

ORDINANCE NO. 44

AN ORDINANCE GOVERNING THE PROCEDURES AND STANDARDS FOR THE REGULATION OF CABLE TELEVISION RATES PURSUANT TO THE RULES OF THE FEDERAL COMMUNICATIONS COMMISSION AND THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

The Town Board of the Town of New Scandia ordains as follows:

SECTION 1. Background and Purpose.

- A. The Town of New Scandia, Minnesota on or about June 10, 1985, passed and adopted a Joint Powers Agreement delegating to the Forest Lake Cable Commission ("Commission") authority to enforce the cable television Franchise passed and adopted by the Town on January 17, 1984. The Joint Powers delegation is made pursuant to Minn. Stat. Section 238.081.
- B. On the 17th day of January, 1984, the Town of New Scandia, Minnesota ("Town") passed and adopted Ordinance No. 17 granting to Citation Cable Systems, Ltd. ("Grantee") the nonexclusive right to construct, own, and operate a cable television system in the Town.
- C. The Cable Television Consumer Protection and Competition Act of 1991 ("1992 Cable Act") was enacted on October 5, 1992, and became effective on December 4, 1992. The 1992 Cable Act amends the Cable Communications Policy Act of 1984 and, in particular, Section 623 (47 U.S.C. 543) governing the regulation of rates charged by cable television operators.
- D. On April 1, 1993, the Federal Communications Commission ("FCC") adopted rate regulations pursuant to the 1992 Cable Act. These FCC rate regulations were released May 3, 1993, and became effective September 1, 1993.
- E. By this Ordinance, the Town delegates to the Commission authority to exercise rate regulatory control over the rates charged by Grantee or any other cable operator doing business within the City.
- F. Pursuant to 47 C.F.R. Part 76.900, Subpart N, Section 76.910, on the _____ day of _____, 1993, the Commission submitted FCC

Form 328--Certification for Local Franchising Authorities--to the FCC via Registered Mail, Return Receipt Requested. Pursuant to Section 76.910, the date on the return receipt, _____, 1993, is to be considered the date filed. A copy of FCC Form 328 was also served on Grantee on _____, 1993, the same day it was filed with the FCC.

- G. Pursuant to Section 76.910, the Commission's certification becomes effective 30 days after the date filed.
- H. In adopting this Ordinance, the Town reviewed applicable FCC regulations governing the basic service tier and provided a reasonable opportunity for consideration of the views of interested parties.
- I. This Ordinance will govern the procedures to be undertaken by the Town and Commission for the regulation of Grantee's cable television rates pursuant to the 1992 Cable Act and the regulations of the FCC.

SECTION 2. Full Regulatory Power Reserved. All rates and charges for basic cable service and any other cable programming services, as defined by the 1992 Cable Act and applicable FCC regulations, shall, to the extent permissible, be subject to regulation by the Commission in a manner provided by this Ordinance. This Ordinance shall apply to all cable television system operators in the Town. The Grantee and/or any other operator of a cable television system operating in the Town shall be subject to the rate regulation provisions provided for herein, and those of the FCC at 47 C.F.R., Part 76.900, Subpart N.

The Town reserves the right to amend this Ordinance from time to time consistent with the requirements of the FCC, and state and federal law.

SECTION 3. Procedures For Implementing Regulation of Basic Cable Service.

- A. The Town hereby adopts and shall follow the rules relating to cable rate regulation promulgated by the FCC at 47 C.F.R., Part 76.900, Subpart N.
- B. Upon adoption of this Ordinance, the Commission Clerk will send to Grantee and each operator of a cable television system in the

Town, via Certified Mail, Return Receipt Requested, a written notice, which shall include a copy of this Ordinance and the completed FCC Form 328.

- C. Within thirty (30) days after receipt of the notice referenced in Section 3.B., Grantee and any other cable television operator shall have thirty (30) days to respond with rate and benchmark information utilizing FCC Form 393--Determination of Maximum Initial Permitted Rates For Regulated Cable Services and Actual Cost of Equipment.
1. If the initial rates and/or any subsequent rate increases are within the FCC standards, the rates will be effective thirty (30) days after submission.
 2. If the Commission is unable to determine whether the rate in issue is within the FCC's standards, based on the material before it, or if the Grantee or any other cable operator has submitted a cost-of-service showing seeking to justify a rate above the FCC's reasonable rate level, the Commission may take an additional period of time to make a final determination and toll the effective date of the proposed rates for a commensurate period.
 - a. The Commission may take an additional 90 days if it needs more time to ensure that a rate is within the FCC's rate standards.
 - b. The Commission may take an additional 150 days to evaluate a cost-of-service showing seeking to justify a rate above the reasonable rate level.
 - c. The Commission must issue a brief written decision regarding its invocation of the additional time period.
 3. If no action is taken within the above referenced time periods, the proposed rates will go into effect, subject to subsequent refund orders if the Commission later issues a decision

disapproving any portion of the proposed rates.

4. In all cases, the Commission will issue a written decision to approve the rate schedule, disapprove the rate schedule or continue for review.
 5. If rates are in excess of the FCC's standards, the rates may be reduced by the Commission pursuant to applicable FCC regulations.
- D. After the initial rate schedule procedures are followed, as described in this Section, Grantee and/or any other cable operator shall, in conjunction with each change in the rates and charges applicable to basic cable service, conform to the standards of the FCC. Before any rate change is effective, Grantee and/or any other cable operator shall notify the Commission of its requested rate change by giving the Commission thirty (30) days advance written notice before the change is effective and by providing the Commission with its rates and applicable information pursuant to FCC regulations.
- E. To the extent specifically permitted by federal law and applicable FCC rules, Grantee and/or any other cable operator shall be permitted to appeal to the FCC for a review of the decision of the Commission.

SECTION 4. Consultant and Costs.

- A. The Commission may utilize a rate consultant to advise it on proposed rate changes and to assist it in the procedures and the standards for review adopted by the FCC. A rate consultant may be any person who has sufficient background and experience, in the sole opinion of the Commission, to properly evaluate and analyze rates and charges.
- B. All costs for the review of initial rates or rate changes shall be paid by the cable operator upon demand of the Commission, unless contrary to applicable rules of the FCC governing these procedures or unless otherwise specifically preempted by state or federal law. The costs shall include, but not be limited to, rate consultants, attorney's fees and the reasonable value of services (as

determined by the Commission) rendered by the Commission or any Commission employees, agents or representatives of the Commission.

SECTION 5. Application of the Requirements in this Ordinance.

The requirements described in this Ordinance are applicable to the Grantee and all operators of cable television systems within the Town subject to rate regulation according to the 1992 Cable Act and applicable FCC rules.

PASSED AND ADOPTED THIS 21st DAY OF September, 1993.

Attest:

By Charles Nordin
Its Chairman

Dolores Johnson
Clerk

958Z040