

ARTICLE 2. CABLE TELEVISION

SECTION 1.	Definitions
SECTION 2.	Initial Review of Basic Cable Rates
SECTION 3.	Review of Request for Increase in Basic Cable Rates
SECTION 4.	Cable Operator Information
SECTION 5.	Automatic Rate Adjustments
SECTION 6.	Enforcement

§ 3.2.1 DEFINITIONS

(A) **BASIC CABLE RATES** means the monthly charges for a subscription to the basic service tier and the associated equipment.

(B) **BASIC SERVICE TIER** means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels, and all domestic television signals other than superstations.

(C) **BENCHMARK** means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

(D) **CABLE ACT OF 1992** means the Cable Television Consumer Protection and Competition Act of 1992, as amended.

(E) **CABLE OPERATOR** means any person or group of persons:

(1) who provide cable service over a cable system and directly or through one or more affiliates owns a significant interest in such a cable system; or

(2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(F) **CHANNEL** means a unit of cable service identified and selected by a channel number or similar designation.

(G) **COST OF SERVICE SHOWING** means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

(H) **FCC** means the Federal Communications Commission.

(I) **INITIAL BASIC CABLE RATES** means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the Village notifies the cable operator of the Village's qualification and intent to regulate basic cable rates.

(J) **MUST-CARRY SIGNAL** means the signal of any local broadcast station (except superstations which are required to be carried on the basic service tier).

(K) **PEG CHANNEL** means the channel capacity designated for public, educational, or governmental use, and facilities and equipment for the use of that channel capacity.

(L) **PRICE CAP** means the ceiling set by the FCC on future increases in basic cable rates regulated by the Village, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.



(M) REASONABLE RATE STANDARD means a per channel rate that is at, or below, the benchmark or price cap level.

(N) SUPERSTATION means any non-local broadcast signal secondarily transmitted by satellite.

§ 3.2.2 INITIAL REVIEW OF BASIC CABLE RATES

(A) NOTICE. Upon the adoption of this Article and the certification of the Village by the FCC, the Village shall immediately notify all cable operators in the Village, by certified mail, return receipt requested, that the Village intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

(B) CABLE OPERATOR RESPONSE. Within thirty (30) days of receiving notice from the Village, a cable operator shall file with the Village its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(C) EXPEDITED DETERMINATION AND PUBLIC HEARING.

(1) If the Board is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the Board of Trustees shall:

(a) hold a public hearing at which interested persons may express their views; and

(b) act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the Village.

(2) If the Board takes no action within thirty (30) days from the date the cable operator filed its basic cable rates with the Village, the proposed rates will continue in effect.

(D) EXTENDED REVIEW PERIOD.

(1) If the Board is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board shall, within thirty (30) days from the date the cable operator filed its basic cable rates with the Village and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

(a) Ninety (90) days if the Board needs more time to ensure that a rate is within the FCC's reasonable rate standard; or

(b) One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the Village Board has not made a decision within the ninety (90) or one hundred fifty (150) day period, it shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(E) PUBLIC HEARING. During the extended review period and before taking action on the proposed rate, the Board shall hold at least one public hearing at which interested persons may express their views and record objections.

(F) OBJECTIONS. An interested person who wishes to make an objection to the proposed initial basic rate may request the Village Clerk to record the objection during the



public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Village Clerk with the objector's name and address.

(G) BENCHMARK ANALYSIS. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Board shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Board's findings, the initial basic cable rates shall be established as follows:

(1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.

(2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by 10 percent, or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992 and the initial date of regulation.

(3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(H) COST-OF-SERVICE SHOWINGS. If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The Board will review a cost-of-service submission pursuant to FCC standards for cost-of-service review. The Board may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus 10 percent, will prescribe the cable operator's new rates.

(I) DECISION.

(1) By formal resolution. After completion of its review of the cable operator's proposed rates, the Board shall adopt its decision by formal resolution. The decision shall include one of the following:

(a) If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the Board shall approve the initial basic cable rates proposed by the cable operator; or

(b) If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the Board shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

(2) Rollbacks and Refunds. If the Board determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the Board may order the rates reduced in accordance with Paragraph (G) or (H) above, as applicable. In addition, the Board may order the cable operator to pay to subscribers refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993.



The method for paying any refund and the interest rate will be in accordance with FCC Regulations as directed in the Board's decision resolution.

(3) Statement of Reasons for Decision and Public Notice. If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the Board must give public notice of its decision. Public notice will be given by advertisement once in a newspaper of general circulation.

(J) APPEAL. The Board's decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable Federal Regulations.

§ 3.2.3 REVIEW OF REQUEST FOR INCREASE IN BASIC CABLE RATES

(A) NOTICE. A cable operator in the Village who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Village and notify all subscribers at least thirty (30) days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one year after the determination of the initial basic cable rates.

(B) EXPEDITED DETERMINATION AND PUBLIC HEARING.

(1) If the Board is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Board shall:

(a) hold a public hearing at which interested persons may express their views; and

(b) act to approve the rate increase within thirty (30) days from the date the cable operator filed its request with the Village.

(2) If the Board takes no action within thirty (30) days from the date the cable operator filed its request with the Village, the proposed rates will go into effect.

(C) EXTENDED REVIEW PERIOD.

(1) If the Board is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board shall by adoption of a formal resolution invoke the following additional periods of time, as applicable, to make a final determination:

(a) Ninety (90) days if the Board needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and

(b) One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

(2) The proposed rate increase is tolled during the extended review period.

(3) If the Board has not made a decision within the 90 or 150 day period, the Board shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.



(D) PUBLIC HEARING. During the extended review period and before taking action on the requested rate increase, the Board shall hold at least one public hearing at which interested persons may express their views and record objections.

(E) OBJECTIONS. An interested person who wishes to make an objection to the proposed rate increase may request the Village Clerk to record the objection during the public hearing or may submit the objection in writing anytime before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Village Clerk with the objector's name and address.

(F) DELAYED DETERMINATION. If the Board is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the Board later issues a decision disapproving any portion of the increase.

(G) PRICE CAP ANALYSIS. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Board shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Board's findings, the basic cable rates shall be established as follows:

(1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

(2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the Board shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(H) COST-OF-SERVICE SHOWINGS. If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Board will review the submission pursuant to the FCC standards for cost-of-service review. The Board may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(I) DECISION. The Board's decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the Village Clerk to record the objection or may be submitted in writing at any time before the decision resolution is adopted.

(J) REFUNDS.

(1) The Board may order refunds of subscribers' rate payments with interest if:

(a) the Board was unable to make a decision within the extended time period as described in Paragraph (C) above; and

(b) the cable operator implemented the rate increase at the end of the extended review period; and

(c) the Board determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the Board disapproves any portion of the rate increase.



(2) The method for paying any refund and the interest rate will be in accordance with FCC Regulations as directed in the Board's decision resolution.

(K) **APPEAL.** The Board's decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable Federal Regulations.

§ 3.2.4 CABLE OPERATOR INFORMATION

(A) VILLAGE MAY REQUIRE.

(1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the Board may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this Section.

(2) In cases where initial or proposed rates comply with the reasonable rate standard, the Board may request additional information only in order to document that the cable operator's rates are in accord with the standard.

(B) REQUEST FOR CONFIDENTIALITY.

(1) A cable operator submitting information to the Board may request in writing that the information be kept confidential. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for confidentiality and a statement of the facts upon which those reasons are based.

(4) Requests which do not comply with the requirements of this Subsection shall not be considered.

(C) **BOARD ACTION.** The Board will act upon requests for confidentiality which comply with the requirements of § 3.2.4(B). The Board will grant the request if the cable operator presents by a preponderance of the evidence a case for nondisclosure consistent with applicable Federal Regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the Board denies the request, the Board shall take one of the following actions:

(1) If the information has been submitted voluntarily without any direction from the Village, the cable operator may request that the Village return the information without considering it. Ordinarily, the Village will comply with this request. Only in the unusual instance that the public interest so requires, will the information be made available for public inspection.

(2) If the information was required to be submitted by the Board, the information will be made available for public inspection.

(D) **APPEAL.** If the Board denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the Board's decision, and the release of the information will be stayed pending review.



§ 3.2.5 AUTOMATIC RATE ADJUSTMENTS

(A) ANNUAL INFLATION ADJUSTMENT. In accordance with FCC Regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

(B) OTHER EXTERNAL COSTS.

(1) The FCC Regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regard to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.

(C) NOTIFICATION AND REVIEW. The cable operator shall notify the Village at least thirty (30) days in advance of a rate increase based on automatic adjustment items. The Village shall review the increase to determine whether the item or items qualify as automatic adjustments. If the Village makes no objection within thirty (30) days of receiving notice of the increase, the increase may go into effect.

§ 3.2.6 ENFORCEMENT

(A) REFUNDS. The Village may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The cable operator has failed to comply with a valid rate order issued by the Village.

(B) FINES. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of \$500 for each day the cable operator fails to comply.

Ordinance and Federal Law References regarding Chapter 3, Article 2 (f/k/a Chapter 6):

Ordinance #119, March 9, 1994;

The Cable Television Consumer Protection and Competition Act of 1992, Pub.L. 102-385, Oct. 5, 1992, 106 Stat. 1460;

Codification enacted Feb. 14, 1996 codified Ordinance #119 as Chapter 6 and modified the language.

