

COLERAIN TOWNSHIP BOARD OF TRUSTEES

RESOLUTION NO. 66-2007.

**RESOLUTION DETERMINING THE VIDEO SERVICE PROVIDER FEE TO BE PAID BY A VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE TOWNSHIP PURSUANT TO A STATE AUTHORIZATION; AND AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE PROVIDER FEE.**

**WHEREAS**, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code, which was 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 Colerain Township’s previously existing franchising authority to regulate cable and/or video service offered in the Township using facilities located along the public roadways and within the public rights of way in the Township; and,

**WHEREAS**, the Township has a cable television franchise agreement with Time Warner Communications Company of Greater Cincinnati (“Time Warner”), established under Resolution 96-18, which expires by its own terms on May 30, 2011, and pursuant to which Time Warner pays franchise fees in the amount of three percent (3%) of gross revenues which are defined by the agreement to include, among other items, 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 Township 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 a franchise agreement in effect to terminate that agreement with the Township, 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 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 R.C. Section 1332.32, a video service provider that is providing service to subscribers in the Township pursuant to a State-issued video service authorization can be required to pay the Township a video service provider fee (“VSP Fee”) based on a percentage of the provider’s “gross revenues” derived from providing video service in the Township, 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 are paid must be the same as the percentage of gross revenues that a cable operator pays pursuant to a franchise agreement that is in effect, or, if there is no effective franchise agreement under which franchise fees are payable for a given calendar quarter, the VSP Fee shall be zero percent (0%) of gross revenues, unless the Township determines by resolution that the VSP Fee will be a percentage of gross revenues not to exceed five percent (5%) of gross revenues; and,

**WHEREAS**, R.C. Section 1332.32(C)(2) further requires the Township to provide all video service providers offering service in the Township with notice of the VSP Fee requirements within ten (10) days of receiving notice from the video service provider that it will begin offering service in the Township, or the video service provider is not required to pay the VSP Fee to the Township; 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 Township specifically determines, by resolution 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,

**WHEREAS**, R.C. Section 1332.32(B)(2)(g) requires the Township to promptly notify affected video service providers 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 minimize the negative financial impact on the Township it is the intent of this Board of Township Trustees that the Video Service Provider Fee shall be as equivalent as possible to the franchise fees required under the Township's franchise agreement with Time Warner; and,

**WHEREAS**, in order to provide timely notice to a video service provider of the VSP Fee, it is necessary for this Board of Township Trustees to determine now that the percentage of gross revenues on which the VSP Fee will be paid is three percent (3%) and that advertising revenues shall be included in the base of gross revenues on which the VSP Fee is paid, and to authorize the Township Administrator to provide notice of the VSP Fee to a video service provider within ten (10) days of the Township receiving notice that a video service provider will begin providing service in the Township.

**NOW, THEREFORE, BE IT RESOLVED**, by the Colerain Township Board of Trustees that:

**SECTION 1.** In accordance with the requirements of said R.C. 1332.32, all video service providers providing video service in the Township 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 three percent (3%) 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 sooner than forty-five (45) days nor later than sixty (60) days after the end of each calendar quarter.

**SECTION 2.** No later than ten (10) days from receipt of notice from a video service provider that it will begin providing video service in the Township pursuant to a State-issued video service authorization, the Township Administrator is authorized and directed to provide such video service provider with notice of the VSP Fee as determined by this Board of Township Trustees above, which notice shall be delivered in a manner that provides for proof of timely delivery or such other manner as may be practicable.

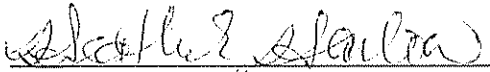
**SECTION 3.** It is found and determined that all formal actions by the Board of Township

Trustees concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board of Township Trustees and that all deliberations of the Board of Township Trustees, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

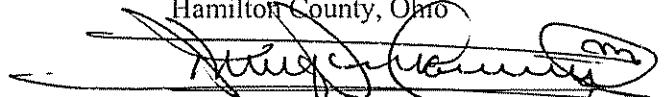
**SECTION 4.** This Resolution shall take effect at the earliest time permitted by law.


Adopted in special session on this 18<sup>th</sup> day of December, 2007.

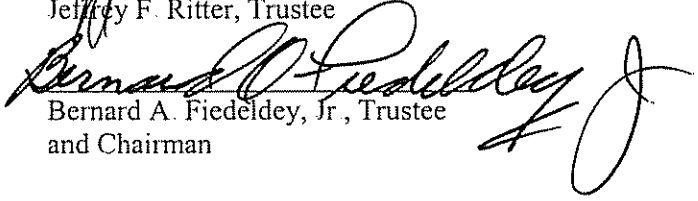
Attest:

  
Heather H. Harlow, Fiscal Officer

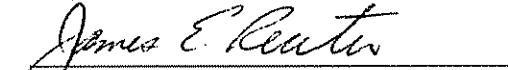
Board of Trustees  
Colerain Township,  
Hamilton County, Ohio

  
Keith N. Corman, Trustee

  
Jeffrey F. Ritter, Trustee

  
Bernard A. Fiedeldej, Jr., Trustee  
and Chairman

Prepared by and approved as to form:

  
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Attorney for Board of Trustees