

TOWN OF PITTSTON CABLE TELEVISION RATE REGULATION ORDINANCE

ARTICLE 1: GENERAL

1.1 Short Title

This Ordinance shall be known as the "Pittston Cable Television Rate Regulation Ordinance" and will be referred to herein as "this Ordinance".

1.2 Purpose

The purpose of this Ordinance is to implement the authority conferred on cable television franchising authorities to regulate Basic Service Rates and Charges.

1.3 Authority

This Ordinance is enacted pursuant to the Cable Television and Consumer Protection and Competition Act of 1992, as amended; pursuant to regulations adopted by the Federal Communications Commission ("FCC"), including but not limited to the "FCC Rate Regulations" as defined herein; and pursuant to 30-A.M.R.S.A. ss 3001, as amended.

1.4 Validity and Severability

The invalidity of any section or provision of the Ordinance shall not affect the validity of any other section or provisions of this Ordinance.

1.5 Effective Date

This Ordinance shall become effective immediately upon its approval by the municipal officers.

ARTICLE 2: DEFINITIONS

2.1 Basic Service Rates and Charges:

Basic Service Tier rates and the charges for related equipment, installation and services which, pursuant to federal laws and regulations, may be regulated by franchising authorities.

2.2 Basic Service Tier:

That tier of cable television service which contains, at a minimum, all local broadcast signals and the public, educational and governmental channels required by the franchise agreement. Provided that the contents of this tier meet this definition, the Cable Operator may, in its sole discretion, determine what (if any) additional service will be provided as part of this tier.

2.3 Benchmark Approach:

That theory of rate regulation which sets rates based upon "benchmarks" established by the FCC.

2.4 Cable Operator:

Any cable television system operating within the Town of Pittston.

2.5 Cost-of-service Approach:

That theory of rate regulation, to be initiated only by the Cable Operator, which allows the Cable Operator to charge rates in excess of the FCC benchmark rates upon a showing that the cost of providing cable service exceeds the benchmark rate.

2.6 FCC: The Federal Communications Commission.

2.7 FCC Rate Regulations:

Report and Order, In the Matter of Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-266, FCC 93-177 (released May 3, 1993), as amended.

2.8 Franchising Authority:

The Town of Pittston, acting pursuant to its authority under federal, state and local laws and regulations to authorize and oversee the provision of cable television service in Pittston.

ARTICLE 3: RATE SETTING PROCEDURES

3.1 Cable Operator Submission

Within 30 days of the date of the notice from the Franchising Authority to the Cable Operator, the Cable Operator shall file its rate justification with the Franchising Authority.

3.2 Franchising Authority Response

The Franchising Authority shall make a decision on the rate request within 30 days after the Cable Operator submits its rate justification. The rates proposed by the Cable Operator shall automatically take effect after that 30-day period unless the Franchising Authority issues a statement that it needs additional time to make its decision.

If the Franchising Authority decides that it needs longer than the initial 30-day period to consider the rate request, it may issue a statement to that effect. Such statement may provide for up to 90 additional days to review a rate request based upon a benchmark approach and up to 150 additional days to review a rate request based upon a cost of service approach.

If the Franchising Authority cannot reach a decision by the end of the extended period set forth in the preceding paragraph, the rates proposed by the Cable Operator shall go into effect, subject to refund. If the Franchising Authority intends to seek refunds, it shall issue an Order to the Cable Operator prior to expiration of the time period for response, notifying the Cable Operator to keep accurate records with respect to rates.

3.3 Public Hearing Required

A public hearing shall be held in connection with every rate setting proceeding. At least 10 days prior to the hearing date, the Town Clerk shall publish a notice of the hearing in a newspaper of general circulation in the Town of Pittston. The notice shall identify the name of the Cable Operator, indicate that a rate change has been requested, and identify the time and place of the public hearing.

3.4 Proprietary Information

The Franchising Authority may require the Cable Operator to furnish proprietary information in connection with any rate setting proceeding.

3.5 Calculation of Rates and Refunds

In setting Basic Tier Rates and Charges, and in setting any refunds, the Franchising Authority shall be governed by the FCC Rate Regulations as amended. The FCC Rate Regulations shall govern notwithstanding any different or inconsistent provisions in the Franchise Agreement.

3.6 Decision of Franchising Authority

The Franchising Authority shall issue a written rate decision with appropriate findings and conclusions if the Franchising Authority:

- a. disapproves, in whole or in part, the initial rate schedule or a proposed rate increase; or
- b. approves the initial rate or proposed rate increase over the objection of an interested party

Public notice must be given of any such written decision, which shall include release of the text of the written decision to the public.

No written decision shall be required to approve an unopposed existing or proposed rate.

3.7 Appeals

The FCC shall have exclusive jurisdiction to hear appeals challenging whether the Franchising Authority's decision is consistent with the 1992 Cable Act or any applicable FCC rules. Any participant in a Franchising Authority's rate regulation proceeding may appeal the Franchising Authority's decision on such grounds to the FCC within 30 days of release of the public notice required under Article 4.6 of this Ordinance.

Appeals on grounds other than those stated in the preceeding paragraph shall be made to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

ARTICLE 4: EXECUTION OF DOCUMENTS

4.1 Authority conferred

The Chair of the Board of Selectmen, or his or her designee, is authorized to execute on behalf of the Town and file with the FCC such certifications, forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the Town to regulate Basic Service Rates and Charges.

ARTICLE 5: AMENDMENT

This Ordinance may be amended by the Municipal Officers following public hearing.

ARTICLE 6: FEDERAL LAW PREEMPTION

To the extent that any provision of this Ordinance is inconsistent with federal law or regulations now in effect or which may be later adopted, federal law shall govern.

Approved by the Municipal Officers this 20th day of April, 1994