Passed: 9-0

ORDINANCE 94-08

TO AMEND TITLE 3 OF THE BLOOMINGTON MUNICIPAL CODE, ENTITLED "CABLE COMMUNICATIONS SYSTEMS" (Authorizing the City to Regulate Basic Service Tier Rates and Related Charges)

WHEREAS, the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385) has set forth a process allowing units of local government to regulate the basic tier of cable services, the equipment necessary to provide the basic tier of services to cable subscribers, and the customer services provided by cable franchisees; and

WHEREAS, the City of Bloomington has reviewed the process set forth in the Cable Television Consumer Protection and Competition Act of 1992 and has been advised of the regulations pursuant to the Cable Television Consumer Protection and Competition Act that have been promulgated by the Federal Communications Commission pertaining to regulation of cable television rates and customer service; and

WHEREAS, the City of Bloomington has been certified by the Federal Communications Commission to regulate the basic service tier of cable television services and equipment necessary to provide the basic tier of services; and

WHEREAS, a condition established by the Federal Communications Commission required for certification to regulate the basic service tier of cable television services and equipment necessary to provide said basic service includes the adoption of rules and regulations consistent with those promulgated by the FCC pursuant to Section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. 543(b)) pertaining to regulation of cable rates; and

WHEREAS, the City of Bloomington seeks to comply with the requirements set forth by the Federal Communications Commission for certification to regulate said rates and equipment;

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA:

SECTION I. That Title 3 of the Bloomington Municipal Code be amended to add the following provisions:

III. REGULATION OF BASIC SERVICE TIER RATES AND RELATED CHARGES

3.02.300 Authority The Common Council hereby adopts the rules and regulations established by the Federal Communications Commission pursuant to the Cable Television Consumer Protection and Competition Act of 1992 for the review and regulation of cable television rates, services and equipment. The City of Bloomington shall retain all powers and authority granted by said FCC regulations, whether or not such powers and authority are explicitly enumerated in this ordinance.

For the purposes of this ordinance, the basic service tier of cable television services shall mean 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 signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system), any public, educational, and governmental programming required by the franchise to be carried on the basic tier, and any additional video

programming signals or service added to the basic tier by the cable operator.

Equipment necessary to provide the basic tier shall be defined as those items of associated equipment necessary for the reception of basic cable service by a subscriber, including, but not limited to converter boxes, remote control units, additional outlets and installations.

3.02.310 General procedures covering all filings The cable operator is required to submit justification for current or proposed increases in the basic service tier rates and related charges. Their submissions are referred to as "rate filings" and must conform with the provisions of this section.

(a) Every rate filing must be submitted to the Clerk of the City of Bloomington by Certified U.S. Mail, return receipt requested. A rate filing shall be considered filed for review on the date the properly completed rate filing and all required copies are received by the City Clerk. Seven (7) copies of each rate filing (including all supporting materials) must be submitted. The cable operator shall at the same time submit a copy, minus confidential information, to the Monroe County Public Library for public review.

(b) Subject to any FCC regulations governing the burden of proof, a rate filing submitted by an operator must show that the rates the operator charges or proposes to charge for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

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 that any pages of the rate filing that contain information that the operator claims is confidential have been submitted in accordance with the provisions of this ordinance covering confidentiality. The cover letter 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;

2) The pages of each rate filing must be numbered sequentially;

3) The rate filing must contain all applicable FCC forms; those forms must be correctly completed;

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;

(5) At any point during the rate review process the City of Bloomington may require the cable operator to submit additional information for clarification of the rate filing. The cable operator shall provide the requested information in a timely manner.

(c) In regard to the confidentiality of filings:

1) Every rate filing shall become the sole property of the City and all contents will be available to the public unless otherwise properly designated as "Confidential" by the cable operator in accordance with the Cable Act of 1992, FCC Regulations and consistent with the provisions of the Freedom of Information Act;

2) The cable operator shall submit information which it believes is confidential separately in a sealed envelope marked "Confidential," or the City will treat the information as public;

3) The cable operator cannot subsequently designate information as "Confidential" after that information has been filed;

4) Requests for information designated as "Confidential" shall be handled according to the procedures outlined in FCC Regulation, 47 C.F.R. § 0.459.

(d) Unless inconsistent with FCC regulations, the review of rate filings should be an open process where meetings are public and all interested parties are afforded an opportunity to comment

on the pertinent issues. The meetings should be arranged and conducted in a manner that conforms with Indiana Open Door Law.

3.02.320 Basic Service rate regulation - current rates and future increases (a) Upon the adoption of this ordinance, the City of Bloomington shall notify the cable operator by certified mail, return receipt requested, that the City intends to regulate subscriber rates charged for the basic service tier and associated equipment. Upon receipt of said notice, the cable operator shall, within 30 days, file with the Clerk of the City of Bloomington its current rates for the basic service tier and associated equipment along with any additional documentation justifying the reasonableness of its rates. All rates, for all customer classifications, must be justified. The cable operator shall make its submission on Federal Communications Commission Form 393.

(b) Once a cable operator has been notified by the City that its rates for basic service and equipment are subject to regulation, it may not thereafter increase its rates for basic service or equipment without the prior approval of the City. This requirement applies in all cases, including 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 cable operator must file with the Clerk of the City of Bloomington a rate filing to justify any increase in basic service or equipment rates or any new basic services 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 made on the FCC Rate Increase Form. 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.

3.02.330 Initial review of rate filings - time limits - submission to Telecommunications Council - public hearing - brief written orders for extension of time and for accounting (a) The Clerk of the City of Bloomington shall forward the cable operator's justification of current rates (FCC Form 393) or request for a rate increase (FCC Rate Increase Form) to the Bloomington Telecommunications Council. The City Clerk shall, in consultation with the President of the Telecommunications Council, establish a date and time for a public hearing before the Telecommunications Council on the cable operator's justification of current rates or request for a rate change. All interested parties shall be afforded an opportunity to comment on the issues before the Telecommunications Council. Notice of the public meeting shall conform with the requirements of the Indiana Open Door law.

(b) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel charge that results from reductions in the number of channels in a tier), the existing rates will remain in effect or the proposed rates will become effective after 30 days from the date of submission, provided, however, that the franchising authority may toll this 30-day deadline for an additional time by issuing a brief written order as described below within 30 days of the rate filing explaining that it needs additional time to review the rates.

(c) If the franchising authority is unable to determine, based upon the material submitted by the cable operator, that the existing or proposed rates are within the FCC's permitted basic service tier charge or actual cost of equipment, as defined in FCC regulations, or if a cable operator has submitted a cost-of-service showing, seeking to justify a rate above the FCC's basic service tier charge, as defined in FCC regulations, the franchising authority may issue a brief written order to toll the 30-day deadline to request and/or consider additional information or to consider the comments from interested parties as follows:

(1) For an additional 90 days in cases not involving

cost-of-service showings; or

(2) For an additional 150 days in cases involving cost-of-service showings.

The written order tolling the 30-day deadline may also include a brief written accounting order to the cable operator directing the cable operator that, in the event the existing rates remain in effect, or the proposed rates go into effect, under the scenario described in 3.02.330(d), the cable operator shall keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid.

(d) If the franchising authority has availed itself of the additional 90 or 150 days permitted for additional review, and has taken no action within these additional time periods, then

(1) in the case of a proposed rate increase, the proposed rates will go into effect at the end of the applicable time period, or

(2) in the case of a justification of existing rates, the existing rates will remain in effect at the end of the applicable time period. In either case, the rates will remain at issue and will be subject to refunds if the franchising authority subsequently issues a written decision disapproving any portion of such rates. However, in order to order refunds, the franchising authority must have issued a brief written accounting order to the cable operator directing the cable operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid. This accounting order must be issued prior to the expiration of the 90 or 150 day extensions.

<u>3.02.340 Resolutions by the Telecommunications Council - Board of Public Works - Common Council</u> (a) Upon completion of its review of the cable operator's filing, the Telecommunications Council shall adopt its decision by formal resolution. The resolution shall indicate the reasons for the decision. Upon passage of the resolution, the Telecommunications Council shall publish the resolution in written form and make copies available to all interested parties.

(b) The Telecommunications Council shall forward its resolution to the City of Bloomington Board of Public Works, which shall place the resolution on its agenda for public discussion and input. After such public discussion and input, the Board of Public Works may remand the resolution to the Telecommunications Council for further findings, clarification and study, or the Board of Public Works may adopt its own resolution. Upon any remand, the Telecommunications Council shall reexamine its resolution and supply the Board of Public Works with the clarification and further findings the Board of Public Works requires. The Telecommunications Council may alter its resolution in any way consistent with these further findings and clarification and return its resolution to the Board of Public Works.

(c) The Board of Public Works shall forward its resolution to the City of Bloomington Common Council, which shall place the resolution on its agenda for public discussion and input. After such public discussion and input, the Common Council may remand the resolution to the Board of Public Works for further findings, clarification and study, or the Common Council may adopt its own resolution. Upon any remand, the Board of Public Works shall reexamine its resolution and supply the Common Council with the clarification and further findings the Common Council requires. The Board of Public Works may seek the input of the Telecommunications Council during this period of further study. The Board of Public Works may alter its resolution in any way consistent with these further findings and clarification and return its resolution to the Common Council. The resolution adopted by the Common Council shall be in the form of a "Final Rate Order" directed to the cable operator. The Final Rate Order shall explain the basis for the Common Council's decision.

<u>3.02.350 Remedies</u> The City of Bloomington reserves all remedies available to it under the FCC guidelines. By way of illustration, and not limitation, the remedies available to the

City of Bloomington for excessive rates include ordering the cable operator to reduce rates and ordering the cable operator to refund to subscribers a portion of previously paid rates.

The City of Bloomington may order the cable operator to refund to subscribers a portion of previously paid rates, including interest computed at applicable rates published by the Internal Revenue Service for its tax refunds and additional tax payments, under the following circumstances:

1) A portion of the previously paid rates has been determined to be in excess of the permitted basic cable service tier charge or above the actual cost of equipment, unless the cable operator has submitted a cost-of-service showing which justifies the rate charged as reasonable; or

2) The cable operator has failed to comply with a valid rate order issued by the City of Bloomington; or

3) If the City of Bloomington has tolled a proposed rate increase for 90 or 150 additional days and has not completed its review by the end of these time periods, the proposed rates can go into effect subject to a refund if portions of the rates are later found to be unreasonable, provided the City of Bloomington has issued the brief written accounting order described in 3.02.330.

The City of Bloomington shall afford the cable operator due process by providing notice and an opportunity to participate before ordering refunds.

SECTION II. This ordinance shall take effect immediately upon its passage, signing, and publication in accordance with the requirements of law.

SECTION III. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 2nd day of February, 1994.

Jim Sherman

JIM SHERMAN, President
Bloomington Common Council

ATTEST:

Patricia Williams

PATRICIA WILLIAMS, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 3rd day of February, 1994.

Patricia Williams

PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 3rd day of February, 1994.

Tomilea Allison

TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This ordinance adopts the rules and regulations established by the Federal Communications Commission pursuant to the Cable Television Consumer Protection and Competition Act of 1992 and establishes procedures to allow the City to regulate subscriber rates charged by any cable franchisee for the basic service tier and associated equipment.

Signed copies to:
Legal Dept - 5
Michael Flaherty
Mayor's Office
TCC
BMC - CACA
Clerk - 2
File