

**TOWNSHIP OF WEST BRADFORD
CHESTER COUNTY**

ORDINANCE #94-03

***AN ORDINANCE ESTABLISHING PROCEDURES AND
STANDARDS FOR THE REGULATION OF RATES FOR
BASIC CABLE SERVICE AND EQUIPMENT.***

BE IT AND IT IS HEREBY ENACTED AND ORDAINED, by the Board of Supervisors of West Bradford Township, Chester County, Pennsylvania, as follows:

SCOPE AND APPLICABILITY

- 0.1 This Ordinance governs the regulation of rates for basic service and equipment within the Township of West Bradford for any franchisee which has been notified that (a) the Township has been certified to regulate its basic service and equipment rates; and (b) the Township has adopted regulations governing regulation of the basic service and equipment rates. In addition, West Bradford Township may regulate the rates for cable services and equipment to the extent not prohibited by law, pursuant to such resolutions, ordinances or regulations as it may hereafter adopt. The provisions set forth below are intended to be consistent with all Federal Communications Commission ("FCC") regulations governing the regulation of basic service rates and equipment, and the Township and all those acting on its behalf will regulate and interpret its rules so that they are consistent with FCC regulations, as if those regulations were set forth, in full, herein; the franchisee is prohibited from engaging in any activity it is prohibited in engaging in under FCC rules, as if those rules were set forth in full herein. For purposes of these provisions, the term "basic service" or "basic cable service" has the same meaning as the term "basic service" at 47 C.F.R. ss76.901 and the term "equipment" refers to all equipment and services subject to regulation under 47 C.F.R. ss76.923.

SECTION 1. FILING AND REVIEW OF RATES

1.1 Initial Filings By Franchisees.

- 1.1.1 Filings: When Made. A franchisee that is notified that its basic service and equipment rates are subject to regulation, must file a submission ("the rate filing") within 30 days of the notification, justifying its basic service and equipment rates. All basic service and equipment rates for all customer classifications must be justified. Once a franchisee has been so notified by the Township

that its rates are subject to regulation, it may not thereafter increase its rates for basic service or equipment without the prior approval of the Township. This requirement applies in all cases, including with respect to increases in rates announced prior to the date the operator was notified its rates were subject to regulation where the increases were not implemented prior to the date of notice. A franchise must submit a rate filing to justify any increase in basic service or equipment rates or any new basic service or equipment rates or any new basic service or equipment rate (collectively referred to herein as rate increases). An "increase" occurs, without limitation, when there is an increase in rates or a decrease in programming or customer services. Rate filings proposing and supporting rate increases must be filed for review at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

1.1.2 Filing: Where Made. Every rate filing must be submitted to the Board of Supervisors of West Bradford Township (the "Board"). A rate filing shall be considered filed for review on the date the required rate filing and all required copies are received by the Board. Five copies of each rate filing (including all supporting materials) must be submitted. If the operator claims any part of the filing is proprietary, it shall ~~additionally~~ file five copies, which omit the proprietary information. *additionally*

1.1.3 Filings: Contents. Subject to FCC regulations governing the burden of proof, a rate filing submitted by a franchisee must show that the rates the franchisee proposes to charge for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

1.1.3.1 Every rate filing must clearly state in a covering letter, whether it justifies existing rates, or proposes an increase in rates. The cover letter must also identify any rate that is derived in whole or in part based upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. It must state whether any part of the proposed increase is based on an inflation adjustment or an alleged increase in external costs. The cover letter should also contain a brief, narrative description of any proposed changes in rates or in service.

- 1.1.3.2 The pages of each rate filing must be numbered sequentially.
 - 1.1.3.3 The rate filing must contain all applicable FCC forms and these forms must be correctly completed.
 - 1.1.3.4 If different rates are proposed for basic service for different classes of customers, the filing must show that the classifications and the differences in the rate charged are reasonable and consistent with federal law.
- 1.1.4 If the franchisee seeks to support a rate based upon a cost of service, the Township will establish a rate that provides the franchisee an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment is not presumed reasonable merely because the franchisee has incurred or made it. A franchisee is not entitled to recover monopoly profits in any form.

1.2 Initial Township Review

- 1.2.1 After receiving a rate filing, the Board promptly shall publish a notice that a filing has been received and that, except for those parts which may be withheld as proprietary, it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide interested parties seven days to submit written comments on the filing to the Board. The written comments shall be available for public inspection. The franchisee may submit and file with the Board a response to the public comments.
- 1.2.2 Within 30 days of the date of the filing, the township shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part, or tolling the proposed rate in whole or in part. If the Township tolls the rate in whole or in part, its written order, at a minimum, shall explain that it requires additional time to review the rate filing and state that the franchisee may cure any deficiency in its filing by submitting a supplementary filing as provided in Section 1.3. With respect to existing rates, tolling means the rates may remain in effect, subject to refund; with respect to rate changes, tolling means the portion of the rate change that is tolled may not go into effect.

1.3 Supplementary Filings:

- 1.3.1 If a proposed rate is tolled in whole or in part, the franchisee shall submit a supplementary filing, 20 days from the effective date of the tolling order, containing corrections, if any, to its filing (including any supplement to its cost of service filing) and any response to information filed by interested parties, or any additional information necessary to support the proposed rate. Supplementary filings must be filed in accordance with Section 1.1.2.
- 1.3.2. A supplementary filing also must contain such information as the Board or the township directs the franchisee to provide.
- 1.3.3. Upon receiving the supplementary filing, the Board promptly shall publish a notice that a filing has been received and that it is available for public review (except those parts which may be withheld as proprietary). The notice shall state that interested parties may comment on the filing, and shall provide interested parties 20 days to submit written comment on the filing to the Board.
- 1.3.4. The public comments shall be made available for public inspection. The franchisee may submit and file with the Board a response to public comments.
- 1.3.5. The Township shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or allowing the rate to go into effect in whole or in part, subject to refund. If the Township issues an order allowing the rates to go into effect, subject to refund, it shall also direct the franchisee to maintain an accounting in accordance with 47 C.F.R. ss76.933.
- 1.3.6. The order specified in Section 1.3.5 shall be adopted within 90 days after the tolling order for any rate the franchisee justifies based on the FCC benchmark. The order shall be adopted within 150 days of the tolling order for any rate the franchisee justifies with a cost of service showing.

SECTION 2. PROVISIONS GENERAL APPLICABLE TO RATE ORDERS

- 2.1 Any rate order of the Township shall be issued and effective upon adoption. Each rate order shall be released to the public and the franchisee. In any case, where the Township approves, denies, or tolls a rate; orders that a rate may go into

effect, subject to refund; or orders refunds; or establishes rates, a public notice shall be published stating that the order has been issued and is available for review. Any such order shall be in writing.

- 2.2 The Board and the Township may take any steps that they are not prohibited from taking by federal law to protect the public interest as part of any rate order or by any other means. By way of illustration and not limitation, the Township may require refunds, set rates, and impose forfeitures and penalties directly or through its delegated representatives, and enforce refund orders. Any order prescribing a rate shall explain why the franchisee's proposed rate was unreasonable and why the prescribed rate is reasonable.
- 2.3 No order approving or setting a rate using the FCC benchmarks shall be interpreted to establish the just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not limitation, should the FCC reduce the benchmarks, the Township shall have the right to reduce a franchisee's rates and to require the franchisee to refund any amounts collected above the benchmarks, except to the extent prohibited by federal law.

SECTION 3. FRANCHISEES' DUTIES

- 3.1 A franchisee must implement remedial requirements, including prospective rate reductions and refund, within 60 days of the date the township issues an order mandating a remedy.
- 3.2 Within 90 days of the date an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative of the franchisee stating:
 - 3.2.1 Whether the franchisee has complied fully with all provisions of the Township order; and
 - 3.2.2 Describing in detail the precise measures taken to implement the Township order; and
 - 3.2.3 Showing how refunds (including interest) were calculated and distributed.
- 3.3. It is each franchisee's responsibility to keep books and records of account so that it can refund any amounts owed to subscribers.
- 3.4 It is each franchisee's duty to submit as complete a filing as possible, and

knowingly withholding information or making a filing that is incomplete under applicable law shall be treated as a evasion and violation of this Ordinance.

3.5 Information Request:

3.5.1 A franchisee and any other entity that has records of revenues or expenses that are allocated to the franchisee's system must respond to requests for information from the Board or Township by deadlines established by the Board. A franchisee is responsible for ensuring that such other entity responds to the requests.

3.5.2. Because federal law limits the time available for an initial response to a filing by a franchisee before the order contemplated by Section 1.2 issues, the franchisee must be prepared to respond to requests for information regarding its filing within five days of the date an information request is mailed to it. The information may include the information the franchisee would be required to provide as part of any supplementary filing.

SECTION 4. DUTIES OF BOARD

4.1 The Board shall be responsible for administering the provisions herein. Without limitation and by way of illustration:

4.1.1 The Board shall ensure notices are given to the public and each franchisee, as required herein and by FCC regulations.

4.1.2 The Board may submit requests for information to the franchisee and establish deadlines for response to them, as provided in Section 3.

4.1.3 For good cause, the Board may waive any provision herein or extend any deadline for filing or response except as to such matters that are mandatory under FCC regulations.

4.1.4 The Board shall rule on any request for confidentiality.

SECTION 5. PENALTIES AND FORFEITURES

Except as prohibited by federal law, a franchisee shall be subject to penalties and forfeitures specified in applicable Township ordinances currently in effect or hereafter enacted; and its request for approval of a rate may be denied if it:

5.1 Knowingly submits false or fraudulent information to the Board or the Township

in connection with any rate proceeding:

- 5.2. Fails to comply with any lawful order or request of the Board or the Township, including, but not limited to a request for information or an order setting rates; or
- 5.3 Evades or attempts to evade federal or local rate regulation; provided that, filing for approval of a rate that is later determined to be unreasonable is not in and of itself an evasion of federal or local rate regulation.

SECTION 6. PROPRIETARY INFORMATION

- 6.1 If these regulations or any request for information requires that production of proprietary information, the franchisee must produce the information. However, at the time the alleged proprietary information is submitted, a franchisee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the Board determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. ss552. If the Board decides that information can be withheld, it will issue a written decision explaining the basis for withholding the information, and place that decision in a public file for inspection. If the franchisee requests confidentiality and the request is denied, (1) where the franchisee is proposing a rate increase, it may withdraw the proposal, in which case the alleged proprietary information will be returned to ~~it~~ or (2) the franchisee may seek review within five working days of the denial in any appropriate forum. Release of the information and all applicable time deadlines for any decision by the Township or Board required by FCC and these regulations will be stayed pending review.
- 6.2 Any interested party may file a request to inspect material withheld as proprietary with the Board. The Board shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable franchisee that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the franchisee may seek review of the decision by filing an appeal in any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

SECTION 7. PETITION FOR CHANGE IN STATUS

- 7.1 Any franchisee may petition for a change in status in accordance with 47 C.F.R.ss 76.915, and the Township shall consider that petition in accordance with 47

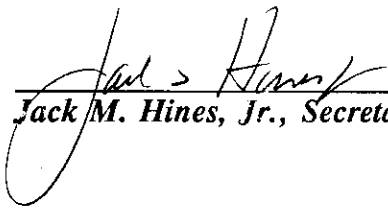
C.F.R. ss76.915. The petition and five copies must be filed with the Board.

SECTION 8. CUSTOMER SERVICE STANDARDS

8.1 The franchisee shall comply with all FCC Customer Service Standards and the Consumer Protection Provisions of applicable Township ordinances in effect or hereafter enacted.

ENACTED AND ORDAINED THIS 13th DAY OF SEPTEMBER, 1994.

ATTEST:



Jack M. Hines, Jr., Secretary

**BOARD OF SUPERVISORS
TOWNSHIP OF WEST BRADFORD:**



John A. Haiko, Chairman



Kenneth E. Klunk, Vice Chairman



Mark J. Blair, Member