

**AN ORDINANCE
OF THE COUNCIL OF THE CITY OF BOWIE MARYLAND
AMENDING CHAPTER 12, “CABLE COMMUNICATIONS” OF THE CITY CODE
TO DELETE THOSE PROVISIONS OF SECTION 12-2, “DEFINITIONS AND WORD
USAGE,” AND SECTION 12-11, “RATE REGULATION; ENFORCEMENT OF
CONSUMER PROTECTION, CUSTOMER SERVICE STANDARDS,” THAT RELATE
TO THE ESTABLISHMENT OF THE CITY CABLE RATE REGULATION
COMMISSION.**

WHEREAS, pursuant to Md. Code Ann., Art. 23A, § 2, the Council of City of Bowie, Maryland (hereinafter “the City”) has the power to enact ordinances it deems necessary to preserve peace and good order and to protect the convenience of the citizens of the municipality; and

WHEREAS, pursuant to Md. Code Ann. Art. 23A, § 2(b)(13), the City Council has the power to grant franchises for cable television systems that utilize the public rights of way, to impose franchise fees, and to establish rates, rules, and regulations for such franchises; and

WHEREAS, pursuant to said authority, by Ordinance No. O-5-99, the City Council enacted Chapter 12, “Cable Communications”, of the Bowie City Code, in order to protect the public convenience, safety, and general welfare by establishing regulatory powers vested in the City or in such persons as the City designates to protect the public and to ensure that any franchise granted is operated in the public interest; and

WHEREAS, Section 12-2, “Definitions and Word Usage,” and Section 12-11, “Rate Regulation; Enforcement Of Consumer Protection, Customer Service Standards,” were among the provisions adopted by Ordinance No. O-5-99, and incorporated thereby in Chapter 12 of the City Code; and

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WHEREAS, Section 12-2(b)(9) defined the term “Commission” to mean “the City Cable Rate Regulation Commission”; and

WHEREAS, Section 12-11, in part, conferred certain duties and responsibilities upon the Commission; and

WHEREAS, changes in federal law and factual circumstances related to the existence of genuine competition among providers of telecommunications services, as determined by the Federal Communications Commission have largely deprived the Commission of a significant function; and

WHEREAS, the City Council consequently finds that the public interest requires the deletion of obsolete provisions from the City Code; and

WHEREAS, the City Council consequently determines that the amendment of Section 12-2 and Section 12-11 to delete the provisions relating to the Commission best serves the public interest.

Section 1. NOW THEREFORE BE IT ORDAINED AND ENACTED by the Council of the City of Bowie, Maryland, that Chapter 12, “Cable Communications,” Section 12-2, “Definitions and Word Usage,” of the City Code be and hereby is amended as follows:

§ 12-2. Definitions and word usage.

A. Usage - general.

For the purposes of this Chapter, the terms, phrases, words, and abbreviations set forth in subsection B of this section shall have the meanings given therein, unless otherwise expressly

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stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, their common and ordinary meaning.

B. Definitions.

* * *

[(9) Commission: The City Cable Rate Regulation Commission.] RESERVED.

Section 2. **BE IT FURTHER ORDAINED AND ENACTED** by the Council of the City of Bowie, Maryland, that Chapter 12, "Cable Communications," Section 12-2, "Definitions and Word Usage," of the City Code be and hereby is amended as follows:

§ 12-11. [Rate regulation;] E[e]nforcement of consumer protection, customer service standards.

A. [Legal authority.

(1) The Commission shall enforce the rate regulations promulgated by the FCC in 47 CFR 76.922, et seq., for the establishment of initial basic cable service and associated equipment rates and for basic cable service and associated equipment rate increases. The Commission shall further enforce the provisions of this Chapter and any franchise agreement issued pursuant thereto with respect to customer service and consumer protection standards.

(2) With regard to the cable programming service tier, as defined by the Cable Act, and the FCC rules and regulations, and over which the Commission is not empowered to exercise rate

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regulation, the cable operator shall give notice to the Commission of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided including the program services included in the tier or tiers. The cable operator shall provide such notice thirty (30) days before the changes are to become effective.

B. Submission.

The franchisee shall submit all rate filings on the proper federal forms. All Commission rate proceedings shall be consistent with the rules and regulations promulgated by the FCC.

C. Notice.

Following the receipt by the Commission of the franchisee's request for review of its existing rates for the basic service tier and associated equipment costs, or the franchisee's request for a proposed increase in these rates, or following the receipt by the Commission of information indicating that a violation of any customer service or consumer protection standards imposed by this Chapter or by any franchise agreement issued pursuant to this Chapter may have occurred, the Commission shall hold a public hearing prior to making a final decision on the request for rate review. The public hearing shall be held to provide the franchisee and all other interested persons an opportunity to be heard concerning the request. The Commission shall have the public hearing notice setting forth the time and place of said hearing published, at least once, in a newspaper of general circulation in the city and on the government access channel no less than

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ten (10) days prior to the date of the hearing. The Commission shall send by certified mail a copy of the public hearing notice to the franchisee at least ten (10) days prior to the date of the hearing.

D. Effective date of rates; tolling orders.

The existing rates will remain in effect or the proposed rates, as appropriate, will become effective after thirty (30) days from the date of receipt of the request, provided, however, that, if the Commission is unable to reach a decision, based upon the material submitted by the franchisee, it may toll the thirty (30) day deadline by issuing a brief written order within the thirty (30) day period explaining that it needs additional time to request and/or consider additional information or to consider the comments from interested persons. The Commission may request an additional ninety (90) days in cases not involving cost-of-service showings, or an additional one hundred fifty (150) days in cases involving cost-of-service showings. The proposed rates shall go into effect or existing rates will remain in effect, as appropriate, at the end of the ninety (90) or one hundred fifty (150) day period, subject to refunds, if the Commission issues a subsequent written decision disapproving any portion of such rates. In order to issue such refunds, the Commission must issue a brief written order to the franchisee by the end of the ninety (90) or one hundred fifty (150) day period, directing the franchisee to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid. The maximum one hundred eighty (180) day period may be extended by mutual agreement of the Commission and the franchisee.

E. Proceedings.

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(1) Any proceeding conducted by the Commission under this section shall provide a reasonable opportunity for consideration of the views of any interested party, including but not limited to, the City Council or its designee, Bowie Cable CATV Advisory Committee, the franchisee or cable operator, subscribers and residents of the franchise area.

(2) The Commission may require such additional testimony or evidence including technical data as it deems necessary to its determination.

(3) The Commission shall conduct its proceedings in accordance with rules and regulations adopted by the commission. The Commission shall maintain a record of all testimony, evidence and written submissions in its proceedings.

(4) The Commission may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the State of Maryland to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents and deposition.

(5) The Commission may require the attendance as a witness of one or more representatives of the cable operator.

The Commission shall have authority to administer oaths and affirmations; issue subpoenas; examine witnesses; rule upon questions of evidence; take or cause depositions to be taken; and issue notices and orders, take actions and make decisions or recommendations in conformity with this law.

F. Additional information; confidentiality.

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In addition to any material or evidence submitted by any party at the hearing, the Commission may require a franchisee to submit any additional information it reasonably deems necessary to its decision. A franchisee, upon submitting information required to be produced in the course of a rate proceeding, may request that such information not be made routinely available for public inspection. The franchisee must identify information it claims is confidential and explain why it is confidential. If the request for confidentiality is denied, the franchisee has five (5) working days to seek a review of that decision from the FCC.

G.] Schedule of fees and charges.

A franchisee shall publish and make available to each potential subscriber a schedule of all applicable fees and charges for providing cable television service and must notify subscribers that basic cable service is available.

[H]B. Waiver, reduction or suspension of fees.

A franchisee may, at its own discretion, waive, reduce, or suspend connection fees for specific or indeterminate periods and/or monthly service fees for periods not to exceed thirty (30) days for promotional purposes, where allowed by federal regulations. The franchisee shall not, with regard to fees, discriminate or grant any preference or advantage to any person, provided, however, that the franchisee may establish a uniform bulk discount rate structure for basic cable service and associated equipment provided to ten (10) or more dwelling units within an apartment building, condominium, garden apartment, or, townhouse complex under common ownership, or to ten (10) or more room units within hotels and motels, or to commercial

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establishments engaged in the sale of television receivers. The franchisee may offer reasonable discounts to senior citizens or other economically disadvantaged group discounts.

[I. Decision of the Commission.

Upon completion of the rate proceedings, the Commission shall with reasonable promptness in accordance with the federal regulations.

J. Remedies.

In addition to any other penalties contained in this Chapter, the Commission may:

(1) Order the franchisee to implement a reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the federal standards;

(2) Prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable;

(3) Order the franchisee to refund to subscribers that portion of previously paid rates determined to be in excess of the permitted tier charge or above the actual cost of equipment, unless the franchisee has submitted a cost-of-service showing which justifies the rate charged as reasonable. The Commission shall give the franchisee notice and an opportunity to comment prior to ordering the franchisee to refund previously paid rates. The franchisee's liability for refunds is limited to a one (1) year period, except that a franchisee that fails to comply with a valid rate order shall be liable for refunds commencing from the effective date of such order until such time as it complies with such order;

(4) Impose fines or monetary forfeitures, in accordance with section 12-15 of this Chapter on a franchisee that does not comply with a rate decision or refund order.

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K]C. Nondiscrimination.

(1) Subject to applicable law, a franchisee shall establish rates that are nondiscriminatory within the same general class of subscribers and which must be applied fairly and uniformly to all subscribers in the franchisee area for all services. Nothing contained herein shall prohibit a franchisee from offering, by way of illustration and not limitation; (a) discounts to senior citizens or economically disadvantaged groups; (b) discounts to commercial and multiple family dwelling, subscribers billed on a bulk basis; (c) promotional discounts; or (d) reduced installation rates for subscribers who have multiple services.

(2) The provisions of this section shall apply to all rates, whether or not they are otherwise subject to rate regulation, except to the extent specifically prohibited by law.

Section 3. BE IT FURTHER ORDAINED that this Ordinance shall become effective thirty (30) days after its enactment by the Council of the City of Bowie, Maryland provided that a fair summary of this Ordinance is published at least once prior to the date of passage and at least once within ten (10) days after the date of passage in a newspaper having general circulation in the City.

INTRODUCED by the Council of the City of Bowie, Maryland at a regular meeting on the _____ day of _____, 2009.

PASSED by the Council of the City of Bowie, Maryland at a regular meeting on the _____ day of _____, 2009.

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ATTEST:

THE CITY OF BOWIE, MARYLAND

Pamela A. Fleming
City Clerk

By:

G. Frederick Robinson, Mayor

**APPROVED AS TO FORM AND
SUFFICIENCY:**

Robert H. Levan, City Attorney

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