

ORDINANCE NO: 28-1996

Offered by: Mr. Waszak, Mrs. Beshara
and Mr. Hooper

AN ORDINANCE DISAPPROVING THE MAXIMUM PERMITTED AND ACTUAL RATES FOR BASIC CABLE TELEVISION SERVICE BY CABLEVISION OF THE MIDWEST, INC., PURSUANT TO THE FCC FORM 1200, EFFECTIVE AS OF JULY 14, 1994; RESERVING THE RIGHT TO RULE ON EQUIPMENT RENTAL AND INSTALLATION RATES; DISAPPROVING THE MAXIMUM PERMITTED AND ACTUAL RATES FOR BASIC CABLE TELEVISION SERVICE, PURSUANT TO THE FCC FORM 1210, EFFECTIVE AS OF MARCH 1, 1995; ORDERING A RATE REDUCTION; ORDERING A REFUND; AND DECLARING AN EMERGENCY

WHEREAS, the Village of Richfield, Ohio ("Village") is a Grantor of a cable television service franchise to Cablevision of the Midwest, Inc. ("Grantee"); and

WHEREAS, in accordance with applicable provisions of the Cable Consumer Protection and Competition Act of 1992 (hereinafter the "Cable Act") and rules adopted by the Federal Communications Commission ("FCC"), the Village has undertaken all appropriate procedural steps to regulate the basic cable service tier and related installation and equipment charges; and

WHEREAS, pursuant to FCC regulations, on or about August 12, 1994, the Village received from Grantee FCC Forms 1200, 1205 and 1215 (collectively, the "FCC 1200"), which were incomplete and required further supporting clarification data; and

WHEREAS, pursuant to FCC regulations, on or about September 9, 1994, the Village notified Grantee in writing that the time period for the Village's review of the FCC 1200 would be extended for an additional ninety (90) days; and

WHEREAS, it was necessary for the Village to request required supporting information from the Grantee in order to determine the propriety of Grantee's basic cable service rates and related installation and equipment rates and to request franchise specific information in order to complete the FCC 1200 and to determine the appropriateness of the proposed rate for the basic cable television service tier; and

WHEREAS, on December 19, 1994, the Village's rate regulation consultants met with Grantee to obtain clarification and information missing from the FCC 1200 filing; and

WHEREAS, on or about December 20, 1994, the Village received from Grantee uncertified franchise level information which contained errors in certain line items; and

WHEREAS, on or about January 6, 1995, and again on January 19, 1995, the Village received responses from Grantee which did not provide complete information and which required additional clarification; and

WHEREAS, on or about February 17, 1995, it was necessary for the Village to request further clarifying information and, subsequently, additional requests were made for Grantee to provide the Village with franchise level information that corrected certain errors; and

WHEREAS, on or about May 31, 1995, the Village eventually received the requested franchise level information in a revised FCC Form 1200 that had the required corrections and which completed the FCC 1200 filing; and

WHEREAS, pursuant to FCC regulations, on or about June 23, 1995, the Village notified Grantee in writing that the time period for the Village's review of the revised FCC Form 1200 would be extended for an additional ninety (90) day period to allow the Village sufficient time to review and rule on all of the proposed rates; and

WHEREAS, pursuant to FCC regulations, on September 27, 1995, the Village issued to Grantee an accounting order, pursuant to 47 C.F.R. §76.933, which preserved the Village's right to rule on the basic tier rate proposed in the FCC 1200, as revised, and, if necessary, to order a refund; and

WHEREAS, on or about November 1, 1994, the Village received from Grantee an FCC Form 1210 and its supporting FCC Form 1215 filing, (collectively, the "FCC 1210") for the period April 1, 1994 through September 30, 1994 which required further clarification; and

WHEREAS, pursuant to FCC regulations, on November 28, 1994, the Village notified Grantee in writing that the time period for the Village's review of the FCC 1210 would be extended for an additional ninety (90) day period; and

WHEREAS, pursuant to FCC regulations, on March 1, 1995, the Village issued an accounting order to Grantee, pursuant to FCC 47 C.F.R. §76.933, which was necessary due to Grantee's failure at that time to provide a complete FCC 1200 form and which preserved the Village's right to rule on the basic tier rate proposed in the FCC 1210 and, if necessary, order a refund; and

WHEREAS, all rate justification information supplied to the Village by Grantee is on file with the Clerk of Council and made a part of this Ordinance by reference; and

WHEREAS, the Village, in order to accomplish its review, scheduled for the Village Council's regular meeting date of March 19, 1996, sufficient time for the purpose of reviewing Grantee's FCC Forms 1200, 1205 and 1215, as well as the FCC Form 1210 and its associated FCC Form 1215, and related rate regulation information and providing interested parties, including the Grantee, ample opportunity to present information to the Village;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Richfield, State of Ohio, that:

SECTION 1. Based upon the Village Council's March 19, 1996 meeting, the information submitted by the Grantee, and the advice of the Village's cable television legal

consultants, the Village determines to make the below listed findings:

- A. Grantee's maximum permitted basic tier rate of \$6.52 per month per subscriber, as calculated in the original FCC Form 1200, for the period July 14, 1994 through February 28, 1995 is unreasonable because it exceeds the maximum permitted rate properly calculated at the franchise level.
- B. Grantee's maximum permitted basic tier rate of \$6.46 per month per subscriber, as calculated in the revised FCC Form 1200, for the period July 14, 1994 through February 28, 1995, is reasonable.
- C. Grantee's actual basic tier rate of \$6.50 per month per subscriber for the period July 14, 1994 through February 28, 1995 is unreasonable because it is greater than the maximum permitted rate calculated pursuant to Grantee's revised FCC 1200.
- D. The FCC has not clarified its instructions on filing dates for the FCC Form 1205 to justify equipment rental and installation rates.
- E. Grantee's proposed maximum permitted basic tier rate of \$6.52 per month per subscriber, as calculated by the original FCC Form 1210, as of March 1, 1995, is unreasonable because it exceeds the maximum permitted rate properly calculated at the franchise level.
- F. Grantee's proposed maximum permitted tier rate of \$6.46 per month per subscriber, as calculated in the revised FCC Form 1210, as of February 28, 1995, is reasonable.
- G. Grantee's actual basic tier rate of \$6.52 per month per subscriber, effective as of March 1, 1995 is unreasonable because it is greater than the maximum permitted rate calculated pursuant to Grantee's Amended FCC 1210.

SECTION 2. Based upon the Village Council's March 19, 1996 meeting, the information submitted by the Grantee, the advice of the Village's cable television legal consultants and the findings in Section 1 of this Ordinance, the Village determines to make the below listed order:

- A. Grantee's maximum permitted basic tier rate of \$6.52 per month per subscriber, as calculated in the original FCC Form 1200, for the period July 14, 1994 through February 28, 1995 is unreasonable because it exceeds the maximum permitted rate properly calculated at the franchise level and is, therefore, disapproved.
- B. Grantee's maximum permitted basic tier rate of \$6.46 per month per subscriber, as calculated in the revised FCC Form 1200, for the period July 14, 1994 through February 28, 1995, is reasonable and is, therefore,

approved.

- C. Grantee's actual basic tier rate of \$6.50 per month per subscriber for the period July 14, 1994 through February 28, 1995 is unreasonable because it is greater than the maximum permitted rate calculated pursuant to Grantee's revised FCC Form 1200 and is, therefore, disapproved.
- D. Due to the FCC's delay in clarifying its instructions on filing dates for the FCC Form 1205 to justify Equipment and Installation charges, the Village reserves the right to receive justification and rule on the Equipment and Installation Charges which were not submitted for approval by Grantee at the time of the filing of the FCC Form 1200.
- E. Grantee's proposed maximum permitted basic tier rate of \$6.52 per month per subscriber, as calculated by the original FCC Form 1210, as of March 1, 1995, is unreasonable because it exceeds the maximum permitted rate properly calculated at the franchise level and is, therefore, disapproved.
- F. Grantee's proposed maximum permitted tier rate of \$6.46 per month per subscriber, as calculated in the revised FCC Form 1210, as of February 28, 1995, is reasonable and is, therefore, approved.
- G. Grantee's actual basic tier rate of \$6.52 per month per subscriber, effective as of March 1, 1995 is unreasonable because it is greater than the maximum permitted rate calculated pursuant to Grantee's revised FCC 1210 and is, therefore, disapproved.
- H. Grantee is ordered to immediately reduce rates for the basic tier to no more than \$6.46 per month per subscriber as approved in paragraph (F) of this section.
- I. Grantee is ordered to refund to subscribers all amounts collected in excess of the rate approved in paragraphs (B) and (F) of this section, plus applicable interest thereon, for the time period starting October 1 1994 until the date the rate complies with this Ordinance. Such refund is to be made no later than sixty (60) days following the passage of this Ordinance. Grantee shall notify the Village when the refunds are made, and itemize the calculation, form and extent of the refunds.

SECTION 3. The Village reserves the right to reconsider this Ordinance for the sole purpose of further reducing rates should new information arise which was not disclosed by the Grantee or modifications to FCC rules and regulations so provide and permit. This Ordinance shall not be construed as an approval of any pending request or proposal for a rate increase pursuant to FCC Form 1210 or otherwise.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

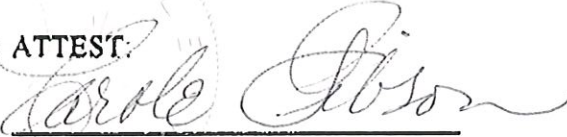
SECTION 5. The Clerk of Council is hereby directed to cause publication of this Ordinance to be made to the citizens of the Village and immediately upon its adoption shall serve a certified copy of the Ordinance by certified mail upon the Grantee.

SECTION 6. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the inhabitants of the Village of Richfield, such emergency being for the reason that in order to protect the Village's cable television subscribers from excessive rates, it is necessary that the within Ordinance become effective at the earliest time allowed by law; wherefore, provided this Ordinance receives the affirmative vote of two-thirds or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.


PASSED: March 19, 1996



President of Council

ATTEST:


Clerk of Council



Mayor
Dated: 3/27/96

