

ORDINANCE NO. 094-061

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING APPENDIX C, ARTICLE 1, DIVISION 1 OF THE CODE OF ORDINANCES RELATING TO CABLE TELEVISION (THE SAME BEING THE FRANCHISE GRANTED BY THE CITY TO CABLESYSTEM OF ADDISON, INC., THE PREDECESSOR TO TCI CABLEVISION OF DALLAS INC., ("TCI")) BY AMENDING THE RATES AND CHARGES (INCLUDING THE BASIC SERVICE TIER, HOURLY SERVICE CHARGE, LEASED CUSTOMER EQUIPMENT) WHICH MAY BE CHARGED BY TCI; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") approved TCI Cablevision of Dallas, Inc. ("TCI") as the successor to Cablesystem of Addison, Inc. under the cable television franchise granted in Ordinance No. 494; and

WHEREAS, in accordance with applicable provisions of the Cable Consumer Protection and Competition Act of 1992 (hereinafter the "Cable Act") and rules adopted by the Federal Communications Commission ("FCC"), the City has undertaken all appropriate procedural steps to regulate the basic cable service tier and related equipment; and

WHEREAS, in accordance with applicable FCC regulations, on or about October 25, 1993, the City filed FCC Form 328 - Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition - with the FCC; and

WHEREAS, in accordance with applicable FCC regulations, on or about November 9, 1993, the City passed and adopted an Ordinance providing for the regulation of rates charged by cable television operators within the City for the basic service tier and related equipment and installation charges and providing for a reasonable opportunity for interested parties to express views concerning basic cable regulation; and

WHEREAS, on or about February 18, 1994, the City received TCI's FCC Form 393 (including the basic tier and cable programming service charges and equipment and installation charges); and

WHEREAS, the City engaged the service of First Southwest Company to provide assistance to the City for review of TCI's FCC Form 393; and

WHEREAS, pursuant to FCC regulations, on or about March 8, 1994, the City sent a letter notifying TCI that the time period for the City's review of FCC Form 393 would be extended for an additional ninety (90) day period; and

WHEREAS, the City, with the assistance of First Southwest Company, on or about March 14, 1994, sent a letter requesting additional information to document that the cable rates were in accord with the FCC standards. The City's time period for review of FCC Form 393 was suspended pending the receipt of this additional information, pursuant to FCC rules and regulations; and

WHEREAS, on or about April 13, 1994, TCI responded to First Southwest Company and the City; and

WHEREAS, First Southwest Company issued a Summary of Findings report dated April 28, 1994, identifying certain issues requiring TCI's response before a final report could be prepared; and

WHEREAS, on or about June 15, 1994, TCI responded to First Southwest Company and the City. TCI's response included a modified filing of FCC Form 393; and

WHEREAS, on or about July 6, 1994, a final report was prepared for the City by First Southwest Company; and

WHEREAS, on or about August 9, 1994, the City Council passed an Accounting Order extending by sixty (60) days the period for review of the evidence; and

WHEREAS, the City conducted a meeting open to the public on August 23, 1994, to ensure that all interested parties had ample opportunity to present information to the City; and

WHEREAS, based upon all the information received from TCI, information received at the public hearing of the City, and all reports and recommendations from First Southwest Company, the City Council finds that the adoption of this Ordinance to be in the best interest of the public welfare; now, therefore,

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

SECTION 1. The above and foregoing premises are true and correct and are incorporated herein in their entirety.

SECTION 2. Exhibit 2 (Rates and Charges) to Ordinance No. 494 is hereby amended in accordance with the following:

A. TCI's request for cable rate approval for the maximum permitted rate for basic service tier (exclusive of any franchise fee) of \$11.68 (\$0.508 maximum per channel rate) is granted. Therefore, pursuant to current FCC regulations, from the effective date of this Ordinance and until further order of the City, TCI shall be permitted to charge an initial rate for the basic service tier of \$11.68.

B. TCI's request for cable rate approval for the maximum permitted charge for hourly service (exclusive of any franchise fee) of \$24.33 is granted. Therefore, pursuant to current FCC regulations, from the date of this Ordinance and until further order of the City, TCI shall be permitted to charge \$24.33 as its hourly service charge.

C. The number of maintenance/service hours used in determining maximum permitted charges for leased customer equipment shall be based on 9.46% of total labor hours for maintenance and installation of customer equipment and service. In accordance therewith from the date of this Ordinance and until further order of the City, the maximum permitted charges for leased customer equipment shall be as follows: Remote - \$0.16; Standard Converter - \$1.10; Addressable Converter - \$2.15.

SECTION 3. TCI shall immediately undertake all necessary steps, in accordance with applicable FCC regulations, to provide refunds to all subscribers based on the difference between the old bundled rates and the sum of the new unbundled program service charge(s) and the new unbundled equipment charge(s), and any franchise fee assessed thereon, which have been overcharged since September 1, 1993, as a result of the difference between TCI's current basic service rate of \$11.73 and the approved basic service rate of \$11.68 and the difference between TCI's current equipment and installation charges and the permitted equipment and installation charges. The refunds liability includes interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.

SECTION 4. TCI shall provide the City evidence that Orders 1, 2, 3, and 4 have been complied with and that all refunds have been properly made in accordance with the Cable Act and applicable FCC regulations.


SECTION 5. This Ordinance shall not be reconsidered should any further analysis pursuant to future FCC rules and regulations result in higher rates to subscribers, unless such future FCC rules and regulations mandate that the City order such an upward adjustment.

SECTION 6. That this Ordinance shall be cumulative of all other ordinances of the City affecting cable television and shall not repeal any of the provisions of those ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

SECTION 7. That if any section, article, paragraph, sentence, clause, phrase, or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of 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 this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 8. This Ordinance shall become effective thirty-one (31) days after the second reading and passage and publication as required by City Charter.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 27th day of September, 1994.



MAYOR

ATTEST:



CITY SECRETARY

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