

ARTICLE 10

PUBLIC UTILITIES



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CHAPTER ONE

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CHAPTER ONE

REGULATION OF CABLE TELEVISION RATES

Section 10-101 Definitions

BASIC CABLE RATES means the monthly charge 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 superstations.

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 provides 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 or similar designation.

COST OF SERVICE SHOWING means a filing in which the cable operator attempts to show that the benchmark rate of 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 Town notifies the cable operator of the Town's qualification and intent to regulate basic cable rates.

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

PEG CHANNEL means the channel capacity designated for public, education, 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 Town, 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.

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

TOWN means the Town of Kiawah Island, South Carolina.

Section 10-102 Initial Review of Basic Cable Rates

(a) Notice. Upon the adoption of this ordinance and the certification of the Town by the FCC, the Town shall immediately notify all cable operators in the Town, by certified mail, return receipt requested, that the Town 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 thirty (30) days of receiving notice from the Town, the cable operator shall file with the Town, its current rates for 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 Town Council 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 Town Council shall:

- (A) hold a public hearing at which interested persons may express their views; and
- (B) act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the Town.

(2) If the Town Council takes no action within thirty (30) days from the date the cable operator filed its basic rates with the Town, the proposed rates will continue in effect.

(d) Extended review period.

(1) If the Town Council 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 Town Council shall, within thirty (30) days from the date the cable operator filed its basic cable rates with the Town and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

- (A) Ninety (90) days if the Town Council needs more time to ensure that a rate is within the FCC's reasonable rate standard; or
- (B) One Hundred Fifty (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 Town Council has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Town Council 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 Town Council 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 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 Town 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 Town Council shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Town Council'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 ten (10%) percent, or the applicable benchmark, adjusted for inflation and any change in the number 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 Town Council will review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The Town Council 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 minus ten (10%) percent, will prescribe the cable operator's new rates.

(I) Decision.

(1) By formal resolution. After completion of its review of the cable operator's proposed rates, the Town Council 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 Town Council 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 Town Council 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 Town Council determines that the initial basic cable rates submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the Town Council may order the rates reduced in accordance with paragraph (g) and (h) above, as applicable. In addition, the Town Council 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 Town Council's decision resolution.

(3) Statement of reasons for decision and public notice. If rates proposed by 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 Town Council must give the public notice of its decision. Public notice will be given by advertisement once in a newspaper of general circulation in the Town.

(j) Appeal. The Town Council's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with the applicable federal regulations.

Section 10-103 Review or Request for Increase in Basic Cable Rates

(a) Notice. A cable operator in the Town who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Town and notify all subscribers at least thirty (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 Town Council 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 Town Council shall;

(A) hold a public hearing at which interested persons may express their views; and

(B) act or approve the rate increase within thirty (30) days from the date the cable operator filed its request with the Town.

(2) If the Town Council takes no action within thirty (30) days from the date the cable operator filed its request with the Town, the proposed rates will go into effect.

(c) Extended review period.

(1) If the Town Council is 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 Town Council shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

(A) Ninety (90) days if the Town Council needs more time to ensure that a rate is within the FCC's reasonable rate standard; or

(B) One Hundred Fifty (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 Town Council has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Town Council 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 Town Council 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 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 Town Clerk with the objector's name and address.

(f) Delayed determination. If the Town Council is unable to make a final determination concerning the requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the Town Council later issues 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 town Council shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Town Council'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 Town Council 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 town Council will review the submission pursuant to the FCC standards for cost-of-service review. The Town Council 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 Town Council'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 increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person in writing at anytime before the decision resolution is adopted.

(j) Refunds.

(1) The Town Council may order refunds of subscribers' rate payments with interest if:

- (A) the Town Council was unable to make a decision within the extended time period as described in Paragraph © above; and
- (B) the cable operator implemented the rate increase at the end of the extended review period; and
- (C) the Town Council 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 Town Council disapproves any portion of the rate increase.

(2) The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Town Council's decision resolution.

(k) Appeal. The Town Council'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 10-104 Cable Operator Information

(a) Town 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 Town Council 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 Town Council 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.

(1) A cable operator submitting information to the Town Council may request in writing that the information 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.

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.

(4) Casual requests which do not comply with the requirements of this subsection shall not be considered.

(c) Town Council action. Requests which comply with the requirements of Subsection (b), will be acted upon by the Town Council. The Town Council will grant the request if the cable operator presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from the public inspection. If the request does not present a case for nondisclosure and the Town Council denies the request, the Town Council shall take the following actions:

(1) If the information has been submitted voluntarily without any direction from the Town, the cable operator may request that the Town return the information without considering it. Ordinarily, the Town will comply with this request. Only in the unusual instance that the public interest so requires will the information be made available for public inspection.

(2) If the information was required to be submitted by the Town Council, the information will be made available for public inspection.

(d) Appeal. If the Town denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the Town Council's decision, and the release of the information will be stayed pending review.