

ORDINANCE NO. _____, SERIES 1996

450.3

PULASKI COUNTY, KENTUCKY

**AN ORDINANCE RELATING TO THE REGULATION OF
CABLE TELEVISION RATES FOR BASIC SERVICE,
RELATED EQUIPMENT, AND INSTALLATION, OF ANY
CABLE TELEVISION SYSTEM OPERATING IN PULASKI
COUNTY**

WHEREAS, the Congress of the United States enacted the Cable Television Consumer Protection Act of 1992 as amended by the Telecommunications Reform Act of 1996 (collectively, the "Act") which provides for the regulation of rates for basic service cable television, related equipment, installation and services ("basic service and equipment") by local franchising authorities; and

WHEREAS, the Federal Communications Commission ("FCC") has issued rules and regulations pursuant to the Act; and

WHEREAS, Pulaski County ("the County") wishes to afford the maximum protection to its citizens afforded by the Act and FCC regulations; and

WHEREAS, the County has been certified by the FCC to regulate the rates for basic service and equipment; and

WHEREAS, the County is a franchising authority with the legal authority to adopt, and the personnel to administer regulations with respect to rates for basic service and equipment; and

WHEREAS, the County desires to regulate the rates for basic service and equipment in accordance with the FCC rate regulations; and

NOW, THEREFORE, BE IT ORDAINED by the Fiscal Court of the County of Pulaski, Commonwealth of Kentucky, that:

Section 1: Scope and Intent.

This ordinance governs the regulation of cable television rates for basic service and equipment for any cable operator providing service in the County subject to regulations under the Act. This ordinance is intended to be consistent with FCC regulations, and the County intends to administer these regulations consistent with those regulations, as required by the Act, 47 U.S.C. §543(b). Likewise, it is the County's intention that the cable operator

be bound by the FCC regulations to the extent allowed by law. For purposes of this ordinance, "basic service" or "basic cable service," and "cable operator" have the same meaning as defined by the Act and FCC regulations. "Operator" shall have the same meaning as "cable operator."

Section 2: Notice of Commencement of Regulation.

Upon adoption of this ordinance and the certification of the County by the FCC, the County shall notify all cable operators subject to the Act who provide service in the franchise area of the County by certified mail, return receipt requested, that the County has commenced to regulate the basic rates of the operator.

Section 3: Rate Filings by Operator.

(a) Within 30 days of receiving notice from the County that it has commenced regulation, the operator shall file with the County a schedule of its current rates for basic service and equipment and justification therefor (the "rate filing"). The operator may, if it so chooses, file a proposal with appropriate justification for an increase in its current rates. An "increase" shall mean any change, including the lessening of the number of channels or other service available as well as raising the rate for basic service or equipment. The operator may at any time thereafter submit a proposal to increase its rates, consistent with FCC regulations.

(b) If the cable operator files a form that is facially incomplete, the County's deadline to rule on the reasonableness of the rates will be tolled pending receipt of a facially complete form.

Section 4: Support for Rate Filings; Burden of Proof.

The rate filing submitted by the operator, either for its current rates or for a change in its current rates, must show that the rates the operator charges or proposes to charge for basic service and equipment are reasonable and in compliance with all applicable FCC regulations. The burden of proof is on the operator to show that the rates are reasonable and in compliance with federal law and all applicable FCC regulations.

(a) If the operator asserts that its current rates or its proposed rates are within the "price cap" in accordance with FCC regulations, it must fully complete applicable FCC forms and otherwise provide material to support its position.

(b) If the operator claims that its current rates for which it is seeking approval or a requested increase in rates is based in whole or in part upon the adjustments for inflation and external costs contemplated by 47 C.F.R. §76.922, it must supplement the information provided to the County on standard FCC forms by providing:

- (i) A calculation showing how the inflation adjustment was derived;
- (ii) A statement itemizing each external cost claimed on the standard FCC form, explaining how the external costs shown on the form were derived, including the total cost to the operator for the external costs it claims, and providing the basis for any allocation for the external costs between tiers of service and any accounting and cost allocation decisions or adjustments made pursuant to 47 C.F.R. §76.924;
- (iii) For any costs claimed to be for compliance with franchise requirements, a clear and specific statement of what constitutes those costs and the basis of any allocation of general administrative overhead or other costs to the franchise requirements. All

allocations and costs shall be computed and allocated in a manner consistent with 47 C.F.R. §76.925.

(c) The operator shall provide a sworn statement by the operator's chief financial officer or an independent, certified accountant stating that he or she has examined the filing submitted by the operator and that all rate adjustments being sought on account of external costs are consistent with the requirements of 47 C.F.R. §76.922 and §76.924, including any reductions in external costs required as a result of deletion of channels, movement of channels between tiers or substitution of channels.

(d) If the operator proposes to increase its rates above that level permitted by the FCC "price cap," it may seek to make a "cost-of-service" showing in accordance with rules and regulations adopted by the FCC. In seeking to make a "cost-of-service" showing, the operator must fully complete applicable FCC forms and otherwise provide material to supplement its position.

(e) If the operator proposes to add or delete channels or service, or to remove certain channels from the basic service to a cable programming service tier as defined by the FCC or to a non-regulated status, it must explain in writing the impact of the addition, deletion or removal on its basic service rates and demonstrate why the addition, deletion or removal complies with FCC rules and regulations.

(f) The operator must show why all rates for all customer classifications are reasonable.

Section 5: Decreases in External Costs.

(a) If it files under the quarterly system, the operator shall adjust its rates in the

next calendar quarter for any decrease in programming costs that result from the deletion of a channel. The operator must adjust its rates annually to reflect any decreases in external costs. The operator must also adjust its rates annually to reflect any changes in external costs, inflation and the number of channels on regulated tiers that occurred during the year if the operator wishes to have such changes reflected in its regulated rates.

(b) If a cable operator is filing under the annual system, it must adjust its rates every 12 months to reflect any net decreases in external costs.

Section 6: Approval of County Necessary.

Once an operator has been notified that the County has commenced regulation of its rates, the operator may not thereafter increase its rates for basic service or equipment without the prior approval of the County, except in accordance with FCC regulations.. This requirement applies in all cases, including increases the operator has announced but not yet implemented prior to the date it received notice of rate regulation from the County.

Section 7: Timing of Rate Filing.

Rate filings proposing and supporting rate increases must be received by the County for review at least 30 days in advance of the proposed effective date of the increase for operators filing under a quarterly system or making a cost-of-service showing and at least 90 days in advance for operators filing under the annual system.

Section 8: Notice to Subscribers.

The operator shall provide written notice to subscribers of any proposed increase in rates at least 30 days in advance of the effective date.

Section 9: Information to be Provided.

In addition to any information it initially provides in support of its current rates or request for increase in rates, the operator shall provide all other information requested by the County, subject to a request for confidentiality pursuant to Section 16 of this Ordinance. The operator shall provide all information requested in a timely manner. If it fails to do so, the tolling periods and deadlines under this Ordinance may be extended. If the operator refuses to provide requested information, it shall state in writing to the County the basis for its refusal and shall cite the specific FCC regulation, order or opinion letter justifying its refusal.

Section 10: Quarterly Filing System or Cost-of-Service System; Effective Date or Rates; Tolling Periods.

(a) After the operator has submitted a rate filing to justify its current rates, or to seek an increase, under the quarterly rate adjustment system, or if a cable operator has submitted a cost-of-service showing pursuant to 47 C.F.R. §76.937(c) and §76.924, the current rates will remain in effect subject to further action by the County. If the County takes no action within 30 days of the date it receives the filing to approve, disapprove or toll the period for reviewing the rates, then the current rates or the proposed rates, as the case may be, shall be deemed approved; provided, however, that the County through the County/Judge Executive or his designee may toll the 30-day period by issuing a brief written order explaining that the County needs additional time to request or review additional information or consider comments from interested parties. The tolling order shall be subject to the following conditions:

- (i) For filings not involving cost-of-service showings, the County may toll

the rates for an additional 90 days after the expiration of the initial 30 days;

(ii) For filings seeking a rate increase based upon a cost-of-service showing, the County may toll the rates for an additional 150 days after the expiration of the initial 30 days. If the County so desires, within 30 days of receipt of a cost-of-service showing, it may ask the FCC pursuant to a petition for special relief under 47 C.F.R. §76.7 that the Commission examine the cable operator's cost-of-service showing. In such a case, the County Judge/Executive or his designee shall issue an order prior to the expiration of the initial 30 days stating that the County is seeking FCC assistance. The County shall serve a copy of the Order on the cable operator.

(b) A tolling order shall direct the operator to keep an accurate account of all amounts received by reason of the rates in issue and on whose behalf such amounts were paid.

Section 11: Annual Filing System; Effective Date of Rates.

(a) If the operator seeks a change in its existing rates using the annual filing system pursuant to 47 C.F.R. §76.922(e), it shall do so no later than 90 days before the effective date of the proposed rates. The County will have 90 days from the date it receives the filing to review the rates. If the County or its designee concludes that the operator has submitted a facially incomplete filing, the County's deadline for issuing a decision, the date on which rates may go into effect if no decision is issued and the period for which refunds are payable will be tolled while the County is waiting for the requested information, provided that, in order to toll these effective dates, the County or its designee must notify the operator of the incomplete filing within 45 days of the date it receives the filing.

(b) If the County has taken no action within the 90-day review period, then the proposed rates may go into effect at the end of the review period, subject to a prospective rate reduction and refund if the County subsequently issues a written decision disapproving any portion of such rates. If the operator inquires as to whether the County intends to issue a rate order after the initial review period, the County or its designee must notify the operator of its intent in this regard within 15 days of the operator's inquiry.

(c) If a proposed rate goes into effect before the County issues its rate order, the County will have 12 months from the date the County received the filing for the rate adjustment to issue its rate order.

(d) If the operator files for a rate adjustment under the annual method for an additional rate adjustment to reflect channel additions to the basic service tier pursuant to 47 C.F.R. §76.922(e)(2)(iii)(C), the County shall have 60 days from the date it receives the filing to review the requested rate. The County shall follow the timetables and other requirements set out in 47 C.F.R. §76.933(g)(4).

Section 12: Rates for Equipment and Installation.

(a) In submitting its request for approval of current rates or for an increase in rates for equipment and installation, the operator shall submit information for all equipment that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of service, and shall otherwise comply with FCC regulations.

(b) The operator shall file its Form 1205 supporting its current rates or a request for an increase in its rates at such times as comply with 47 U.S.C. §76.923.

(c) If the operator seeks approval for setting a rate for a new type of equipment

pursuant to 47 C.F.R. §76.923(o), the County shall have 60 days from the date it receives the filing to review the requested rate or issue an accounting order, pursuant to 47 C.F.R. §76.933(h).

Section 13: Rates Subject to Refunds.

If the County chooses to toll the period to review current rates, the current rates will remain in effect subject to refund. In like manner, if the County chooses to toll the period to review a proposed rate increase, it may permit the proposed rate increase to go into effect subject to refund if ordered by the Fiscal Court. If the County has taken no action at the end of the additional 90 days for the quarterly filing system or 150 days for the cost-of-service system, the proposed rate increase shall go into effect subject to refund. In all cases, the County shall issue a brief written order in accordance with 47 C.F.R. §76.933 and Section 10(b) of this Ordinance that the operator keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid. Refunds, including interest, shall be paid to the full extent allowed by law and FCC regulations.

Section 14: Certification of Compliance.

Within 90 days of any order of the County mandating a reduction in rates, ordering a refund of rates, or prescribing rates at a level less than the rate increase sought by the operator, the operator shall file with the County a certification, signed by an authorized representative, that it has fully complied with the County's order and describing in detail the steps taken to implement the order and showing how refunds, including interest, were calculated and distributed.

Section 15: Public Notice.

Prior to taking any action to approve or disapprove rates, or prior to the expiration of any period under this ordinance that would result in rates going into effect subject to refund, the County shall provide appropriate notice to the public and an opportunity at a public hearing or otherwise at which interested parties may orally express their views or submit written comments.

Section 16: Proprietary Information.

(a) The operator may request that portions of the filings and information it supplies to the County in support of its current rates or a proposed rate increase be kept confidential. Such request may be made solely as it relates to proprietary information. "Proprietary information" for purposes of this section is information which if openly disclosed would permit an unfair commercial advantage to competitors of the cable operator. If possible, the portions of the filing that are proprietary shall be segregated from the non-proprietary information. The request that the information be kept confidential must state the reason that disclosure of the information would permit an unfair commercial advantage to competitors of the cable operator. The burden of demonstrating that the information requested is proprietary shall fall on the operator.

(b) The County Judge/Executive or his designee shall grant the request that the information be kept confidential if he determines that the preponderance of evidence shows disclosure would permit an unfair commercial advantage to competitors of the cable operator. If the operator requests confidentiality and the request is denied, the operator may withdraw its request for a rate increase and the information it claims to be proprietary

will be returned to it.

(c) If the cable operator makes no request for confidentiality, the material will be considered public records available for inspection by any person pursuant to the Kentucky Open Records Act.

Section 17: Decision.

(a) After it completes its review of the rate filing submitted by the operator, the County shall issue an order approving or disapproving the current rates sought to be justified or the increased rates sought. If the County had previously decided pursuant to Section 10 of this Ordinance to allow rates to remain in effect or go into effect subject to refund, and if the County disapproves the rates in question, it shall issue an appropriate order directing that refunds be made. The County may order such refunds to the full extent permitted by the FCC regulations.

(b) The County may order a reduction in rates where necessary to bring rates into compliance with FCC regulations. If the County determines that the current rate or a proposed rate is unreasonable, it may prescribe a reasonable rate.

(c) Before disapproving a rate or prescribing a rate, or ordering a refund, the County shall ensure that the operator has had notice and opportunity to comment on the rate in question or refund. The County shall provide 10 days' written notice and give the operator the opportunity to submit written or oral comments in addition to its rate filing.

(d) If the rates are disapproved in whole or in part, or the County prescribes rates, or orders refunds, the order issued by the County shall specify the reasons for the decision. The County Clerk shall provide written notice to the operator of the County's decision by

providing a copy of the resolution or order.

(e) The County's decision approving or disapproving the rate in whole or in part, or prescribing rates, may be appealed to the FCC by the operator or by any citizen who submitted oral or written comments to the County prior to the resolution or order rendering the decision.

Section 18: Change in Regulatory Status.

(a) If the operator believes it is subject to effective competition as defined in 47 C.F.R. §76.905, it may petition the County for a change in its regulatory status. The operator bears the burden of proving the existence of effective competition.

(b) If the operator files a petition for a change in regulatory status, the County shall within 30 days provide public notice of the filing of the petition by publishing a legal notice pursuant to KRS 424 and by otherwise providing appropriate notice to the public.

(c) Any citizen or other person may within 15 days of the publication of the legal notice file a written opposition to the petition. The written opposition shall be served on the cable operator.

(d) Within seven days after a written opposition is served on the operator, the operator may file a reply with the County.

(e) With its petition for a change of status, the cable operator shall present such evidence consistent with 47 C.F.R. §76.905 to demonstrate that effective competition exists. Such evidence shall be accompanied by a sworn statement from an authorized representative of the cable operator that the evidence is true and correct to the best of the operator's knowledge and belief. Mere assertions unsupported by documentary or other evidence shall

be insufficient to demonstrate that effective competition exists.

(f) Within 30 days after the last day for the filing of a reply by a cable operator pursuant to subsection (d), the County shall rule on the operator's petition for change. The County shall notify the FCC within 10 days of its decision. Unless the FCC receives an opposition to any such change in regulatory status approved by the County, the County's decision will become final 30 days after adoption by the County.

(g) After the County's determination that effective competition exists becomes final, the County will cease regulating basic cable service rates, and the regulatory authority of the FCC over cable programming services for the system in the franchise area will also cease.

(h) Pursuant to 47 C.F.R. §76.915, the cable operator and the County may submit a joint statement to the FCC that effective competition exists.

Section 19: Compliance with FCC Regulations.

This ordinance is intended to comply with FCC regulations to the extent required by federal law. If any section of this ordinance becomes invalid or inapplicable because of changes in federal law or FCC regulations, then the cable operator shall comply with federal law or FCC regulations to the extent required, and the remaining sections of this ordinance shall remain in full force and effect.

Section 20: Enforcement.

The operator is required to comply with the terms and provisions of this ordinance and any order rendered pursuant to it. If the operator violates the ordinance or fails to comply with any order of the County with respect to rates, it shall be subject to a fine of

\$500 a day for each day it is in violation or fails to comply. Violations of this ordinance or failure to comply with any order with respect to rates may be considered a violation of the Franchise Agreement, if any, between the operator and the County.

Section 21: Effective Date.

This ordinance shall take effect upon its passage and approval and publication as required by KRS Chapter 424.

Section 22: Headings.

The headings in this Ordinance for each section are for information and convenience; they do not modify the meaning of the text of each section.


READ the first time this the 13th day of August, 1996.

READ the second time, ADOPTED and APPROVED this the 27th day of August, 1996.

PULASKI COUNTY FISCAL COURT

BY: 
PULASKI COUNTY JUDGE/EXECUTIVE

Attested To:

By: 
PULASKI COUNTY COURT
CLERK

Approved as to legal form:


PULASKI COUNTY ATTORNEY

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