

BURKE, WARREN, MACKAY & SERRITELLA, P.C.

MEMORANDUM

TO: Village of Barrington Hills

FROM: Burke Warren MacKay & Serritella, P.C.

RE: Franchise Agreement for the Provision of Cable Services between Comcast of Illinois IX, LLC and the Village of Barrington Hills

DATE: September 23, 2010

Issue

This memorandum discusses the impact of the Illinois Municipal Code, 65 ILCS §§ 5/11-42-11 and 11-42-11.1 (the "Code"), on the proposed franchise agreement between the Village of Barrington Hills (the "Village") and Comcast of Illinois IX, LLC ("Comcast") with a specific focus on (i) Comcast's obligation to provide cable services to all or a substantial number of Village residents and (ii) the standards governing the provision of cable services by Comcast.

Short Answer

Neither the proposed franchise agreement nor the Code requires that Comcast provide cable services to all or a substantial number of Village residents. The standards governing the provision of cable services by Comcast are those set forth in the Cable and Video Customer Protection Law (220 ILCS §5/22-501), which are adopted in the Code and the proposed franchise agreement.

Analysis

SUPPLY OF CABLE SERVICES

The Code provides that municipalities may license, franchise and tax (cable) "community antenna television" providers. The Code does not require that a cable provider provide cable services to all or a substantial number of Village residents.

The franchise agreement provides that Comcast provide services to "every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and within one (1) mile of the existing Cable System's technically feasible connection point. Subject to the density requirement, [Comcast] shall offer Cable Service to all new homes or previously unserved homes located within one-hundred twenty five (125) feet of [Comcast's] distribution cable." The agreement further provides that Comcast can impose an additional charge if it elects to provide service to areas not meeting the above density and distance standards.

STANDARDS GOVERNING THE PROVISION OF CABLE SERVICES

Cable franchise agreements must contain provisions governing customer service and privacy standards and protections as such are provided in Cable and Video Customer Protection Law (the "Law").

The Law expressly sets forth the standards that govern the provision of cable services where a municipality grants a franchise pursuant to the Code. This Law contains numerous standards including, without limitation, standards controlling (i) the disconnection of cable services, (ii) the time frame for the installation of cable service and repair of cable service, (iii) the method for dealing with customer inquiries, and (iv) the prohibition of disclosure of customer information. In addition to the foregoing, the Law has standards on the quality of cable service to be provided to customers. For example, cable providers must render "reasonably efficient service", "provide clear visual and audio reception that meets or exceeds applicable Federal Communications Commission technical standards" and, if a cable customer receives poor reception due to the cable provider's equipment, such equipment must be promptly repaired at the cable provider's expense.

The Law also contains standards related to service interruptions. In the event of an interruption of service, the cable provider must immediately but not later than 24 hours after notice from the customer or the time the problem is otherwise brought to the cable provider's attention, start work on resolving the service interruption (except where the interruption is beyond the cable providers control). Other service problems must be addressed by cable providers no later than the business day after notification of the problem and such shall be corrected within 48 hours after notification of the service problem 95% of the time, measured every quarter.

The Illinois Attorney General and the applicable local unit of government are empowered to enforce the standards set forth in the Law. § 5/22-501(r). In addition, the local unit of government can, by ordinance, provide for penalties to be assessed upon a cable provider that materially breaches the standards within the Law, except that this right does not apply where the material breach is out the control of the cable provider or its affiliate. § 5/22-501(r). The penalties consist of a daily fine not to exceed \$750.00 for a material breach, but not to exceed \$25,000.00 for each occurrence of a material breach per customer. § 5/22-501(r)(1).

The franchise agreement expressly acknowledges that Comcast is subject to customer service policies and customer privacy standards set forth in the Law and that the enforcement of these standards and policies and the penalties for non-compliance shall be consistent with the Law. We suggest that the Village adopt an ordinance consistent with the Law providing for the penalties specified in § 5/22-501(r).

Conclusion

In conclusion, neither the proposed franchise agreement nor §§ 5/11-42-11 - 5/11-42-11.1 of the Illinois Municipal Code address a municipality's obligation to ensure that

cable services are provided to all or a substantial number of residents. The standards governing the provision of cable services by Comcast are those standards set forth in the Cable and Video Customer Protection Law 220 ILCS § 5/22-501, et seq. as incorporated in the franchise agreement.