

AN ORDINANCE AMENDING CHAPTER TWENTY-FOUR OF THE CODE OF ORDINANCES, CITY OF URBANA, ILLINOIS, PRESCRIBING REGULATIONS FOR RATES CHARGED TO CABLE TELEVISION SUBSCRIBERS

WHEREAS, the Federal Communications Commission ("FCC") has issued rules pursuant to the Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385 (1992) ("1992 Cable Act"), implementing the regulation of cable television subscriber rates;

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 City of Urbana became certified on November 22, 1993 and is required to adopt the required regulations on or before March 22, 1994.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Article V, entitled "Cable Television Rate Regulation", Sections 24-121 through 24-140 is hereby added to Chapter 24, entitled "Utilities", of the Code of Ordinances of the City of Urbana, Illinois, as follows:

ARTICLE V. CABLE TELEVISION RATE REGULATION

Sec. 24-121. Intent.

It is the intent of this Article to adopt regulations with respect to basic cable rates that are consistent with the regulations adopted by the FCC pursuant to the Cable Act of 1992.

Sec. 24-122. Definitions.

For the purposes of this Article, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

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

(B) 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.

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

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

(E) CABLE OPERATOR means any person or group of persons:

(1) 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

(2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

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

(G) CITY means the City of Urbana, Illinois.

(H) COST OF SERVICE SHOWING means a filing in which the cable operator attempts to show that the 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.

(I) FCC means the Federal Communications Commission.

(J) 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 City notifies the cable operator of the City's qualification and intent to regulate basic cable rates.

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

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

(M) PRICE CAP means the ceiling set by the FCC on future increases in basic cable rates regulated by the City, 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.

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

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

Sec. 24-123. Initial review of basic cable rates.

(A) Cable operator response. Within 30 days of receiving notice from the City, a cable operator shall file with the City on the forms approved by the FCC, its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(B) Opportunity for Public Comment. Any interested person who wishes to express his or her opinion regarding the proposed initial basic rate may submit written comments; provided that the comments must be filed with the City Clerk at least seventy-two hours before the City Council meeting. In order for comments to be considered, the person must provide the City Clerk with his or her name and address. The City Council may permit interested persons an opportunity to orally express their views concerning the proposed initial basic rate.

(C) 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 City Council shall review the rates using the benchmark analysis in accordance with the FCC regulations.

(D) Cost-of-service showings. If a cable operator elects to submit a cost-of-service showing in an attempt to justify a initial basic cable rates above the FCC's reasonable rate standard, the City Council shall review the rates in accordance with the FCC standards for cost-of-service review.

(E) Decision. (1) By formal resolution. After completion of its review of the cable operator's proposed rates, the City 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 City 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 City 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 City Council 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 City Council may order the rates reduced in accordance with the FCC regulations. In addition, the City 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 City Council'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 City Council must give public notice of its decision.

(F) Appeal. The City 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.

(G) Continuing jurisdiction. The City reserves the right to reconsider its decision concerning the initial basic cable rates based upon newly discovered information or changes in federal law.

Sec. 24-124. Review of request for increase in basic cable rates.

(A) Notice. A cable operator in the City who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the City and notify all subscribers at least 30 days before the cable operator desires the increase to take effect.

(B) Opportunity for Public Comment. An interested person who wishes to express his or her opinion regarding the proposed rate increase may submit written comments; provided that the comments must be filed with the City Clerk at least seventy-two hours before the City Council meeting. In order for comments to be considered, the person must provide the City Clerk with his or her name and address. The City Council may permit interested persons an opportunity to orally express their views concerning the proposed rate increase.

(C) 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 City Council shall review the rate using the price cap analysis in accordance with the FCC regulations. Based on the City 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 City Council shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(D) 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 City Council will review the submission pursuant to the FCC standards for cost-of-service review. The City 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.

(E) Decision. The City 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 and the City Council must give public notice of its decision.

(F) Refunds. The City Council may order refunds of subscribers' rate payments with interest in accordance with FCC regulations. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the City Council's decision resolution.

(G) Appeal. The City 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.

(H) Continuing jurisdiction. The City reserves the right to reconsider its decision concerning an increase in the basic cable rates based upon newly discovered information or changes in federal law.

Sec. 24-125. Cable operator information.

(A) City may require. The City may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination.

(B) Request for Confidentiality. (1) A cable operator submitting information to the City 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) City Council action. Requests which comply with the requirements of Subsection (B), will be acted upon by the City Council. The City Council will grant the request if the cable operator presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable state law. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public

inspection. If the request does not present a case for nondisclosure and the City Council denies the request, the City Council shall take one of the following actions:

(1) If the information has been submitted voluntarily without any direction from the City, the cable operator may request that the City return the information without considering it. Ordinarily, the City 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 City Council, the information will be made available for public inspection.

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

Sec. 24-126. Automatic rate adjustments

(A) Annual inflation adjustment. The cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index in accordance with FCC regulations.

(B) Other external costs. The cable operator may increase its rate for the basic service tier to reflect certain external cost factors in accordance with FCC regulations.

(C) Notification and review. The cable operator shall notify the City at least 30 days in advance of a rate increase based on automatic adjustment items. The City shall review the increase to determine whether the item or items qualify as automatic adjustments. If the City makes no objection within 30 days of receiving notice of the increase, the increase may go into effect.

Sec. 24-127. Notices.

(A) All notices, forms, or other documentation required by this Article to be served or filed upon the City by the cable operator shall be delivered or mailed to the City Clerk and to the Chief Administrative Officer.

(B) Notices, forms, or other documentation shall not be considered served or filed until actually received by the City Clerk and the Chief Administrative Officer.

Sec. 24-128. Enforcement

(A) Refunds. The City may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The cable operator has failed to comply with a valid rate order issued by the City.

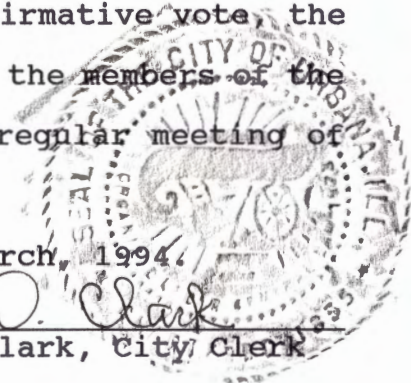
(B) Fines. If the cable operator fails to comply with a request for information, a rate decision, or a refund order, the cable operator shall be subject to a fine of \$500 for each day the cable operator fails to comply.

Section 2. That if any section, paragraph or provision of this Ordinance is held to be invalid or unenforceable, such invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance, or the provisions of the Code.

Section 3. The provisions of this ordinance shall take precedence and be interpreted as superseding any other ordinance or statute in conflict with the provisions of this ordinance.

Section 4. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this 21st day of March, 1994.

Phyllis D. Clark
Phyllis D. Clark, City Clerk

APPROVED by the Mayor this 23rd day of March, 1994.
Tod Satterthwaite
Tod Satterthwaite, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the 21st day of March, 1994, the corporate authorities of the City of Urbana passed and approved Ordinance No. 9394-74, entitled AN ORDINANCE AMENDING CHAPTER TWENTY-FOUR OF THE CODE OF ORDINANCES, CITY OF URBANA, ILLINOIS PRESCRIBING REGULATIONS FOR RATES CHARGED TO CABLE TELEVISION SUBSCRIBERS which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 9394-74 was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the 24th day of March, 1994, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this 4th day of April, 1994.

(SEAL)

Phyllis D. Clark
CITY CLERK