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§ 892-1.1 Applicability

The rules contained in this Subpart apply to all amendments of cable television franchises; provided, however, that any amendment that would have the effect of extending the duration of a franchise shall be deemed a renewal and shall be subject to the provisions of Part 891 of this Title.

§ 892-1.2 Commencement of amendment process

Any cable television company or municipality proposing to amend a cable television franchise shall commence the formal amendment process by written notice sent to the other party and to the commission. The notice shall contain the text or set forth the substance of the proposed amendment.

§ 892-1.3 Public hearing requirements

(a) No cable television franchise may be amended except after a public hearing on notice to the public in accordance with state and local laws applicable to public hearings generally. This provision shall not be deemed to require an additional hearing in those cases in which a hearing is otherwise required by applicable provisions of law.

(b) In addition to satisfying other applicable requirements, the notice of public hearing shall indicate the subject of the proposed amendment and state that a copy of the proposed amendment is available for public inspection at the office of the municipal clerk prior to the hearing. The notice shall also state that the amendment, if approved by the municipality, may not take effect without the prior approval of the commission.

§ 892-1.4 Commission approval required

No amendment to any cable television franchise shall be effective without the prior approval of the commission upon application in accordance with the provision of section 897.3 of this Title, unless the order shall otherwise provide. The effective date of the amendment shall be the date the commission issued an order.

§ 892-3.1 Intent and purpose

(a) Section 623 of the Cable Communications Policy Act of 1984, as amended by section 3 of the Cable Television Consumer Protection and Competition Act of 1992, and codified in 47 *USC section 543*, provides for the regulation by State and local franchising authorities of the rates charged for basic cable service by cable television companies not subject to effective competition. Section 623 has been implemented by rules and regulations adopted by the Federal Communications Commission and published at 47 *CFR sections 76.900 et seq.* The purpose and intent of this Subpart is to provide rules applicable to the regulation of cable service in the State of New York by municipalities and the commission consistent with the Federal rules and regulations in 47 *CFR sections 76.900 et seq.*

(b) This subdivision shall apply to all references to the Code of Federal Regulations (CFR) contained herein. The applicable provisions of the CFR are available for public inspection and copying at the offices of the Department of Public Service, Three Empire State Plaza, Albany, New York 12223 and the New York State Department of State located at 41 State Street, Albany, NY 12207. 47 *CFR sections 76.900 et seq.* were published in the Federal Register, volume 58, No. 97, May 21, 1993 at pp. 29753-29768, together with 47 *CFR section 0.459* were published by the United States Government Printing Office, Superintendent of Documents, Washington, DC 20402.

§ 892-3.2 Definitions

(a) Basic cable service, or basic service, or basic service tier shall mean the tier of cable service that shall include, as a minimum, 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, educational and governmental channels required by the franchise or commission rules and may include any additional video programming signals as determined by a cable television company.

(b) Cable programming service shall mean any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) video programming carried on the basic service tier as defined in this section; or

(2) video programming offered on a pay-per-channel or pay-per-program basis; or

(3) a combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

(i) consists of commonly identified video programming; and

(ii) is not bundled with any regulated tier of service.

(c) Commission shall mean the New York State Public Service Commission.

(d) Equipment or associated equipment shall mean all equipment in a subscriber's home that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service, including, but not limited to, converter boxes, remote control units, connections for additional television receivers and other cable home wiring, and the installation or rental thereof.

(e) FCC shall mean the Federal Communications Commission.

(f) Participant shall include any person who has submitted written comments or sworn testimony in a ratemaking proceeding. In addition, the commission shall be deemed a participant in any ratemaking proceeding conducted by a municipality and a municipality shall be deemed a participant in any ratemaking proceeding conducted by the commission concerning a cable television company franchised to provide cable service in such municipality. Pursuant to *47 CFR section 76.944(b)* (see: section 893-3.1) a participant may file an appeal of a decision of a municipality or the commission with the FCC within 30 days of release of the written decision described in section 892-3.6(f) and (g) of this Subpart.

(g) Ratemaking proceeding shall mean a proceeding for the review of rates for basic cable service and associated equipment conducted by the commission or a municipality after certification pursuant to *47 CFR section 76.910* and after the written notice described in *47 CFR section 76.910(e)(2)* has been served upon a cable television company.

(h) Relevant franchising authority shall mean both the municipality in which the cable television company provides cable service and the commission.

§ 892-3.3 Effective competition

Only the rates for basic cable service of a cable television system that is not subject to effective competition as defined in *47 CFR section 76.905* may be regulated by a municipality or the commission. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.

§ 892-3.4 Municipal election

(a) A municipality shall determine whether the rates charged for basic cable service and associated equipment by one or more cable television companies franchised to provide cable service therein will be regulated in accordance with the provisions of *47 CFR sections 76.900 et seq.* Pursuant to this section, a municipality may:

(1) elect to undertake such rate regulation itself, or jointly in conjunction with one or more municipalities served by the same cable television system; or

(2) elect to have the commission undertake such rate regulation; or

(3) elect that no such regulation is warranted at the time the initial election is made.

A municipality shall make an initial election pursuant to this section on or before February 28, 1994, provided, however, that if no election is made by such date, the commission may undertake such rate regulation or other action as may be necessary consistent with the public interest.

(b) A municipality may elect to undertake the regulation of rates for basic cable service and associated equipment charged by any cable television company franchised to provide cable service therein in accordance with 47 CFR sections 76.900 et seq. subject to conditions as follows:

(1) the municipality shall adopt a resolution at a regular or special meeting thereof, which resolution shall include:

(i) the name of the cable television franchisee to be regulated; and

(ii) a statement that the municipality possesses the personnel and resources necessary to administer the regulations in 47 CFR, sections 76.900 et seq. or, alternatively, if a municipal official is vested with authority to act on behalf of a municipal legislative body in matters pertaining to cable television rates, by action of said official in the manner prescribed for the exercise of such authority, provided said action shall identify the cable television franchisee to be regulated and state the existence of the personnel and resources necessary to administer said FCC regulations;

(2) the municipality shall serve a certified copy of said resolution or a true copy of an action on delegated authority on the commission within five days of the date thereof;

(3) the municipality shall also serve promptly upon the commission:

(i) a copy of its request for certification as filed with the FCC and copies of oppositions, if any, to such request;

(ii) notice that certification has been obtained or, alternatively, a copy of any response from the FCC to the contrary; and

(iii) a copy of the notice served upon the cable television franchisee initiating regulation as required by 47 CFR section 76.910(e)(2).

(c) A municipality may elect to have the commission undertake the regulation of rates for basic cable service and associated equipment charged by any cable television company franchised to provide cable service therein in accordance with 47 CFR sections 76.900 et seq. subject to conditions as follows:

(1) the municipality shall adopt a resolution at a regular or special meeting thereof which resolution shall include:

(i) the name of the cable television franchisee to be regulated; and

(ii) a statement that the municipality chooses to have the commission undertake such regulation;

(2) such election shall be effective on the date that the certified copy of said resolution is received by the commission.

(d) A municipality may elect not to undertake regulation in accordance with 47 CFR sections 76.900 et seq. subject to conditions as follows:

(1) The municipality shall adopt a resolution at a regular or special meeting thereof which resolution shall include:

(i) the name of the cable television franchisee; and

(ii) a statement that the rates charged by said franchisee for basic service and associated equipment shall not be subject to regulation at such time but that the municipality reserves the right to alter said election at any time.

(2) The municipality shall serve a certified copy of said resolution on the commission within five days of the date of adoption.

(3) An election not to regulate rates may be changed at any time.

(4) A municipal determination that rates shall not be subject to regulation in accordance with 47 CFR sections 76.900 et seq. shall be subject to review by the commission pursuant to the standards set forth in section 222 of the public service Law.

(e) An election made by a municipality before the 30th day following the effective date of this Subpart shall be presumed valid and shall remain in effect until altered in accordance with section 892-3.5 of this Subpart.

A municipality may, at any time, alter an initial election in the same manner required for such initial election, provided, that it shall provide prompt notice thereof to the commission and to any cable television company affected thereby and further provided that in any case where the commission regulates rates, any such change shall not take effect during the pendency of a ratemaking proceeding.

§ 892-3.6 Procedures

(a) Every ratemaking proceeding shall be conducted and decided in accordance with the regulations of the FCC and the provisions of this section not inconsistent therewith; provided, however, that a municipality which elects to regulate rates itself, or jointly with one or more other municipalities, may adopt and administer additional regulations with respect to the rates for the basic service tier that are consistent with the regulations of the FCC and may adopt additional procedures applicable to the submission and consideration of views of interested parties. A municipality which adopts such additional regulations or procedures shall file a copy thereof with the commission.

(b) A ratemaking proceeding shall be deemed commenced:

(1) when a cable television company is served by a municipality or the commission with the written notice described in *47 CFR section 76.910(e) (2)*; or

(2) after such written notice has been served on a cable television company, and provided that certification remains in effect, upon receipt by a municipality or the commission of a notice of any proposed increase or decrease in the rates for basic cable service and associated equipment.

(c) In accordance with *47 CFR section 76.930*, a cable television company shall file its schedule of rates for basic cable service and associated equipment with the municipality and the commission:

(1) within 30 days of receiving such written notice or by November 15, 1993, whichever is later; or

(2) at least 30 days prior to the effective date of any proposed increase.

Such rates shall be filed on forms, or in the manner, as may be prescribed by the FCC. In either case, the cable television company shall cause to be published in a newspaper of general circulation in the municipality, a notice that said ratemaking proceeding has been commenced; that a copy of the schedule of rates will be available for public inspection during normal business hours at the office of the clerk of the municipality and at the commission; and that interested parties may submit written comments to the municipality or the commission, as the case may be, on or before a specified date which shall not be later than the 20th day after said schedule of rates is filed by the cable television company. Such notice shall be published at least 15 days before the due date for comments.

(d) Promptly upon receipt of said schedule of rates, a municipality that has chosen to undertake rate regulation in accordance with *47 CFR sections 76.900 et seq.* shall ensure that a public meeting is scheduled to occur within 30 days of the date the cable company files its schedule of rates on applicable FCC forms and may schedule a public hearing for the purpose of receiving public comment on said rates. The authority to schedule said hearing may be delegated to the clerk or other municipal official by the municipality. Notice of such hearing shall be published at least five days before the date of said hearing. In the event that the municipality determines pursuant to *47 CFR section 76.933* to extend the time for review of rates beyond 30 days, it shall provide at least one additional opportunity for the submission of comments. The costs of publication of all notices shall be borne by the cable television company.

(e) When filing or submitting financial information, a cable television company shall certify the accuracy of such information; provided, however, that certification may be made by an officer of the cable television company. A cable television company may be required to produce proprietary information provided, however, that procedures analogous to those set forth in *47 CFR section 0.459* regarding requests for confidentiality shall be applied by the municipality or the commission.

(f) A determination of rates shall be made at a public meeting and shall be embodied in a written decision whenever such determination:

(1) disapproves an initial rate;

(2) disapproves a request for a rate increase in whole or in part; or

(3) approves a request for an increase in whole or in part over the objection of a participant.

(g) Every written decision must include at a minimum:

(1) the date the ratemaking proceeding was commenced;

(2) a copy of each public notice described in this section;

(3) a list of the participants in the ratemaking proceeding;

(4) a complete description of each rate approved or disapproved and the effective date thereof;

(5) whether a rate reduction or rate refund is being ordered and, if so, the amount of the reduction or refund;

(6) the effective date of the rates approved and the amount of reductions or refunds, if any; and

(7) a statement that the decision was made in accordance with applicable Federal standards and the regulations contained in this Subpart.

(h) Whenever a written decision is issued, copies of the text shall be provided to all participants in the proceeding and shall be made available to the public. Notice of the issuance of a written decision and the availability thereof shall be published in a newspaper of general circulation in the affected municipality. The cable television company shall bear the costs of such notice.

(i) In addition to the foregoing, the commission shall not enter an order prescribing any rate unless:

(1) it shall have first caused a notice of the rates proposed by a cable television company to be served on each municipality wherein said company provides service and shall have provided each municipality with a reasonable period of time consistent with the applicable Federal procedure to file comments on the proposed rates; and

(2) in the event it determines pursuant to *47 CFR section 76.933* to extend the time for review of rates beyond 30 days, it shall provide at least one additional opportunity for the submission of written comments by interested parties and may conduct a public hearing;

(3) in respect to so much of any rate or charge as shall be based upon franchise fees payable to a municipality or the cost of compliance with public, educational or governmental access requirements or any other requirements set forth in the municipal franchise agreement, it shall have provided the municipality with a reasonable opportunity consistent with time periods applicable to review and to comment upon the amount of such fees and costs.

§ 892-3.7 Notice of rate increases

(a) A cable television company shall provide written notice to subscribers of any increase in the rates for cable services at least 30 days before any proposed increase is effective. The notice to subscribers should include the name and address of the commission and the municipality.

(b) A cable television company shall provide written notice to the commission and the municipality at least 30 days before any proposed increase in the rates for cable services is effective.

§ 892-3.8 Notification of basic service tier availability

A cable television company shall provide written notification to subscribers of the availability of basic cable service by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification shall include the following information:

(a) that a basic service tier is available;

(b) the cost per month for the basic service tier; and

(c) a list of all services included in the basic service tier.

§ 892-3.9 Severability

If any provision of this Subpart or the application of such provision to any circumstances is held invalid for any reason whatsoever, the remainder of this Subpart or the application of the provision to other circumstances shall not be affected thereby.