

Chapter 136

CABLE TELEVISION

[HISTORY: Adopted by the Board of Trustees of the Village of Port Byron 12-14-1981 by Ord. No. 81-12-14 (Title 8, Ch. 1, Art. 1, of the 1993 Code). Amendments noted where applicable.]

§ 136-1. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

ADDITIONAL SERVICE — Service provided by grantee for which a special charge is made based on program content and provided beyond basic service.

BASIC SERVICE — Includes but shall not be limited to channels WHBF, WQAD, KIIN and other program sources from satellites or local origination.

CABLE TELEVISION NETWORK — Any network of cable, optical, electrical or electronic equipment; the use of transmission of television or other intelligences for the use of the inhabitants of the Village.

COMMISSION — The Village Cable Television Advisory Commission.

FCC — The Federal Communications Commission.

FRANCHISE — The rights and privileges granted by the terms of this chapter.

GRANTEE — Person, firm, corporation or other entity granted a franchise by this chapter.

PRIVATE PROPERTY — All property owned by a private person including property owned by a public utility not owned by the Village.

PROPERTY OF THE GRANTEE — All property owned or used by the grantee arising from or related to this franchise.

SHALL AND WILL — Each term is mandatory; "may" is permissive.

STREET — Includes all streets, roadways, highways, avenues, alleys, courts, curbs, sidewalks, boulevards, easements, rights-of-way, bridges and all extensions and additions maintained under the public authority of the Village.

SUBSCRIBER — Person, firm or corporation receiving service from the grantee.

VILLAGE — Its council, officials, boards, commissions, agents or employees designated within the territorial limits of the Village.

§ 136-2. Cable television network franchise.

- A. Authority is granted to the grantee of the right and privilege to construct, erect, operate, modify and maintain in, upon, along, above, over and under streets, utility easements, sidewalks and public grounds for use in this Village any towers, antennas, poles, cables, electronic equipment or other appurtenant equipment necessary for the operation of a cable television network in the Village. The grantee is hereby designated as a public utility for the purpose of being able to use easements which have been designated for use of same by public utilities by the Village.
- B. The term of this franchise shall be for a period of 15 years. The term shall begin on date of acceptance by grantee.
- C. The franchise shall not be exclusive.
- D. A franchise granted pursuant to this chapter shall be amendable.
- E. The franchise is a privilege held for the benefit of the public by the grantee. The franchise shall not be sold, transferred, leased, assigned or disposed of in whole or in part without the prior written consent of the Village. Such consent shall not be unreasonably withheld.
- F. Pole use agreements are required of the grantee. Said use agreements shall be entered into by the grantee and copies submitted to the Village. These use agreements shall be prepared and executed when it is necessary for the grantee to use poles and/or conduits within the Village limits owned or maintained by the power or telephone utility or some other agency.
- G. The Village shall retain the right to require removal of the cable where existing poles are not sufficient to adequately handle the Village's and grantee's cables.

§ 136-3. Operation of the franchise.

- A. Compliance with regulations. The grantee agrees to comply with all applicable Village ordinances, standards and specifications in effect at the time of passage of this chapter and any amendments or additions to ordinances, specifications or standards which may be put in force throughout the length of the franchise.
- B. Compliance with FCC rules and regulations. The grantee shall at all times comply with any all applicable rules and regulations of the FCC and any and all new laws enacted by the federal government or the FCC. Should any rule or regulation take effect subsequent to the grant of this franchise and if such rule or regulation is not binding on existing franchises, the grantee agrees to abide by changes the Village may desire consistent with the rules and regulations as may be established by the FCC.
- C. Notwithstanding the grant of the franchise, grantee shall obtain all necessary federal, state and local government permits, licenses and other required authorizations in connection with the cable television network.

- D. The grantee shall not require or offer to remove a subscriber's antenna as a condition or provision of service.
- E. The grantee upon request from any subscriber, at the time of installation, shall install an antenna switching device so as to permit the continued use of the subscriber's antenna at a charge equal to the cost of said switch, said charge not to exceed \$15.
- F. The grantee shall provide a toll-free telephone number on a twenty-four-hour availability basis so that complaints and request for repairs or adjustments may be made at any time.

§ 136-4. Cable television commission.

- A. Upon the passage of this chapter, there shall be established the Cable Television Advisory Commission.
- B. The Commission shall perform the following functions:
 - (1) Advise board on all matters pertaining to this chapter.
 - (2) Monitor grantee's construction, operation and maintenance.
 - (3) Serve as a mediation and decision-making panel on conflicts between public or private users and the grantee.
 - (4) Conduct an annual public hearing regarding the operation of the franchise to be held on or about the anniversary date of the passage of this chapter.
 - (5) Determine a policy of future channels to maximize the usefulness of the service to the community.
 - (6) Report to the Board the results of all committee and Commission meetings.
- C. The Commission shall consist of five members to be appointed by the Village President to serve for a term of four years. Initial appointments shall be for two individuals for two years and three for four years, to be determined by lot. The President shall serve as a nonvoting Commission member.

§ 136-5. Complaint procedures.

- A. The grantee shall make every reasonable effort to resolve any complaints to the satisfaction of a complainant.
- B. Should the complainant not be satisfied with the grantee's action, then the complainant may file a formal complaint with the Commission. The Commission shall, in writing, inform the grantee of the complaint and, within a specified time, the grantee shall report to the Commission on the steps taken to satisfy the complaint. A copy of this report shall be forwarded to the complainant. The complainant, if not satisfied, must file a further written complaint within 90 days of this report. If no further complaint is filed within the ninety-day period, the complaint shall be deemed abandoned and dismissed. Should the complainant file

further complaints, a public commission hearing shall be called by the Commission within 30 days after the filing of the latter complaint.

- C. At the public hearing, both parties shall be entitled to due process of law. A majority vote of the Commission as to its determination shall be binding on the parties. The Commission shall notify all parties in writing of its decision within 10 days of the close of the hearing.

§ 136-6. Validation and acceptance of franchise.

- A. Effective date. This chapter shall be in full force and effect from and after its passage by the Village Board and after publication as required by law and upon acceptance by grantee as follows:
 - (1) A statement of acceptance by grantee of the franchise, its terms, provisions and requirements shall be submitted in writing to the Board.
 - (2) A certificate of insurance with coverage and amounts as specified, to the Village by the grantee.
 - (3) Grantee shall reimburse the Village for all costs relating to the cost of elections, including publication fees, concerning this chapter.
- B. Should the grantee fail to comply with all of the above provisions within 30 days after passage of this chapter, it shall be deemed to have abandoned its application and shall acquire no rights or privileges under this chapter.

§ 136-7. Termination of franchise.

- A. The Village reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise under the following circumstances:
 - (1) If the grantee should default in performance of any of its obligations under the franchise and fails to rectify the default within 30 days of receipt of written notice by the Village, except that the grantee shall not be responsible for delays cause by strike, acts of God, unavailability of materials, or other matters beyond the control of the grantee.
 - (2) If the grantee should fail to maintain liability and indemnification coverage as required in the franchise agreement.
 - (3) If the grantee should become insolvent, be declared bankrupt, or the property of the grantee shall come in the possession of any receiver, assignee or others acting under a court order.
 - (4) If the grantee should, for a period of 30 days, violate any order or ruling by the Village, unless the grantee is lawfully contesting the legality of such an order or taking steps to bring itself into compliance.
 - (5) If the grantee arbitrarily ceases to provide service over the network.

- B. Following the occurrence of any of the events listed above, the Board by written notice to the grantee of said violation, the alleged violation of which could constitute revocation, shall establish a date of a public hearing concerning said violation. Such hearing is to be set within 60 days of written notification to both parties. If during this period the grantee should cure the violation to the satisfaction of the Village, the Village shall declare such notice null and void. The Village, at such hearing, may establish a reasonable time for the grantee to comply, and if the remedy is not perfected during such additional time, the Village may revoke the franchise without further hearing.

§ 136-8. Expiration of franchise.

- A. At least nine months prior to the expiration of the franchise, the Board shall schedule a public meeting or meetings with the grantee to review the performance of the grantee. The Board may inquire in particular as to whether the grantee is supplying a level and variety of service equal to those generally offered in comparable market situations. The Board shall provide its findings and recommendations to the grantee at least six months prior to the termination of said franchise.
- B. The Board shall, within 90 days after the filing of said written findings, determine whether the franchise shall be reissued and, if so, establish a public proceeding leading to such issuance.

§ 136-9. Procedure following termination or expiration of franchise.

- A. In the event the franchise expires and is not renewed or is revoked by the Village, the grantee may, at its option, sell its network to the Village or any duly constituted licensed franchise of the Village at a price mutually agreeable to the parties or it may remove the same. In the event the grantee elects to remove its network, it shall be done immediately, but in any event within 90 days after cessation of operation.
- B. If the network is removed, the grantee shall return such public and private property to the owners of same in the same condition as when the property of the grantee was placed thereon, excepting normal wear and tear.
- C. Should the grantee fail to complete any work in Subsection B above or any work required by law or ordinance in a timely and satisfactory manner, the Village may cause such work to be completed, for which the grantee shall reimburse the Village.

§ 136-10. Reports and records.

- A. The grantee shall file annually with the Village Clerk within three months of the close of each fiscal year a total facilities report indicating the total number of subscribers and detailing the total physical miles of plant constructed, rebuilt or in operation during the fiscal year. The report shall include any revision to the network "as built," which maps shall be filed with the Village. Also, if requested by the Village, progress reports of construction or rebuilding shall be supplied at such intervals as established by the Village.

- B. The grantee shall keep complete records of accounts showing dates and payments made and shall furnish an annual accounting by a certified public accountant to the Village. The Cable Television Advisory Commission created hereunder shall have the right, power and authority to inspect the monthly service charge records at the office of the grantee during business hours of any work day, providing the grantee is given no less than seven days' notice by the Commission.
- C. The Village shall have the right to access during normal business hours, upon giving reasonable notice, to the grantee's contracts, engineering plans, and service reports relating to the franchised property and operations of the grantee.
- D. Grantee's fiscal year shall coincide with the date of acceptance by the grantee.
- E. The grantee shall file with the Village Clerk a current list of its owners, partners, general and limited, and officers, together with a list of shareholders having 5% or more of the stock, if the grantee is a corporation.

§ 136-11. Franchise payment.

- A. The grantee shall pay to the Village, during the term of this franchise, 3% of its annual gross subscriber revenues. "Gross subscriber revenues" shall be defined as all revenues collected by the grantee concerning the network and system authorized by this chapter within Village limits, including, but not limited to, installation service, basic service and premium service. This amount shall not include sales and other taxes collected from subscribers by the grantee.
- B. The grantee shall make all payments due and owing pursuant to this franchise to the Village on a quarterly basis. Said payments are payable to the Village within 30 days following the end of a calendar quarter. Each payment shall be accompanied by a statement under oath from a representative of the grantee certifying the gross subscriber revenues upon which the payment is based. The franchise fee may be subject to renegotiation. Any change made in the franchise fee as a result of negotiation shall be reasonable. In the event there is established a renegotiated franchise fee during the term of this franchise, there shall be given full acceptance by the Cable Advisory Commission of said revised fee when and if the grantee applies to the Commission for a rate increase pursuant to the terms of this subsection.
- C. Delinquent payments shall bear interest at the rate of 1% per month.
- D. Within 120 days of the end of each fiscal year of the grantee, the grantee shall file with the Board an annual report, prepared, certified and audited by an independent CPA, showing the financial status of the grantee and the gross subscriber revenues for the report period.

§ 136-12. Subscriber rates and service agreements.

- A. Except as otherwise provided in the franchise, the grantee shall have the right, privilege and authority to change the rates fixed in this section to subscribers for its service. Multiuser rates and charges may be negotiated between the grantee and

subscriber, but in no case shall the rate exceed the aggregate of that computed on the basis of single-user rates. At turn-on, single-user rates may be as follows:

Service	Per Month	Installation
Basic	\$8.75	\$25
Premium movie channel	\$9	\$25
Premium movie channel (2)	\$9	Free if offered with other movie channel; \$25 if ordered separately
Extra outlets	\$2	Free, if ordered with other service; \$25 if ordered separately

If customer has other outlets currently owned in the house, no extra cost charge is made by Midland Cablevision Systems, Inc.

- B. Disconnection of any or all services shall be at no charge to the subscriber.
- C. Churches, public schools, public libraries, the youth center, fire stations and the municipal building shall receive free monthly basis service. The grantee shall furnish one hook-up without installation charge to said institutions.
- D. Grantee's rates and charges presently in effect shall be kept on file with the Village Clerk.
- E. Charge to subscriber rates and charge.
 - (1) For the purpose of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, per-channel or per-program charges to subscribers, (pay cable) rental of a channel, or any other services of the system for which the rates or charges will not require the approval of the Village.
 - (2) The grantee may change the rates for basic service in the following manner:
 - (a) Notify the Village in writing 30 days in advance of a projected rate increase.
 - (b) If the Village makes no objection to the rate increase within 30 days of receipt of such application, no action is necessary and the rate shall be in effect as notified.
 - (c) If the Village does not agree with the rate increase, it shall, within 30 days of receipt of the application for a rate increase, schedule a hearing, and the Village shall notify the grantee of said public hearing for the purpose of clarification and understanding of the rate change.

- (d) If the Village, after public hearing, does not agree with the grantee on a rate change, no rate change shall be made.
- (e) If the Village agrees on a rate change or a negotiated new rate change, then the grantee shall bill for same on the next billing period. This rate change shall be retroactive to the date of the original notification by the grantee of a rate change.
- (f) All billings will be made on a monthly basis.

§ 136-13. Insurance.

- A. The grantee shall at all times during the term of the franchise carry and require its contractor to carry:
 - (1) Insurance in such forms and such amounts to protect the Village and grantee from and against all claims, injury or damage to persons, property, both real and personal, caused by construction, erection, operation and maintenance of any structure or equipment. The amounts of such insurance shall be not less than \$500,000 as to any one person, \$1,000,000 as to any one occurrence or injury or death to persons, and \$100,000 for damages to property. In addition, the grantee shall provide an umbrella policy in the amount of \$1,000,000.
 - (2) Workers' compensation insurance as provided by the laws of the state and employers' liability insurance.
 - (3) Automobile insurance with limits not less than \$100,000/\$300,000 of liability and automobile property damage insurance with a limit of not less than \$100,000 covering all automobile equipment.
 - (4) The grantee shall have the Village and all of its officers and employees included as co-insured on all insurance policies referred to in this section.
- B. All of said insurance shall provide for a twenty-five-day notice to the Village in the event of any material alteration or cancellation of any coverage in said policies prior to the date of change to be effective.
- C. The grantee shall at all times defend, indemnify, protect and hold harmless the Village, its employees and officers from and against any and all liabilities, losses and damages to property or bodily injury or death to any person including payments made under workers' compensation laws which may rise or be caused by erection, construction, replacement, removal, maintenance or operation of grantee's network caused by any act on the part of grantee, its agents, officers or employees. The grantee shall hold the Village, its officers and employees harmless against any damages resulting from legal action which may be brought against the Village, its officers and employees in its connection with the establishment or operation of the grantee's network and shall defend at its own expense any action brought against the Village, its officers and employees by reason of erection, construction, replacement, removal, maintenance or operation of the grantee's network.
- D. The Village shall immediately notify the grantee of any such claim or action.

- E. The grantee shall secure and furnish to the Village and maintain at all times during the term of the franchise a performance surety bond in favor of the grantee of all the provisions of the franchise ordinance.

§ 136-14. Network description.

- A. The network required hereunder shall have a minimum initial forward bandwidth capability of 300 MHZ. Provision shall be made for increasing channel capacity when all channels currently available are in use and there exists an economically reasonable justification for adding channel capacity. The network shall have a thirty-five-channel capability when used with a converter. Additional channels shall be made available when they are of interest to the Cable Commission members and viewers.
- B. The grantee shall install initially a cable television system importing at least five satellite channels and all local channels for basic service. In addition, there will be two premium channels available for extra cost as outlined under the schedule of rates.
- C. The network required shall have reverse capability for a bandwidth of 30 MHZ and shall not be required unless and until there exists an economically feasible justification for meeting the reverse capability demand.

§ 136-15. Service area.

- A. The grantee shall design and construct its network so as to pass and provide tap-off facilities to every single-family dwelling unit, multiple-family dwelling unit, agency and business establishment within the boundaries of the Village as shown on the Zoning Map, which map shall be incorporated as part of this chapter.
- B. The grantee shall, at its expense, extend its network where there is sufficient subscriber dwelling units to yield an average of 20 dwelling units per linear mile to any newly annexed developed areas of the Village or to any resident dwelling unit within the Village limits and within 200 feet of any existing cable terminal point.

§ 136-16. Time for performance.

- A. Within 30 days of the effective date of the franchise granted hereunder the grantee shall file all applications and notices to permit commencement of construction and thereafter diligently pursue all such applications. The Village may, in its discretion, provide assistance to ensure the scheduled construction of the network.
- B. Upon the granting of the franchise, the grantee shall commence engineering and/or construction of the network.
- C. Within nine months of the effective date of the franchise, the grantee shall have placed in use sufficient distribution facilities so as to permit the offering of basic service to 100% of the area defined as Village limits except for those areas where right-of-way for service installation cannot readily be obtained.

- D. The Village, in its discretion, may extend the time for the grantee if said grantee is acting in good faith and where performance in such cases is being delayed or interrupted due to circumstances reasonable beyond its control.

§ 136-17. Conditions of street occupancy.

- A. In areas where either telephone or electric facilities are installed aerially at the time of construction, the grantee may install its facility aerially with the understanding that, at such time both telephone and electronic facilities are required to be placed underground by the Village, the grantee shall likewise at its expense place its services underground.
- B. The grantee shall not disturb or open the surface of any street, sidewalk, driveway or public place without first having obtained a necessary permit as required by the Village.
- C. Any opening or obstruction in the streets or public right-of-way made by the grantee shall be guarded and protected at all times by the placement of adequate barriers, fences and boarding, and during periods of dusk and darkness shall be designated by warning lights.
- D. In case of any disturbance of pavement, walkway, sidewalk, driveway or other ground surface, the grantee shall restore at its expense said surface to the same condition as before the work commenced.
- E. The grantee shall have authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Village to prevent limbs from such trees from contacting cables and equipment of the grantee.
- F. The grantee shall not place poles or other fixtures when and where the same will interfere with any gas, electric or telephone fixture, water hydrants or water mains. The grantee before construction shall meet with street, water and sewer supervisors and appropriate utility managers to ascertain the location of existing systems and services to the Village.
- G. The grantee shall make and keep at all times in the Village Hall a full and complete set of plans showing the exact location of all network equipment installed in public places of the Village.
- H. All transmission lines and distribution structures, lines and equipment erected by the grantee shall be so located as to cause minimum interference with the proper use of streets, alleys and public ways and cause minimum interference with the rights or reasonable convenience of property owners who adjoin said streets, alleys or public ways.
- I. In the event the grantee desires to use Village property for the purpose of constructing or locating a structure for the enclosure of its equipment or otherwise use a Village facility, the grantee shall negotiate with the Village an agreement for the use thereof.

§ 136-18. Service standards.

- A. The grantee shall provide twenty-four-hour service response.
- B. In such case where a network problem has caused loss of service to more than a subscriber, the response shall be immediate or in no event exceed two hours except, in a case of damage by storm or an event in which restoration of other services shall become necessary before grantee can restore its service.

§ 136-19. Performance measurements.

Test procedures used in verification of performance criteria set forth herein shall be in accordance with good engineering practice, as there is more than one technically acceptable method for performance checks. The technique and equipment utilized shall be described in the annual certificate filed with the Village.

§ 136-20. Unauthorized connections or modifications.

- A. It shall be unlawful for any person to wrongfully or unlawfully injure the property of the grantee or to deliberately interfere with the dissemination of cable television, and any person so doing shall be deemed guilty of a petty offense and punishable under Subsection C of this section or by state statute.
- B. It shall be unlawful for any person to intercept or receive signals of the grantee without having subscribed for said services and entered into an agreement to pay for said services, and any person so doing shall be deemed guilty of a petty offense and punishable under Subsection C of this section by state statute.
- C. Any person violating any of the provisions of Subsections A and B above of this section shall, upon conviction, be subject to a fine not to exceed \$500.

§ 136-21. Interconnection.

Nothing in this chapter shall be construed so as to prevent the grantee from interconnecting its network with other networks in other cities, municipalities, townships, counties or states.

§ 136-22. Notice.

All notices required by this chapter shall be in writing and be sent by certified mail to the last known address of the parties.