

ORDINANCE NO. 135

An Ordinance To Create Cable Television Rate Regulations

An Ordinance enacted pursuant to the authority granted by Michigan Public Act 246 of 1945, as amended, and the Federal Communications Act of 1934, as amended and as may be amended from time to time, to provide for the regulation of rates for cable television basic service and associated equipment; to provide for the administration and enforcement of the provisions of this Ordinance by City officials; and to provide for remedies and/or penalties for the violation of the provisions contained herein.

THE CITY OF LUNA PIER, COUNTY OF MONROE, STATE OF MICHIGAN, HEREBY ORDAINS:

SECTION 1 - SHORT TITLE.

This Ordinance shall be known and referred to as the "City of Luna Pier Cable Television Rate Regulation Ordinance".

SECTION 2 - PURPOSE.

The purpose of this Ordinance is to (1) provide for the regulation of rates of basic cable television service and associated equipment, and (2) prescribe procedures applicable to rate regulation which provide a reasonable opportunity for consideration of the views of interested parties, consistent with the provisions of the Federal Communications Act of 1934, as amended, including the Cable Television Consumers Protection and Competition Act of 1992, Public Law 102-385 and the Federal Communication Commission's Rules and Regulations promulgated pursuant thereto, from which this Ordinance shall be implemented and interpreted consistent therewith.

SECTION 3 - DEFINITIONS.

The following words and terms used in this Ordinance are defined as follows:

- A. Act, shall mean the Federal Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102-385), and as may be amended from time to time.
- B. Associated Equipment, shall mean all equipment and services subject to regulation pursuant to 47 CFR 76.923, and/or are used by a subscriber to receive basic service cable programming regardless of whether such equipment is also used to receive other tiers of regulated programming service and/or unregulated tiers of programming services. Associated equipment includes, but is not limited to:
1. Converter boxes;
 2. Remote control units;
 3. Connections for additional television receivers; and
 4. Other cable home wiring.
- C. Basic Service, shall mean "basic service" as defined in the FCC Rules, and any other cable television which is subject to rate regulation by City of Luna Pier pursuant to the Act and the FCC Rules and/or Regulations, including the tier of cable television programming which includes, at a minimum, all signals of domestic television broadcast stations provided to any subscriber (except any signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal

- is ultimately received by the cable system), and public, educational and/or governmental programming required by the franchise authority to be carried as a basic service, and any additional video programming signals added to the basic service by the Cable Operator.
- D. Cable Operator, shall mean any operator of a cable television service within the boundaries of Luna Pier.
- E. Existing Rates, shall mean the rates for basic service and associated equipment charged by the Cable Operator on the initial date of regulation by the Franchising Authority.
- F. FCC, shall mean the United States Federal Communication Commission.
- G. FCC Rules and/or Regulations, shall mean any and all rules and/or regulations which the FCC promulgates and/or adopts from time to time pursuant to the Act.
- H. Franchising Authority, shall mean the City of Luna Pier.
- I. Rate Increase, shall mean an increase in rates and/or associated equipment, including, among others, effective increases in rates that are the result of reduction in programming provided under the basic service and/or as provided by the FCC Rules and/or Regulations.
- J. Ordinance, means this Cable Television Rate Regulation Ordinance.
- K. City, shall mean the City of Luna Pier, Monroe County, Michigan.
- L. All Other Words and Phrases, as used in this Ordinance which are not specifically defined in Section 3 of this Ordinance, shall have the same meaning as provided in the Act and FCC Rules and/or Regulations.

SECTION 4 - ADOPTION OF FCC RULES; CERTIFICATION AS FRANCHISING AUTHORITY

The City of Luna Pier by this reference, hereby adopts all rules and regulations regarding basic service rates and associated equipment rates which the FCC promulgated pursuant to the Act, and makes said Rules and Regulations part of this Ordinance. Upon receipt of FCC's certification as a cable Franchising Authority, the City Clerk shall send written notice of its certification and notice that it has adopted the required regulations, return receipt requested, to all Cable Operators with the City. The City as the Franchising Authority, shall then execute the powers, duties and responsibilities to regulate the basic service rates and associated equipment rates given to a Franchising Authority in compliance with the Act, the FCC Rules and/or Regulations and this Ordinance.

SECTION 5 - CABLE OPERATORS' COMPLIANCE AND BURDEN OF PROOF.

The Cable Operator shall comply with all duties and obligations imposed upon the Cable Operator by the Act, FCC Rules and/or Regulations, and this Ordinance. A Cable Operator has the burden of proving that its schedule of rates for the basic service tier and associated equipment or a proposed rate increase, complies with the Act and the FCC Rules including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923.

SECTION 6 - SUBMISSION OF EXISTING RATES AND/OR PROPOSED RATE INCREASE AND OTHER INFORMATION

- A. Within thirty (30) days of receiving the notice of certification and regulation as identified in Section 4 of this Ordinance, a Cable Operator shall submit in writing its schedule of existing

rates and supporting information for the basic service tier and associated equipment to the City Clerk. A Cable Operator cannot institute a rate increase for basic service rates and associated equipment unless the Cable Operator submits its proposed rates and supporting information with the City Clerk in accordance with the Act, FCC Rules and/or Regulations and this Ordinance. The Cable Operator shall include as part of its submission such other information as is necessary to show and explain that the schedule of rates complies with the Act and FCC Rules and/or

Regulations for basic service rates and associated equipment rates or proposed rate increases. The filing of the rate schedule and other necessary information shall be deemed to have been complete when at least one (1) original and ten (10) copies have been received by the City Clerk. The City Clerk shall file the original of such rates schedules and other information, and provide a copy to each City Council member, any consultants and the City Attorney, with one (1) copy kept for public inspection, within five (5) days thereof.

B. In addition to the submission of required information and data pursuant to Section 6(A) above, a Cable Operator shall promptly provide to the City Clerk one (1) original and ten (10) copies of all additional information requested by the Franchising Authority, the Mayor, City Administrator or the City's Cable Television Committee, that is related and may be helpful in connection with the Franchising Authority's and/or Committee's review and regulation of existing basic service rates and associated equipment rate schedules or any proposed rate increase. The Franchising Authority, the Mayor and/or the City's Cable Television Committee may establish reasonable deadlines and the Cable Operator shall comply with such deadlines. The Franchising Authority may, by resolution or otherwise, adopt standard rules and regulations prescribing the information, data and calculations which must be included as part of a Cable Operator's original filing of the schedule of rates.

SECTION 7 - NOTICE OF PUBLIC HEARING.

A Upon the completion of filing of the schedule of existing rates or the proposed increase in rates pursuant to Section 6 above, the City Clerk shall cause to be published, in a qualified newspaper of general circulation with the City a notice of a public hearing on the existing rate schedules or proposed rate increase request no less than seven (7) days before the public hearing. Said notice shall state:

1. That a Cable Operator has submitted its existing rate schedules or a proposed rate increase request to the Franchising Authority for review pursuant to this Ordinance;
2. The location and times at which the public may examine the existing rate schedules or proposed rate increase request (except those parts which may be withheld as proprietary);
3. The date, time and location at which the Franchising Authority will conduct a public hearing;
4. That all interested persons shall have a opportunity to comment on the rate at the public hearing, and are encouraged to submit written comments before the date of the public hearing to the Franchising Authority.

B. The City Clerk shall also send written notice of the date, time and location of the public hearing to Cable Operator which submitted the existing rates or proposed rate increase for review, no less than seven (7) days before the date of the public hearing. Said notice is to be sent to the Cable Operator by first class Mail.

SECTION 8 - TOLLING ORDER.

After the Cable Operator has filed its existing schedule of rates or proposed rate increase, the existing schedule of rates will remain in effect or the proposed rate increase will become effective after thirty (30) days from the date of filing under Section 6 above unless the Franchising Authority (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 such filing. If the Franchising Authority is unable to determine, based upon the materials submitted by the Cable Operator that the existing rates or proposed rates increases are reasonable or if the Cable Operator has submitted a cost of service showing, then the Franchising Authority may toll the thirty (30) day deadline for an additional ninety (90) days in cases not involving cost of service showings and for an additional one hundred fifty (150) days in cases involving cost of service showings. Said order must be in writing, and explain that additional time and/or information is necessary in order for the Franchising Authority to act upon the existing rate schedule or the proposed rate increase, and shall be adopted by resolution within said thirty (30) day period. The Franchising Authority shall send a copy of the tolling order to the Cable Operator by First Class Mail within seven (7) days after the effective date of the decision.

SECTION 9 - FRANCHISING AUTHORITY'S REVIEW OF RATES.

A. Unless the time for conducting the public hearing and entering a decision is extended by the issuance of a tolling order by the Franchising Authority pursuant to Section 8 above, the Franchising Authority shall conduct a public hearing on the existing rate schedules or the proposed rate increase request which the Cable Operator submitted, and enter a decision on said submitted schedules and/or rate increase request within thirty (30) days of the date the Clerk received the existing rates schedules or proposed rate increase request. If the time for conducting the public hearing is extended pursuant to Section 8 of this Ordinance, a public hearing should be held and a decision rendered, before the extended time period expires.

B. The rates identified in the submitted schedule of existing rates or proposed rate increase, shall go into effect thirty (30) days from the date of the City Clerk's receipt of the existing rate schedules or proposed rate increase request, unless the Franchising Authority disapproves the existing or proposed rates or, extends the time period for conducting the review of the existing rates or proposed rate increase, pursuant to Section 8 of this Ordinance.

C. If the Franchising Authority fails to act on the submitted existing rates schedules of the proposed rate increase request by the end of any respective tolling period, then the existing rates may remain in effect or the proposed rate increase may become effective at the end of the respective tolling period, subject to refunds. If the Franchising Authority subsequently disapproves any portion of such rates, refunds may not be ordered unless a brief written order is issued by the Franchising Authority before the end of the respective tolling period directing the Cable Operator to keep an accurate accounting of all its customers and the amounts paid by each as a result of said rates.

D. If a tolling order has been issued, any additional information required or requested pursuant to Section 6(B) of this Ordinance, shall be promptly submitted by the Cable Operator.

SECTION 10 - CONDUCT OF PUBLIC HEARING.

A. During a public hearing on the review of a Cable Operator's existing rates or on review of a proposed rate increase, the Franchising Authority shall provide the Cable Operator and all other interested persons with the opportunity to comment on the

rates either in person, in writing, or by agent. The Franchising Authority may conduct as many public hearings, including adjourned or continued hearings, as necessary to carry out the provisions of the Act, FCC Rules and Regulations and this Ordinance.

B. If the Franchising Authority deems it necessary, either prior to or following a public hearing, the Franchising Authority or its designee may direct the preparation of one or more written reports for the Franchising Authority's consideration in its review and decision of the existing rate schedules or a proposed rate increase request. Any such report should summarize and be based upon the filings and information submitted by the Cable Operator, the comments or objections of interested parties, information and analysis received from a consultant, the Franchising Authority's staff, Cable Television Committee or attorney, and any other information which it deems appropriate. Said report should include a recommendation to the Franchising Authority for its decision.

C. The City Clerk shall provide by First Class Mail a copy of any such report to the Cable Operator prior to the Franchising Authority's consideration of the report at a public meeting or hearing. The Cable Operator may file a written response to the report with the City Clerk, submitting one (1) original and ten (10) copies of the response for filing and forwarding as provided by Section 6 above.

SECTION 11 - RATE DECISIONS AND ORDERS.

A. The Franchising Authority shall issue a written order by resolution or otherwise, which:

1. Approves the Cable Operator's existing rates for basic cable service and associated equipment or the proposed rate increase; or
 2. Disapproves the Cable Operator's existing rates or proposed rate increase; or
 3. Approves, in part, and disapproves, in part, the Cable Operator's existing rates or proposed rate increase; and/or
 4. Orders a rate reduction; and/or
 5. Prescribes a reasonable rate; and/or
 6. Allows the existing rates or proposed rate increase to become effective subject to refund; and/or
 7. Determines that a refund hearing shall be held pursuant to Section 12 of this Ordinance; and/or
 8. Orders any further appropriate relief permitted by this Ordinance, the Act or the FCC Rules and/or Regulations.
- B. If the Franchising Authority issues an order allowing the existing rates or proposed rate 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 before the end of the respective tolling period provided for in Section 8 of this Ordinance.

SECTION 12 - REFUND HEARING; NOTICE.

A. If the Franchising Authority determines that the subscribers to the Cable Operator may be entitled to refund as provided in the FCC Rules and/or Regulations (specifically, 47 CFR 76.942), the Franchising Authority shall include a notice in its decision issued pursuant to Section 11 of this Ordinance, that the Franchising Authority will hold a public hearing to consider ordering the Cable Operator to make a refund to subscribers. The City Clerk shall send by First Class Mail to the Cable Operator,

written notice of the date, time and location of the public hearing not less than seven (7) days before said public hearing at which the Franchising Authority shall consider issuing a refund order and shall provide an opportunity for the Cable Operator to comment. The Cable Operator and members of the public may appear in person, by agent, or in writing at such time for the purpose of submitting comments to the Franchising Authority.

- B. At the conclusion of the refund hearing, the Franchising Authority shall issue a written order by resolution or otherwise, which:
 - 1. Denies the subject Cable Operator refund; or
 - 2. Orders the Cable Operator to implement a refund to the subscribers.

SECTION 13 - WRITTEN DECISIONS; PUBLIC NOTICE.

A. All decisions of the Franchising Authority issued pursuant to Section 11 and/or Section 12 of this Ordinance shall be in writing, by resolution, supported by its reasons, and effective as of the date the Franchising Authority makes a decision.

- B. Notice of all decisions of the Franchising Authority issued pursuant to Section 11 and/or Section 12 of this Ordinance shall be published by the City Clerk in a qualified newspaper of general circulation in the City no less than fifteen (15) days after the effective date of the decision. Said notice shall include:
 - 1. A summary of the Franchising Authority's written decision;
 - 2. A statement that copies of the Franchise Authority's decision are available for public inspection or copying from the office the City Clerk.

C. The City Clerk shall send, by First Class Mail, a copy of the Franchising Authority's decision to the Cable Operator by First Class Mail.

SECTION 14 - PROPRIETARY INFORMATION.

A. Pursuant to this Ordinance, the Franchising Authority, the Mayor, the City Administrator and/or the City Cable Committee, may require the Cable Operator to produce documents and information needed to make rate decisions. Regardless, if any such request for information requires the production of proprietary information or documents, the Cable Operator shall produce the information. However, at the time the alleged proprietary information is submitted, the 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. A request for confidentiality will be granted if the Franchising Authority determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 USC 552. The Franchising Authority shall place in a public file for inspection any decision that results in information being withheld. If the Cable Operator requests confidentiality and their request is denied where the Cable Operator is proposing a rate increase, it may (1) withdraw the proposal, in which case the alleged proprietary information will be returned to it, or (2) the Cable Operator may seek review within five (5) working days of the denial in any appropriate form. The release of the information will be stayed pending review.

B. Any interested party may file a request to inspect material withheld as proprietary by the Franchising Authority. The Franchising Authority 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 the 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 analogous to and consistent with the Rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR 0.459.

SECTION 15 - RULES AND REGULATIONS.

In addition to the Rules promulgated pursuant to Section 6 above, the Franchising Authority 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 and/or Regulations. The Franchising Authority may also by resolution provide for the appointment of a City Cable Television Committee which may be comprised of a mix of members of the City Council, citizens of the City and any other persons, consultants, advisors as may be deemed appropriate, to assist the Franchising Authority in the review, analysis and decision process of the Franchising Authority.

SECTION 16 - FAILURE TO GIVE NOTICE.

The failure of the City Clerk and/or the Franchising Authority to give the notices or to mail copies of reports as required by this Ordinance shall not invalidate the decisions or proceedings of the Franchise Authority so long as there is substantial compliance with this Ordinance.

SECTION 17 - ADDITIONAL HEARINGS.

In addition to the requirements of this Ordinance, the Franchising Authority may, in its sole discretion, hold additional public hearings and meetings upon such reasonable notice as a Franchising Authority shall prescribe.

SECTION 18 - ADDITIONAL POWERS.

The Franchising Authority shall possess all powers conferred by the Act, and the FCC Rules and/or Regulations, the Cable Operator's Franchise Agreement, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules and Regulations, and this Ordinance shall be in addition to the powers conferred by law or otherwise. The Franchising Authority may take any action not prohibited by the Act and the FCC Rules and/or Regulations to protect the public interest in connection with basic cable service rate regulation.

SECTION 19 - FAILURE TO COMPLY; REMEDIES.

The Franchising Authority may pursue any and all legal and equitable remedies against the Cable Operator (including, without limitation, all remedies provided under the Cable Operator's franchise agreement with the Township), for failure to comply with the Act, the FCC Rules and/or Regulations, any orders or determinations of the Franchising Authority 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 and/or Regulations, any orders or determinations of the Franchising Authority 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 20 - SEVERABILITY.

Various parts, sections and clauses of this Ordinance are hereby declared severable, and 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.

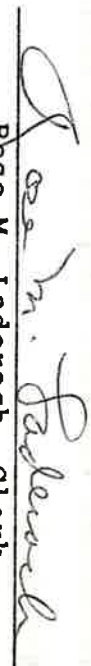
SECTION 21 - CONFLICTING PROVISIONS.

In the event of any conflict between this Ordinance and the provisions of any prior Ordinance or any franchise agreement, permit, consent agreement or other agreement with a Cable Operator, then the provisions of this Ordinance shall control.

SECTION 22 - EFFECTIVE DATE.

This Ordinance shall become effective ten (10) days after a summary has been published as provided by law.

I, Rose M. Laderach, Clerk, City of Luna Pier, do hereby certify that the foregoing ordinance was duly adopted at a regular meeting of the Luna Pier City Council held on 13th day of April, 1995.


Rose M. Laderach, Clerk
City of Luna Pier

DATED: April 14, 1995

Adopted: 4/13/95

Published: 4/17/95

Effective: 4/27/95