

ORDINANCE NO. 1-401

AN ORDINANCE TO ADOPT REGULATIONS AND PROCEDURES FOR BASIC
CABLE TV RATE REGULATION

THE CITY OF ISHPEMING ORDAINS:

Section 1. Definitions. For purposes of this Ordinance, "Act" shall mean the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time; "FCC" shall mean the Federal Communications Commission; "FCC Rules" shall mean all rules of the FCC promulgated from time to time pursuant to the Act; "basic cable service" shall mean "basic service" as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the City pursuant to the Act and the FCC Rules; "associated equipment" shall mean all equipment and services subject to regulation pursuant to 47 CFR 76.923; and an "increase" in rates shall mean an increase in rates or a decrease in programming or customer services. All other words and phrases used in this Ordinance shall have the same meaning as defined in the Act and FCC Rules.

Section 2. Purpose; Interpretation. The purpose of this Ordinance is to (1) adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation and (2) prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the City. This Ordinance shall be implemented and interpreted consistent with the Act and FCC Rules.

Section 3. Rate Regulations Promulgated by FCC. In connection with the regulation of rates for basic cable service and associated equipment, the City of Ishpeming shall follow all FCC Rules.

Section 4. Filing; Additional Information; Burden of Proof.

- (a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include, as part of its submission, such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and the FCC Rules. The cable operator shall file ten (10) copies of the schedule or proposed increase with the City Clerk. For purposes of this Ordinance, the filing of the cable operator shall be deemed to have been made when at least ten (10) copies have been received by the City Clerk. The City Council may, by resolution or otherwise, adopt rules and regulations prescribing the information, data, and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.
- (b) In addition to information and data required by rules and regulations of the City pursuant to Section 4(a) above, a cable operator shall provide all information requested by the Manager in connection with the City's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The Manager may establish deadlines for submission of the requested information, and the cable operator shall comply with such deadlines.
- (c) A cable operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules including, without limitation, 47 USC 543 and 47

CFR 76.922 and 76.923.

Section 5. Proprietary Information.

- (a) If this Ordinance, any rules or regulations adopted by the City pursuant to Section 4(a), or any request for information pursuant to Section 4(b) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator 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 City determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. The City shall place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, (1) where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.
- (b) Any interested party may file a request to inspect material withheld as proprietary with the City. The City shall weigh the policy considerations favoring non-disclosure 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 operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.
- (c) 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.

Section 6. Public Notice; Initial Review of Rates. Upon the filing of ten (10) copies of the schedule of rates or the proposed increase in rates pursuant to Section 4(a) above, the City Clerk shall publish a public notice in a newspaper of general circulation in the City which shall state that: (1) the filing has been received by the City Clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying, and (2) interested parties are encouraged to submit written comments on the filing to the City Clerk not later than seven (7) days after the public notice is published. The City Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the City Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least three (3) days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the City Council, then the City Clerk shall mail a copy of the report by first-class mail to the cable operator at least three (3) days before the meeting at which the City Council shall first consider the schedule of rates or the proposed increase.

Section 7. Tolling Order. After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after thirty (30) days from the

date of filing under Section 4(a) above unless the City Council (or other properly authorized body or official) tolls the thirty (30) day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within thirty (30) days of the date of filing. The City Council may toll the thirty (30) day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

Section 8. Public Notice; Hearing on Basic Cable Service Rates Following Tolling of 30-Day Deadline. If a written order has been issued pursuant to Section 7 and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the City any additional information required or requested pursuant to Section 4 of this Ordinance. In addition, the City Council shall hold a public hearing to consider the comments of interested parties within the additional 90 day or 150 day period, as the case may be. The City Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the City which shall state: (1) the date, time, and place at which the hearing shall be held, (2) interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and (3) 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 office of the Clerk. The public notice shall be published not less than fifteen (15) days before the hearing. In addition, the City Clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than fifteen (15) days before the hearing.

Section 9. Staff or Consultant Report; Written Response. Following the public hearing, the Manager shall cause a report to be prepared for the City Council which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the City Council pursuant to Section 10. The City Clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty (20) days before the City Council acts under Section 10. The cable operator may file a written response to the report with the City Clerk. If at least ten (10) copies of the response are filed by the cable operator with the City Clerk within ten (10) days after the report is mailed to the cable operator, the City Clerk shall forward it to the City Council.

Section 10. Rate Decisions and Orders. The City Council shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the City Council issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. The order specified in this Section shall be issued within 90 days of the tolling order under Section 7 in all cases not involving a 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.

Section 11. Refunds; Notice. The City Council may order a refund to subscribers as provided in 47 CFR 76.942. Before the City Council orders any refund to subscribers, the City Clerk shall give at least seven (7) days written notice to the cable operator by first-class mail of the date, time, and place at which the City Council shall consider

issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the City Council.

Section 12. Written Decisions; Public Notice. Any order of the City Council pursuant to Section 10 or Section 11 shall be in writing, shall be effective upon adoption by the City Council, and shall be deemed released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the City 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 Clerk. In addition, the City Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

Section 13. Rules and Regulations. In addition to rules promulgated pursuant to Section 4, the City Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

Section 14. Failure to Give Notice. The failure of the City Clerk to give the notices or to mail copies of reports as required by this Ordinance shall not invalidate the decisions or proceedings of the City Council.

Section 15. Additional Hearings. In addition to the requirements of this Ordinance, the City Council may hold additional public hearings upon such reasonable notice as the City Council, in its sole discretion, shall prescribe.

Section 16. Additional Powers. The City shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this Ordinance shall be in addition to powers conferred by law or otherwise. The City may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

Section 17. Failure to Comply; Remedies. The City may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's franchise with the City) for failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this Ordinance, any requirements of this Ordinance, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this Ordinance, any requirements of this Ordinance, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's franchise.

Section 18. Severability. The various parts, sections, and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 19. Conflicting Provisions. In the event of any conflict between this Ordinance 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 Ordinance shall control.

Section 20. Effective Date. This Ordinance shall be effective upon publication.

Adopted: September 15, 1993