

TOWNSHIP OF TYRONE
CABLE TELEVISION RATE REGULATION ORDINANCE

Ordinance No. 33

An ordinance to provide for the regulation of cable television service rates and equipment charges within the Township of Tyrone.

SECTION - 1 - SHORT TITLE

This ordinance may be known and referred to as the "**CABLE TV RATE REGULATION ORDINANCE**".

SECTION - 2 - PURPOSE

The purpose of this Ordinance is to adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation, and to prescribe procedures to ensure a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the Township. This Ordinance shall be implemented and interpreted consistent with the Act and FCC Rules. In connection with the regulation of rates for basic cable service and associated equipment, the Township of Tyrone shall comply with FCC Rules.

SECTION - 3 - DEFINITIONS

The following words and terms used in this Ordinance are defined as follows:

Act: shall mean the Federal Communications Act of 1934, as amended, specifically including the amendments contained in the Cable Television Consumer Protection and Competition Act of 1992.

Associated Equipment: shall mean all equipment and services subject to regulation pursuant to the Act and as may be necessary to receive cable programming services. For the purposes of this Ordinance, Associated equipment includes, but is not limited to:

- (a) Converter boxes;
- (b) Remote control units;
- (c) Connections for additional television receivers; and
- (d) Cable Television internal home wiring.

Basic Service: shall mean "basic cable television service" as defined in the FCC Rules as well as any other cable television service which is subject to Municipal rate regulation pursuant to the Act and FCC Rules.

Township: shall mean the Township of Tyrone or its legally authorized representative.

Existing Rates: shall mean the operator's published cable television service rates or associated equipment charges in effect on the effective date of local municipal Rate Regulation.

FCC: shall mean the Federal Communications Commission.

FCC Rules: shall mean all rules of the FCC promulgated pursuant to the Act.

Franchising Authority: shall mean the Township of Tyrone.

Ordinance: shall mean this Rate Regulation Ordinance.

Cable Operator or Operator: shall mean any operator of a cable television system as defined by FCC Rules that is subject to regulation by a Certified Municipal Franchising Authority.

Rate Increase: shall mean an increase in rates or charges and/or a decrease in programming or customer services. These, and all other words and phrases used in this Ordinance shall have the same meaning as defined in the Act and FCC Rules.

SECTION - 4 - UNDEFINED WORDS OR TERMS

Any word or term which is not specifically defined in Section 3 of this ordinance shall be given its normal, ordinary meaning. Any word or term which is used in this ordinance and which is not specifically defined in Section 3 of this Ordinance but is defined in F.C.C. Rules or Regulations shall have the meaning given to such word or term within the F.C.C. Rules and/or Regulations.

SECTION - 5 - RATE REGULATION/ADOPTION OF FCC RULES

The Township by this reference hereby adopts all rules and regulations regarding basic service rates and associated equipment rates which the F.C.C. promulgates pursuant to the Act, and makes said rules and regulations part of this Ordinance.

SECTION - 6 - DESIGNATION OF THE CABLE FRANCHISING AUTHORITY

Effective upon certification of the Township as a cable television Rate Regulatory Authority, the Township Board or its representative is hereby designated as the cable Franchising Authority for the Township and shall execute the powers, duties and responsibilities given to the cable Franchising Authority in this ordinance, the Act and the F.C.C. Rules and/or Regulations.

SECTION - 7 - REGULATED CABLE OPERATORS

(a) A Regulated Cable Operator shall comply with all duties and obligations required and/or imposed upon Operators by the Act, F.C.C. Rules and/or Regulations, and this Ordinance.

(b) A Regulated Cable Operator has the burden of proving that its existing rates or a proposed rate increase is in compliance with the Act and FCC rules and regulations.

SECTION - 8 - SUBMISSION OF EXISTING OR PROPOSED RATE SCHEDULE

(a) The Operator shall, within 30 days of receiving notice from the Franchising Authority that it is Certified and qualified to initiate Cable Television Rate Regulation, file ten (10) copies of its existing or proposed rates with the Township Clerk. For purposes of this Ordinance, receipt by the Township Clerk of the required ten (10) copies shall constitute Operator submission of an existing or proposed Cable Television Rate Schedule. The Township Board may, by resolution or otherwise, adopt rules and regulations prescribing the type, form and nature of all information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.

(b) In addition to information and data required by rules and regulations of the Township pursuant to Section 8,(a) above, a cable operator shall provide all information requested by the Township in connection with the Township's review and regulation of existing rates for the basic service tier and

associated equipment or a proposed increase in these rates. The Township may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.

(c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules.

SECTION - 9 - PROPRIETARY INFORMATION.

The Franchising Authority may require the Operator to produce documents needed to make rate decisions. Requests that proprietary information be held confidential shall be supported by the Regulated Cable Operator and be handled in a manner analogous to the procedures and criteria set forth in 47 CFR 0.459.

SECTION - 10 - PUBLIC NOTICE; INITIAL REVIEW OF RATES.

Upon the filing of ten (10) copies of the schedule of rates or the proposed increase in rates pursuant to Section 8,(a) above, the Township Clerk shall publish a public notice in a newspaper of general circulation in the Township which shall state that;

(a) the filing has been received by the Township Clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying, and;

(b) interested parties are encouraged to submit written comments on the filing to the Township Clerk not later than seven (7) days after the public notice is published.

The Township Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the Township Board shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three (3) days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the Township Board, then the Township Clerk shall mail a copy of the report by first-class mail to the cable operator at least three (3) days before the meeting at which the Township Board shall first consider the schedule of rates or the proposed increase.

SECTION - 11 - TOLLING ORDER

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after thirty (30) days from the date of filing under Section 8,(a) above unless the Township Board (or other properly authorized body or official) tolls the thirty (30) day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within thirty (30) days of the date of filing. The Township Board may toll the thirty (30) day deadline for an additional ninety (90) days in cases not involving cost-of-service showings and for an additional one-hundred-fifty (150) days in cases involving cost-of-service showings.

SECTION - 12 - PUBLIC NOTICE; HEARING, FOLLOWING TOLLING ORDER

If a written order has been issued pursuant to Section 11 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the Township any additional information required or requested pursuant to Section 8 of this Ordinance. In addition, the Township Board shall hold a public hearing to consider the comments of interested parties within the additional ninety (90) day or one-hundred-fifty (150) day period, as the case may be. The Township Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the Township which shall state;

- (a) the date, time, and place at which the hearing shall be held;
- (b) interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and;
- (c) copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the Clerk. The public notice shall be published not less than fifteen (15) days before the hearing. In addition, the Township Clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than fifteen (15) days before the hearing.

SECTION - 13 - STAFF OR CONSULTANT REPORT; WRITTEN RESPONSE

Following the public hearing, the Township shall cause a report to be prepared for the Township Board which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the Township Board. The Township Clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty (20) days before the Township Board acts under Section 14. The cable operator may file a written response to the report with the Township Clerk and if at least ten (10) copies of the response are filed by the cable operator with the Township Clerk within ten (10) days after the report is mailed to the cable operator, the operator response report shall be forwarded to, and considered by, the Township Board prior to its action.

SECTION - 14 - RATE DECISIONS AND ORDERS.

The Township Board shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the Township Board issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this Section shall be issued within ninety (90) days of the tolling order under Section 11 in all cases not involving a cost-of-service showing. The order shall be issued within one-hundred-fifty (150) days after the tolling order under Section 11 all cases involving a cost-of-service showing.

SECTION - 15 - REFUNDS; NOTICE.

The Township Board may order a refund to subscribers as provided in 47 CFR 76.942. Before the Township Board orders any refund to subscribers, the Township Clerk shall give at least seven (7) days written notice to the cable operator by first-class mail of the date, time, and place at which the Township Board shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the Township Board.

SECTION - 16 - WRITTEN DECISIONS; PUBLIC NOTICE.

Any order of the Township Board pursuant to Section 14 or Section 15 shall be in writing, shall be effective upon adoption by the Township Board, and shall be deemed released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the Township which shall;

(a) summarize the written decision, and;

(b) state that copies of the text of the written decision are available for inspection or copying from the office of the Clerk.

In addition, the Township Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

SECTION - 17 - RULES AND REGULATIONS.

In addition to rules promulgated pursuant to Section 8, the Township Board may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

SECTION - 18 - FAILURE TO GIVE NOTICE.

The failure of the Township Clerk to give the notices or to mail copies of reports as required by this Ordinance shall not invalidate the decisions or proceedings of the Township Board.

SECTION - 19 - ADDITIONAL HEARINGS.

In addition to the requirements of this Ordinance, the Township Board may hold additional public hearings upon such reasonable notice as the Township Board, in its sole discretion, shall prescribe.

SECTION - 20 - ADDITIONAL POWERS.

The Township shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this Ordinance shall be in

addition to powers conferred by law or otherwise. The Township may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

SECTION - 21 - FAILURE TO COMPLY: REMEDIES.

The Township may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's franchise with the Township) for failure to comply with the Act, the FCC Rules, any orders or determinations of the Township pursuant to this Ordinance, any requirements of this Ordinance, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the Township pursuant to this Ordinance, any requirements of this Ordinance, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.

SECTION - 22 - SEVERABILITY.

The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION - 23 - CONFLICTING PROVISIONS.

In the event of any conflict between this Ordinance and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this Ordinance shall control.

SECTION - 24 - EFFECTIVE DATE.

This Ordinance shall take effect ten (10) days after publication as required by law.

RESOLVED BY: Kurnik
SECONDED BY: Hammond
VOTE: Hammond, Yes; Kurnik, Yes; Schumacher, Yes;
Hyde, Absent; Manning, Absent
ADOPTION DATE: February 15, 1994
PUBLICATION DATE: March 20, 1994
EFFECTIVE DATE: March 30, 1994