later than sixty (60) days after the end of a calendar quarter; and

**WHEREAS**, it is also the desire that all VSP Fees be used first for the operation, maintenance, and capital improvement of the Village’s television station, with any remaining fees going to the Village’s general revenue fund; and

**WHEREAS**, the PEG programming origination point for the Village is currently and shall remain located at 100 Dayton Street, Yellow Springs, Ohio, unless and until the Village shall designate otherwise; and

**WHEREAS**, Ohio R.C. 1332.21 through 1332.34 contain numerous requirements that a VSP provide certain specific notifications to the Village, but otherwise fail to adequately proscribe the specific manner in which such notice should be provided and the Village believes that such notice should properly be provided in writing to the Village Manager either by certified mail, express mail or personal delivery, all evidenced by a return receipt; and

**WHEREAS**, in order to enable the Village to treat incumbent cable providers and VSPs appropriately and adequately and properly address all the requirements and conditions of Ohio R.C. 1332.21 through 1332.34 as enacted by the Ohio General Assembly, the Village believes it is necessary to amend the Codified Ordinances of Yellow Springs Ohio to include Chapter 840; and

**NOW, THEREFORE, THE COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY ORDAINS THAT:**

**Section 1.** That the Codified Ordinances of Yellow Springs Ohio are hereby amended to include Chapter 840:

**CHAPTER 840: COMPETITIVE VIDEO SERVICE AUTHORIZATIONS**

**840.01 DEFINITIONS.**

As used in this chapter:

- (a) “Incumbent Cable Provider” means any person who on the effective date of this section is the holder of a cable franchise agreement with the Village as granted pursuant to the requirements of 47 U.S.C 541.
- (b) “PEG” means the activities or actions performed for the benefit of public, educational, and government video programming by the Village.
- (d) “Video Service” means the service defined in Ohio R.C. 1332.21(J).
- (e) “Video Service Authorization” or “VSA” means the authorization granted to a video service provider in accordance with the requirements of Ohio R.C. 1332.21 to 1332.34 et seq.
- (f) “Video Service Provider Fee” or “VSP Fee” means the fee paid by a VSP in accordance with the requirements of Ohio R.C. 1332.32.
- (g) “Video Service Provider” or “VSP” means a person, firm, or corporation granted a video service authorization under Ohio R.C. 1332.21 to 1332.34 et seq.
- (h) “Village” means the Village of Yellow Springs, Ohio.

**840.02 VSP FEE, PERCENTAGE, AND AUDIT**

- (a) Not sooner than forty-five (45) nor later than sixty (60) days after the end of each calendar quarter, a video service provider shall pay a VSP Fee to the Village. The fee shall be calculated quarterly by determining the provider's gross revenue for the preceding calendar quarter as described in division (b) of this section and multiplying the result by the percentage specified in division (c)(1) or (2) of this section.

- (b) Gross revenue shall be computed in accordance with generally accepted accounting principles.
  - (1) Gross revenue shall consist of all of the following revenue for the calendar quarter that is collected by the provider for video service from all its subscribers having service addresses within the Village:
    - (aa) Recurring monthly charges for video service;
    - (bb) Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;
    - (cc) Charges for rental of set top boxes and other video service equipment;
    - (dd) Service charges related to the provision of video service, including, but not limited to, activation, installation, and repair;
    - (ee) Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges.
    - (ff) Advertising revenue. For these purposes, "advertising revenue" means the net revenue received by the video service provider for advertising on its subscription-based video service within the Village. If such revenue is derived under a regional or national compensation contract or arrangement between the VSP and one or more advertisers or advertising representatives, the amount of revenue derived for the Village shall be determined by multiplying the total net revenue received by the video service provider under the contract or arrangement by the percentage resulting from dividing the number of subscribers in the Village by the total number of regional or national subscribers that potentially receive the advertising under the contract or arrangement.
  - (2) Gross revenue shall not include any of the following:
    - (aa) Any taxes, fees, or assessments that are collected by the video service provider from video service subscribers for pass-through to any federal, state, or local government agency, including the video service provider fee authorized under this section, the fee authorized under division (F) of Ohio R.C.

1332.30, and the federal communication commission user fee;

- (bb) Uncollectible charges, except that uncollectible charges, all or part of which are written off as bad debt but subsequently collected, less the expenses of their collection shall be included in gross revenue in the quarter collected;
  - (cc) Late payment charges;
  - (dd) Maintenance charges;
  - (ee) Charges for services other than video service, reasonably identifiable on books or records the video service provider keeps in the regular course of business or by other reasonable means, that are aggregated or bundled with amounts billed to video service subscribers, including, but not limited to, any revenue received by a VSP or its affiliates for telecommunications service, information service, or the provision of directory or internet advertising, including yellow pages, white pages, banner advertising, and electronic publishing;
  - (ff) Reimbursement by programmers of marketing costs actually incurred by the video service provider;
  - (gg) Any revenue not expressly enumerated in division (b)(1) of this section.
- (c) (1) If in a calendar quarter a franchise fee is payable by a provider under a franchise in effect in the Village, the percentage of gross revenue payable in that calendar quarter by the video service provider to the Village shall be the same percentage of gross revenue payable in that calendar quarter pursuant to that franchise, not to exceed five percent (5%).
  - (2) Otherwise, the percentage shall be five percent (5%) of a video service provider's gross revenues, as calculated in accordance with this ordinance.
- (d) A video service provider that pays a VSP Fee pursuant to this section may identify and collect the amount of that fee as a separate line item on the regular bill of each of its video service subscribers that has a service address within any portion of the Village.

- (e) (1) At its sole expense and not more often than once per calendar year, the Village or its designee may conduct an audit for the purpose of verifying the accuracy of a video service provider's calculation of the video service provider fees it paid to the Village in the audit period. For the purpose of the audit, the video service provider shall make available for inspection, at the location where such records are kept in the normal course of business, those records pertaining to its gross revenue as defined in division (b) of this section.
- (2) A video service provider shall pay any amounts found to have been underpaid in the audit within thirty (30) days after notice and shall include interest on the underpayments. However, payment need not be made in that thirty-day period if the VSP brings an action under division (e)(3) of this section.
- (3) An action by the Village or by the VSP to dispute the amount of VSP Fee due based on the audit results may be brought in a court of competent jurisdiction not later than two (2) years following the end of the quarter to which the disputed amount relates.

**840.03 VSP FEE NOTICE PROVISION.**

Upon receipt of notice from a VSP that it will begin providing Video Service in the Village Pursuant to a state-issued video service authorization, the Village Manager or his/her designee is authorized and directed to provide such VSP with notice of the VSP Fee as determined by this Council in section 840.02 which notice shall be delivered in a manner that provides for proof of timely delivery.

**840.04 CABLE ADVISORY PANEL.**

The Village, at its discretion, may create a cable advisory panel to review cable operations, direct access operations, to manage and direct the Village's cable franchise management, PEG access channels, franchise fee collection activities and VSP Fee collection activities as may be necessary under Ohio R.C. 1332.21 through 1332.34 et seq., all until such time as the Village may terminate or revoke such grant of authority.

**840.05 MANAGEMENT AUTHORIZATION.**

If applicable, the cable advisory panel shall coordinate regulatory efforts for the Village and provide expertise on other matters regarding cable franchises, cable service providers, VSAs, VSPs, and other electronic media. Additional responsibilities shall include the creation and promotion of a community media center and PEG access channels, the establishment and review of programming policies, resolution of policy disputes and questions of equal treatment for access users, and fiscal controls. If matters of contract interpretation arise concerning community programming, the cable advisory panel shall be consulted.

**840.06 VSP ACCESS PROVISION.**

Upon receipt of notice from a VSP that it will begin providing Video Service in the Village pursuant to a VSA, the Village Manager or his/her designee is authorized and directed to provide such VSP with notice that the VSP shall be required to provide the same number of PEG channels in the Village under the same service tier conditions and subject to the same conditions as may be proscribed by Ohio R.C. 1332.30(A)(1) for the Incumbent Cable Provider with the most recent obligation in the Village, which notice shall be delivered in a manner that provides for proof of timely delivery and shall state the appropriate number of PEG channels and service tiers required to be provided by the VSP within the Village within one-hundred and twenty (120) days after delivery of such notice.

**840.07 ACCESS PROGRAMMING REQUIREMENT.**

In accordance with the requirements Ohio R.C. 1332.30(A)(1)(b), when one (1) or two (2) PEG channels are required to be provided to the Village by an incumbent cable provider or VSP, pursuant to a franchise, competitive video service agreement, ordinance, resolution or otherwise, then the person providing the those channels shall continue to provide the channel or channels, with one (1) PEG channel on the person's basic cable service and, as applicable, the second (2) PEG channel on the person's basic cable service or on any service tier viewed by more than fifty percent (50%) of the subscribers in the VSA

**840.08 FEE PAYMENT REQUIREMENTS.**

Any VSP Fee or Community Service Fee Payments required to be paid to the Village by a VSP shall be made quarterly and be remitted directly to the Village via a negotiable instrument made payable to the Village of Yellow Springs, 100 Dayton Street, Yellow Springs, Ohio 45387 not later than sixty (60) days after the end of a calendar quarter.

**840.09 PEG ORIGINATION POINT.**

The PEG programming origination point for the Village for the delivery of VSP access services is currently and shall remain located at 100 Dayton Street, Yellow Springs, Ohio, unless and until the Village shall designate otherwise.

**840.10 NOTICE REQUIREMENT.**

Any notice to the Village that is required of a VSP in accordance with of Ohio R.C. 1332.21 through 1332.34 shall be provided in written form to the Village Manager by certified mail, express mail or upon personal delivery, all evidenced by a return receipt.

**840.11 APPLICATION TO INCUMBENT CABLE PROVIDERS.**

Nothing in this section shall apply to incumbent cable providers until they are granted a Video Service Authorization in accordance with Ohio R.C. 1332.21 through 1331.34 et seq.

**840.12 CUSTOMER SERVICE STANDARDS**

- (a) When requested to do so, a VSP shall assist the Village in addressing video

service subscriber complaints, in a manner consistent with the provider's complaint handling process.

- (b) A VSP shall meet all of the following customer service standards:
- (1) The provider shall restore video service within seventy-two (72) hours after a subscriber reports a service interruption or other problem if the cause was not a natural disaster.
  - (2) Upon a report by a subscriber of a service interruption and if the interruption is caused by the video service provider and lasts for more than four (4) hours in a given day, the provider shall give the subscriber a credit in the amount of the cost of each such day's video service as would be billed to the subscriber.
  - (3) Upon a report by a subscriber of a service interruption and if the interruption is not caused by the video service provider and lasts for more than twenty-four (24) consecutive hours, the provider shall give the subscriber, for each hour of service interruption, a credit in the amount of the cost of per hour video service as would be billed to the subscriber.
  - (4) The provider shall give a subscriber at least thirty (30) days' advance, written notice before removing a channel from the provider's video service, but no such notice is required if the provider must remove the channel because of circumstances beyond its control.
  - (5) The provider shall give a subscriber at least ten (10) days' advance, written notice of a disconnection of all or part of the subscriber's video service, except if the disconnection has been requested by the subscriber, is necessary to prevent theft of video service, or is necessary to reduce or prevent signal leakage as described in 47 C.F.R. 76.611.
  - (6) The provider shall not disconnect all or part of a subscriber's video service for failure of the subscriber to pay its video service bill, until the bill is at least forty-five (45) days past due.
  - (7) The provider shall give a subscriber at least thirty (30) days' advance, written notice before instituting an increase in video service rates.

#### **840.13 FEE APPROPRIATION.**

All VSP Fees are to be used first for the operation, maintenance, and capital improvement of the Village's television station, with any remaining fees going to the

Village's general revenue fund.

**840.99 PENALTY.**

Whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than Five Hundred and 00/100 Dollars (\$500.00) or imprisoned not more than sixty (60) days or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

**Section 2.** This ordinance shall hereby take effect and be in force thirty (30) days after passage.

\_\_\_\_\_  
Judith Hempfling, President of Council

Passed:

ATTESTED: \_\_\_\_\_  
Deborah Benning, Clerk of Council

ROLL CALL:

Judith Hempfling \_\_\_\_\_

Karen Wintrow \_\_\_\_\_

Kathryn Van der Heiden \_\_\_\_\_

John Booth \_\_\_\_\_

Lori Askeland \_\_\_\_\_