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Amend RMC 5.60
Cable TV Rate Regulation
Procedures

ORDINANCE NO. 1830

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, AMENDING AND ADDING NEW SECTIONS TO CHAPTER 5.60 OF THE REDMOND MUNICIPAL CODE IN ORDER TO PROVIDE FOR THE REGULATION OF BASIC SERVICE TIER RATES AND RELATED EQUIPMENT, INSTALLATION AND SERVICE CHARGES OF ANY CABLE TELEVISION FRANCHISE GRANTED BY THE CITY OF REDMOND.

WHEREAS, on October 5, 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 (hereinafter "Act"), which, among other things, provided that the basic service tier rates and the charges for related equipment installation and services of the cable television system (hereinafter "Basic Service Rates and Charges") shall be subject to regulation by a franchising authority in accordance with the regulations prescribed by the Federal Communications Commission (hereinafter "FCC"); and

WHEREAS, on April 1, 1993, the FCC prescribed such regulations in the Report and Order, in the Matter of Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-266, FCC 93-177 (released May 3, 1993) (hereinafter referred to as "FCC Rate Regulations"); and

WHEREAS, the City of Redmond (hereinafter the "City") is a franchising authority with the legal authority to adopt and the

personnel to administer regulations with respect to the Basic Service Rates and Charges of any cable television system operating in the City, including, without limitation, the system currently being operated by the Viacom Cable Company (hereinafter the "Company") pursuant to City Ordinance No. 1359 (hereinafter the "Franchise"); and

WHEREAS, the City desires to regulate the Basic Service Rates and Charges of the Company and other cable television systems operating in the City and shall do so in accordance with the FCC Rate Regulations, notwithstanding any different or inconsistent provisions in the Franchise; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. Definitions Amended. Subsection 5.60.010(19) of the Redmond Municipal Code is hereby amended to read as follows:

(19) "Franchise" means the nonexclusive right or authority to construct, operate and maintain a cable television system by use of city owned rights-of-way, easements, or other publicly owned properties and includes all ordinances, regulations, laws and franchise documents governing such activities.

Section 2. Definitions Added. New subsections 5.60.010(40) - (43) are hereby added to the Redmond Municipal code to read as follows:

(40) "Benchmark rate" means a target (benchmark) rate established by the FCC and currently applicable to a franchise operating in the City.

(41) "FCC regulation" means any duly established federal regulation covering the

activities of a cable television franchisee and its relation with the City. Such term shall include at a minimum the final rules promulgated as MM Docket 92-266, FCC 93-177 codified as 47 CFR §§ 76.990 - 985 as the same exist or are hereinafter amended.

(42) "Equipment" means and includes converter boxes, remote control units, connections for additional outlets and cable home wiring.

(43) "Rate Administrator" means that staff person designated by the Mayor to perform the duties of the Rate Administrator prescribed by this Chapter.

Section 3. Rate Regulation Authorized. Section 5.60.280

of the Redmond Municipal Code is hereby amended to read as follows:

5.60.280 Rates.

(a) Whenever requested to do so by the City and within such time period as the City may require, the Franchisee shall file with the City a complete schedule of all rates to be charged to subscribers, including but not limited to:

- (1) Installation of basic service.
- (2) Charges for basic service.
- (3) Installation of premium service.
- (4) Charges for premium service.
- (5) Installation of FM service.
- (6) Charges for FM service (including rates for FM service as a primary service).
- (7) Charges for relocation and reconnection.
- (8) Converter charges.
- (9) Charges for parental control keys.

(10) Installation charges for additional outlet service.

(11) Charges for additional outlet service.

(12) Discounts for multiple premium service.

(13) Extended Drop installation charges.

(14) All other charges proposed.

(b) Rates shall be regulated and approved by the City pursuant to the authorization granted by FCC Regulations and according to the procedures set forth in Sections 5.60.540 - .660.

Section 4. Rate Regulation Procedures Added. New

Sections 5.60.540 - 660 are hereby added to the Redmond Municipal Code to read as follows:

5.60.540 Designation of Staff Contact. In accordance with the FCC Rate Regulations, the Mayor shall designate an appropriate staff person to execute on behalf of the City and file with the FCC such certification forms or other instruments that are now or may hereafter be required pursuant to the FCC regulations in order to enable the City to regulate Basic Service Rates and other related charges. The staff person so designated shall be known as the Rate Administrator.

5.60.550 Adoption of FCC Regulations. The regulation of Basic Service Rates and Charges of the Franchisee shall be undertaken in accordance with adopted FCC Rate Regulations as the same exist or are hereafter amended. Such regulations are generally codified at 47 Code Federal Register §§ 76.900-985. In the event of conflict between any City procedure or these ordinances and the Regulations, such Regulations shall control.

5.60.560 Rates Subject to Regulations. The City Council has been certified to regulate Basic Service Rates which include the rate for

service for the provision of all local broadcast signals as well as the public, educational and governmental access channels required pursuant to FCC regulation and any other programming services that the Franchisee chooses to include in its basic service rate along with:

- A. All equipment and installation used to receive basic service, even if that equipment is also used to receive other regulated and/or unregulated services;
- B. The installation and monthly use of connections for additional receivers.

5.60.570 Initial Application. Following the written notice provided to the Franchisee, the cable operator shall have thirty (30) days after receipt of such notice to file its rate justification with the franchising authority on the appropriate FCC form. The initial rate schedule shown on the form shall be considered by the City Council within thirty (30) days after receipt of the form. The Council may make a rate determination or issue a brief order within the thirty (30) day period notifying the Franchisee that the City Council requires additional time to make a rate decision. If the City Council requires additional time to make its rate decision, it may have up to ninety (90) additional days to review a rate request based upon FCC benchmark regulation and up to one hundred and fifty (150) additional days to review a Cost-of-Service showing. The time limits provided by this Section may be extended pursuant to applicable FCC rules.

5.60.580 Future Rate Increases. Future requests for rate increases shall be considered in a timely fashion in accordance with FCC regulation.

5.60.590 Rate Decisions. If the City Council determines that any proposed rate is unreasonable, it may:

- A. Order a reduction in such rate or rates;
- B. Prescribe a reasonable rate;

- C. Order a rate refund; or
- D. Impose fines or monetary forfeiture to the extent permitted under state law.

Such decisions shall be based solely on the record before the City Council.

5.60.600 Notification of Decision. The City Council's decision shall be in writing mailed to the Franchisee and any interested party who has filed a written objection and shall be posted and otherwise made available to the public through the office of the City Clerk whenever the City Council:

- A. Disapproves an initial rate for Basic Service or for related equipment or installation of services;
- B. Disapproves a request for a rate increase; or
- C. Approves a request for an increase over the objections of an interested party.

A written decision shall not be required for approval of an unopposed existing or proposed rate for Basic Service or equipment.

5.60.610 Notification of Filing and Hearing. Upon receipt of a request for establishment of initial rate, benchmark rate, or future rate increases, the City Clerk shall notify the City Council of the request. The Council shall set a public hearing on the request to be held at least thirty (30) days from the date the Council acts to set the hearing. The City Clerk shall cause notice of the filing and the upcoming hearing to be published in the City's official newspaper at least twenty (20) days prior to the hearing. Copies of the filing shall be maintained in the office of the City Clerk. Any interested party may file a written objection to the proposed increase, provided such written objections shall be filed in the Office of the City Clerk ten (10) calendar days prior to the date set for hearing and the notice of the hearing shall so state. In addition to the hearing notice to be published by the City Clerk, the Franchisee

shall also provide a notification of the pending rate or rate increase request on its public access or other channel devoted to public notification.

5.60.620 Hearing Procedure: Benchmark Rate.

A. Whenever the Franchisee shall propose adoption of an initial rate, benchmark rate or future rate increases, the following procedures shall apply to the public hearing:

1. Formal rules of evidence shall not apply to the public hearing and it shall be conducted in accordance with normal Council hearing procedures. Council shall afford the Franchisee and all interested persons a reasonable opportunity to be heard.
2. If the Franchisee has submitted a rate schedule based on benchmark formulas and calculations, the City Council may not prescribe a rate lower than that permitted in the FCC Benchmark Rate Tables or more than ten percent (10%) less than the Franchisee's September 30, 1992 per channel rate, whichever is higher.
3. The Franchisee shall first make its presentation, followed by the presentation of the City staff entering its analysis and recommendations, if any. Then all interested parties who have filed an objection to the rate increase shall be heard. Finally, members of the public shall be heard. The staff should be given a brief opportunity to respond and the Franchisee may conclude with rebuttal, addressing new information raised by the staff, interested parties or the public. The Mayor shall set reasonable time limits for

the presentation of the respective parties, provided that the time established for individual public comments may be limited to three (3) minutes per person.

5.60.630 Notice and Hearing Procedures: Cost of Service Showing. The general hearing procedures outlined in Section 5.60.620 shall apply to an application by the Franchisee for a Basic Service Rate above the benchmark rate provided that:

- A. The Franchisee shall submit a Cost-of-Service showing prepared in accordance with FCC regulations sufficient to support a finding that the rates are reasonable. It shall make ten (10) copies available in conjunction with its initial application for public inspection and use at the hearing.
- B. If the Franchisee submits a Cost-of-Service showing, that showing supersedes any benchmark/rollback provisions established by the FCC. The City Council may prescribe whatever rate it finds justified by the Cost-of-Service showing, utilizing generally-accepted accounting principles, utility rate regulation principles, and the review of criteria in 47 CFR §§ 76.922 to 76.925 as the same exist or are hereafter amended, even if that rate is below the system's benchmark and more than ten percent (10%) below the system's September 30, 1992 rates.

5.60.640 Refunds. The City may order the Franchisee to refund to subscribers that portion of previously paid rates determined to be unreasonable. However, the Franchisee's liability for refunds is generally limited to a one-year period and shall not go beyond September 1, 1993, the effective date of the FCC rules.

5.60.650 Use of Administrative Hearing Officer. The City Council may, in its sole discretion, elect to have its hearing conducted by its Hearing Examiner. In the event

that a hearing is conducted by the Hearing Examiner, the Hearing Examiner shall present his or her proposed findings of fact, conclusions and recommendations to the City Council. Prior to adoption of such findings, the City Council shall hold a public hearing at which the Franchisee, any interested parties who filed an objection to the rate increase, and any member of the public may be heard. The purpose of this public hearing will be for the Franchisee, interested parties and the public to comment on the proposed findings and recommendations and shall not itself be an evidentiary hearing. Having heard the comments of the Franchisee, interested parties and the public, the City Council may adopt the recommendations of the Hearing Examiner, reverse or modify the Hearing Examiner's determination based upon the record before the Hearing Examiner, or remand the matter back to the Hearing Examiner for the taking of further evidence and testimony.

5.60.660 Appeals. An appeal from any order or decision of the City Council regarding any rate increase shall be solely to the FCC pursuant to 47 CFR § 76.944 as the same exists or is hereafter amended. Such appeal shall be filed within thirty (30) days. Appeals from other decisions of the City Council regarding the franchise shall be filed in the King County Superior Court within ten (10) business days of the date notice of decision is issued. Nothing herein shall be interpreted to limit the right of any citizen or the City to file a complaint with the FCC regarding any Franchisee activity in accordance with 47 CFR § 76.953 et seq.

Section 5. Duties of Rate Administrator. The Rate Administrator is hereby authorized and directed to provide notice to any Franchisee holding a franchise from the City of Redmond that the City has been authorized to regulate the rates the system charges for Basic Cable Service and all equipment, installation and other services used by Basic Service and that the City has adopted

the requisite rules regarding rate regulation by the adoption of this ordinance.

The Rate Administrator shall further instruct the Franchisee that, within thirty (30) days of receipt of a copy of this ordinance the Franchisee shall file a completed FCC Form 393 justifying the current rates for Basic Service and related equipment, installation and other services.

Section 6. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

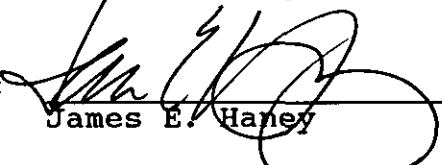
APPROVED:


MAYOR, ROSEMARIE IVES

ATTEST/AUTHENTICATED:


CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 
James E. Haney

FILED WITH THE CITY CLERK: 03-27-95
PASSED BY THE CITY COUNCIL: 04-04-95
PUBLISHED: 04-12-95
EFFECTIVE DATE: 04-17-95
ORDINANCE NO. 1830