

TOWNSHIP OF HAMPTON
COUNTY OF BAY

CABLE TELEVISION BASIC SERVICE AND
ASSOCIATED EQUIPMENT RATE REGULATION ORDINANCE

Ordinance No. 15A

An ordinance to provide for the regulation of rates for cable television basic service and associated equipment; to repeal all ordinances or parts of ordinances in conflict herewith; and to provide for an effective date of this ordinance.

TOWNSHIP OF HAMPTON
BAY COUNTY

ORDAINS:

SHORT TITLE

This ordinance may be known and referred to as the "HAMPTON CHARTER TOWNSHIP CABLE TELEVISION RATE REGULATION ORDINANCE".

Sec. 1. Definitions.

For purposes of this Ordinance "Act" shall mean the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385), and as may be amended from time to time; "FCC" shall mean the Federal Communications Commission; "FCC Rules" shall mean all rules of the FCC promulgated from time to time pursuant to the Act; "basic cable service" shall mean "basic service" as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the Township pursuant to the Act and the FCC Rules; "associated equipment" shall mean all equipment and services subject to regulation pursuant to 47 CFR § 76.923; and an "increase" in rates shall mean an increase in rates or a decrease in programming or customer services. All other words and phrases used in this Ordinance shall have the same meaning as defined in the Act and FCC Rules.

Sec. 2. Purpose; Interpretation.

The purpose of this Ordinance is to: (1) adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation; and (2) prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the Township. This Ordinance shall be implemented and interpreted consistent with the Act and FCC Rules.

Sec. 3. Rate Regulations Promulgated by FCC.

In connection with the regulation of rates for basic cable service and associated equipment, the Township of Hampton shall follow all FCC Rules.

Sec. 4. Filing; Additional Information; Burden of Proof.

- (A) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and the FCC Rules. The cable operator shall file 10 copies of the schedule or proposed increase with the Township Clerk. For purposes of this Ordinance, the filing of the cable operator shall be deemed to have been made when at least 10 copies have been received by the Township Clerk. The Board of Trustees may, by resolution or otherwise, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of the schedule of rates or a proposed increase.
- (B) In addition to information and data required by rules and regulations of the Township pursuant to Sec. 4(A) above, a cable operator shall provide all information requested by the Township Supervisor or the Township Attorney in connection with the Township's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The Township Supervisor or the Township Attorney may establish deadlines for submission of the requested information and the cable operator shall comply with such deadlines.
- (C) A cable operator has the burden of providing that its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates complies with the Act and the FCC Rules including, without limitation, 47 USC § 543 and 47 CFR § § 76.922 and 76.923.

Sec. 5. Proprietary Information.

- (A) If this Ordinance, any rules or regulations adopted by the Township pursuant to Section 4(A), or any request for information pursuant to Section 4(B) requires the production of proprietary information, the cable operator shall produce the information. However, at the time the allegedly proprietary information is submitted, a cable operator may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support those reasons. The request for confidentiality will be granted if the Township determines that the preponderance of the evidence shows that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. § 552. The Township shall

place in a public file for inspection any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, (1) where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

- (B) Any interested party may file a request to inspect material withheld as proprietary with the Township. The Township shall weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in light of the facts of the particular case. It will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. It may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal with any appropriate forum. Disclosure will be stayed pending resolution of any appeal.
- (C) The procedures set forth in this Section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality including, without limitation, 47 CFR § 0.459.

Sec. 6. Public Notice; Initial Review of Rates.

Upon the filing of 10 copies of the schedule of rates or the proposed increase in rates pursuant to Section 6-143(1) above, the Township Clerk shall publish a public notice in a newspaper of general circulation in the Township which shall state that: (1) the filing has been received by the Township Clerk and (except those parts which may be withheld as proprietary) is available for public inspection and copying; and (2) interested parties are encouraged to submit written comments on the filing to the Township Clerk not later than 7 days after the public notice is published. The Township Clerk shall give notice to the cable operator of the date, time, and place of the meeting at which the Board of Trustees shall first consider the schedule of rates or the proposed increase. This notice shall be mailed by first-class mail at least 3 days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration of the Board of Trustees then the Township Clerk shall mail a copy of the report by first-class mail to the cable operator at least 3 days before the meeting at which the Board of Trustees shall first consider the schedule of rates or the proposed increase.

Sec. 7. Tolling Order.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after 30 days from the date of filing under Section 4(A) above unless the Board of Trustees (or other properly authorized body of official) tolls the 30 day deadline pursuant to 47 CFR § 76.933 by issuing a brief written order, by resolution or otherwise, within 30 days of the date of filing. The Board of Trustees may toll the 30 day deadline for an additional 90 days in cases not involving cost-of-service showings and for an additional 150 days in cases involving cost-of-service showings.

Sec. 8. Public Notices; Hearing on Basic Cable Service Rates Following Tolling of 30-Day Deadline.

If a written order has been issued pursuant to Section 7 and 47 CFR § 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in these rates, the cable operator shall submit to the Township any additional information required or requested pursuant to Section 4 of this Ordinance. In addition, the Board of Trustees shall hold a public hearing to consider the comments of interested parties within the additional 90 days or 150 day period, as the case may be. The Township Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the Township which shall state: (1) the date, time, and place at which the hearing shall be held; (2) interested parties may appear in person, by agent, or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates; and (3) copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the Clerk. The public notice shall be published not less than 15 days before the hearing. In addition, the Township Clerk shall mail by first-class mail a copy of the public notice to the cable operator not less than 15 days before hearing.

Sec. 9. Staff or Consultant Report; Written Response.

Following the public hearing, the Township Supervisor shall cause a report to be prepared for the Board of Trustees which shall (based on the filing of the cable operator, the comments or objections of interested parties, information requested from the cable operator and its response, staff or consultant's review, and other appropriate information) include a recommendation for the decision of the Board of Trustees pursuant to Section 10. The Township Clerk shall mail a copy of the report to the cable operator by first-class mail not less than 20 days before the Board of Trustees acts under Section 10. The cable operator may file a written response to the report with the Township Clerk. If at least 10 copies of the response are filed by the cable operator with the Township Clerk within 10 days after the report

is mailed to the cable operator, the Township Clerk shall forward it to the Board of Trustees.

Sec. 10. Rate Decisions and Orders.

The Board of Trustees shall issue a written order, by resolution or otherwise, which in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, orders a rate reduction, prescribes a reasonable rate, allows the existing rates or proposed increase to become effective subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If the Board of Trustees issues an order allowing the existing rates or proposed increase to become effective subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR § 76.933. The order specified in this Section shall be issued within 90 days of the tolling order under Section 7 in all cases not involving a cost-of-service showing. The order shall be issued within 150 days after the tolling order under Section 7 in all cases involving a cost-of-service showing.

Sec. 11. Refunds; Notice.

The Board of Trustees may order a refund to subscribers as provided in 47 CFR § 76.942. Before the Board of Trustees orders any refund to subscribers, the Township Clerk shall give at least 7 days written notice to the cable operator by first-class mail of the date, time, and place at which the Board of Trustees shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent, or by letter at such time for the purpose of submitting comments to the Board of Trustees.

Sec. 12. Written Decisions; Public Notice.

Any order of the Board of Trustees pursuant to Section 10 or Section 11 shall be in writing, shall be effective upon adoption or on such other date as specified by the Board of Trustees and shall be deemed released to the public upon adoption. The Clerk shall publish a public notice of any such written order in a newspaper of general circulation within the Township which shall: (1) summarize the written decision; and (2) state that copies of the text of the written decision are available for inspection or copying from the office of the Clerk. In addition, the Township Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

Sec. 13. Rules and Regulations.

In addition to rules promulgated pursuant to Section 4 the Board of Trustees may, by resolution or otherwise, adopt rules and regulations for basic service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

Sec. 14. Failure to Give Notice.

The failure of the Township Clerk to give the notices or to mail copies of reports as required by this Ordinance shall not invalidate the decisions or proceedings of the Board of Trustees.

Sec. 15. Additional Hearings.

In addition to the requirements of this Ordinance, the Board of Trustees may hold additional public hearings upon such reasonable notice as the Board of Trustees in its sole discretion, shall prescribe.

Sec. 16. Joint Action.

Whenever a provision of this Ordinance requires the publication of a notice a public hearing, the preparation of a staff or consultant report, other publication or similar act, the Township may take such action jointly, in cooperation with any other local unit of government served by the same cable operator.

Sec. 17. Additional Powers.

The Township shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise, and all other applicable law. The powers exercised pursuant to the Act, the FCC Rules, and this Ordinance shall be in addition to powers conferred by law or otherwise. The Township may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

Sec. 18. Failure to Comply; Remedies.

The Township may pursue any and all legal and equitable remedies against the cable operator (including, without limitation, all remedies provided under a cable operator's Consent Agreement with the Township) for failure to comply with the Act, the FCC Rules, any orders or determinations of the Township pursuant to this Ordinance, any requirements of this Ordinance, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the Township pursuant to this Ordinance, any requirements of this Ordinance, or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of renewal of a cable operator's Consent Agreement.

Sec. 19. Conflicting Provisions.

In the event of any conflict between this Ordinance and the provisions of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, then the provisions of this Ordinance shall control.

Sec. 20. Repeal of Conflicting Ordinances


All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Sec. 21. Effective Date

This Ordinance shall become effective immediately upon formal adoption by the Charter Township of Hampton Board of Trustees.

CERTIFICATION OF RESOLUTION ADOPTING PROPOSED ORDINANCE 15A
RE: CABLE TELEVISION BASIC SERVICE AND
ASSOCIATED EQUIPMENT RATE REGULATION ORDINANCE

I, SALLY SHEPARDSON, as Clerk for the Charter Township of Hampton, Bay County, Michigan, hereby certify that the above Resolution was duly adopted by the Charter Township of Hampton Board on the 14th of February, 1994, at a regular meeting of said Board at which a quorum was present.



SALLY SHEPARDSON, Clerk
Charter Township of Hampton

RESOLUTION ADOPTING PROPOSED ORDINANCE 15A
RE: CABLE TELEVISION BASIC SERVICE AND
ASSOCIATED EQUIPMENT RATE REGULATION ORDINANCE

Motion by Spegel that the following resolution be adopted.
Seconded by Piorkowski.


RESOLVED, that the Charter Township of Hampton Board of Trustees adopt the proposed Cable Television Basic Service and Associated Equipment Rate Regulation Ordinance, the same being proposed as Ordinance 15A, which is attached hereto, to amend Ordinance 15, the Charter Township of Hampton Cable, Antenna and Television Service Ordinance, and all other amendments thereto.

On roll call, the vote was as follows:

Yeas: Spegel, Piorkowski, Burley, VanSumeren,
Shepardson, Savage and DeWyse.

Nays: None

Resolution declared adopted.



SALLY SHEPARDSON, Clerk
Charter Township of Hampton