

RESOLUTION NO. 40 - 2007

RESOLUTION ENACTING PROVISIONS FOR COMPETITIVE VIDEO SERVICE AUTHORIZATIONS, ESTABLISHING FEES, DEFINING CERTAIN TERMS AND AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO PROVIDE CERTAIN NOTICE TO THE VIDEO SERVICE PROVIDERS OFFERING VIDEO SERVICE IN WEST CHESTER TOWNSHIP PURSUANT TO 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; and,

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 West Chester Township's ("Township") 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 Township using facilities and equipment located in the Township's public rights-of-way; and,

WHEREAS, the Township has a current cable television franchise agreement with Time Warner which expires by its own terms on or about November 16, 2009 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 Ohio Revised Code Section 1332.23, any new video service provider intending to provide video service to subscribers in the Township 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, Ohio Revised Code Section 1332.23 also permits a cable operator with an effective franchise agreement to terminate its franchise with the Township, at its option, by applying for a VSA when a competitive video service provider either gives notice that it will begin providing service to subscribers in the Township or actually begins providing service to subscribers in the Township, or if the FCC determines that the cable operator is subject to "effective competition" in the Township pursuant to 47 CFR 76.907; and,

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

WHEREAS, Ohio Revised Code 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 Township determines by Resolution that the VSP Fee will be a higher percentage of gross revenues, not to exceed five percent (5 %) of gross revenues; and,

WHEREAS, Ohio Revised Code Section 1332.32(C)(2) further requires the Township to provide all VSPs offering service in the Township 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 Township, or the VSP is not required to pay the VSP Fee to the Township; and,

WHEREAS, Ohio Revised Code 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 Ohio Revised Code Section 1332.32(B)(1)(a-e) but specifically excludes revenues as defined in Ohio Revised Code Section 1332.32(B)(2)(a-h), unless the Township determines, by resolution uniformly applicable to all VSPs, that advertising revenues as defined by Ohio Revised Code 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, Ohio Revised Code Section 1332.32(B)(2)(g) requires the Township to promptly notify affected VSPs of the Resolution 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 Board 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 Revised Code 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 Township Administrator or his or her designee to provide notice of the VSP Fee to a VSP within ten (10) days of the Township receiving notice that the VSP will begin providing service in the Township; and,

WHEREAS, Ohio Revised Code Section 1332.30(A)(2) requires that the Township 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 Revised Code 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 Township; and,

WHEREAS, Ohio Revised Code Section 1332.30(A)(1)(a) requires that if more than three (3) PEG channels are required to be provided to the Township 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 percent (60%) of the programming is non-repeat and locally produced, all referred to as "not substantially utilized"; and,

WHEREAS, because Ohio Revised Code Section 1332.30(A)(1)(a) fails to provide guidance as to what "non-repeat and locally produced" shall mean, the Township 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 Township or its affiliates, or any local public or private agency that provides services to residents of Butler County, or any transmission of a meeting or proceeding of any local, state, or federal governmental entity; and,

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

WHEREAS, the PEG programming origination point for the Township is currently located at 8940 Beckett Road, West Chester, OH 45069 unless and until the Township shall designate otherwise; and,

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

WHEREAS, in order to enable the Township 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 Township believes it is necessary to resolve as follows; and,

NOW THEREFORE, BE IT RESOLVED that the West Chester Township Board of Trustees does hereby agree to:

SECTION 1. Definitions. That the following definitions apply to the terms used herein:

"Incumbent Cable Provider" means any person who on the effective date of this Resolution is the holder of a cable franchise agreement with the Township as granted pursuant to requirements of 47 U.S.C. 541.

"PEG" means the activities or actions performed for the benefit of public, educational and government video programming by the Township.

"Video Service" means the service defined in Ohio Revised Code Section 1332.21(1).

"Video Service" Authorization or VSA" means the authorization granted to a video service provider in accordance with the requirements of Ohio Revised Code Sections 1332.21 to 1332.34 et seq.

"Video Service Provider Fee or VSP Fee" means the fee paid by a VSP in accordance with the requirements of Ohio Revised Code Section 1332.32.

"Video Service Provider or VSP" means a person, firm, or corporation granted a video service authorization under Ohio Revised Code Sections 1332.21 to 1332.34 et seq.

SECTION 2. VSP FEE. In accordance with the requirements of Ohio Revised Code Section 1332.32, all VSPs providing video service in the Township pursuant to a VSA obtained from the Director of the Ohio Department of Commerce shall pay a VSP Fee in the amount of five percent (5%) of gross revenues received from providing Video Service in the Township, which gross revenue base shall include advertising revenues. The VSP Fee shall be paid quarterly, not later than sixty (60) days after the end of each calendar quarter.

SECTION 3. VSP FEE NOTICE PROVISION. Upon receipt of notice from a VSP that it will begin providing Video Service in the Township pursuant to a state-issued video service authorization, the Township Administrator or his or her designee is authorized and directed to provide such VSP with notice of the VSP Fee as determined by this Resolution which notice shall be delivered in a manner that provides for proof of timely delivery.

SECTION 4. VSP ACCESS PROVISION. Upon receipt of notice from a VSP that it will begin providing Video Service in the Township pursuant to a VSA, the Township Administrator or his or 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 Township under the same service tier conditions and subject to the same channel reclamation conditions as may be proscribed by Ohio Revised Code Section 1332.30(A)(1)(a-b) for the Incumbent Cable Provider with the most recent obligation in the Township, 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 Township within one-hundred and twenty (120) days after delivery of such notice.

SECTION 5. ACCESS PROGRAMMING REQUIREMENTS. In accordance with the requirements of Ohio Revised Code Section 1332.30(A)(1)(a) when more than three (3) PEG access channels are provided to the Township by an Incumbent Cable Provider or VSP, such additional channel shall be programmed by the Township 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 Township or its affiliates, or any local public or private agency that provides services to residents of Butler County, or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

SECTION 6. FEE PAYMENT REQUIREMENTS. Any VSP Fee or Community Service Fee payments required to be paid to the Township by a VSP shall be made quarterly and be remitted directly to the Township via appropriate negotiable instrument made payable to West Chester Township, 9113 Cincinnati-Dayton Road, West Chester, Ohio 45069, not later than sixty (60) days after the end of each calendar quarter.


SECTION 7. PEG ORIGINATION POINT. The PEG programming origination point of the Township for the delivery of VSP access services shall be located at 8940 Beckett Road, West Chester, Ohio 45069.

SECTION 8. NOTICE REQUIREMENT. Any notice to the Township that is required of a VSP in accordance with Ohio Revised Code Sections 1332.21 through 1332.34 shall be provided in written form to the Township Administrator either by certified mail, express mail or upon personal delivery, all evidenced by a return receipt.

SECTION 9. APPLICATION TO INCUMBENT CABLE PROVIDERS. The additional requirements applicable to VSPs enacted in this Resolution shall not apply to Incumbent Cable Providers. The relationship between the Township and such providers shall continue to be governed by the franchise agreement between the parties until its expiration or until the Incumbent Cable Provider is granted a VSA in accordance with Ohio Revised Code 1332.21-1331.34 et seq.

SECTION 10. To ensure that the Township continues to timely receive appropriate fees and public access service provision from persons providing video and/or cable service in the Township using the Township's rights-of-way, it is necessary that this Resolution become effective at the earliest date permitted by law.

Adopted this 8th day of January, 2008.



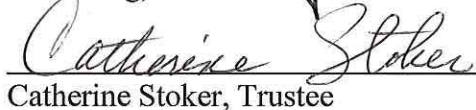
George Dang, Trustee

YES
Yes / No



Lee Wong, Trustee


YES
Yes / No



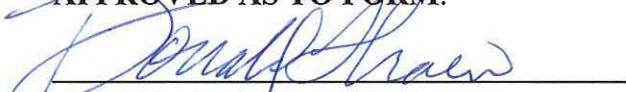
Catherine Stoker, Trustee

YES
Yes / No

ATTEST:


Patricia Williams, Township Fiscal Officer

APPROVED AS TO FORM:


Donald L. Crain, Law Director

