

ORDINANCE NO. 161 - 1994

AN ORDINANCE OF THE SUPERVISORS OF THE TOWNSHIP OF PYMATUNING, COUNTY OF MERCER, COMMONWEALTH OF PENNSYLVANIA (HEREINAFTER "MUNICIPALITY"), SETTING FORTH DEFINITIONS OF TERMS USED IN THE ORDINANCE PROVIDING FOR AN INITIAL REVIEW OF BASIC CABLE RATES; PROVIDING FOR REVIEW FOR REQUESTS IN THE INCREASE OF BASIC CABLE RATES; SETTING FORTH CABLE OPERATOR INFORMATION THAT MAY BE REQUIRED; PROVIDING FOR AUTOMATIC ADJUSTMENTS IN CERTAIN CASES; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; DESIGNATING THE ENTITY TAKING MUNICIPAL ACTION; AND PROVIDING A SEVERABILITY CLAUSE, A REPEALER CLAUSE AND 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 Municipality franchise cable television service for the benefit of its citizens; and

WHEREAS, the Municipality 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 Municipality's cable ratepayers;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY, AND IT IS HEREBY ORDAINED AND ENACTED BY THE AUTHORITY OF THE SAME AS FOLLOWS:

**SECTION 1. DEFINITIONS**

In this Ordinance:

**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.

**CABLE OPERATOR** means any person or group of persons:

(a) who provide cable service over a cable system directly or through one or more affiliates owns a significant interest in such a cable system; or

(b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

**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 cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator 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 cable operator is charging for the basic service tier, including charges for associated equipment, at the time the Municipality notifies the cable operator of the Municipality'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 Municipality, 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.

**SECTION. 2 - INITIAL REVIEW OF BASIC CABLE RATES**

(a) Notice. Upon the adoption of this Ordinance and the certification of the Municipality by the FCC, the Municipality shall immediately notify all cable operators in the Municipality, by certified mail, return receipt requested, that the Municipality intends to regulate subscriber rates charged for the basic service tier and associated equipment authorized by the Cable Act of 1992.

(b) Cable operator response. Within 30 days of receiving notice from the Municipality, a cable operator shall file with the Municipality 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 Municipality is able to expeditiously determine that the cable operator'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 Municipality 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 the cable operator filed its basic cable rates with the Municipality.

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

(d) Extended review period. (1) If the Municipality 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 cable operator submits a cost-of-service showing, the Municipality shall, within 30 days from the date the cable operator filed its basic cable rates with the Municipality 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 Municipality needs more time to ensure that a rate is within the FCC's reasonable rate standard; or

(B) 150 days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the Municipality has not made a decision within the 90 or 150 day period, the Municipality shall issue a brief written order at the end of the period requesting the cable operator 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 Municipality 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 Municipality 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 Municipality's Secretary with the objector's name and address.

(g) Benchmark analysis. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Municipality shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Municipality'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 cable operator'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 cable operator'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 cable operator'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 a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The Municipality will review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The Municipality may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus 10 percent, will prescribe the cable operator's new rates.

(i) Decision. (1) By formal resolution. After completion of its review by the cable operator's proposed rates, the Municipality 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 Municipality shall approve the initial basic cable rates proposed by the cable operator; 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 Municipality 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 Municipality determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operators cost-of-service showing justifies lower rates, the Municipality may order the rates reduced in accordance with Paragraph (g) or (h) above, as applicable. In addition, the Municipality may order the cable operator 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 for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Municipality's decision resolution.

(3) Statement of reasons for decision and public notice. If rates proposed by a cable operator 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 Municipality must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the Municipality.

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

### **SECTION 3. REVIEW OF REQUEST FOR INCREASE IN BASIC CABLE RATES**

(a) Notice. A cable operator in the Municipality who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Municipality and notify all subscribers at least 30 days before the cable operator 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 Municipality is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Municipality 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 cable operator filed its request with the Municipality.

(2) If the Municipality takes no action within 30 days from the date the cable operator files its request with the Municipality, the proposed rates will go into effect.

(c) Extended review period. (1) If the Municipality 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 cable operator submits a cost-of-service showing, the Municipality 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 Municipality 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 cable operator 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 Municipality has not made a decision within the 90 or 150 day period, the Municipality shall issue a brief order at the end of the period requesting the cable operator 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 Municipality 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 Municipality's Secretary 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 Municipality's Secretary with the objector's name and address.

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

(g) Price cap analysis. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Municipality shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Municipality's findings, the basic cable rate 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 Municipality 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 cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Municipality will review the submission pursuant to the FCC standards for cost-of-service review. The Municipality may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(i) Decision. The Municipality's decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator 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 Municipality's Secretary to record the objection or may be submitted in writing at any time before the decision resolution is adopted.

(j) Refunds. (1) The Municipality may order refunds of subscribers' rate payments with interest if:

(A) the Municipality was unable to make a decision within the extended time period as described in Paragraph (c) above; and

(B) the cable operator implemented the rate increase at the end of the extended review period; and



(C) the Municipality determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the Municipality 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 Municipality's decision resolution.

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

#### **SECTION 4. CABLE OPERATOR INFORMATION**

(a) Municipality may require. (1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the Municipality may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator 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 Municipality may request additional information only in order to document that the cable operator's rates are in accord with the standard.

(b) Request for Confidentiality. (1) A cable operator submitting information to the Municipality may request in writing that 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) Municipality action. Requests which comply with the requirements of Subsection (b) will be acted upon by the Municipality. The Municipality will grant the request if the cable operator presents by a preponderance of the evidence, a case of 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 Municipality denies the request, the Municipality shall take one of the following actions:

(1) if the information has been submitted voluntarily without any direction from the Municipality, the cable operator may request that the Municipality return the information without consideration it. Ordinarily, the Municipality 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 Municipality, the information will be made available for public inspection.

(d) Appeal. If the Municipality denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five working days of the Municipality's decision, and the releases of the information will be stayed pending review.

#### **SECTION 5. AUTOMATIC RATE ADJUSTMENTS**

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

(b) Other external costs. (1) The FCC regulations also allow the cable operator 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 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 May 15, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs for retransmission consent fees or changes in those fees incurred before October 6, 1994.

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

#### **SECTION 6. ENFORCEMENT**

(a) Refunds. The Municipality may order the cable operator 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 cable operator has failed to comply with a valid rate order issued by the Municipality.

(b) Fines. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of \$500.00 for each day the cable operator fails to comply.

#### **SECTION 7. GOVERNMENT ACTION**

When any action, including review, is required or inferred of the Municipality pursuant to the terms of this Ordinance, that action or activity shall be deemed to be required of the legislative body of the Municipality, or, by an administrative body appointed by the legislative body for the sole purpose of administering the Municipality's obligations under this Ordinance.

#### **SECTION 8. SEVERABILITY**

The provisions of this Ordinance shall be severable and, if any of the provisions hereof shall be held unconstitutional, void or otherwise unenforceable, such shall not affect or impair the validity of any of the remaining provisions of this Ordinance.

**SECTION 9. REPEALER**

All ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as the same affect this Ordinance.

**SECTION 10. EFFECTIVE DATE**

This Ordinance shall become effective five (5) days after final passage and approval by the Mayor where such approval is required.

**ORDAINED AND ENACTED** finally into law by the Municipality this 12th day of May, 1994.

**ATTEST:**

**PYMATUNING TOWNSHIP, MERCER COUNTY,  
PENNSYLVANIA:**

Joyce E. Leventy  
Township Secretary

BY: Joseph A. Schick  
George J. Fieck Jr.  
George W. Lesic  
(Supervisors)