

ORDINANCE NO. 93-02

ORDINANCE ESTABLISHING REGULATIONS  
GOVERNING CHARGES FOR BASIC CABLE  
EQUIPMENT AND SERVICES FOR THE  
COUNTY OF MARSHALL, KENTUCKY

BE IT ORDAINED by the Marshall County Fiscal Court of the  
County of Marshall, Kentucky as follows:

**SCOPE AND APPLICABILITY**

0.1 This Ordinance governs the regulation of rates for basic service and equipment within the County of Marshall, Kentucky (County) for any franchisee which has been notified that (a) the County has been certified to regulate its basic service and equipment rates; and (b) the County has adopted regulations governing regulation of basic service and equipment rates. The provisions set forth below are intended to be consistent with all Federal Communications Commission ("FCC") regulations governing the regulation of basic service rates and equipment, and the County will regulate and interpret its rules so that they are consistent with FCC regulations, as if those regulations were set forth in full herein; the franchisee is prohibited from engaging in under FCC rules, as if those rules were set forth in full herein. For purposes of these provisions, the term "basic service" or "basic cable service" has the same meaning as the term "basic service" at 47 C.F.R. 76.901 and the term "equipment" refers to all equipment and services subject to regulation under 47 C.F.R. 76.923.

**SECTION 1: FILING AND REVIEW OF RATES**

**1.1 Initial Filings By Franchisees.**

1.1.1 Filings: When Made. A franchisee that is

notified that its basic service and equipment rates are subject to regulation must file a submission ("the rate filing") within 30 days of the notification (but no earlier than November 15, 1993), justifying its then-existing basic service and equipment rates. All rates, for all customer classifications must be justified. Once a franchisee has been so notified by the County that its rates are subject to regulation, it may not thereafter increase its rates for basic service or equipment without the prior approval of the County. This requirement applies in all cases, including with respect to increases in rates announced prior to the date the operator was notified its rates were subject to regulation where the increases were not implemented prior to the date of notice. A franchisee must submit a rate filing to justify any increase in basic service or equipment rates or any new basic service or equipment rate (collectively referred to herein as rate increases). An "increase" occurs when there is an increase in rates or a decrease in program or customer services. Rate filings proposing and supporting rate increases must be filed for review at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

1.1.2 Filing: Where Made. Every rate filing must be submitted to the County Clerk. A rate filing shall be considered filed for review on the date the required rate filing and all required copies are received by the County Clerk 3 copies of each rate filing (including all supporting materials) must be submitted. If the operator claims any part of the filing is proprietary, it

shall additionally file 2 copies, which omit the proprietary information.

1.1.3 Filing: Contents. Subject to any FCC regulations governing the burden of proof, a rate filing submitted by a franchisee must show that the rates the franchisee proposes to charge for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

1.1.3.1 Every rate filing must clearly state in a covering letter whether it justifies existing rates; or proposes an increase in rates. The covering letter must also identify any rate that is derived in whole or in part based upon cost of service, and identify any pages of the rate filing that contain information that the franchisee claims is proprietary. It must state whether any part of the proposed increase is based on an inflation adjustment or an alleged increase in external costs. The cover letter should also contain a brief, narrative description of any proposed changes in rates or in service.

1.1.3.2 The pages of each rate filing must be numbered sequentially.

1.1.3.3 The rate filing must contain all applicable FCC forms and these forms must be correctly completed.

1.1.3.4 If different rates are proposed for basic service for different classes of customers, the filing must show that the classifications and the differences in the rate charged are reasonable and consistent with federal law.

1.1.4 If the franchisee seeks to support a rate based upon a cost of service, the County will establish a rate that

provides the franchisee an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment is not presumed reasonable merely because the franchisee has incurred or made it. A franchisee is not entitled to recover monopoly profits in any form.

1.1.5 In addition to information the County requires the franchisee to provide, and unless the County grants a waiver of this provision, a franchisee who seeks to justify all or any part of its rates based upon its cost of service must submit a complete cost of service analysis that shows all expenses it incurs and all revenues derived from the system, directly or indirectly by the franchisee or any person that constitutes a cable operator of the system within the meaning of 47 U.S.C. 522(4). The cost of service must identify the accounting level (as that term is used in the FCC's regulations) at which each expense or revenue identified was aggregated and show clearly how the expense was allocated. The franchisee may not include costs at an accounting level unless it also includes all revenues from that same level attributable to the system or to a group of systems of which the system service the County is a part. The replacement cost of a comparable system must be identified and supported. The franchisee must identify the name and address of any entity with which it has a contract, other than a programmer, which derives revenues from the system, and must state whether and how the revenues of that entity were included in the cost of service. In addition, the cost of service shall clearly show the derivation of a proposed charge per channel and

the application of that charge to yield a basic service rate. It must also show and support the derivation and allocation of any amounts included in the derivation of the rate for:

- 1.1.5.1 operation and maintenance expenses;
- 1.1.5.2 administrative and general expenses;
- 1.1.5.3 programming expenses; identifying all retransmission consent costs and copyright fees separately;
- 1.1.5.4 costs for PEG access and any institutional network;
- 1.1.5.5 franchise fee expenses;
- 1.1.5.6 investment in the system and associated depreciation;
- 1.1.5.7 other expenses, including federal, state and local taxes, itemized; and
- 1.1.5.8 the proposed return on equity and actual interest expense paid by the franchisee.

1.1.6 Notwithstanding the foregoing, a franchisee is not required to submit the cost of service specified in Section 1.1.5 for equipment rates, and instead initially shall complete, submit and support the costs of equipment using applicable FCC forms. Any cost of service submitted to justify basic service rates must show that the cost of service does not include equipment costs.

## 1.2 Initial County Review.

1.2.1 After receiving a rate filing, the County Clerk promptly shall publish a notice that a filing has been received and that, except for those parts which may be withheld as proprietary,

it is available for public review. The notice shall state that interested parties may comment on the filing, and shall provide interested parties seven days to submit written comments on the filing to the County Clerk. The County Clerk shall submit the comments received and its recommendations for action to the Fiscal Court no later than 20 days after the filing and shall make those recommendations available for public inspection. The franchisee may submit a response to public comments or staff recommendations, but must do so no later than three business days after the staff recommendations are submitted to the Fiscal Court. The response shall be filed with the County Clerk, and if submitted in a timely fashion, the County Clerk shall forward a copy to the Fiscal Court and the County Attorney.

1.2.2 Within 30 days of the date of the filing, the Fiscal Court shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or tolling the proposed rate in whole or in part. If the Fiscal Court tolls the rate in whole or in part, its written order at a minimum shall explain that it requires additional time to review the rate filing and state that the franchisee may cure any deficiency in its filing by submitting a supplementary filing as provided in Section 1.3. With respect to existing rates, tolling means the rates may remain in effect, subject to refund; with respect to rate changes, tolling means the portion of the rate change that is tolled may not go into effect.

### 1.3 Supplementary Filings.

1.3.1 If a proposed rate is tolled in whole or in part, the franchisee shall submit a supplementary filing 20 days from the effective date of the tolling order, containing corrections, if any, to its filing (including any required supplement to its cost of service filing) and any response to information filed by interested parties or to the recommendations of the Staff, or any additional information necessary to support the proposed rate. Supplementary filings must be filed in accordance with Section 1.1.2.

1.3.2 A supplementary filing also must contain such information as the County directs the Franchisee to provide.

1.3.3 In addition to information the County requires the franchisee to provide, and unless the County grants a waiver of this provision, a franchisee who claims that it is entitled to a rate in whole or in part based upon the adjustments for inflation and external costs contemplated by 47 C.F.R. 76.922(d)(1)-(2) must submit the following:

1.3.3.1 a calculation showing how each part of the adjustment was derived.

1.3.3.2 a statement itemizing each external cost (as defined by FCC regulations), the amount of that external costs for the two calendar years prior to the date of the filing and the year-to-date in which the filing is made; and the projected amount of the external cost for the remainder of the year in which the filing is made and for the following calendar year. The statement must specifically show any increases in revenues from programming

services. "Revenues" include all revenues, in whatever form received.

1.3.3.3 if the increase is attributable to any increase in programming service costs, the contract for each programming service whose cost has increased; a sworn statement identifying each programming service whose costs increased where the programmer is an affiliate of the franchisee (as defined by FCC regulations); and, for any contract that has been in effect less than 12 months, the prior contract for the service.

1.3.3.4 a sworn statement by the franchisee's chief financial officer or an independent, certified accountant stating that he or she has examined all external costs (including all programming costs) and has offset against any increase claimed, the amount of any decreases in external costs, and the amount by which any increase in external costs was below the GNP-PI, as required by 47 C.F.R. 76.922(d) (2); affirming that the franchisee has only sought to recover any external cost to the extent that cost exceed the GNP-PI; and affirming that the franchisee has not attempted to recover any increase in the cost of programming purchased by an affiliate except as provided in 47 C.F.R. 76.922(d)(2)(vi).

1.3.4 Upon receiving the supplementary filing, the County Clerk promptly shall publish a notice that a filing has been received and that it is available for public review (except those parts which may be withheld as proprietary). The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty days to submit written comments



on the filing to the County Clerk. The County Clerk shall submit the comments received and its recommendations for action to the Fiscal Court no later than 30 days prior to the date the Fiscal Court must act under Section 1.3.7.

1.3.5 The recommendations shall be made available for public inspection. The franchisee may submit a response to public comments or staff recommendations, but must do so no later than ten days after the staff recommendations are submitted to the Fiscal Court. The response shall be filed with the County Clerk, and if submitted in a timely fashion, the County Clerk shall forward a copy to the Fiscal Court and the County Attorney.

1.3.6 The Fiscal Court shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or allowing the rate to go into effect in whole or in part, subject to refund. If the Fiscal Court issues an order allowing the rates to go into effect subject to refund, it shall also direct the franchisee to maintain an accounting in accordance with 47 C.F.R. 76.933.

1.3.7 The order specified in Section 1.3.5 shall be adopted within 90 days after the tolling order for any rate the franchisee justifies based on the FCC benchmark. The order shall be adopted within 150 days of the tolling order for any rate the franchisee justified with a cost of service showing.

## **SECTION 2: PROVISIONS GENERALLY APPLICABLE TO RATE ORDERS**

2.1 Each rate order shall be released to the public and the

franchisee. In any case where the Fiscal Court approves, denies, or tolls a rate; orders that a rate may go into effect subject to refund; or orders refunds or establishes rates, a public notice shall be published stating that the order has issued and is available for review. Any such order shall be in writing.

2.2 The Fiscal Court may take any steps that it is not prohibited from taking by federal law to protect the public interest as part of any rate order or by any other means. By way of illustration and not limitation, it may require refunds, set rates, and impose forfeitures and penalties directly or through its delegated representatives, and enforce refund orders. Any order prescribing a rate must explain why the franchisee's proposed rate was unreasonable and why the prescribed rate is reasonable. However, before prescribing a rate or ordering a refund to subscribers, the Fiscal Court shall ensure the franchisee has had notice and opportunity to comment on the proposed rate or refunds. If the recommendations of the County clerk propose a refund or a rate, then mailing a copy of the recommendation to the franchisee at the time it is submitted to the Fiscal Court shall be deemed to provide the franchisee this notice and the franchisee must comment on the refund or rate in its response to the recommendations.

2.3 No order approving or setting a rate using the FCC benchmarks shall be interpreted to establish the just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not

limitation, should the FCC reduce the benchmarks, the County shall have the right to reduce a franchisee's rates and to require the franchisee to refund any amounts collected above the benchmark, except to the extent prohibited by federal law.

**SECTION 3: FRANCHISEES' DUTIES**

3.1 A franchisee must implement remedial requirements, including prospective rate reductions and refunds, within 60 days of the date the Fiscal Court issues an order mandating a remedy.

3.2 Within 90 days of the date an order mandating a remedy is issued, a franchisee must file a certification, signed by an authorized representative of the cable company stating:

3.2.1 whether the franchisee has complied fully with all provisions of the Fiscal Court's order; and

3.2.2 describing in detail the precise measures taken to implement the Fiscal Court's order; and

3.2.3 showing how refunds (including interest) were calculated and distributed.

3.3 It is each franchisees' responsibility to keep books and records of account so that it can refund any amounts owed to subscribers.

3.4 It is each franchisees' duty to submit as complete a filing as possible, and knowingly withholding information or making a filing that is incomplete under applicable law shall be treated as an evasion of this ordinance.

**3.5 Information Requests.**

3.5.1 A franchisee and any other entity that has

records of revenues or expenses that are allocated to the franchisee's system must respond to requests for information from the County by deadlines established by the County. A franchisee is responsible for ensuring that each other entity responds to the County requests.

3.5.2 Because federal law limits the time available for an initial response to a filing by a franchisee, before the order contemplated by Section 1.2 issues, the franchisee must be prepared to respond to requests for information regarding its filing within five days of the date an information request is mailed to it. The information may include the information the franchisee would be required to provide as part of any supplementary filing.

#### **SECTION 4: DUTIES OF THE COUNTY**

4.1 The County Clerk shall be responsible for administering the provisions herein. Without limitation and by way of illustration:

4.1.1 The County Clerk shall ensure notices are given to the public and each franchisee as required herein and by FCC regulations.

4.1.2 The County Clerk may submit requests for information to the franchisee and establish deadlines for response to them, as provided in Section 3.

4.1.3 For good cause, the County Clerk may waive any provision herein or extend any deadline for filing or response except as to such matters that are mandatory under FCC regulations.

4.1.4 The County Clerk shall rule on any request for

confidentiality.

4.1.5 The County Clerk shall prepare the recommendations to the Fiscal Court contemplated by Sections 1.2-1.3. If the County recommends that any increase be denied in whole or in part, it shall:

4.1.5.1 propose a rate and explain the basis for its recommendation (it may propose that rates remain at existing levels); and

4.1.5.2 recommend whether and on what basis refunds should issue; and

4.1.5.3 notify the franchisee of its recommendation at the time it is submitted to the Fiscal Court.

#### **SECTION 5: PENALTIES AND FORFEITURES**

Except as prohibited by federal law, a franchisee shall be subject to penalties and forfeitures under this ordinance, and its request for approval of a rate may be denied if it:

5.1 knowingly submits false or fraudulent information to the County in connection with any rate proceeding;

5.2 fails to comply with any lawful order or request of the County, including, but not limited to a request for information or an order setting rates; or

5.3 evades or attempts to evade federal or local rate regulation; provided that, filing for approval of a rate that is later determined to be unreasonable is not in and of itself an evasion of federal or local rate regulation.

#### **SECTION 6: PROPRIETARY INFORMATION**

6.1 If these provisions, or any request for information

requires the production of proprietary information, the franchisee must produce the information. However, at the time the allegedly proprietary information is submitted, a franchisee 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 County 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 County shall place in a public file for inspection any decision that results in information being withheld. If the franchisee requests confidentiality and the request is denied, (1) where the franchisee 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 franchisee may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

6.2 Any interested party may file a request to inspect material withheld as proprietary with the County Clerk. The County shall weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in the light of the facts of the particular case. It will then promptly notify the requesting entity and the cable franchisee that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the franchisee may seek review of the decision by filing an appeal with

any appropriate forum. Disclosure will be stayed pending resolution of any appeal.

**SECTION 7: PETITION FOR CHANGE IN STATUS**

7.1 Any franchisee may petition for a change in status in accordance with 47 C.F.R. 76.915, and the county shall consider that petition in accordance with 47 C.F.R. 76.915. The petition and 6 copies must be filed with the County Clerk.

Passed this the 14<sup>th</sup> day of December, 1993.

Mike Miller  
Mike Miller  
Marshall County Judge/Executive

ATTEST:

James R. English  
James R. English  
Marshall County Clerk

FIRST READING: 11/16/93  
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**VOTE**

	<u>AYE</u>	<u>NAY</u>
JEROME HICKS	✓ ✓	_____
GORDON HARGROVE	✓ ✓	_____
JERRY ENGLISH	✓ ✓	_____