

ORDINANCE No. 22-07
CITY OF CENTERVILLE, OHIO

Sponsored by Council Member James Singer on the 19th day of November, 2007.

AN ORDINANCE TO AMEND THE CODIFIED ORDINANCES OF THE CITY OF CENTERVILLE TO INCLUDE CHAPTER 840 ADDING PROVISIONS FOR COMPETITIVE VIDEO SERVICE AUTHORIZATIONS, ESTABLISHING FEES, DEFINING CERTAIN TERMS, AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO PROVIDE CERTAIN NOTICE TO THE VIDEO SERVICE PROVIDERS OFFERING VIDEO SERVICE IN THE CITY PURSUANT TO A STATE AUTHORIZATION.

WHEREAS, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code, 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, Sections 1332.21 through 1332.34 of the Ohio Revised Code became effective on September 24, 2007; and

WHEREAS, Sections 1332.21 through 1332.34 of the Ohio Revised Code will substantially reduce the City of Centerville ("City") 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 City using facilities and equipment located in the City's public rights-of-way; and

WHEREAS, the City has a current cable television franchise agreement with Time Warner which expires by its own terms on or about June 30th, 2007 and pursuant to which Time Warner 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 R.C. Section 1332.23, any new video service provider intending to provide video service to subscribers in the City must apply for and obtain a video service authorization ("VSA") from the Director of the Ohio Department of Commerce; and

WHEREAS, upon being granted a VSA by the Director of the Ohio Department of Commerce, the applicant shall be considered a competitive video service provider ("VSP"); and

WHEREAS, R.C. Section 1332.23 also permits a cable operator with an effective franchise agreement to terminate its franchise with the City, 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 City or actually begins providing service to subscribers in the City, or if the FCC determines that the cable operator is subject to "effective competition" in the City pursuant to 47 CFR 76.907; and

WHEREAS, under R.C. Section 1332.32, a VSP that is providing service to subscribers in the City pursuant to a state-issued VSA must pay the City a video service provider fee ("VSP Fee") based on a percentage of the provider's "gross revenues" derived from providing video service in the City, not to exceed five percent (5 %) of such revenues; and

WHEREAS, R.C. Section 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 City determines by ordinance or resolution that the VSP Fee will be a higher percentage of gross revenues, not to exceed five percent (5 %) of gross revenues; and

WHEREAS, R.C. Section 1332.32(C)(2) further requires the City to provide all VSPs offering service in the City 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 City, or the VSP is not required to pay the VSP Fee to the City; and

WHEREAS, R.C. Section 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 R.C. Section 1332.32(B)(1)(a-c) but specifically excludes revenues as defined in R.C. Section 1332.32(B)(2)(a-h), unless the City determines, by ordinance uniformly applicable to all VSPs, that advertising revenues as defined by R.C. Section 1332.32(B)(2)(g) are also be included in the base of gross revenues on which the VSP Fee is paid; and

WHEREAS, R.C. Section 1332.32(B)(2)(g) requires the City 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 R.C. Section 1332.32(B)(2)(g) shall be included in the base of gross revenues on which the VSP Fee is paid, to authorize the City Manager or designee to provide notice of the VSP Fee to a VSP within ten (10) days of the City receiving notice that a VSP will begin providing service in the City; and

WHEREAS, the City has previously authorized the Miami Valley Communications Council ("MVCC") to manage and direct the City's cable franchise management, public, educational, and government access programming and franchise fee collection activities and now desires to additionally authorize the MVCC to manage and direct the City's VSA public, educational, and government access programming and VSP Fee collection activities as may be necessary under R.C. Sections 1332.21 through 1332.34 of the Ohio Revised Code; and

WHEREAS, R.C. Section 1332.30(A)(2) requires that the City 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 R.C. Section 1332.30(A)(1)(a-b) for the current incumbent cable provider of video or cable service with the most recent obligation in the City; and

WHEREAS, R.C. Section 1332.30(A)(1)(a) requires that if more than three (3) PEG channels are required to be provided to the City by an incumbent cable provider or VSP, then any such additional channel may be reclaimed by the incumbent cable provider or VSP if it is programmed with fewer than forty (40) hours of non-character generated content per week and less than sixty per-cent (60%) of the programming is non-repeat and locally produced, all referred to as "not substantially utilized"; and

WHEREAS, because R.C. Section 1332.30(A)(1)(a) fails to provide guidance as to what "Non-repeat and locally produced" shall mean, the City believes it necessary to define "non-repeat and locally produced" as the first three (3) playbacks of programming produced or provided by any local resident, the MVCC or its affiliates, or any local public or private agency that provides services to residents of the greater Dayton metro area, or any transmission of a meeting or proceeding of any local, state, or federal governmental entity; and

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

WHEREAS, the PEG programming origination point for the City is currently and shall remain located at the MVCC office location— 1195 East Alex Bell Road, Centerville, Ohio 45459, unless and until the City and MVCC shall designate otherwise; and

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

WHEREAS, in order to enable the City to treat incumbent cable providers and

VSPs appropriately and adequately and properly address all the requirements and conditions of Sections 1332.21 through 1332.34 of the Ohio Revised Code as enacted by the Ohio General Assembly, the City believes it is necessary to amend the Codified Ordinances of the City of Centerville to include Chapter 840; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CENTERVILLE, OHIO:

Section 1. That the Codified Ordinances of the City of Centerville, 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 City as granted pursuant to requirements of 47 U.S.C 541.

(b) "Miami Valley Communications Council or MVCC" means the Miami Valley Communications Council which currently represents its eight member cities of Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro, and West Carrollton. MVCC is governed by a policy making body consisting of delegates representing the eight member cities. MVCC additionally maintains agreements with eighteen other Miami Valley political subdivisions who participate as affiliate members. MVCC is managed by an appointed Executive Director and his/her staff.

(c) "PEG" means the Activities or actions performed for the benefit of public, educational and government video programming by the City or MVCC.

(d) "Video Service" means the service defined in R.C. Section 1332.21(J).

(e) "Video Service" Authorization or VSA" means the authorization granted to a video service provider in accordance with the requirements of R.C. Sections 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 R.C. Section 1332.32.

(g) "Video Service Provider or VSP" means a person, firm, or corporation granted a video service authorization under R.C. Sections 1332.21 to 1332.34 et sea.

840.02 VSP FEE, PERCENTAGE, AND AUDIT

(A) Not sooner than forty-five nor later than sixty days after the end of each calendar quarter, a video service provider shall pay a video service provider fee to the City. 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 City:

(a) Recurring monthly charges for video service;

(b) Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges;

(c) Charges for rental of set top boxes and other video service equipment;

(d) Service charges related to the provision of video service, including, but not limited to, activation, installation, and repair;

(e) Administrative charges related to the provision of video service, including, but not limited to, service order and service termination charges.

(f) 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 City. If such revenue is derived under a regional or national compensation contract or arrangement between the video service provider and one or more advertisers or advertising representatives, the amount of revenue derived for the City 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 City 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:

(a) 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 section 1332.30 of the Revised Code, and the federal communication commission user fee;

(b) 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;

(c) Late payment charges;

(d) Maintenance charges;

(e) 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 video service provider 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;

(f) Reimbursement by programmers of marketing costs actually incurred by the video service provider;

(g) 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 City, the percentage of gross revenue payable in that calendar quarter by the video service provider to the City shall be the same percentage of gross revenue payable in that calendar quarter pursuant to that franchise, not to exceed five percent.

(2) Otherwise, the percentage shall be five (5) percent of a video service provider's gross revenues, as calculated in accordance with

this ordinance.

(D) A video service provider that pays a video service provider 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 City.

(E) (1) At its sole expense and not more often than once per calendar year, the City 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 City 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 section 840.02 of the Centerville Ordinances.

(2) A video service provider shall pay any amounts found to have been underpaid in the audit within thirty days after notice and shall include interest on the underpayments. However, payment need not be made in that thirty-day period if the video service provider brings an action under division (3) of this section.

(3) An action by the City or by the video service provider to dispute the amount of video service provider fee due based on the audit results may be brought in a court of competent jurisdiction not later than two 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 City Pursuant to a state-issued video service authorization, the City 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 §840.02 which notice shall be delivered in a manner that provides for proof of timely delivery.

840.04 MVCC MANAGEMENT AUTHORIZATION. The City authorizes the Community Programming Board ("MVCC") to manage and direct the City's cable franchise management, public, educational, and government access programming and franchise fee collection activities and further directs MVCC to manage and direct the City's VSA public, educational, and government access programming and VSP Fee collection activities as may be necessary under R.C. Sections 1332.21 through 1332.34 et seq., all until such time as the City may terminate or revoke such grant of authority.

840.05 MVCC MANAGEMENT AUTHORIZATION. The MVCC shall coordinate regulatory efforts for the City 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 the 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 MVCC shall be consulted.

840.06 VSP ACCESS PROVISION. Upon receipt of notice from a VSP that it will begin providing Video Service in the City pursuant to a VSA, the City 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 City under the same service tier conditions and subject to the same channel reclamation conditions as may be proscribed by R.C. Section 1332.30(A)(1)(a-b) for the Incumbent Cable Provider with the most recent obligation in the City, 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 City within one-hundred and twenty (120) days after delivery of such notice.

840.07 ACCESS PROGRAMMING REQUIREMENT. In accordance with the requirements of R.C. Section 1332.30(A)(1)(a) when more than three (3) PEG access channels are provided to the City by an Incumbent Cable Provider or VSP, such additional channel shall be programmed by the City with at least forty (40) hours of non-character generated content per week with at least sixty per-cent (60%) of the programming being non-repeat and locally produced. For the purposes of this Section "non-repeat and locally produced" shall mean the first three (3) playbacks of programming produced or provided by any local resident, the MVCC or its affiliates, or any local public or private agency that provides services to residents of the greater Dayton metro area, or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

840.08 FEE PAYMENT REQUIREMENTS. Any VSP Fee or Community Service Fee Payments required to be paid to the City by a VSP shall be made quarterly and be remitted directly to the Community Programming Board via a negotiable instrument made payable to the City of Centerville, Miami Valley Communications Council, 1195 Alex Bell Road, Centerville, Ohio 45459, not later than sixty (60) days after the end of a calendar quarter.

840.09 PEG ORIGINATION POINT. The PEG programming

origination point of the City for the delivery of VSP access services shall be located at the MVCC office location — 1195 Alex Bell Road, Centerville, Ohio 45459.

840.10 NOTICE REQUIREMENT. Any notice to the City that is required of a VSP in accordance with of R.C. Sections 1332.21 through 1332.34 shall be provided in written form to both the City Manager and the Executive Director of the MVCC either 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 R.C. 1332.21-1331.34 et seq.

840.12 CUSTOMER SERVICE STANDARDS

(A) When requested to do so, a video service provider shall assist the City in addressing video service subscriber complaints, in a manner consistent with the provider's complaint handling process.

(B) A video service provider shall meet all of the following customer service standards:

(1) The provider shall restore video service within seventy-two 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 fours 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 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 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 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 days past due.

(7) The provider shall give a subscriber at least thirty days' advance, written notice before instituting an increase in video service rates.

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 dollars (\$500.00) or imprisoned not more than sixty 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 upon the earliest time allowed by law.

PASSED THIS 19th day of November, 2007.


Deputy Mayor of the City of
Centerville, Ohio

ATTEST:


Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 22-07, passed by the Council of the City of Centerville, Ohio on the 19th day of

November, 2007.

Debra A. James
Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney