

## CHAPTER 12

### CABLE TELEVISION REGULATIONS

**12.1 Purpose of Chapter.** The purpose of this chapter is to adopt regulations consistent with the Federal Communications Act of 1934 as amended, the Cable Television Consumer Protection and Competition Act of 1992 and the rules of the Federal Communications Commission with respect to basic cable television service rate regulation. In addition, the purpose of this chapter is also to prescribe procedures so as to provide reasonable opportunity for consideration of the views of interested parties in connection with regulation by the Township of rates for basic cable television service. This chapter shall be implemented and interpreted consistent with the above stated statutes and applicable rules of the Federal Communications Commission.

**12.2 Definitions.** For purposes of this chapter, the words and phrases listed in this section shall have the meanings stated below:

- (1) "Act" means the Communications Act of 1934 as amended, and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, being U.S. Public Law 102-385, as it may be amended from time to time.
- (2) "Associated equipment" means all equipment and services subject to regulation pursuant to 47 CFR § 76.923.
- (3) "Basic cable television service" shall mean basic service as defined in the rules of the Federal Communications Commission and any other cable television service which is subject to rate regulation by the Township pursuant to the Act and the rules of the Federal Communications Commission.
- (4) "Cable television operator" means an operator of basic cable television service as defined in the FCC Rules and the operator of any other cable television service which is subject to rate regulation by the Township pursuant to the Act and the rules of the Federal Communications Commission.
- (5) "FCC" means the Federal Communications Commission.
- (6) "FCC Rules" means all rules of the FCC promulgated from time to time pursuant to the Act.
- (7) "Increase in rates" means an increase in cable television rates or a decrease in cable television programming or a decrease in the customer services provided by a cable television operator.
- (8) "Township" means the Township of Oakfield, Kent County, Michigan.

All other words and phrases used in this chapter shall have the meanings as defined in the Act in the FCC Rules.

**12.3 Regulation of Basic Cable Television Service.** The Township may regulate the rates charged for basic cable television service within the Township, in accordance with this chapter and other applicable and Township ordinances. In the regulation of rates for basic cable television service and associated equipment, the Township shall follow all FCC Rules.

**12.4 Procedures; Filing of Rate Schedules; Submission of Information by Cable Television Operator.**

- (1) The procedures under which the Township shall regulate the rates charged for basic cable television service within the Township shall be as set forth in this chapter.
- (2) A cable television operator shall submit its schedule of rates for basic cable television service and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable television operator shall also submit with its proposed schedule of rates such information as may be necessary to demonstrate that its schedule of rates or its proposed increase in rates complies with the Act and the FCC Rules. The cable television operator shall file ten copies of its schedule of rates or its proposed increase in rates with the Township Clerk. Such filing by the cable television operator shall be deemed to have been made when ten copies thereof have been received by the Township Clerk.
- (3) By resolution or otherwise, the Township Board may adopt rules and regulations prescribing the information, data, calculations and other material which the Township requires to be included as a part of the filing of a schedule of rates or a proposed increase in rates by a cable television operator.
- (4) In addition to information, data, calculations and other material required by rules and regulations of the Township, a cable television operator shall provide all other information requested by the Township Board in connection with the Township's review and regulation of existing rates for basic cable television service and associated equipment or a proposed increase in such rates. The Township Board may establish deadlines for submission of any requested information, data, calculations or other material, and the cable television operator shall comply with such deadlines.
- (5) A cable television operator has the burden of proving that its schedule of rates or its proposed increase in rates for basic cable television service and associated equipment complies with the Act and the FCC Rules, including, without limitation, 47 USC § 543 and 47 CFR §§ 76.922 and 76.923.

**12.5 Notice, Initial Review of Rates.** Upon the filing of ten copies of the schedule of rates or a proposed increase of rates by the cable television operator, pursuant to this chapter, the Township Clerk shall publish a public notice in a newspaper of general circulation in the Township. The notice shall state that the filing has been received by the Township Clerk and (except those parts which may be withheld as proprietary under Section 6 hereof) is available for public inspection and copying; that interested parties are encouraged to submit written comments on the schedule of rates or proposed increase in rates, to the Township Clerk, not later than seven days after the public notice is published; and any other information deemed pertinent. The Township Clerk shall give notice to the cable television operator of the date, time and place of the meeting in which the Township Board

shall first consider the schedule of rates or the proposed increase in rates. Such notice to the cable television operator shall be mailed by first-class mail at least three days prior to the meeting of the Township Board. If a written report by Township staff or a consultant of the Township, regarding the schedule of rates or the proposed increase in rates, has been prepared for consideration of the Township Board, then the Township Clerk shall mail a copy of the report by first-class mail to the cable television operator at least three days before the meeting at which the Township Board will first consider the schedule of rates or the proposed increase in rates.

#### **12.6 Proprietary Information.**

- (1) If this chapter, any rules or regulations adopted by the Township pursuant to Section 4(2), or any request for information pursuant to Section 5 requires the production of proprietary information, the cable television operator shall produce such information. The cable television operator may request, however, that specific, clearly identified portions of its response be treated as confidential and be withheld from public disclosure, for the reason that such stated portions are proprietary. Such request must state the reasons why the information should be treated as proprietary and the facts supporting such reasons. The Township Board may grant the request for confidentiality of such information if the Board determines that the preponderance of the evidence shows that non-disclosure of such information is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. § 552. The Township Clerk shall place in a file available for public inspection any written decision that results in information being withheld. If the cable television operator requests confidentiality of allegedly proprietary information, and such request is denied, the cable television operator may withdraw its proposal, in cases in which the cable operator is proposing a rate increase, and in that event the allegedly proprietary information shall be returned to the cable television operator; alternatively, the cable television operator may seek review within five business days of the denial of such request for confidentiality, in any appropriate forum, and in that event the Township's release of such information shall be stayed, pending resolution of the review being sought.
- (2) Any interested party may file with the Township Clerk a written request to inspect material withheld as proprietary. In responding to such request, the Township shall consider the policy considerations favoring non-disclosure and shall also consider the reasons cited for permitting inspection of the material, in relation to the facts of the particular case. Upon reaching a decision regarding whether withheld material shall then be disclosed, the Township shall promptly notify the requesting party and the cable television operator that submitted the information in question. The Township may grant, deny or grant with conditions any such request. The party requesting disclosure of such information or the cable television operator may seek review of the Township's decision by filing an appeal in any appropriate forum. Pending resolution of any such appeal, disclosure by the Township of such information or material shall be stayed.

- (3) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR § 0.459.

**12.7 Effective Date of Rates; Order Tolling Effective Date of Rates.** After a cable television operator has filed its existing schedule of rates or its proposed increase in rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing under Section 5 of this chapter unless the Township Board (or other properly authorized body or official) tolls such 30 day period pursuant to 47 CFR § 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The Township Board may by such order toll the 30-day period for an additional 90 days in cases not involving cost-of-service showings or for an additional 150 days in cases involving cost-of-service showings.

**12.8 Hearing on Basic Cable Service Rates Following Tolling of 30-Day Deadline; Public Notice.**

- (1) If a written order has been issued pursuant to Section 7 of this chapter and 47 CFR 76.933 so as to toll the effective date of existing rates for basic cable television service and associated equipment or a proposed increase in such rates, the cable television operator shall submit to the Township any additional information required or requested pursuant to Section 4(4) of this chapter.
- (2) In addition, the Township Board shall hold a public hearing to consider the comments of interested parties within the additional 90 day or 150 days, as the case may be.
- (3) The Township Clerk shall publish a notice of the public hearing in a newspaper of general circulation within the Township. The notice shall state the date, time and place at which the hearing will be held; the fact that interested parties may appear in person, by agent or by letter at such hearing, in order to submit comments on or objections to the existing cable television rates or the proposed increase in rates; and that copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the Township Clerk. Such notice shall be published not less than 15 days before the public hearing. In addition, the Township Clerk shall mail by first-class mail a copy of the public notice to the cable television operator not less than 15 days before the public hearing.

**12.9 Report of Staff or Consultant; Written Response.** Following the public hearing provided for in Section 8, the Township Board may cause a written report to be prepared for the Board by the Township's staff or consultants. The report may include a recommendation for a decision by the Township Board regarding cable television rates pursuant to Section 10. Such a report shall be based on the material and information filed by the cable television operator, the comments or objections of interested parties, information requested from the cable television operator, review or comment by Township staff or consultants and other appropriate information. If such a report is submitted, the Township Clerk shall mail a copy of it to the cable television operator by first-class mail not less than 20 days before the decision by Township Board under Section 10.

The cable television operator may file with the Township Clerk a written response to the report. The Township Clerk shall forward the written response of the cable television operator to the Township Board, if the response is received by the Clerk within ten days after the report is mailed by the cable television operator and at least ten copies of the response are submitted to the Clerk.

**12.10 Decision and Order on Rates.** The Township Board shall issue an order, by resolution or otherwise, which in whole or in part, (1) approves the existing rates for basic cable television service and associated equipment or a proposed increase in such rates; (2) denies the existing basic cable television rates or proposed increase in such rates; (3) orders a reduction in the existing rates or in the proposed increase in rates; (4) prescribes a reasonable rate or reasonable increase in rates; (5) allows the existing cable television rates or proposed increase in rates to become effective subject to refunds; or (6) orders other appropriate relief; all in accordance with the FCC Rules. If the Township Board issues an order allowing the existing basic television rates or proposed increase in rates to become effective subject to refund, the Township Board shall also direct the cable television operator to maintain an accounting pursuant to 47 CFR § 76.933. The order of the Township Board shall be issued within 90 days of the tolling order under Section 7 in all cases not involving cost of service showing. The order shall be issued within 150 days after the tolling order under Section 7 in all cases involving a cost of service showing.

**12.11 Refunds, Notice.** The Township Board may order a refund to cable television subscribers as provided in 47 CFR § 76.942. Before the Township Board orders a refund to subscribers, the Township Clerk shall give at least seven days written notice to the cable television operator by first-class mail of the date, time and place at which the Township Board shall consider issuing a refund order and shall provide an opportunity for the cable television operator to comment regarding the proposed refund. The cable television operator may appear in person, by agent, or by letter at such time, for the purpose of submitting comments to the Township Board.

**12.12 Written Decisions, Public Notice.** Any order of the Township Board pursuant to Section 10 or Section 11 shall be in writing, shall be effective upon adoption by the Township Board, and shall be deemed released to the public upon adoption. The Township Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the Township, which shall (1) summarize the written decision, and (2) state that copies of the text of the written decision are available for inspection or copying from the office of the Township Clerk. In addition, the Township Clerk shall mail a copy of the text of the written decision to the cable television operator by first-class mail.

**12.13 Rules and Regulations.** In addition to rules promulgated pursuant to Section 4, the Township Board may, by resolution or otherwise, adopt rules and regulations for basic cable television service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

**12.14 Failure to Give Notice.** The failure of the Township Board to give the notices or to mail copies of reports as required by this chapter shall not invalidate the decision or proceedings of the Township Board.

**12.15 Additional Hearings.** In addition to the requirements of this chapter, the Township Board may hold additional public hearings upon such reasonable notice as the Township Board, in its sole discretion, shall prescribe.

**12.16 Additional Powers.** The Township Board shall possess all powers conferred by the Act, the FCC Rules, the cable television operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this chapter shall be in addition to powers conferred by law or otherwise. The Township Board may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable television service rate regulation.

**12.17 Failure to Comply, Remedies.** The Township Board may pursue any and all legal and equitable remedies against the cable television operator (including, without limitation, all remedies provided under a cable television operator's franchise with the Township Board) for failure to comply with the Act, the FCC Rules, any orders or determinations of the Township Board pursuant to this chapter, any requirements of this chapter, or any rules and regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the Township Board pursuant to this chapter, any requirements of this chapter, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable television operator's franchise.

**12.18 Conflicting Provisions.** In the event of any conflict between this chapter and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this chapter shall control.