

ORDINANCE NO. 2023

AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA RELATING TO CABLE COMMUNICATIONS; CREATING A NEW ARTICLE IV "RATE REGULATION PROCEDURES" OF CHAPTER 30 OF THE CODE OF ORDINANCES; PRESCRIBING REGULATIONS FOR RATES CHARGED TO CABLE TELEVISION SUBSCRIBERS FOR THE BASIC SERVICE TIER; PROVIDING FOR DEFINITIONS; PROVIDING FOR INITIAL REVIEW OF BASIC CABLE RATES; PROVIDING FOR REVIEW OF REQUESTS FOR INCREASES IN BASIC CABLE RATES; PROVIDING FOR SUBMITTAL OF GRANTEE INFORMATION; PROVIDING FOR AUTOMATIC RATE ADJUSTMENTS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING ORDINANCES AND CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission ("FCC") has issued rules pursuant to the Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385 (1992) ("1992 Cable Act"), implementing the regulation of cable television subscriber rates; and

WHEREAS, these rules allocate the regulation of rates for the basic service tier and associated equipment rates to local franchising authorities and require local authorities to become certified and adopt their own regulations governing the process of rate regulation; and

WHEREAS, the city franchises cable television service for the benefit of its citizens; and

WHEREAS, the city has submitted its application for certification to the FCC and it is expedient to adopt the required regulations now, in order to implement regulations at the earliest possible date to obtain the most competitive rates for the city's cable ratepayers.

NOW, THEREFORE, BE IT ENACTED by the people of the City of Winter Park, Florida as follows:

Section 1. A new Article IV of Chapter 30 of the Code of Ordinances of the City of Winter Park is created to read as follows:

ARTICLE IV. RATE REGULATION PROCEDURES

Sec. 30-101. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Basic cable rates* means the monthly charges for a subscription to the basic service tier and the associated equipment.

*Basic service tier* means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels, and all domestic television signals other than superstations.

*Benchmark* means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

*Cable Act of 1992* means the Cable Television Consumer Protection and Competition Act of 1992.

*Channel* means a unit of cable service identified and selected by a channel number or similar designation.

*Cost of service showing* means a filing in which the grantee attempts to show that the benchmark rate or the price cap is not sufficient to allow the grantee to fully recover the costs of providing the basic service tier and to continue to attract capital.

*FCC* means the Federal Communications Commission.

*Initial basic cable rates* means the rates that the grantee is charging for the basic service tier, including charges for associated equipment, at the time the city notifies grantee of the city's qualification and intent to regulate basic cable rates.

*Must-carry signal* means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

*PEG channel* means the channel capacity designated for public, educational, or governmental use, and facilities and equipment for the use of that channel capacity.

*Price cap* means the ceiling set by the FCC on future increases in basic cable rates regulated by the city, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

*Reasonable rate standard* means a per channel rate that is at, or below, the benchmark or price cap level.

*Superstation* means any non-local broadcast signal secondarily transmitted by satellite.

**Sec. 30-102. Initial review of basic cable rates.**

(a) *Notice.* Upon the adoption of this ordinance and the certification of the city by the FCC, the city shall immediately notify the grantee, by certified mail, return receipt requested, that the city intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

(b) *Grantee response.* Within 30 days of receiving notice from the city, the grantee shall file with the city its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(c) *Expedited determination and public hearing.*

(1) If the city commission is able to expeditiously determine that the grantee's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the city commission shall:

a. Hold a public hearing at which interested persons may express their views; and

b. Act to approve the rates within 30 days from the date of grantee filed its basic cable rates with the city.

(2) If the city commission takes no action within 30 days from the date the grantee filed its basic cable rates with the city, the proposed rates will continue in effect.

(d) *Extended review period.*

(1) If the city commission is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the grantee submits a cost-of-service showing, the city commission shall, within 30 days from the date the grantee filed its basic cable rates with the city and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. 90 days if the city commission needs more time to ensure that a rate is within the FCC's reasonable rate standard; or

b. 150 days if the grantee has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the city commission has not made a decision within the 90 or 150 day period, the city commission shall issue a brief written order at the end of the period requesting the grantee to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(e) *Public hearing.* During the extended review period and before taking action on the proposed rate, the city commission shall hold at least one public hearing at which interested persons may express their views and record objections.

(f) *Objections.* An interested person who wishes to make an objection to the proposed initial basic rate may request the city clerk to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the city clerk with the objector's name and address.

(g) *Benchmark analysis.* If the grantee submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the city commission shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the city commission's findings, the initial basic cable rates shall be established as follows:

(1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the grantee's rates will be capped at that level.

(2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the grantee's per channel rate on September 30, 1992, reduced by 10 percent, or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992 and the initial date of regulation.

(3) If the current basic cable rates exceed the benchmark, but the grantee's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(h) *Cost-of-service showings.* If the grantee does not wish to reduce the rates to the permitted level, the grantee shall have the opportunity to submit a cost-of-service showing in an attempt to justify an initial basic cable rates above the FCC's reasonable rate standard. The city commission will review a cost-of-service

submission pursuant to FCC standards for cost-of-service review. The city commission may approve initial basic cable rates above the benchmark if the grantee makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the grantee's September 30, 1992 rates minus 10 percent, will prescribe the grantee's new rates.

(i) *Decision.*

(1) *By formal resolution.* After completion of its review of the grantee's proposed rates, the city commission shall adopt its decision by formal resolution. The decision shall include one of the following:

a. If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the city commission shall approve the initial basic cable rates proposed by the grantee; or

b. If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the city commission shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

(2) *Rollbacks and refunds.* If the city commission determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the grantee's cost-of-service showing justifies lower rates, the city commission may order the rates reduced in accordance with paragraph (g) or (h) above, as applicable. In addition, the city commission may order the grantee to pay to subscribers refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The method of paying any refund and the interest rate will be in accordance with FCC regulations as directed in the city commission's decision resolution.

(3) *Statement of reasons for decision and public notice.* If rates proposed by a grantee are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the city commission must give public notice of its decision. Public notice will be given by advertisement once in a newspaper of general circulation in the city.

(j) *Appeal.* The city commission's decision concerning rates for the basic service tier or associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

**Sec. 30-103. Review of request for increase in basic cable rates.**

(a) *Notice.* A grantee in the city who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the city and notify all subscribers at least 30 days before the grantee desires the increase to take effect. This notice may not be given more often than annually and not until at least one year after the determination of the initial basic cable rates.

(b) *Expedited determination and public hearing.*

(1) If the city commission is able to expeditiously determine that the grantee's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the city commission shall:

a. Hold a public hearing at which interested persons may express their views; and

b. Act to approve the rate increase within 30 days from the date the grantee filed its request with the city.

(2) If the city commission takes no action within 30 days from the date the grantee filed its request with the city, the proposed rates will go into effect.

(c) *Extended review period.*

(1) If the city commission is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the grantee submits a cost-of-service showing, the city commission shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. 90 days if the city commission needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and

b. 150 days if the grantee has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

(2) The proposed rate increase is tolled during the extended review period.

(3) If the city commission has not made a decision within the 90 or 150 day period, the city commission shall issue a brief written order at the end of the period requesting the grantee to

keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

(d) *Public hearing.* During the extended review period and before taking action on the requested rate increase, the city commission shall hold at least one public hearing at which interested persons may express their views and record objections.

(e) *Objections.* An interested person who wishes to make an objection to the proposed rate increase may request the city clerk to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the city clerk with the objector's name and address.

(f) *Delayed determination.* If the city commission is unable to make a final determination concerning a requested rate increase within the extended time period, the grantee may put the increase into effect, subject to subsequent refund if the city commission later issues a decision disapproving any portion of the increase.

(g) *Price cap analysis.* If a grantee presents its request for a rate increase as being in compliance with the FCC's price cap, the city commission shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the city commission's findings, the basic cable rates shall be established as follows:

(1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

(2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the city commission shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(h) *Cost-of-service showings.* If a grantee submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the city commission will review the submission pursuant to FCC standards for cost-of-service review. The city commission may approve a rate increase above the price cap if the grantee makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the grantee's then current rate will prescribe the grantee's new rate.

(i) *Decision.* The city commission's decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a grantee is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for

the decision. Objections may be made at the public hearing by a person requesting the city clerk to record the objection or may be submitted in writing at anytime before the decision resolution is adopted.

(j) *Refunds.*

(1) The city commission may order refunds of subscribers' rate payments with interest if:

a. the city commission was unable to make a decision within the extended time period as described in paragraph (c) above; and

b. the grantee implemented the rate increase at the end of the extended review period; and

c. the city commission determines that the rate increase as submitted exceeds the applicable price cap or that the grantee failed to justify the rate increase by a cost-of-service showing, and the city commission disapproves any portion of the rate increase.

(2) The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the city commission's decision resolution.

(k) *Appeal.* The city commission's decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations.

**Sec. 30-104. Grantee information.**

(a) *City may require.*

(1) In those cases when the grantee has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the city commission may require the grantee to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a grantee may request the information be kept confidential in accordance with this section.

(2) In cases where initial or proposed rates comply with the reasonable rate standard, the city commission may request additional information only in order to document that the grantee's rates are in accord with the standard.

(b) *Request for Confidentiality.*

(1) A grantee submitting information to the city commission may request in writing that the information not be made routinely



available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.

(4) Casual requests which do not comply with the requirements of this subsection shall not be considered.

(c) *City commission action.* Requests which comply with the requirements of subsection (b) will be acted upon by the city commission. The city commission will grant the request if the grantee presents by a preponderance of the evidence, a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the city commission denies the request, the city commission shall take one of the following actions:

(1) If the information has been submitted voluntarily without any direction from the city, the grantee may request that the city return the information without considering it. Ordinarily, the city will comply with this request. Only in the unusual instance that the public interest so requires, will the information be made available for public inspection.

(2) If the information was required to be submitted by the city commission, the information will be made available for public inspection.

(d) *Appeal.* If the city commission denies the request for confidentiality, the grantee may seek review of that decision from the FCC within five working days of the city commission's decision, and the release of the information will be stayed pending review.

#### **Sec. 30-105. Automatic rate adjustments.**

(a) *Annual inflation adjustment.* In accordance with FCC regulations, the grantee may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

(b) *Other external costs.*

(1) The FCC regulations also allow the grantee to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of complying with franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regard to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.

(c) *Notification and review.* The grantee shall notify the city at least 30 days in advance of a rate increase based on automatic adjustment items. The city shall review the increase to determine whether the item or items qualify as automatic adjustments. If the city makes no objection within 30 days of receiving notice of the increase, the increase may go into effect.

**Sec. 30-106. Enforcement.**

(a) *Refunds.* The city may order the grantee to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The grantee has failed to comply with a valid rate order issued by the city.

(b) *Fines.* If the grantee fails to comply with a rate decision or refund order, the grantee shall be subject to a fine of \$500 for each day the grantee fails to comply.

**Section 2.** If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and said

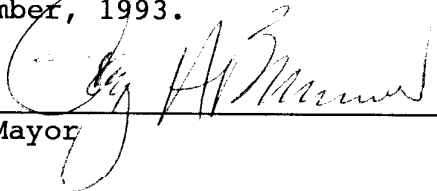
holding shall in no way affect the validity of the remaining portions of this ordinance.

**Section 3.** All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 4.** It is the intention of the city commission of the city that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the city; and that sections of this ordinance may be renumbered or relettered, and the word "ordinance" may be changed to "chapter," "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered, and typographical errors which do not affect the intent may be corrected by authorization of the city manager, without need of public hearing, by filing a corrected or recodified copy of same with the city clerk.

**Section 5.** This ordinance shall take effect immediately upon its passage and adoption.

**ADOPTED** at a regular meeting of the city commission of the City of Winter Park, Florida, held at City Hall, Winter Park, Florida, on the 9th day of November, 1993.

  
\_\_\_\_\_  
Mayor

Attest:   
\_\_\_\_\_  
City Clerk