

ORDINANCE NO. 2003-8

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAZYNE, FLORIDA, AUTHORIZING THE FILING OF A CERTIFICATION WITH THE FEDERAL COMMUNICATIONS COMMISSION TO OBTAIN AUTHORITY TO REGULATE BASIC CABLE TELEVISION RATES AND ADOPTING ADMINISTRATIVE REGULATIONS CONSISTENT WITH THE FEDERAL COMMUNICATIONS COMMISSION'S REGULATIONS FOR SUCH RATE REGULATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 8AA, Article I of the Miami-Dade County Code (“County Cable Ordinance”) and the Board of County Commissioners of Miami-Dade County, Florida (“County”), and Florida law authorizes the Village of Key Biscayne (“Village”) to grant licenses to construct and to operate a cable system to provide cable service within the Village and thus the Village is a local franchising authority under federal law; and

WHEREAS, Adelpia Cable Communications (“Adelpia”) is currently occupying the Village’s public rights-of-way and operating a cable television system pursuant licenses granted by the Village and by the County, and

WHEREAS, it is the intent of the Village to exercise its authority as a local franchising authority to the fullest extent allowed by federal law, the Federal Communications Commission (“Commission”), and Florida law; and

WHEREAS, although federal and state law and the Village’s code allow cable competition, the Village is serviced by only one licensed cable provider, Adelpia, and therefore, the Village strives to assure that its residents are given the opportunity to receive high quality services at reasonable rates; and

WHEREAS, the Commission's regulation, 47 C. F.R. §76.910, provides the framework for cable television rate regulation; and

WHEREAS, pursuant to 47 C.F.R. §76.910(a), a franchising authority must be certified by the Commission to regulate the basic service tier and associated equipment of a cable system within its jurisdiction; and

WHEREAS, pursuant to 47 C.F.R. §76.910(b), to be certified, the franchising authority must file with the Commission a Certification providing that:

1) The franchise authority will adopt and administer regulations with respect to the rates for basic service tier that are consistent with the regulations prescribed by the Commission for regulation of the basic service tier; and

2) The franchise authority has the legal authority to adopt and the personnel to administer such regulations; and

3) Procedural laws and regulations applicable to rate regulation proceedings by such authority provide a reasonable opportunity for consideration of the views of interested parties; and

4) The cable system in question is not subject to effective competition; and

WHEREAS, pursuant to County Cable Ordinance, Section 8AA-61.01, the Village has the legal authority to regulate basic service tier rates; and

WHEREAS, Adelphia filed a Petition with the Commission to obtain a declaration that it is subject to effective competition and therefore, no longer subject to the Commission's rate regulations, which the Village has opposed; and

WHEREAS, the Village Attorney filed the Certification described above with the Commission on May 2, 2003, and served this on Adelphia on the same day, and

WHEREAS, for the Certification to remain effective, the Village must adopt regulations within 120 days of the filing of the Certification that are (i) consistent with the Commission's rate regulations, and (ii) provide a reasonable opportunity for consideration of the views of interested parties; and

WHEREAS, the Village Council finds that it would be in the public interest to regulate the basic service tier and associated equipment of a cable system within its jurisdiction and to delegate such authority to the Village Manager.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Certification Authorized. That the Village Council authorizes the Village Attorney, retroactive to May 2, 2003, to file the Certification with the Commission for the authority for the Village to regulate basic cable television rates.

Section 2. That the Village hereby adopts Administrative Regulations for setting the rates for the basic service tier, attached hereto as Exhibit "A", that are consistent with the Commission's regulations for regulation of the basic service tier, and the Village will administer such Administrative Regulations accordingly.

Section 3. That the Village Attorney is directed to notify Adelphia that the Village has adopted the aforementioned Administrative Regulations.

Section 4. Authority. That the Village Manager and Village Attorney are authorized to take any and all action necessary to implement this Ordinance.

Section 5. Inclusion In The Code. That it is the intention of the Village Council that the provisions of this Ordinance shall become and made a part of the Village Code; that the sections

of this Ordinance may be renumbered or relettered to accomplish such intentions; and the word “ordinance” shall be changed to “Section” or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption at second reading.

PASSED AND ADOPTED on first reading this 26th day of August, 2003.

PASSED AND ADOPTED on second reading this 9th day of September, 2003.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

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EXHIBIT "A"
**ADMINISTRATIVE REGULATIONS OF THE VILLAGE OF KEY BISCAYNE FOR
REGULATION OF BASIC CABLE SERVICE AND EQUIPMENT RATES**

In accordance with the Federal Communications Commission ("FCC") rules for rate regulation as established herein, these Administrative Regulations of the Village of Key Biscayne for Regulation of Basic Cable Service and Equipment Rates ("Administrative Regulations") establish the original local rules for rate regulation. These Administrative Regulations clarify steps necessary for all parties to comply with new FCC rules and applicable local rules and establish timelines for administrative review and necessary action regarding the regulation of rates.

The Administrative Regulations set forth below are intended to be consistent with FCC regulations and applicable local law governing the regulation of basic cable service and equipment rates. The Village is aware that the FCC is currently re-examining its rate rules, however, these procedures will be interpreted so that they are consistent with FCC regulations, and applicable local regulations, as if those regulations were set out here in full. A licensee is prohibited from engaging in any activity that is prohibited under FCC rules, as if those rules were set out here in full. If any parts of these Administrative Regulations are pre-empted because of changes in FCC rules, changes will be incorporated herein, and other provisions will remain in force. The Village may also amend the Administrative Regulations as appropriate to clarify the rules for regulating rates.

SECTION 1. GENERAL RULES FOR RATE REGULATIONS

1. Once basic rate regulation has begun, a licensee must initially justify its existing rates and thereafter justify any increases or new rates for basic service and equipment in accordance with FCC rules.

(a) Subject to FCC rules governing burden of proof, it is the licensee's responsibility to show that its rates are reasonable.

(b) A licensee must justify rates for basic service and equipment for all classes of customers.

(c) Except as FCC rules may otherwise provide, once a licensee has been notified by the Village that its rates are subject to regulation, it may not increase rates for basic service or equipment without the prior approval of the Village except as provided by FCC rule regulations. This requirement applies in all cases, including announced increases rates that were not implemented before rate regulation began.

2. Rate filings proposing and supporting rate increases must be filed with the Village as specified in 47 C.F.R. §76.933. This requirement does not eliminate or alter any other local requirement for notices.

3. The licensee is required to notify the Village in writing of intended rate changes at least sixty

(60) days prior to the date the change is proposed to become effective. This notice is separate and different from a formal rate filing, and is not limited to regulated services.

4. If a licensee is required to produce information it believes is proprietary, it 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 may be granted if the Village Manager 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, and Florida law.

5. The Village Manager is authorized to take all actions consistent with these Administrative Regulations.

SECTION 2. SUBMISSION OF RATES FILINGS

1. A rate filing shall be considered filed for review on the date the rate filing and all required copies (including all supporting materials) are received by the Village and Village Manager.

(a) Three copies of the rate filing must be submitted to the Village Manager.

(b) One copy of the rate filing must be submitted to the Village.

(c) If a licensee claims that any material in the filing is proprietary, that material must be stamped "proprietary", and separated from other material in each of the four copies of the filing. Each page of the proprietary information must contain a page number and any other description needed to show where it belongs within the public portion of the filing. The public portion of the filing must show each place where proprietary information was omitted.

(d) In addition, a fifth complete copy that does not omit the proprietary information must be submitted to the Village Manager if the operator claims its filing contains proprietary information. This copy must be clearly marked on the first page "Contains Proprietary Information".

2. Except as inconsistent with FCC Rules, every filing must include the following components.

(a) A cover letter stating whether the filing justifies existing rates or proposes an increase in rates. The letter must identify any proposed rate that is based, in whole or in part, upon cost of service, inflation adjustment, or alleged increase in external costs. The cover letter should also contain a brief narrative description of any proposed changes in rates or in services.

(b) Copies of all applicable FCC forms, which must be correctly completed.

(c) The pages of each rate filing must be sequentially numbered.

(d) If different rates are proposed for basic service for different classes of subscribers, the filings must show that the classifications and the differences in rates charged are reasonable and consistent with federal law. Changes in bulk rates must also be reported.

SECTION 3. INITIAL VILLAGE MANAGER REVIEW AND PUBLIC COMMENT

1. Public comment by interested parties is allowed and encouraged. After receiving a rate filing, the Village Manager may issue an appropriate notice stating that the filing is available for public review and written comment by interested parties and giving deadlines for the submission of those comments. The Village Manager may also accept any informal letters and telephoned comments or complaints from licensee's subscribers as public comment.

2. Based on written comments, subscriber comments, the licensee's filings and responses, and applicable federal rules or benchmarks, the Village Manager may issue a preliminary written administrative order regarding the rate filing.

3. The administrative order shall describe the reasons for the Village Manager's decision and actions as required under FCC rules, with recommendations for:

- (a) approval of the rate; or
- (b) prescribing a different rate; or
- (c) tolling the proposed rates in whole or in part; or
- (d) an additional period of time for review and action on the filing; or
- (e) any combination thereof as appropriate under FCC rules.

4. The Village Manager's preliminary decision will be submitted in time for the Village Clerk to place it on the agenda and for the Village to take formal action as specified in 47 C.F.R §76.922.

SECTION 4. VILLAGE COUNCIL REVIEW AND ACTION

1. After review of the supplementary information, public comments, and Village Manager's recommendations, the Village Council shall render a written order, consistent with 47 C.F.R. §76.933, which may be in any lawful form:

- (a) approving the proposed rates in whole or in part;
- (b) denying the rate in whole or in part;
- (c) approving a rate different from the one proposed by the licensee;
- (d) allowing the rates to go into effect, subject to further review;
- (e) any combination thereof;

2. The Village's written orders will be issued within time limits established by the FCC rules.

SECTION 5. LICENSEE'S DUTIES

1. A licensee must implement remedial requirements within thirty (30) days of the date an order issues mandating a remedy.
2. Within ninety (90) days of the date an order mandating a remedy is issued, a licensee must file a certification, signed by an authorized representative of the cable company stating whether the licensee has complied fully with all provisions of the relevant order.
3. It is each licensee's responsibility to keep books and records of account.
4. It is each licensee's duty to submit as complete a filing as possible.
5. A licensee must respond to requests for information within deadlines established by the Village Manager.
6. Because federal law limits the time available for an initial response to a rate filing by a licensee, a licensee must be prepared to respond promptly and within no more than fourteen (14) days to information requests made by the Village Manager.

SECTION 6. PROVISIONS GENERALLY APPLICABLE TO RATE ORDERS

1. Every rate order shall be made available to the public and the licensee. To the extent required by FCC rules, orders must be in writing and explain the bases for a decision. In addition to the rate order's publication in the Village as part of the Village agenda, the Village Manager may also publish a notice (in compliance with 47 C.F.R §76.936(b)) stating that the order has been issued and is available for review.
2. The Village Manager or Village Council may take any action permitted under applicable law, including but not limited to setting rates and ordering refunds.
3. To the extent required by FCC rules, any order prescribing a rate (i.e. setting a rate different from the one proposed) must explain why the licensee's proposed rate was unreasonable and why the prescribed rate is reasonable.
4. Before such a rate is prescribed or a refund to subscribers ordered, a licensee shall be given notice and opportunity to comment on the prescribed rate as described above.