

ORDINANCE 94-0-7

AN EMERGENCY ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, MARYLAND, TO AMEND CHAPTERS 15 AND 93 OF THE COLLEGE PARK CODE TO ESTABLISH THE PROCEDURES FOR REGULATION OF RATES FOR BASIC CABLE SERVICE AND EQUIPMENT

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992 authorizes franchising authorities to regulate certain rates for cable television service and equipment; and

WHEREAS, the City of College Park, Maryland, desires to regulate cable rates except to the extent that it is prohibited from doing so by applicable law; and

WHEREAS, FCC regulations implementing the Cable Television Consumer Protection and Competition Act of 1992 require franchising authorities to adopt regulations before rate regulation of basic service and equipment can begin; and

WHEREAS, it is necessary to have this Ordinance become effective on or before the present Federal Communications Commission's rate freeze expires on May 15, 1994, and therefore, this Ordinance is to be adopted as an emergency ordinance under the provisions of Section C8-2B of the City Charter, upon a finding by the Mayor and City Council that it affects property and the sound operation of municipal government.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the City of College Park (1) that Section 15-10B of Chapter 15 (Boards, Commissions and Committees) is amended to read as follows and (2) that a new Section 93-6 entitled "Regulation of Rates for Basic Cable Service and Equipment" is added to Chapter 93 (Cable Television Franchise) as follows:

* "15-10B. In accordance with [Section 4 of the Specification, set rates and fees and conduct public hearings, if required, to fairly judge the reasonableness of any request for rate or fee increases] Section 93-6 of the College Park Code, perform those functions relating to the regulation of rates for basic cable service and equipment set forth therein."

"93-6. Regulation of Rates for Basic Cable Service and Equipment

SUBSECTION 1. SCOPE AND APPLICABILITY

A. This Ordinance section governs the regulation of rates for basic service and equipment within the City for any franchisee which has been notified that (1) the City has been certified to regulate its basic service and equipment rates; and (2) the City has adopted regulations governing regulation of basic service and equipment rates. The provisions set forth below are intended to be consistent with all Federal Communications Commission ("FCC") regulations governing the regulation of basic service rates and equipment, and the City will regulate and interpret its rules so

that they are consistent with FCC regulations, as if those regulations were set forth in full herein.

B. The franchisee is prohibited from engaging in any activity it is prohibited from engaging in under FCC rules, as if those rules were set forth in full herein. For purposes of these provisions, the term "basic service" or "basic cable service" has the same meaning as the term "basic service" at 47 C.F.R. § 76.901 and the term "equipment" refers to all equipment and services subject to regulation under 47 C.F.R. § 76.923.

SUBSECTION 2. FILING AND REVIEW OF RATES

A. Initial Filings by Franchisees.

1. Filings: When Made. A franchisee that is notified that its basic service and equipment rates are subject to regulation must file a submission ("the rate filing") within 30 days of the notification, justifying its then-existing basic service and equipment rates. All rates, for all customer classifications, must be justified. Once a franchisee has been so notified by the City that its rates are subject to regulation, it may not thereafter increase its rates for basic service or equipment without the prior approval of the City. This requirement applies in all cases, including with respect to increases in rates announced prior to the date the operator was notified its rates were subject to regulation where the increases were not implemented prior to the date of notice. A franchisee must submit a rate filing to justify any increase in basic service or equipment rates or any new basic service or equipment rate (collectively referred to herein as rate increases). An "increase" occurs when there is an increase in rates or a decrease in program or customer services. Rate filings proposing and supporting rate increases must be filed for review at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

2. Filing: Where Made. Every rate filing must be submitted to the City Manager. The City Manager shall be responsible for promptly providing this filing to the Cable Television Commission (the "Commission"). A rate filing shall be considered filed for review on the date the rate filing and all required copies are received by the City Manager. Five (5) copies of each rate filing (including all supporting materials) must be submitted. Information that the operator claims is proprietary under Subsection 7 hereof must be clearly identified and segregated from the remainder of the filing and clearly marked so that the City may determine where and how the proprietary information was used to determine rates.

3. Filing: Contents. Subject to any FCC regulations governing the burden of proof, a rate filing submitted by a franchisee must show that the rates the franchisee proposes to charge for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

a. Every rate filing must clearly state in a covering letter whether it justifies existing rates; or proposes an increase in rates. The covering letter must also identify any rate that is derived in whole or in part based upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. It must state whether any part of the proposed increase is based on an inflation adjustment or an alleged increase in external costs. The cover letter should also contain a brief, narrative description of any proposed changes in rates or in service.

b. The pages of each rate filing must be numbered sequentially.

c. The rate filing must contain all applicable FCC forms and these forms must be correctly completed.

d. If different rates are proposed for basic service for different classes of customers, the filing must show that the classifications and the differences in the rate charged are reasonable and consistent with federal law.

4. If the franchisee seeks to support a rate based upon a cost of service, the City will establish a rate that provides the franchisee an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment is not presumed reasonable merely because the franchisee has incurred or made it. A franchisee is not entitled to recover monopoly rents in any form.

5. In addition to information the City requires the franchisee to provide, and unless the City grants a waiver of this provision, a franchisee who seeks to justify all or any part of its rates based upon its cost of service must submit a complete cost of service analysis that shows all expenses it incurs and all revenues derived from the system, directly or indirectly, by the franchisee or any person that constitutes a cable operator of the system within the meaning of 47 U.S.C. § 522(5). The cost of service must identify the accounting level (as that term is used in the FCC's regulations) at which each expense or revenue identified was aggregated and show clearly how the expense or revenue was allocated. The franchisee may not include costs at an accounting level unless it also includes all revenues from that same level attributable to the system or to a group of systems of which the system serving the City is a part. The replacement cost of a comparable system must be identified and supported. The franchisee must identify the name and address of any entity with which it has a contract, other than a programmer, which derives revenues from the system, and must state whether and how the revenues of that entity were included in the cost of service. In addition, the cost of service shall clearly show the derivation of a proposed charge per channel and the application of that charge to yield a basic service rate. It must also show and support the derivation and allocation of any amounts included in the derivation of the rate for:

a. operation and maintenance expenses;

- b. administrative and general expenses;
- c. programming expenses (identifying retransmission consent costs and copyright fees separately);
- d. costs for PEG access and any institutional network;
- e. franchise fee expenses;
- f. investment in the system and associated depreciation;
- g. other expenses, including federal, state and local taxes, itemized; and
- h. the proposed return on equity and actual interest expense paid by the franchisee.

6. Notwithstanding the foregoing, a franchisee is not required to submit the cost of service specified in Subsection 2(A)(5) for equipment rates, and instead shall complete, submit and support the costs of equipment using applicable FCC forms and presenting any other information the City deems necessary or appropriate, consistent with FCC regulations. Any cost of service submitted to justify basic service rates must show that the cost of service does not include equipment costs.

B. Initial City Review.

1. After receiving a rate filing, the Commission, with the assistance of the City Manager, promptly shall publish a notice that a filing has been received and that, except for those parts which may be withheld as proprietary, it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide interested parties seven (7) days to submit written comments on the filing to the City Manager, who shall promptly submit same to the Commission. The franchisee may submit a response to public comments but must do so no later than three (3) business days after it is notified that the comments have been received by the Commission. The response shall be filed with the City Manager, and if submitted in a timely fashion, the City Manager shall forward a copy to the Commission.

2. Within thirty (30) days of the date of the filing, the Commission shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or tolling the proposed rate in whole or part. If the Commission tolls the rate in whole or in part, its written order shall explain that it requires additional time to review the rate filing, identify generally any then-known deficiencies in the franchisee's filing and state that the franchisee may cure any deficiency in its filing by submitting a supplementary filing as provided in Subsection 2(c). With respect to existing rates, tolling means the rates may remain in effect, subject to refund; with respect to rate changes, tolling means the portion of the rate change that is tolled may not

go into effect.

C. Supplementary Filings.

1. If a proposed rate is tolled in whole or in part, the franchisee shall submit a supplementary filing within twenty (20) days from the date the tolling order issues, containing corrections, if any, to its filing (including any required supplement to its cost of service filing) and any response to information requests filed by interested parties or any additional information necessary to support the proposed rate. Supplementary filings must be filed in accordance with Subsection 2(A)(2).

2. A supplementary filing also must contain such information as the City directs the franchisee to provide.

3. In addition to information the Commission requires the franchisee to provide, and unless the Commission grants a waiver of this provision, a franchisee who claims that it is entitled to a rate in whole or in part based upon the adjustments for inflation and external costs contemplated by 47 C.F.R. § 76.922(d)(1)-(2) must submit the following:

a. a calculation showing how each part of the adjustment was derived.

b. a statement itemizing each external cost (as defined by FCC regulations), the amount of that external cost for the two (2) calendar years prior to the date of the filing and the year-to-date in which the filing is made; and the projected amount of the external cost for the remainder of the year in which the filing is made and for the following calendar year. The statement must specifically show any increases in revenues from programming services. "Revenues" include all revenues, in whatever form received.

c. if the increase is attributable to any increase in programming service costs, the contract for each programming service whose cost has increased; a sworn statement identifying each programming service whose costs increased where the programmer is an affiliate of the franchisee (as defined by FCC regulations); and, for any contract that has been in effect less than twelve (12) months, the prior contract for the service.

d. a sworn statement by the franchisee's chief financial officer or an independent, certified accountant stating that he or she has examined all external costs (including all programming costs) and has offset against any increase claimed, the amount of any decreases in external costs, and the amount by which any increase in external costs was below the GNP-PI, as required by 47 C.F.R. § 76.922(d)(2); affirming that the franchisee has only sought to recover any external cost to the extent that cost exceeded the GNP-PI; and affirming that the franchisee has not attempted to recover any increase in the cost of programming purchased by an affiliate except as provided in 47 C.F.R. § 76.922(d)(2)(vi).

4. Upon receiving the supplementary filing, the Commission with the assistance of the City Manager promptly shall publish a notice that a filing has been received and that it is available for public review (except those parts which may be withheld as proprietary). The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty (20) days to submit written comments on the filing to the City Manager who shall promptly provide same to the Commission. The comments shall be made available for public inspection. The franchisee may submit a response to public comments but must do so no later than ten (10) days after it is notified that the comments are received by the Commission. The response shall be filed with the City Manager who will promptly provide same to the Commission.

5. The Commission shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or allowing the rate to go into effect in whole or in part, subject to refund. If the Commission issues an order allowing the rates to go into effect subject to refund, it shall also direct the franchisee to maintain an accounting in accordance with 47 C.F.R. § 76.933.

6. The order specified in subsection 2(C)(5) shall be issued ninety (90) days after the tolling order for any rate the franchisee justifies based on the FCC benchmark. The order shall be issued within one hundred fifty (150) days of the tolling order for any rate the franchisee justifies with a cost of service showing.

SUBSECTION 3. PROVISIONS GENERALLY APPLICABLE TO RATE ORDERS

A. Any rate order of the Commission shall be effective on adoption, or as local law may require, noting that tolling orders, at least, must be effective immediately. Each rate order shall be released to the public and the franchisee. In any case where the Commission approves, denies, or tolls a rate; orders that a rate may go into effect subject to refund; or orders refunds or establishes rates, a public notice shall be published stating that the order has been issued and is available for review. Any such order shall be in writing, and explain the basis for the City's decision.

B. The Commission may take any steps that it is not prohibited from taking by federal law to protect the public interest as part of any rate order or by any other means. By way of illustration and not limitation, it may require refunds, set rates, and impose forfeitures and penalties directly or through its delegated representatives, and enforce refund orders. Any order prescribing a rate must explain why the franchisee's proposed rate was unreasonable and why the prescribed rate is reasonable. However, before prescribing a rate or ordering a refund to subscribers, the Commission shall ensure the franchisee has had notice and opportunity to comment on the proposed rate or refunds. If the Commission proposes a refund or a rate, then mailing a copy of the proposed refund or rate by ordinary mail to the franchisee

shall be deemed to provide the franchisee this notice and the franchisee must comment on the refund or rate within fifteen (15) days of the mailing and the Commission may take any corrective action within fifteen (15) days thereafter. If no comments is received by the Commission within fifteen (15) days or if the Commission takes no further action on the comments within its prescribed time, the Commission's prior order shall be considered reaffirmed.

C. No order approving or setting a rate using the FCC benchmarks shall be interpreted to establish the just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not limitation, should the FCC reduce the benchmarks, the Commission shall have the right to reduce a franchisee's rates and to require the franchisee to refund any amounts collected above the benchmark, except to the extent prohibited by federal law.

SUBSECTION 4. FRANCHISEES' DUTIES

A. A franchisee must implement remedial requirements, including prospective rate reductions and refunds, within sixty (60) days of the date the Commission issues an order mandating a remedy.

B. Within ninety (90) days of the date an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative of the cable company, stating:

1. whether the franchisee has complied fully with all provisions of the Commission's order; and
2. describing in detail the precise measures taken to implement the Commission's Order; and
3. showing how refunds (including interest) were calculated and distributed.

C. It is each franchisee's responsibility to keep books and records of accounts so that it can refund any amounts owed to subscribers.

D. It is each franchisee's duty to submit as complete a filing as possible, and knowingly withholding information or making a filing that is incomplete under applicable law shall be treated as an evasion of this Ordinance.

E. Information Requests

1. A franchisee and any other entity that has records of revenues or expenses that are allocated to the franchisee's system must respond to requests for information from the Commission by deadlines established by the Commission. A franchisee is responsible for ensuring that such other entity responds to the

Commission's requests.

2. Because federal law limits the time available for an initial response to a filing by a franchisee, the franchisee must be prepared to respond within five (5) days of the date it is provided the information request, to any information request submitted prior to the date the order contemplated by Subsection 2(B) issues. Such information requests may include a request for the information the franchisee would be required to provide as part of any supplementary filing.

SUBSECTION 5. DUTIES OF THE CITY CABLE TELEVISION COMMISSION AND CITY MANAGER

A. The Commission shall be responsible for administering the provisions herein. Without limitation and by way of illustration:

1. Commission shall ensure notices are given to the public and each franchisee as required herein and by FCC regulations.

2. Commission may submit requests for information to the franchisee and establish deadlines for response to them, as provided in Subsection 3.

3. For good cause, the Commission may waive any provision herein or extend any deadline for filing or response except as to such matters as are mandatory under FCC regulations.

4. Commission shall rule on any request for confidentiality.

5. If the Commission recommends that any increase be denied in whole or in part, it shall:

- a. propose a rate and explain the basis for its proposal (it may propose that rates remain at existing levels); and
- b. propose whether and on what basis refunds should issue; and
- c. notify the franchisee of its proposal.

B. The City Manager or his designee(s) shall provide the Commission with whatever staff assistance the Commission may require, including the use of consultants.

SUBSECTION 6. PENALTIES AND FORFEITURES

Except as prohibited by federal law, a franchisee shall be subject to penalties, forfeitures and any other remedies or sanctions available under federal, state or local law, including without limitation a franchisee's franchise with the City, and a franchisee's request for approval of a rate may be denied, if it:

A. knowingly submits false or fraudulent information to the City in connection with any rate proceeding;

B. fails to comply with any lawful order or request of the City, including, but not limited to, a request for information or an order setting rates; or

C. evades or attempts to evade federal or local rate regulation; provided that, filing for approval of a rate that is later determined to be unreasonable is not in and of itself an evasion of federal or local rate regulation.

SUBSECTION 7. PROPRIETARY INFORMATION

A. If these provisions, or any request for information, requires the production of proprietary information, the franchisee must produce the information. However, at the time the allegedly proprietary information is submitted, a franchisee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that supported those reasons. The request for confidentiality will be granted if the Commission determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. § 552. The City Manager shall place in a public file for inspection any decision that results in information being withheld. If the franchisee requests confidentiality and the request is denied, (1) where the franchisee is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the franchisee may seek review within five (5) working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

B. Any interested party may file a request to inspect material withheld as proprietary with the City Manager who shall promptly furnish same to the Commission. The Commission shall weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable franchisee that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the franchisee may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

SUBSECTION 8. PETITION FOR CHANGE IN EFFECTIVE COMPETITION STATUS

Any franchisee may petition for a change in effective competition status in accordance with 47 C.F.R. § 76.915, and the City shall consider that petition in accordance with 47 C.F.R. § 76.915. The petition and five (5) copies must be filed with the City Manager, who shall promptly furnish same to the Commission.

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SUBSECTION 9. REPEAL OF CONFLICTING ORDINANCES

All prior ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SUBSECTION 10. SEVERABILITY

If any clause, section, other part or application of this Ordinance is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Ordinance.

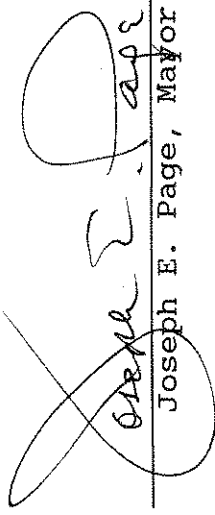
SUBSECTION 11. EFFECTIVE DATE

Effective date: This Ordinance shall become effective on the 10th day of May, 1994.

Adopted this 10th day of May, 1994 as an emergency ordinance.

ATTEST:


Miriam P. Wolff, CMC, City Clerk


Joseph E. Page, Mayor

* [Brackets] indicate matter deleted.
Underlining indicates new matter added.