

RESOLUTION NO. 93-61

BE IT RESOLVED by the Township Trustees of Union Township, Butler County, Ohio that:

A RESOLUTION OF THE TOWNSHIP OF PRESCRIBING REGULATIONS FOR RATES CHARGED TO CABLE TELEVISION SUBSCRIBERS FOR THE BASIC SERVICE TIER; PROVIDING THAT THIS RESOLUTION IS CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission ("FCC") has issued rules pursuant to the Cable Television Consumer Protection and Competition Act, Pub. L. No. 102385 (1992) ("1992 Cable Act"), implementing the regulation of cable television subscriber rates; and

WHEREAS, these rules allocate the regulation of rates for the basic service tier and associated equipment rates to local franchising authorities and require local authorities to become certified and adopt their own regulations governing the process of rate regulation; and

WHEREAS, the Township of Union franchises cable television service for the benefit of its citizens; and

WHEREAS, the Township has submitted its application for certification to the FCC and it is expedient to adopt the required regulations now, in order to implement regulations at the earliest possible date to obtain the most competitive rates for the Township's cable ratepayers;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWNSHIP TRUSTEES OF UNION TOWNSHIP BUTLER COUNTY, OHIO that

SECTION I.
DEFINITIONS

BASIC CABLE RATES means the monthly charges for a subscription to the basic service tier and the associated equipment.

BASIC SERVICE TIER means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must carry signals, all PEG channels, and all domestic television signals other than super-stations.

BENCHMARK means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

CABLE ACT OF 1992 means the Cable Television Consumer Protection and Competition Act of 1992.

CABLE OPERATOR means any person or group of persons:

- a. who provide cable service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system; or
- b. who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

CHANNEL means a unit of cable service identified and selected by a channel number of similar designation.

COST OF SERVICE SHOWING means a filing in which the Cable Operator attempts to show that benchmark rate or the price cap is not sufficient to allow the Cable Operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

FCC means the Federal Communications Commission.

INITIAL BASIC CABLE RATES means the rates that the Cable Operator is charging for the basic service tier, including charges for associated equipment, at the time the Township notifies the Cable Operator of the Township's qualification and intent to regulate basic cable rates.

INTER-COMMUNITY CABLE REGULATORY COMMISSION (ICRC) is a regional council of governments organized under Ohio law of which Union Township is a member, having the authority to conduct certain administrative procedures on behalf of the Township in relation to this resolution.

MUST-CARRY SIGNAL means the signal of any local broadcast station (except super-stations which is required to be carried on the basic service tier.

PEG CHANNEL means the channel capacity designated for public, educational, or governmental use, and facilities and equipment for the use of that channel capacity.

PRICE CAP means the ceiling set by the FCC on future increases in basic cable rates regulated by the Township, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

REASONABLE RATE STANDARD means a per channel rate that is at, or below, the benchmark or price cap level.

SUPER-STATION means any non-local broadcast signal secondarily transmitted by satellite.

SECTION II. INITIAL REVIEW OF BASIC CABLE RATES

A. Notice - Upon the adoption of this ordinance and the certification of the Township by the FCC, the Township or the ICRC shall immediately notify all Cable Operators in the Township, by certified mail, return receipt requested, that the Township intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

B. Cable operator response - Within 30 days of receiving notice from the Township or the ICRC, a Cable Operator shall file with the Township or the ICRC, its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

C. Expedited determination and public hearing

1. If the Township is able to expeditiously determine that the Cable Operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the Township shall:

a. Hold a public hearing at which interested persons may express their views; and

b. Act to approve the rates within 30 days from the date the Cable Operator filed its basic cable rates with the Township.

2. If the Township or the ICRC takes no action within 30 days from the date the Cable Operator filed its basic cable rates with the Township, the proposed rates will continue in effect.

3. Such public hearing may be held in conjunction with other ICRC Committee under the direction of the ICRC.

D. Extended review period

1. If the Township is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the Cable Operator submits a cost-of-service showing, the Township shall, within 60 days from the date the Cable Operator filed its basic cable rates with the Township and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

- a. 90 days if the Township needs more time to ensure that a rate is within the FCC's reasonable rate standard; or
- b. 150 days if the Cable Operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

2. If the Township has not made a decision within the 90 or 150 day period, the Township shall issue a brief written order at the end of the period requesting the Cable Operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

E. Public hearing - During the extended review period and before taking action on the proposed rate, the Township or the ICRC shall hold at least one public hearing at which interested persons may express their views and record objections.

F. Objections - An interested person who wishes to make an objection to the proposed initial basic rate may request the Township Clerk to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Clerk with the objector's name and address.

G. Benchmark Analysis - If a Cable Operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Township or the ICRC shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Township or the ICRC's findings, the initial basic cable rates shall be established as follows:

1. If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the Cable Operator's rates will be capped at that level.

2. If the current basic cable rates exceed the benchmark, the rates shall be the greater of the Cable Operator's per channel rate on September 30, 1992, reduced by 10 percent, or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992 and the initial date of regulation.

3. If the current basic cable rates exceed the benchmark, but the Cable Operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

H. Cost-of-service showings - If a Cable Operator does not wish to reduce the rates to the permitted level, the Cable Operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify an initial basic cable rates above the FCC's reasonable rate standard. The Township will review a cost-of-service review. The Township may approve initial basic cable rates above the benchmark if the Cable Operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the Cable Operator's September 30, 1992 rates minimum 10 percent, will prescribe the Cable Operator's new rates.

I. Decision

1. **By formal resolution** - After completion by the Township or the ICRC of its review of the Cable Operator's proposed rates, the Township shall adopt its decision by formal resolution. The decision shall include one of the following:

a. If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the Township shall approve the initial basic cable rates proposed by the Cable Operator; or

b. If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the Township shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

2. **Rollbacks and refunds** - If the Township determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the Cable Operator's cost-of-service showing justifies lower rates, the Township may order the rates reduced in accordance with Paragraph G. or H. above, as applicable. In addition, the Township may order the Cable Operator to pay to subscribers, refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Township's decision resolution.

3. **Statement of reasons for decision and public notice**
If rates proposed by a Cable Operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the Township must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the Township.

J. Appeal - The Township's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

**SECTION III.
REVIEW OF REQUEST FOR INCREASE IN BASIC CABLE RATES**

A. Notice - a Cable Operator in the Township who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Township and the ICRC and notify all subscribers at least 30 days before the Cable Operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one year after the determination of the initial basic cable rates.

B. Expedited determination and public hearing

1. If the Township or the ICRC is able to expeditiously determine that the Cable Operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Township shall:

- a. Hold a public hearing at which interest persons may express their views; and
- b. Act to approve the rate increase within 30 days from the date the Cable Operator filed its request with the Township.

2. If the Township takes no action within 30 days from the date the Cable Operator filed its request with the Township, the proposed rates will go into effect.

3. During the extended review period and before taking action on the proposed rate, the Township or the ICRC shall hold at least one public hearing at which interested persons may express their views and record objections.

C. Extended review period

1. If the Township and the ICRC are unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the Cable Operator submits a cost-of-service showing, the Township shall, by adoption of a formal resolution, invoke the following additional periods of time as applicable, to make a final determination:

- a. 90 days if the Township or the ICRC needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and
- b. 150 days if the Cable Operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

2. The proposed rate increase is tolled during the extended review period.

3. If the Township has not made a decision within the 90 to 150 day period, the Township shall issue a brief written order at the end of the period requesting the Cable Operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

D. **Public hearing** - During the extended review period and before taking action on the requested rate increase, the Township or the ICRC shall hold at least one public hearing at which interested persons may express their views and record objections.

E. **Objections** - An interested person who wishes to make an objection to the proposed rate increase may request the secretary to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the secretary with the objector's name and address.

F. **Delayed Determination** - If the Township is unable to make a final determination concerning a requested rate increase within the extended time period, the Cable Operator may put the increase into effect, subject to subsequent refund if the Township later issued a decision disapproving any portion of the increase.

G. **Price Cap Analysis** - If a Cable Operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Township shall review the rate using a price cap analysis in accordance with the standard form authorized by the FCC. Based on the Township's findings, the basic cable rates shall be established as follows:

1. If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

2. If the proposed basic cable rate increase exceeds the price cap established by the FCC, the Township shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

H. **Cost-of-service showings** - If a Cable Operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Township will review the submission pursuant the FCC standards for cost-of-service review. The Township may approve a rate increase above the price cap if the Cable Operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the Cable Operator's then current rate will prescribe the Cable Operator's new rate.

I. **Decision** - The Township's decision concerning the requested rate increase, shall be adopted by formal resolution. If a rate increase proposed by a Cable Operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increases, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the secretary to record the objection or may be submitted in writing at anytime before the decision resolution is adopted.

J. **Refunds**

1. The Township may order refunds of subscribers' rate payments with interest if:

a. The Township was unable to make a decision within the extended time period as described in Paragraph C. above; and,

b. The Cable Operator implemented the rate increase at the end of the extended review period; and,

c. The Township determines that the rate increase as submitted exceeds the applicable price cap or that the Cable Operator failed to justify the rate increase by a cost-of-service showing, and the Township disapproves any portion of the rate increase.

2. The method of paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Township's decision resolution .

K. **Appeal** - The Township's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable Federal Regulations.

**SECTION IV.
CABLE OPERATOR INFORMATION**

A. **May Require**

1. In those cases when the Cable Operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the Township or the ICRC may require the Cable Operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a Cable Operator may request the information be kept confidential in accordance with this section.

2. In cases where initial or proposed rates comply with the reasonable rate standard, the Township or the ICRC may request additional information only in order to document that the Cable Operator's rates are in accord with the standard.

B. Request for Confidentiality

A Cable Operator submitting information to the Township may request in writing that the information may not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies. All such requests shall be subject to the provisions of the Ohio Revised Code, Public Records Statute or other applicable legislation.

9 / 9

Adopted the 21st day of December, 19 93

Jay S. Coates
Wick Alden

Township Trustees

Attest: Patricia Williams
Township Clerk