

Ordinance No. _____, Passed _____, 20____

ORDINANCE NO. D-15

An Ordinance determining the video service provider fee to be paid by a video service provider offering video service in the City of Orrville, Ohio, pursuant to a video service authorization; authorizing the Mayor to give notice to the video service provider of the video service provider fee; and declaring an emergency.

WHEREAS, the General Assembly enacted Sections 1332.31 through 1332.34 of the Ohio Revised Code, effective September 24, 2007, to provide a statewide “uniform regulatory framework” for the provision of cable television and/or other video service, which will substantially reduce the City of Orrville’s traditional franchising authority to regulate cable and/or video service offered in the City using facilities located in the City’s public rights-of-way; and

WHEREAS, the City of Orrville has a cable television franchise agreement with Armstrong which expired by its own terms on or about February 15, 2015 and pursuant to which Armstrong pays franchise fees in the amount of five percent (5%) of gross revenues which are defined by the franchise to include 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 from the Director of the Ohio Department of Commerce; 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-issued video service authorization 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 video service provider that is providing service to subscribers in the City pursuant to a state-issued video service authorization must pay the City a video service provider fee (“VSP Fee”) based upon a percentage of the provider’s “gross revenues” derived from in the City, not to exceed five percent (5%) of such revenues; and

WHEREAS, R.C. Section 1332.32 requires that the percentage of gross revenues on which VSP Fees paid must be the same as that of the revenues that a cable operator pursuant to an agreement that is in effect, or if there is no effective franchise agreement under which fees are payable for a calendar quarter VSP Fee shall be zero percent of gross revenues, unless the City determines by Ordinance that the VSP Fee will be a percentage of gross revenues not to exceed five (5%); and

WHEREAS, R.C. Section 1332.32(C)(2) further requires the City to provide all service providers offering services in the City with notice of the VSP Fee requirements with ten (10) days of receiving notice from the video service provider that it will begin offering service in the City, or the video service provider 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 revenues consisting of revenues received from subscribers only, unless the City specifically determines, by Ordinance uniformly applicable to all video service providers, that advertising revenues also be included in the base of gross revenues on which the VSP Fee is paid; and

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WHEREAS, R.C. Section 1332.32(B)(2)(g) requires the City to promptly notify affected video service providers of the Ordinance determining to include the 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 minimize the negative financial impact on the City, it is the intent of this Council that the Video Service Provider Fee shall be as equivalent as possible to the franchise fees required by the City's franchise with Armstrong; and

WHEREAS, in order to provide timely notice to a video service provider of the VSP Fee, it is necessary for this Council to determine now that the percentage of gross revenues on which the VSP Fee will be paid is five percent (5%) and that the advertising revenues shall be included in the base of gross revenues on which the VSP Fee is paid, and to authorize the Mayor to provide notice of the VSP Fee to a video service provider with ten (10) days of the City receiving notice that a video service provider will begin providing service in the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Orrville, State of Ohio:

SECTION 1. Subject to Ohio Revised Code Section 1332.32 taking effect, in accordance with the requirements of R.C. 1332.32, all video service providers providing video service in the City pursuant to a video service authorization obtained from the Director of the Ohio Department of Commerce shall pay Video Service Provider Fees ("VSP Fees") in the amount of five percent (5%) of gross revenues received from providing video service in the City, which the gross revenue base shall include advertising revenues. The VSP Fee shall be paid quarterly, not sooner than forty-five (45) days nor later than sixty (60) days after the end of each calendar quarter.

SECTION 2. That, no later than ten (10) days from receipt of notice from a video service provider that it will begin providing video service in the City pursuant to a state-issued service authorization, the Mayor is authorized and directed to provide such video service provider with notice of the VSP FEE as determined by this Council, which notice may be given by overnight (return receipt) or certified mail or other manner of delivery no later than ten (10) days from receipt of video service provider's notice.

SECTION 3. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of the Council and its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 4. This Ordinance is hereby determined to be in an emergency measure necessary for the preservation of the public peace, health, safety, and welfare in order to ensure that the City continues to receive appropriate fees from persons providing video and/or cable service in the City using the City's rights-of-way; therefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.


RECORD OF ORDINANCES

0139

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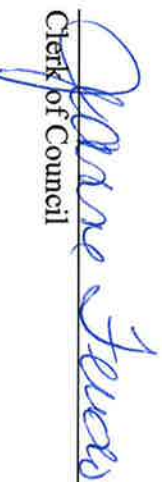
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Passed this 4th day of May 2015.



President of Council

Attest:



Clerk of Council

Approved:



Mayor

5/4/15

Date