

ORDINANCE NO. 093-064

AN ORDINANCE BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, IMPLEMENTING RATE REGULATIONS FOR CABLE TELEVISION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (the "1992 Cable Act") provides that the City may regulate basic cable service and equipment rates; and

WHEREAS, the City Council of the Town of Addison finds that rates of cable television affect the public interest and implementing rate regulation is in the best interest of the public; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, AS FOLLOWS:

Section 1. Recitals. The above recitals are hereby found to be true and correct and are incorporated herein.

Section 2. Rate Regulation. The Town of Addison ("City") shall regulate cable television rates in accordance with the 1992 Cable Act and the Federal Communications Commission ("FCC") rules, regulations and orders promulgated under the 1992 Cable Act. The City does hereby adopt the regulations set out below:

2.1 Certain Definitions. As used in these regulations, the following phrases shall be defined as set forth below:

"Basic cable service" means any video programming service tier which includes the retransmission of local television broadcast signals.

"Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

"Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station to include broadcast stations, superstations, satellite delivered cable networks and pay cable whether the subscriber fee is on a per-channel or per-program basis.

2.2 Scope of Regulation. The City shall hereafter regulate the following areas:

(a) Rates for basic cable service.

(b) All equipment used in a subscriber's home to receive the basic service tier. Basic service-related equipment shall be regulated even if it is also used to receive other tiers of regulated programming (cable programming service) and/or unregulated video programming (per-channel and per-program offerings). Regulated equipment includes, but is not limited to, converter boxes, remote control units, connections for additional television receivers and other cable home wiring.

(c) Charges for any changes in service tiers or equipment initiated at the subscriber's request after initial service installation and "bulk" discount rate structures available to multiple-dwelling building customers.

2.3 Effective Competition. A cable system is subject to rate regulation if there is no "effective competition" to the cable system as defined in the 1992 Cable Act. All cable systems are presumed not to face effective competition. To rebut the presumption of no effective competition, a cable operator must demonstrate to the satisfaction of the City Council that effective competition exists.

2.4 Certification. Under the 1992 Cable Act, the City shall seek FCC certification to regulate by filing FCC Form 328. At the option of the City Council, the City may apply for joint certification and jointly regulate (including joint hearings, data collection and ratemaking). Unless the FCC notifies the City otherwise, the certification will become effective 30 days after the date filed. The City shall notify the cable operator that it has been certified and has adopted the required regulations. If the City shall be unable to meet the certification standards, it shall petition the FCC to regulate basic cable service rates on their behalf in lieu of filing for certification.

2.5 Rate Regulation.

(a) The City shall commence regulating basic cable rates when it notifies the cable operator, in writing, that it

has been certified and has adopted the regulations required by the FCC. Within 30 days of receiving the certification notice, the cable operator shall submit a schedule of rates and equipment charges to the City for approval. Thereafter, the cable operator may petition for annual rate adjustments.

(b) The cable operator's schedule of rates must be submitted on FCC Form 393. The cable operator shall have the burden of proving that its existing or proposed rates comply with the FCC's standards.

(c) Within 30 days of the cable operator's rate request, the City Council shall hold a public hearing on any proposed rate schedule. Any resident of the City and the cable operator may attend and participate in the hearing. The City Council shall provide public notice of the date, time and location of the hearing. At the conclusion of the public hearing, the City Council shall take one of the following actions:

- (i) approve as reasonable the rates proposed by the cable operator; or
- (ii) prescribe rates that are reasonable, in accordance with the FCC's standards; or
- (iii) extend the date by which a decision will be made for 90 days if the rates are based on "benchmark" standards; or
- (iv) extend the date by which a decision will be made for 150 days if the rates involved are based on "cost of service."

(d) Before any extension described above in subparagraph (c) expires, the City shall direct the operator to keep an accurate account of all amounts received by reason of the proposed rates, should they become effective.

(e) The City may at any time request additional information, including proprietary information, from the cable operator. Such information shall be provided within five days of the City's request therefor. The City shall keep confidential any business records that are proprietary.

#### 2.6 Refunds.

(a) The City shall order a refund to subscribers as follows:

- (i) if the cable operator has failed to comply with a rate decision and continues to charge unreasonable rates (the refund period shall run back to the effective date of the order); or
- (ii) if an initial review of existing cable rates finds unreasonable rates in excess of the FCC's permitted rates (the refund period shall run from the date the cable operator implemented a prospective rate reduction back to September 1, 1993, or one year, whichever is shorter); or
- (iii) if the City has postponed a decision on a proposed rate increase for 90 or 150 additional days as set out in subsection 2.5 (c) and has not completed review at the end of this period, the proposed rate shall go into effect subject to a refund if portions of the rate are later found to be unreasonable. The refund period runs from the date the City issued the accounting order and ends on the date the cable operator implements a prospective rate reduction ordered by the City, or one year, whichever is shorter.
- (iv) The cable operator will receive written notice and have an opportunity to comment before implementing the refund.


2.7 Appealing Rate Decisions. The FCC shall hear appeals of the City's rate decisions. Any participant to the basic cable rate proceeding can appeal the City's decisions within 30 days after the decision. Opposition may be filed within 15 days of the filing of the appeal, replies to which can be filed within 7 days. Pleadings must be served on the parties. Appeals from rate decisions that do not depend on determining whether the City acted inconsistently with the FCC regulations may be heard in District Court.

Section 3. Severability. In the event of a conflict between these regulations and/or any FCC regulation then the FCC regulation shall control. If any part or provision in this Ordinance, or application to any person or circumstance is held invalid, unconstitutional by a court or competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. Repealer. If any provision of any existing ordinances of the City conflicts with the provisions of this Ordinance such conflicting provisions are hereby repealed.

Section 5. Effective Date. This Ordinance shall take effect immediately from and after its passage.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,  
TEXAS, this the 9th day of November, 1993.

  
MAYOR

ATTEST:

  
CITY SECRETARY

Published  
11/25/92

