

TOWN OF ANDOVER

Local Law No. 1 of the year 1994

A local law concerning the regulations of rates charged by cable television operators for the basic service tier and related equipment, and for the cable programming service tier and related equipment.

Be it enacted by the Board of Trustees of the Town of Andover as follows:

Section 1. The Franchising Authority has the legal authority to administer and shall enforce against any non-municipally owned cable television system operators, as permitted therein, the provisions of Part 76, Subpart N of the Rules and Regulations of the Federal Communications Commission, concerning Cable Rate Regulation, 47 C. F. R. ss 76.900 et seq., as they currently read and hereafter may be amended, which are herewith incorporated by reference.

Section 2. Any rate regulation proceedings conducted under Section 1 hereto shall provide a reasonable opportunity for consideration of the views of any interested party, including but not limited to, the Franchising Authority or its designee, the Cable Operators, subscribers, and residents of the franchise area. In addition to all other provisions required by the laws of the State of New York and this Town for such proceedings, and in view of any interested party, the Franchising Authority shall take the following actions:

a. Franchising Authority shall publish in a local newspaper; post in a conspicuous place in the Town Hall, and mail, by certified mail, to the Cable Operator a Public Notice of the intent to conduct a public proceeding on basic service tier rates and/or charges for equipment to receive such basic service tier, as defined by the FCC.

b. Said Public Notice shall state, among other things, that cable television rates are subject to municipal review and explain the nature of the rate review in question; that any interested party has a right to participate in the proceeding; that public views may be submitted in the proceeding, explaining how they are to be submitted and the deadline for submitting any such views; that a decision concerning the reasonableness of the cable television rates in question will be governed by the Rules and Regulations of the Federal Communications Commission ("FCC"); and that the decision of the Franchising Authority is subject to review by the FCC.

c. The Franchising Authority shall conduct a public proceeding to determine whether or not the rates or proposed rate increase are reasonable. The Franchising Authority may delegate the responsibility to conduct the proceeding to any duly qualified and eligible individual(s) or entity. If the Franchising Authority or its designee cannot determine the reasonableness of a proposed rate increase within the time period permitted by the FCC Rules and Regulations, it may toll the effective date of the proposed rates for an additional period of time as permitted by the FCC Rules and Regulations, and issue any other necessary or appropriate order and give Public Notice accordingly.

d. In the course of the rate regulation proceeding, the

Franchising Authority may request additional information from the Cable Operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the Franchising Authority shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of Affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry. The Franchising Authority may request propriety information, provided that the Franchising Authority shall consider a timely request from the Cable Operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in Section 0.459 of the FCC Rules and Regulations. Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level based on a cost-of-service showing submitted by the cable operator. The Franchising Authority may exercise all powers under the laws of the State of New York and of the Town of Andover to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents, and deposition.

e. Upon termination of the rate regulation proceeding, the Franchising Authority shall adopt and release a written decision as to whether or not the rates or proposed rate increase are reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription, and refunds.

f. The Franchising Authority may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the FCC Rules and Regulations, for charging an unreasonable rate or proposing an unreasonable rate increase. However, the Franchising Authority may impose fines or monetary forfeitures on a Cable Operator that does not comply with a rate decision or refund order of the Franchising Authority, directed specifically at the Cable Operator, pursuant to the laws of the State of New York and the Codes, Rules and Regulations of the Town of Andover.

g. Consistent with FCC Rules and Regulations, the Franchising Authority's decision may be reviewed only by the FCC.

h. The Franchising Authority shall be authorized, at any time, whether or not in the course of a rate regulation proceeding, to gather information as necessary to exercise its jurisdiction as authorized by the laws of the State of New York, the Communications Act of 1934, as amended, and the FCC Rules and Regulations. Any information submitted to the Franchising Authority shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of Affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

Section 3. The Franchising Authority shall file with the FCC the required Certification form (FCC Form 328) on September 1, 1993, or as soon thereafter as appropriate. Thirty days after, or as soon thereafter as appropriate, the Franchising Authority shall notify the cable operators that the Franchising Authority has been certified by the FCC and that it has adopted all necessary regulations so as to

begin regulating basic service tier cable television rates and equipment charges.

Section 4. With regard to the cable programming service tier, as defined by the Communications Act of 1934, as amended, and the FCC Rules and Regulations, and over which the Franchising Authority is not empowered to exercise rate regulation, the Cable Operator shall give notice to the Franchising Authority of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers any any changes in the nature of the services provided, including the program service included in the tier or tiers. Said notice shall be provided within five (5) business days after the change becomes effective.

Section 5. The Franchising Authority may delegate its powers to enforce this Law (per the applicable portions of Federal Communications Act, State Law and Municipal Law) to municipal employees or officers ("cable official"). The cable official will have the authority to:

- (1) administer oaths and affirmations;
- (2) issue subpoenas;
- (3) examine witnesses;
- (4) rules upon questions of evidence;
- (5) take or cause depositions to be taken;
- (6) conduct proceedings in accordance with this law;
- (7) exclude from the proceeding any person engaging in contemptuous conduct or otherwise disrupting the proceedings;
- (8) hold conferences for the settlement or simplification of the issues by consent of the parties; and
- (9) take actions and make decisions or recommend decisions in conformity with this law.

Section 6. Insofar as the provisions of this local law are inconsistent with the provisions of any other local law or act, the provisions of this local law shall be controlling.

Section 7. This local law shall take effect immediately upon filing the the Secretary of State.

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phrase, paragraph, or part thereof directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of any such section would have been adopted had any such provision not been included.

SECTION 15: EFFECTIVE DATE.

This local law shall take effect upon filing with the Secretary of State and State Comptroller as required by the Municipal Home Rule Law.