

ORDINANCE NO. 08 -08

**ORDINANCE AUTHORIZING AN EXTENSION TO THE CABLE TELEVISION
FRANCHISE AGREEMENT WITH COMCAST OF NORTHERN ILLINOIS, INC AND
THE VILLAGE OF EAST DUNDEE**

WHEREAS, the Village of East Dundee is a home rule unit of local government under and pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, has the authority to exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the President and Board of Trustees of the Village of East Dundee having determined that it is in the best interests of the health, safety and welfare of the residents of the Village of East Dundee to authorize an extension to the Cable Television Franchise Agreement with Comcast of Northern Illinois, inc and the Village of East Dundee.

**NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF
TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES,
ILLINOIS, AS FOLLOWS:**

SECTION 1: Definitions:

1. Cable Operator: Any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system within the Village.

2. Cable Service:

- (A) The one-way transmission to subscribers of (1) video programming or (2) other programming service, and
- (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

3. Cable System: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves

subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541 (c) of title 47 of the United States Code) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of said title; or (E) any facilities of any electric utility used solely for operating its electric utility system.

4. Gross Revenue: All revenues received by the cable operator from the operation of the System to provide Cable Service. Gross Revenue includes, but is not limited to:

- A. revenue from fees charged subscribers for basic cable service;
- B. revenue from fees charged subscribers for any optional, premium, per-channel or pre-program Cable Service;
- C. revenue from fees charged subscribers for any tier of Cable Service other than basic cable service;
- D. revenue from late or administrative fees charged subscribers;
- E. revenue from guides, installation, disconnection, re-connection and change-in-service fees;
- F. revenue from leased access fees;
- G. revenue from converter rentals;
- H. advertising revenues; and
- I. revenues from home shopping channels.

Gross revenue shall be the basis for computing the Franchise Fee imposed pursuant to this ordinance. Gross revenue shall not include any taxes on Cable Service furnished by the Cable Operator which are imposed upon any subscriber or user by the state, county, the Village or other governmental unit and collected by the Cable Operator on behalf of said governmental unit and which the Cable Operator passes on in full to the applicable tax authority or authorities, nor shall it include amounts collected from Subscribers for support of public, education and government access.

5. Franchise: An initial authorization, or renewal thereof, issued by the Village as the franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, certificate, or otherwise, which authorizes the construction or operation of a cable system.

6. Franchising Authority: The Village.

7. Interactive On-Demand Services: a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

8. Multichannel Video Programming Distributor: a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

9. Other Programming Service: information that a cable operator makes available to all subscribers generally.

10. Person: an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

11. Video Programming: programming provided by, or generally considered comparable to programming provided by a television broadcast station.

SECTION 2: Franchise Fee. Any cable operator which operates a cable system providing cable services within the Village of East Dundee's corporate boundaries shall pay to the Village a franchise fee of 5% of such cable operator's Gross Revenues derived from the operation of such cable system providing cable services.

SECTION 3: Auditing. Cable Operator audits conducted under this Ordinance shall be as provided below:

On an annual basis within one hundred twenty (120) days of the close of the calendar year, the Cable Operator shall submit to the Village a financial statement reflecting the total amount of the revenue and all payments and computations for the previous year. Said statement shall be either audited or certified by an independent certified public accountant or certified by a financial officer of the Cable Operator.

Upon ten (10) days prior written notice, the Village shall have the right to conduct an independent audit of Cable Operator's records related to the computation of the fee, in accordance with generally accepted accounting procedures. If such audit indicates a fee underpayment of five percent (5%) or more, the Cable Operator shall assume all reasonable costs of such an audit.

SECTION 4: Acceptance by Village. No acceptance of any payment by the Village shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums payable as a fee or for the performance of any other obligations of the Cable Operator.

SECTION 5: Failure to Make Required Payment. In the event that any fee payment or recomputed amount is not made on or before the dates specified herein, the Cable Operator shall pay as additional compensation:

- (1) An interest charge, computed from such due date, of eighteen percent (18%) per annum the period for which payment was due.
- (2) If the payment is late by forty-five (45) days or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Village by reason of delinquent payment.

SECTION 6: Payment schedule. The franchise fee set forth in Section 2 of this Ordinance shall be paid to the Village on a quarterly basis, that is, on April 30, for the period encompassing January 1st to March 31st of each year, July 30th for the period encompassing April 1st to June 30th of each year, October 30th for the period encompassing July 1st to September 30th of each year, and January 30th for the period encompassing October 1st to December 31st of the immediate preceding calendar year. Any franchise fees which are not paid in a timely manner in accordance with Section 2 of this Ordinance shall be paid to the Village with interest at a rate of 15% interest rate per annum on the delinquent amount. Time is of the essence.

SECTION 7: Pass through. Any Cable Operator "pass through" or itemization of fee costs on any Subscriber's bills shall be in accordance with State or Federal law, if applicable.

SECTION 8: Additional Payments: Any additional amount due after an audit shall be paid within 30 days after the Village's submission of an invoice for the sum.

SECTION 9: Construction Bond. Each Cable Operator shall provide a construction bond in the amount of \$50,000 prior to the commencement of a material upgrade or substantial rebuild of the Cable System.

The requirement for a construction bond shall extinguish upon the completion of the material upgrade or substantial rebuild of the Cable System. The Village may require a lesser bond to cover line extensions which shall occur during the term of the Franchise. Any construction bond provided under this Section shall satisfy and supercede any other requirements for construction bonds imposed by the Grantor by ordinance.

SECTION 10: Insurance. The Cable Operator shall, as a condition precedent of the Agreement, provide the Village with such bond written by a company in the State of Illinois which shall be conditioned upon the Cable Operator's faithful performance of its material obligations under the Franchise and shall name the Village as the beneficiary.

1. **General requirement.** The Cable Operator shall maintain adequate insurance during the entire term of this Agreement to protect against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.

2. **Insurance Limits.** Cable Operator shall maintain insurance of the following types and in the amounts described below:

3. Commercial General Liability: No less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a minimum \$10,000,000.00 aggregate limit. Such insurance shall:

- a) include the Cable Operator, its officers and employees as additional insureds with respect to liability arising out of activities performed by or behalf of the Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its cable system; and
- b) be primary with respect to any insurance or self-insurance covering the Grantor, its officers or employees.

4. Business Automobile Liability: Not less than \$1,000,000 per accident for bodily injury and property damage and such insurance shall include coverage for owned, hired and non-owned automobile; and

5. Worker's Compensation: In accordance with statutory limits and Employer's Liability with limits not less than \$1,000,000 per accident.

6. Deductibles and Self-Insured Retention: If the Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor.

7. Additional Requirements. All policies shall contain, or shall be endorsed so that the policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be effective by the Cable Operator, except after forty-five (45) days prior written notice, return receipt requested, has been given to the Village.

8. Acceptability of Insurers: The insurance obtained by the Grantee shall be placed with insurers with a Best's rating of no less than "A-Excellent".

9. Verification of Coverage: The Grantee shall furnish, on an annual basis, the Grantor with properly executed certificates of insurance which shall clearly evidence all insurance required in this Section. All required certificates and endorsements are to be on standard forms or such forms as are consistent with standard industry practices and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement.

SECTION 11: Acknowledgement of Franchise by Village. At the request of a Cable Operator operating a cable system within the Village, if it is in compliance with all Village ordinances and has submitted all required documents, the Village shall present a letter or certificate acknowledging that the Cable Operator has a franchise within the Village of East Dundee.

SECTION 12: Educational and Governmental Programming. As a condition to operating a cable system within the Village, the Cable Operator shall reserve one channel for educational and governmental cable casting for the Village.

SECTION 13: Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 14: Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 15: Effective Date. This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Adopted this 17th day of March, 2008, pursuant to a roll call vote as follows:

AYES: Ruffalo, Gorman, Carlini, Lynam, Cichowski, Mahony, President O'Leary

NAYES: _____

ABSENT: _____

Approved by me this 17th day of March, 2008.



DANIEL O'LEARY, President

Published in pamphlet form this 18th day of March, 2008, under the authority of the President and Board of Trustees.

ATTEST:



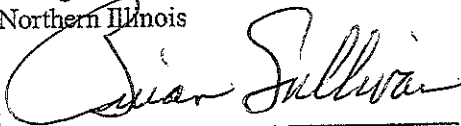
SUSAN NORTON, Village Clerk

Recorded in the Village Records on March 18th, 2008.

Fox Valley Regional Cable Commission Franchise Extension

The undersigned parties agree to extend the term of that certain Cable Television Franchise Agreement, as amended, by and between the Village of East Dundee and United Cable Television Corporation of Northern Illinois from its present expiration date of March 15, 2008, to May 30, 2008. The parties agree that each and all of the remaining terms, obligations and conditions of such Cable Television Franchise Agreement, as amended, shall remain intact and in effect in all respects to the extent consistent with applicable federal and state law and regulation.

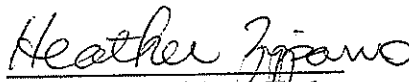
COMCAST OF NORTHERN ILLINOIS, INC.,
An Illinois corporation in good standing with
The Illinois Secretary of State and successor in interest
And assigned of United Cable Television Corporation
Of Northern Illinois

By: 
Print Name: BRIAN SULLIVAN
Its Authorized officer

VILLAGE OF EAST DUNDEE,
an Illinois municipal corporation

By: 
Daniel O'Leary, Village President

ATTEST:

By: 
~~Sue Norton~~, Village Clerk
Heather Zipparo,