

CHAPTER 8

CABLE TELEVISION

ARTICLE I – CABLE/VIDEO SERVICE PROVIDER FEE  
AND PEG ACCESS FEE

**8-1-1**        **DEFINITIONS.** As used in this Article, the following terms shall have the following meanings:

(A)        **"Cable Service"** means that term as defined in 47 U.S.C. § 522(6).

(B)        **"Commission"** means the Illinois Commerce Commission.

(C)        **"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.

(1)        Gross revenues shall include the following:

(a)        Recurring charges for cable 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 or video 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 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.

- (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, subject to subsection (i).
  - (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 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.
  - (j) The service provider fee permitted by 220 ILCS 5/21-801(b).
- (2) Gross revenues do not include any of the following:
- (a) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
  - (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 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 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.
  - (d) 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.

- (e) 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.
  - (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 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

(D) **"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.

(E) **"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.

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

(G) **"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.

**8-1-2 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 **three percent (3%)** of the holder's gross revenues.

(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 to prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 116.02(b).

**8-1-3 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 fee imposed pursuant to **Section 8-1-2(B)**.

(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 date set forth in **Section 8-1-2(D)**.

(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 the operator owed under **Section 8-1-3(B)**.

**8-1-4 APPLICABLE PRINCIPLES.** All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

**8-1-5 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 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 local unit of government's 911 or E911 fees, taxes or charges.

**8-1-6 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 recomputed 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.* found in Chapter 36. No acceptance of amounts remitted should be construed as an accord that the amounts are correct. **(See Chapter 36 - Taxation)**

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

**8-1-7 LATE FEES/PAYMENTS.** All fees due and payments which are past due shall be governed by ordinances adopted by this municipality pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*

**(See 220 ILCS 5/21-801)**

**ARTICLE II - CABLE AND VIDEO CUSTOMER PROTECTION LAW**

**8-2-1            CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.**

(A)            **Adoption.** The regulations of 220 ILCS 5/70-501 are hereby adopted by reference and may 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 municipality'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.

**8-2-2            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 Protection Law with respect to complaints received from residents within the Village.

**8-2-3            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 5/70-501(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.

**8-2-4            PENALTIES.** The Village, pursuant to 220 ILCS 5/70-501(r)(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection Law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a completively 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 notice in (B).

### ARTICLE III - GENERAL REGULATIONS

**8-3-1 GRANT OF NON-EXCLUSIVE FRANCHISE.** There is hereby granted by Evansville, Illinois and assigned a non-exclusive Franchise to Rifkin Acquisition Partners, L.L.C. (d/b/a Charter Communications), hereinafter referred to as the "Franchisee", to operate and maintain a cable system for a period of **five (5) years** upon renegotiation and acceptance by both parties. **(See Appendix "A")**

**8-3-2 DEFINITIONS.** For the purpose of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. The word "shall" is always mandatory and not merely directory.

(A) **"City"** shall mean Village of Evansville, Illinois.

(B) **"Board"** shall mean the governing body of Evansville, Illinois.

(C) **"Franchise"** shall mean the authorization to operate a cable television system, including all mutual rights, duties and obligations of the Franchisee and the City as contained in this Chapter.

(D) **"Franchisee"** shall mean Rifkin Acquisition Partners, L.L.C. (d/b/a Charter Communications), its successor or any affiliated company in accordance with the provisions of this Chapter.

(E) **"Gross Basic Service Receipts"** shall mean those receipts derived from the regular basic subscriber services consisting of the carriage of television broadcast signals and required non-broadcast signals.

(F) **"System"** shall mean those antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and constructed within the City for the purpose of producing, providing, receiving, transmitting, amplifying and distributing, audio, video and other forms of electronics or directional duplex signals.

**8-3-3 GRANT OF AUTHORITY.** Franchisee shall be given the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways now laid out or dedicated and in compatible easements, and all extensions, thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the entire area of the City of a cable system for the integration, sale, and distribution of television, radio and other signals used for the receipt transmission of information.

Franchisee shall raise or lower wires or equipment upon the reasonable request of any third person, including any person holding a building permit. *Expenses* associated with raising and lowering the wires or equipment shall be paid by the person requesting the same (except in cases where Franchisee is required to bear the costs

under other provisions of this Franchise) and the Franchisee may require advance payment. Franchisee shall be entitled to require that it be given up to **ten (10) days** advance notice by the person requesting the movement. Where City requests the raising or lowering of wires Franchisee shall pay all expenses.

**8-3-4 COMPLIANCE WITH APPLICABLE LAWS.** Franchisee, shall, at all times during the life of this Franchise, be subject, when not inconsistent with this Franchise, to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

**8-3-5 COMPLIANCE WITH FCC REGULATION.** Franchisee shall comply with all applicable rules and regulations of the Federal Communications Commission.

Copies of all petitions, applications and communications submitted by the Franchisee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect of any matters directly affecting Cable System operations authorized pursuant to the Franchise, shall be submitted to the Board upon request.

**8-3-6 COMPLIANCE WITH ELECTRICAL STANDARDS.** Construction and maintenance of the transmission and distribution system including house connections, shall be in accordance with the provisions of the National Electrical Safety Code of the National Board of Fire Underwriters, and such safety codes as now exist or which may be established in the future. In the event of a conflict among safety codes, the strictest standard shall apply.

**8-3-7 SERVICE TERRITORY.** Franchise shall include the entire area of the City.

Franchisee's distribution system shall be capable of providing service to all potential subscribers requesting service within the incorporated limits of the City and shall extend its distribution system to serve additional subscribers in any unserved areas of the City as of the effective date of this Chapter whenever the number of unserved homes passed by such extension would exceed **forty (40) homes** per mile; provided that such extensions are technically and economically feasible to the Franchisee.

Where the length of a drop cable required to serve an individual resident would exceed **one hundred fifty (150) feet**, the subscriber served by such a drop cable shall pay the cost of installing a feeder cable to a point where the subscriber will receive a signal without degradation of picture quality or reliability.



**8-3-8**        **CUSTOMER SERVICE.** Franchisee shall comply with applicable Federal, State and local laws for the protection of privacy of cable subscribers.

Franchisee shall render efficient repair service, and interrupt service only for good cause and for the shortest time possible. A toll-free telephone number shall be maintained so that complaints and repair requests may be received by Franchisee at any time. All non-emergency service requests and complaints shall be responded to within **five (5) days** of receipt. All emergencies and/or system outages will be responded to within **twenty-four (24) hours**.

Franchisee shall give City **thirty (30) days** prior notice of any rate increases, channel lineup or other substantive service changes.

The Franchisee shall by appropriate means, as subscribers are connected or reconnected to the system, furnish information concerning the procedures for making inquiries and/or complaints, including the name, address and toll-free telephone number of the Franchisee.

The equipment installed by the Franchisee in the subscriber's home shall remain the property of the Franchisee and shall be subject to reasonable inspection and service by the Franchisee at reasonable hours, and removal upon non-payment or termination of the service.

**8-3-9**        **COMMUNITY PROGRAMMING.** Franchisee shall reserve one local access/PEG (Public, Education, Government) Channel.

**8-3-10**       **SERVICE TO CITY.** Franchisee shall provide and maintain on free connection of basic cable service to the fire station, city hall and to all public and parochial primary and secondary schools located in the City. The cost of any internal wiring shall be borne by the institution.

Such connections shall be provided at such times as service can be provided from the Franchisee's existing distribution plant. If a distribution plant extension of the system is required which imposes an undue economic hardship, the Franchisee shall have the right to petition the City for relief from the service commitments of this Section. Service shall be provided to newly constructed City facilities under the same terms and conditions and as soon as practical, but in no event later than **two (2) years** from the date of occupancy.

**8-3-11**       **FEE TO CITY.** Franchisee shall pay to the City for the privilege of operating a cable system under this Franchise **three percent (3%)** of its gross basic service receipts per month, in accordance with the Cable Act. Such percentage shall be payable to the City on an annual basis due no later than **ninety (90) days** following the end of the period.

City shall have the right to inspect for up to **three (3)** previous years the Franchisee's records showing its gross receipts for all services from which its contracted

payouts are computed. No acceptance of any payout by the City shall be construed as a release of or an accord or satisfaction of any claim the City might have for further or additional sums payable under the terms of this Franchise.

**8-3-12 CONDITIONS ON STREET USE.** Franchisee shall endeavor to obtain rights to use facilities belonging to other Franchise holders within the City. Approval of the assignment of such rights to the Franchisee by such other Franchise holders is hereby expressly given by the City, it being the intention of the City that the Franchisee will utilize public utility facilities where feasible.

All transmission and distribution structures, lines, and equipment erected by the Franchisee within the City shall be located so as not to interfere with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places, and not to interfere with existing public utility installation.

If the Franchisee disturbs any pavements, sidewalks, driveways or other surfacing, it shall, at its own expense, and in the manner provided by the City, replace and restore all such pavings, sidewalks, driveways or other surfaces of any streets or alleys thus disturbed.

If at any time during the period of this Franchise, the City shall lawfully elect to alter, or change the grade or alley, or other public ways, the Franchisee shall upon reasonable notice by the City, remove and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense, and in each instance comply with the requirements of the City.

**8-3-13 INDEMNIFICATION AND INSURANCE.**

<u>Workers' Compensation</u>	<u>Statutory Limits</u>
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned and hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

The City shall be added as an Additional Insured to the above Commercial General Liability and Auto Liability Insurance Coverage.

The Franchisee shall furnish the City with current Certificates of Insurance evidencing such coverage.

**8-3-14**     **TRANSFER.** Franchisee shall promptly notify the City in the event of any sale or transfer of **twenty-five percent (25%)** or more of the voting stock or control of the Franchise.

**8-3-15**     **NOTICE.** Any notices to be sent to the parties hereto shall be sent to the following addresses; unless either party notifies the other in writing of another address:

Village of Evansville  
P.O. Box 257  
Evansville, IL 62242

Charter Communications  
Attn: Vice President  
Government Relations  
12444 Powerscourt, 4<sup>th</sup> Floor  
St. Louis, MO 63131

**8-3-16**     **DURATION AND RENEWAL OF FRANCHISE.** This franchise and the rights, privileges and authority hereby granted shall take effect and be in force **thirty (30) days** from and after the final passage hereof and upon filing of acceptance by the Franchisee, and shall continue in force and effect for a term of **five (5) years.**

**8-3-17**     **EMERGENCY USE OF FACILITIES.** In the case of any emergency or disaster, the Franchisee shall upon request of the City, make available its facilities for emergency use during the emergency or disaster.

**8-3-18**     **PUBLIC RECORDS.** The City shall have access to records and other like materials of the Franchisee upon reasonable prior notice as mutually agreed upon by the City and Franchisee.

**8-3-19**     **FORFEITURE OF FRANCHISE.**  
(A) In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the Franchisee hereunder in the event that the Franchisee:

- (1) Violates any provision of this Franchise or any rule, order, or determination of the Board made pursuant of this Franchise,

except where such violation, other than subsection (2) below, is without fault or through excusable neglect;

- (2) Becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt;
- (3) Attempts to evade any of the provisions of this Franchise or practices any fraud or deceit upon the City.

(B) Such termination and cancellation shall be by Ordinance duly adopted after **thirty (30) days** written notice to the Franchisee and shall in no way affect any of the City's rights under this Franchise or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact shall be made by the Board or its representative. Before this Franchise may be terminated and canceled under this Section, the Franchisee must be provided with an opportunity to be heard before the Board and an opportunity to cure any condition leading to termination or cancellation. If the Franchisee has corrected the condition leading to termination or cancellation within the **thirty (30) days** written notice of termination or cancellation, or, if such correction requires more than **thirty (30) days**, has begun to correct any such condition, this Franchise shall remain in effect.

(C) Prevention or delay of any performance under the Franchise due to circumstances beyond the control of Franchisee or City including, but not limited to, natural disaster, employee strikes or war shall not be deemed noncompliance with or a violation of this Franchise.

**8-3-20 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE.**

Franchisee shall comply at all times with applicable Federal, State and local laws and all executive and administrative orders relating to nondiscrimination, equal employment and affirmative action.

**8-3-21 SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unconstitutional or unenforceable, such portion shall be deemed a separate, distinct and independent provision and such holding shall not effect the validity of the remaining portions hereof.

**8-3-22 INTEGRATION.** This Agreement sets forth the entire Agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations and warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged

agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated Agreement.

**8-3-23**      **RATE REGULATION.** To the extent that Federal or State Law or regulation may now, or as the same may hereafter be amended to, authorize the City to regulate the rates for any particular service tiers, service packages, equipment, or any other services provided by the Franchisee, the City shall have the right to exercise rate regulation to the full extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the City. If and when exercising rate regulation, the City shall abide by the terms and conditions set forth by the FCC.

**(Ord. No. 526; 09-23-02)**