

## Chapter 85

### CABLE TELEVISION

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**[HISTORY: Adopted by the Board of Trustees of the Village of Pelham Manor 5-9-1994 by L.L. No. 1-1994. Amendments noted where applicable.]**

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#### § 85-1. Construal of provisions.

This chapter shall be construed in accordance with and be subject to the applicable laws and regulations of the United States and New York State governing the operation of cable television systems.

#### § 85-2. Scope and purpose.

The purposes of this chapter are to:

- A. Establish, implement and administer a local policy with respect to the regulation of cable television through the promulgation of regulations and the administration of franchise agreements.
- B. Establish a framework for franchise procedures and standards which assure that cable systems are responsive to the needs and interests of village residents, businesses and others located within the village.
- C. Establish a local policy to assure/cause cable television systems to provide services and a diversity of information, news and entertainment program sources and services to residents, businesses and others located within the village under fair, economic and nondiscriminatory terms and conditions.
- D. Encourage the establishment of competitive cable television systems so as to provide residents, businesses and others located within the village with access to a choice of cable television program sources and services.
- E. Establish by action of the Board of Trustees procedures for the regulation of cable television services and the orderly negotiation, review and consideration of cable television franchise proposals and service; to provide continuing oversight of the operation of cable systems and the use of enforcement procedures, so as to assure that the franchisees comply fully and in all respects with franchise obligations and other requirements, including but

not limited to minimum service, the terms and conditions of this chapter and any and all rules and regulations promulgated hereunder.

### § 85-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**AFFILIATE** — Another person who owns or controls, is owned or controlled by, or is under common ownership or control with such person.

**BASIC CABLE SERVICE** — Any group of channels or services tier which includes the retransmission of television broadcast signals which can be received via over-the-air reception within the village.

**BOARD** — The Board of Trustees of the village and for purposes of §§ 85-4 and 85-6 to 85-10 shall include any agent, delegate or subcommittee of the Board appointed for the purpose of negotiations or other implementation of such sections.

**CABLE CHANNEL or CHANNELS** — A portion of the electromagnetic frequency spectrum which is used in a cable system for the delivery of program sources and which is capable of delivery by a television broadcast or satellite or microwave delivered signal.

**CABLE OPERATOR** — Any person or group of persons who provides cable services over a cable system either directly or indirectly or in conjunction with any affiliate through the facilities of a communications common carrier regulated by the FCC or the New York State Public Service Commission or any successor thereto, or who otherwise controls or is responsible for, through any arrangement, the management and operation of any such cable system.

**CABLE SERVICES** — The one-way transmission to subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection of such video programming or other programming services for subscribers.

**CABLE SYSTEM** — An electromagnetic transmission facility and associated signal generation reception and control equipment that is designed to provide cable service which includes video programming and which is transmitted to multiple subscribers within the village and which fully conforms with any definition of a cable system established by the FCC.

**FCC** — The Federal Communications Commission, an independent regulatory agency of the United States government.

**FRANCHISE** — An initial authorization or renewal thereof issued by the village which authorizes the construction and/or operation of a cable system or cable service.

### § 85-4. Powers and duties of Board.

The Board shall:

- A. Develop telecommunications policy.

- B. Develop such regulatory standards and promulgate such regulations as it deems appropriate, as provided in § 85-5.
- C. Administer local cable franchises and compliance with all applicable federal, state and local regulatory laws.
- D. Review and analyze information needed for the administration of franchises and local regulatory requirements.
- E. Review and analyze rates and monitor compliance with rate regulations.
- F. Serve as ombudsman for subscribers with unresolved complaints.
- G. Review and analyze accuracy of franchise fee payments and other monies paid to the village.
- H. Conduct performance and compliance reviews of the cable operators.

#### **§ 85-5. Regulations.**

It is the intention of the Board to promulgate rules and regulations to carry into effect the purpose of this chapter and to regulate the operations of cable television operators in the village. Such rules and regulations shall be promulgated after a public hearing. Rules and regulations, properly promulgated and adopted, shall have the force and effect of law, provided that they are not inconsistent with state and federal law. The Board shall seek enforcement of its rules and regulations pursuant to the penalty provisions contained in § 85-10 of this chapter.

#### **§ 85-6. Franchise agreements.**

It is the intention of the Board to negotiate and review all franchise agreements with all cable operators who desire to supply cable service to residents, businesses and others located within the village. In addition to the inclusion in the franchise agreement of the minimum franchise requirements mandated under all applicable federal, state and local laws, and relevant regulations promulgated thereunder, the Board may seek the inclusion of such additional benefits for the village and its residents, businesses and others within the village as have been accorded in any other franchise agreements entered into by the cable operator (or any affiliate thereof) in any other comparable jurisdiction within the United States or as may otherwise be deemed appropriate by the Board.

#### **§ 85-7. Consumer protection.**

It is the intention of the Board to negotiate and include in each franchise agreement with any cable operator supplying cable service to residents, businesses and others located within the village, appropriate provisions to protect the interests of individual village residents, businesses and others located within the village as consumers. In addition to the inclusion in the franchise agreement of the consumer protection requirements mandated under all applicable federal, state and local laws and relevant regulations promulgated thereunder, the Board may seek the inclusion of such additional benefits for the village and its residents, businesses and others located within the village as have been accorded in any other franchise agreements entered into

by the cable operator (or any affiliate thereof) in any other comparable jurisdiction within the United States or as may otherwise be deemed appropriate by the Board.

**§ 85-8. Cable services.**

It is the intention of the Board to negotiate and include in each franchise agreement with any cable operator supplying basic cable service and cable service to residents, businesses and others located within the village appropriate provisions defining the scope and general type of program services to be supplied pursuant to such franchise agreements. In addition to the inclusion in the franchise agreement of the basic cable service and cable service requirements mandated under all federal, state and local laws, and relevant regulations promulgated thereunder, the Board may seek the inclusion of such additional benefits for the village and its residents, businesses and others located within the village as have been accorded in any other franchise agreements entered into by the cable operator (or any affiliate thereof) in any other comparable jurisdiction within the United States or as may otherwise be deemed appropriate by the Board.

**§ 85-9. Access to and use of property.**

It is the intention of the Board to negotiate and include in each franchise agreement with any cable operator supplying cable services to residents, businesses and others located within the village appropriate provisions with regard to the use of public and private property for the construction and operation of cable systems. In addition to the inclusion in the franchise agreement requirements for the use of public and private property mandated under all applicable federal, state and local laws and relevant regulations promulgated thereunder, the Board may seek the inclusion of such additional benefits for the village and its residents, businesses and others located within the village as have been accorded in any other jurisdiction in any other franchise agreement entered into by the cable operator (or any affiliate thereof) in any other comparable jurisdiction within the United States or as may otherwise be deemed appropriate by the Board.

**§ 85-10. Penalties for offenses.**

- A. Any person willfully violating or failing to comply with any regulatory provisions of this chapter or any rule or regulation adopted pursuant to § 85-5 shall be guilty of an offense and upon conviction thereof be subject to a fine of not more than \$250.
- B. In lieu of such criminal penalties, each such violation shall be subject to a civil penalty of not less than \$50 and not more than \$2,500 per violation. Each day of a continuing violation shall constitute a separate violation or offense and shall be subject to a separate fine or civil penalty.
- C. In addition to any other penalties prescribed in this section, the village may maintain an action in a court of competent jurisdiction to compel compliance with or restrain by injunction any violation of the provisions of this chapter or any rule or regulation adopted pursuant to § 85-5. Each day upon which there exists a violation of this chapter or any rule or regulation adopted under it, or a failure to abide by or comply with any provision or

requirement of this chapter or any such rule or regulation shall constitute a separate occurrence, and may subject the cable television provider to separate penalties.

- D. In instances where a franchise agreement provides for assessed charges or liquidated damages for the breach or violation of that franchise agreement, then such assessed charges or liquidated damages shall operate as a separate and independent remedy of the village. Such assessed charges or liquidated damages shall not be claimed by the village until after it first attempts to resolve the matter in the manner prescribed by this chapter or the rules and regulations adopted pursuant to § 85-5.