

TOWN OF ST. JOHN, LAKE COUNTY, INDIANA

ORDINANCE NO. 952

AN ORDINANCE AUTHORIZING THE TOWN OF ST. JOHN TO ADOPT THE CABLE TELEVISION RATE REGULATIONS AS ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION.

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 and the equipment necessary to provide the basic tier of services of cable subscribers; and

WHEREAS, the Town Council of the Town of St. John, Lake County, Indiana (TOWN), 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 (FCC) pertaining to regulation of cable television rates; and

WHEREAS, the Town has applied for Certification to the FCC 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 FCC 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 Town seeks to comply with the requirements set forth by the FCC for certification in order to regulate the basic service tier of cable television services and equipment necessary to provide basic service; and

WHEREAS, the Town Council of the Town of St. John, Lake County, Indiana, has determined that it is in the best interests of the Residents of the Town to adopt the Cable Television Rate Regulations as established by the Federal Communications Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF ST. JOHN, LAKE COUNTY, INDIANA:

SECTION ONE:

A. That the Town Council does hereby adopt the Rules and Regulations set forth by the Federal Communications Commission pursuant to Section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C.543(b)) for the

review of the basic service tier of Cable Television Services and Equipment necessary for the provision of such service tier.

B. 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, education, 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 said basic tier of service 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.

#### SECTION TWO:

A. The Town shall provide the Grantee of the Cable Television Franchise, the Public, and Interested Parties with an opportunity to be heard at a Public Hearing before the Town Council, upon Fourteen (14) days written notice to the Grantee of the Cable Television Franchise, of the time and place of the Public Hearing, provided further that said notice shall indicate that the purpose of the Public Hearing is to receive the views of the Grantee and Interested Parties on issues pertaining to regulation of the basic service tier of cable television services and equipment necessary to provide said basic tier of service; and provided further that notice of said Public Hearing shall be published in a local newspaper of general circulation at least Ten (10) days before the date of the Public Hearing, and provided further, that an Agenda for said Public Hearing shall be posted in a public place at the St. John Town Hall and Clerk-Treasurer's Office at least Seven (7) days prior to the Public Hearing.

B. Upon the adoption of this Ordinance, and the Certification of the Town of St. John by the Federal Communications Commission, the Town shall immediately notify the cable operator by Certified Mail, Return Receipt Requested, that the Town intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Television Consumer Protection and Competition Act of 1992. Upon receipt of said notice by the Town, the Cable Operator shall, within Thirty (30) days, file with the Town, its current rates for the basic service tier and associated equipment along with any additional documentation justifying the reasonableness of its rates.

#### SECTION THREE:

A. That the Town of St. John, Lake County, Indiana, shall

establish that the period for review of rates of the basic service tier of cable television services and the equipment necessary to provide said basic tier of services shall be Thirty (30) days from the submission by the Grantee of the Cable Television Franchise of Federal Communications Commission Form 393. If the Town Council takes no action within Thirty (30) days from the date the cable operator files its basic cable rates with the Town, the proposed rates will continue in effect.

B. In the event that additional time for review of the Federal Communications Commission Form 393 submitted by Grantee is necessary, the Town Council, or its Designee, shall issue a brief written order prior to the end of the Thirty (30) day review period, with a copy of said Order to be sent by Certified Mail, Return Receipt Requested, to the Grantee, providing for an additional Ninety (90) day period for review of rates of the basic service tier and the equipment necessary to provide said basic tier of service. During the extended review period and before taking action on the proposed rate, the Town Council shall hold at least One (1) Public Hearing in which Interested Parties may express their views and record objections.

#### **SECTION FOUR:**

A. That the Town shall establish that the period for review of the basic service tier of Cable Television services and the equipment necessary to provide said basic tier of services shall be Ninety (90) days from the submission by the Grantee of information and forms prescribed by the Federal Communications Commission for a showing of cost-of-service, as defined by the Federal Communications Commission.

B. In the event that additional time for review of the cost-of-service showing submitted by the Grantee is necessary, the Town Council, or its Designee, shall issue a brief written Order prior to the end of the Ninety (90) day review period with a copy of said Order to be sent by Certified Mail, Return Receipt Requested, to the Grantee, providing for an additional One Hundred Fifty (150) day period of review of rates of the basic service tier and the equipment necessary to provide said basic tier of service. During the extended review period, and before taking action on the proposed rate, the Town Council shall hold at least One (1) Public Hearing in which Interested Parties may express their views and record objections.

#### **SECTION FIVE:**

A. Upon completion of its review of the proposed rates for the basic service tier of Cable Television Services and the equipment necessary to provide said basic tier of service, the Town Council shall adopt its decision by formal Resolution. Said Resolution shall indicate the reasons for the decision. Upon passage of the Resolution, the Town Council shall publish the Resolution in pamphlet form.

B. In the event that the Cable Operator's proposed rates exceed the reasonable rate standard as established by the FCC in its rules and regulations referenced and incorporated herein, the Town Council may order the rates reduced by rollbacks or refunds to subscribers, in the manner so prescribed by the FCC.

**SECTION SIX:**

In considering information provided by the Grantee as a part of the review of the rates for the basic service tier of cable television services and the equipment necessary to provide said basic tier of service, the Town Council shall not disclose to the Public the content of any records, forms, reports, calculations, or other documents as provided which the Grantee has indicated as being of a proprietary interest or constituting a trade secret in nature. The Town Attorney shall determine the validity of the Grantee's claim of proprietary interest or trade secrecy in accordance with the applicable provisions of the Indiana Public Records Law, as amended from time to time.

**SECTION SEVEN:**

The Town Attorney, or his Designee, is authorized to execute on behalf of the Town, and file with the FCC, such Certification forms or other instruments as are now, or may hereafter be required by the FCC Rate Regulations in order to enable the Town to regulate Basic Service Rates and Charges.

**SECTION EIGHT:**

The Town Council may order the Cable Operator to refund to subscribers a portion of previously paid rates under the following circumstances:

- A. A portion of the previously paid rates have been determined to be in excess of the permitted basic cable service tier charge or above the actual cost of equipment; or
- B. The Cable Operator has failed to comply with a valid Rate Order issued by the Town Council.

**SECTION NINE:**

Failure by the Cable Operator to comply with the terms and conditions established by this Ordinance, including its attachment hereto, as amended from time to time, shall constitute a violation of St. John Ordinance No. 583 and Ordinance Number 912 (Cable Television Franchise Ordinance), each as amended from time to time. Penalties for any such Violations are subjection to the General Penalty Provisions of the Town Code of the Town of St. John, Lake County, Indiana, as amended from time to time.

**SECTION TEN:**

That all existing Ordinances, Guidelines, Regulations, or parts thereof, in conflict with the provisions of this Ordinance, are hereby deemed null, void, and of no legal effect, and are specifically repealed.

**SECTION ELEVEN:**


If any section, clause, provision, or portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other section, clause, provision, or portion of this Ordinance.

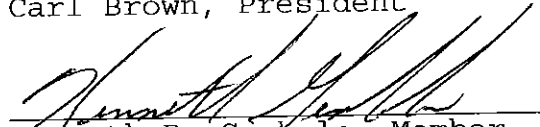
**SECTION TWELVE:**

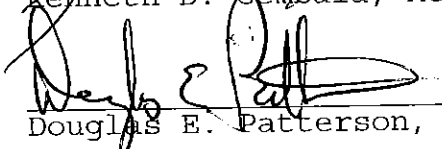
That this Ordinance shall take effect, and be in full force and effect, from and after its passage by the Town Council of the Town of St. John, and its publication in accordance with applicable laws.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF ST. JOHN, LAKE COUNTY, INDIANA, THIS 28 DAY OF February, 1994.

TOWN OF ST. JOHN, LAKE COUNTY,  
INDIANA, TOWN COUNCIL

  
\_\_\_\_\_  
Carl Brown, President

  
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Kenneth D. Gembala, Member

  
\_\_\_\_\_  
Douglas E. Patterson, Member

ATTEST:

  
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Judith L. Companik,  
Clerk-Treasurer