

COUNCIL OF THE TOWN OF LA PLATA
Ordinance No. 05-16

Introduced By: Mayor Gene Ambrogio

Date Introduced: October 11, 2005

Amendments Adopted:

Date Adopted: March 14, 2006

Date Effective: March 30, 2006

1 **An Ordinance** concerning

2
3 **Cable Television**

4
5 **FOR** the purpose of removing certain cable television service standards and requirements from the Code
6 of the Town of La Plata and including such standards and requirements within the Cable Television
7 Franchise Agreement; correcting the terminology used to identify the Town of La Plata and the
8 Council of the Town of La Plata; and all matters generally relating thereto.

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11
12 **BY** repealing and reenacting with amendments
13 Chapter 82 – Cable Television
14 Sections 82-1 through 82-31
15 Code of the Town of La Plata
16 (1998 Edition and Supplements)

17
18 **BY** repealing and reenacting with amendments
19 Chapter 84 – Cable Television Rate Regulation
20 Sections 84-2, 84-3, 84-4, 84-5 and 84-6
21 Code of the Town of La Plata
22 (1998 Edition and Supplements)

23
24 **EXPLANATORY STATEMENT:** The Council of the Town of La Plata deems it desirable to
25 provide that certain cable television service standards and requirements be updated and included within the
26 Cable Television Franchise Agreement and be removed from the Town Code as the language describing
27 those standards and requirements in the Code is duplicative; except that the references to the authority of
28 the Town to grant and require cable television franchises shall remain.

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72 (3) All installations shall be made in accordance with good engineering practices and shall not interfere with
73 the use of public places by the public.

74 (4) The location and maintenance of a cable system shall not endanger the lives of persons, cause damage to
75 property or interfere with improvements by the town. The town may require a cable operator to remove or
76 relocate the operator's equipment, at the operator's expense, to avoid such endangerment, damage or
77 interference.

78 (5) A cable operator shall guard and protect any opening or construction in the streets or other public places
79 by the placement and maintenance of appropriate and adequate barriers, fencings or boardings. During
80 periods of dusk and darkness these barriers, fencings and boardings shall be delineated by warning lights
81 approved by the town.

82
83 B. In cases of disturbance of any street, sidewalk, alley, public way or paved area, the franchise holder shall,
84 at its own cost and expense and in a manner approved by the appropriate governmental authority, replace
85 and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work
86 involving such disturbance was done.

87
88 C. If, at any time during the period of the franchise, the town shall lawfully elect to alter or change the grade
89 of any street, sidewalk, alley or other public way, the franchise holder, upon reasonable notice by the town,
90 shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures
91 at its own expense.

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93 D. Any poles or other fixtures placed in any public way by the franchise holder shall be placed in such a
94 manner as not to interfere with the usual travel on such public way.

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96 E. The franchise holder shall, on the request of any person holding a building moving permit issued by the
97 town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary
98 removal or raising or lowering of wires shall be paid by the person requesting the same, and the franchise
99 holder shall have the authority to require such payment in advance.

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101 F. The franchise holder shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks
102 and public ways and places of the town so as to prevent the branches of such trees from coming in contact
103 with the wires and cables of the franchise holder, except that, at the option of the town, such trimming may
104 be done by it or under its supervision and direction at the expense of the franchise holder.

105
106 G. In all sections of the town where the cables, wires or other like facilities of public utilities are or are
107 hereafter placed underground, the franchise holder shall place its cables, wires or other like facilities
108 underground to the maximum extent that existing technology reasonably permits the franchise holder to do
109 so. In addition, the franchise holder shall remove its overhead cables, wires or other like facilities and
110 replace them with underground facilities when other utilities are required to do so within the Town of La
111 Plata.

112
113 **82-4 Effect of other ordinances.**

114 The franchise holder shall be subject to all ordinances in force or that may be hereafter enacted.
115

116 **82-5 Indemnification of town; insurance.**
117

118 A. The franchise holder shall hold the town harmless from any and all claims or damages as a result of this
119 franchise, including damages arising out of the construction, maintenance and operations of the CATV
120 system authorized herein.
121

122 B. Before starting construction, the franchise holder shall insure the town and the franchise holder with
123 regard to all damages mentioned above in the minimum amounts of one hundred thousand dollars
124 (\$100,000.) for bodily injury or death to any one (1) person, three hundred thousand dollars (\$300,000.) for
125 bodily injury or death resulting from any one (1) accident and fifty thousand dollars (\$50,000.) for property
126 damage resulting from any one (1) accident. Said insurance is to be provided by a recognized insurance
127 company authorized to do business in Maryland.
128

129 **82-6 Duty of franchise holder.**
130

131 The franchise holder shall, during the term of this franchise, operate facilities capable of developing a
132 regular service as provided in a franchise agreement. The television signals shall be of high-quality color and
133 monochrome, as transmitted, and will be consistent with the present state of the art. One (1) channel will be
134 reserved for television signals originated within the town. Locally originated signals will be offered on this
135 channel on a regular basis beginning no later than one (1) year after the granting of a franchise agreement.
136 Special television and other services may also be provided on other channels of the proposed CATV system
137 to customers equipped and authorized to use these additional services.
138

139 **82-7 Franchise fee.**
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141 The franchise holder shall pay to the Town of La Plata a franchise fee in the amount of three percent (3%)
142 of gross revenue from all CATV service and connection charges paid by subscribers served from the town
143 system, starting with the date that the first subscribers are connected. Payment of said fee, together with an
144 accounting of the subscribers and services rendered each subscriber, shall be made on an annual basis no
145 later than on December 31 of each year.
146

147 **82-8 Bill-paying locations and telephone availability.**
148

149 A. The franchise holder shall maintain one (1) or more convenient locations within the town for subscribers
150 to pay bills. At least annually the franchise holder shall provide each subscriber with written notice of each
151 bill-paying location.
152

153 B. The cable operator shall maintain a local, toll-free or collect call telephone access line which will be
154 available to its subscribers twenty-four (24) hours a day, seven (7) days a week, to enable subscribers to
155 make service complaints, make requests for service, and make billing inquiries. This access line shall be

156 subject to the following requirements:

157

158 (1) Trained company representatives shall be available to respond to customer telephone inquiries during
159 normal business hours.

160 (2) After normal business hours, the access line may be answered by a service or an automated response
161 system, including an answering machine. Inquiries received after normal business hours must be responded
162 to by a trained company representative on the next business day.

163 (3) Under normal operating conditions, telephone answer time by a customer representative, including wait
164 time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred,
165 transfer time shall not exceed thirty (30) seconds. These standards shall be met to less than ninety percent
166 (90%) of the time under normal operating conditions, measured on a quarterly basis.

167 (4) The operator shall not be required to acquire equipment or perform surveys to measure compliance with
168 the telephone answering standards above unless a historical record of complaints indicates a clear failure to
169 comply.

170 (5) Under normal operating conditions, the customer shall receive a busy signal less than three percent (3%)
171 of the time.

172

173 **82-9 Service to schools and municipality.**

174

175 The franchise holder shall furnish service to public, private and parochial school locations within the town,
176 for educational purposes, upon request by the town and upon agreement to the payment by the school
177 system of the actual cost of such installations for materials and labor. Such service will thenceforth be
178 provided by the franchise holder at no monthly service charge to the town or to the school system. The
179 franchise holder shall furnish, upon request of the Town Council, one (1) connection each to the Town
180 Police, Fire and Rescue Departments and to the Town Office and the Town Library without charge for
181 installation and without charge for continuing monthly service.

182

183 **82-10 Proof of financial capability.**

184

185 Before starting construction of the CATV system, the franchise holder shall demonstrate to the town that
186 the franchise holder is sufficiently well-financed to ensure the completion of the initial system and to defray
187 any operating losses that may be anticipated in the initial operation of the system. Failure of the franchise
188 holder to meet this requirement shall constitute grounds for forfeiture of the franchise.

189

190 **82-11 Emergencies.**

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192 In the case of any emergency or disaster, the franchise holder shall, upon the request of the town, make
193 every effort to make available its facilities to the town or any governmental agency designated by the town
194 for emergency use during the emergency or disaster period. The franchise holder should provide a voice and
195 a television signal on the local-origination channel to permit emergency signals to be distributed under the
196 control of the town; the cost of such connection means is to be paid by the franchise holder; and the cost of
197 any camera, microphone or other signal-generation equipment dedicated to emergency use is to be paid by

198 the town.

199

200 **82-12 Area of service; expansion.**

201

202 A. The franchise holder shall construct the initial CATV system so as to offer services to all dwelling units
203 within the territorial limits of La Plata within nine (9) months after the date of granting the franchise.
204 However, the franchise holder shall offer service to all residents connected to a CATV system at the time of
205 the granting of a franchise within six (6) months from the date of the granting of a franchise. Failure of the
206 franchise holder to meet this requirement shall constitute grounds for forfeiture of the franchise. Within one
207 (1) year of the date of the franchise, the franchise holder shall complete construction of the system so as to
208 include all requirements described in this chapter, including outlets in schools and other specially designated
209 points, emergency signal override, pickup points for local origination, etc.

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211 B. The franchise holder may extend CATV service to any subscriber outside the corporate limits of the
212 town after the initial system is constructed within the corporate limits of the town if the franchise holder is
213 current in its connection of subscribers within the area covered by the initial system. "Current" shall mean
214 that no subscriber shall wait more than five (5) days for initial connection.

215

216 C. After the initial nine-month system startup period, any citizen requesting CATV service in writing shall
217 be provided with such service within ten (10) working days. The franchise holder will be assessed liquidated
218 damages to the citizen requesting the service of one (1) month's free service for each day over ten (10)
219 working days that the service is not provided.

220

221 **82-13 Channels and services offered.**

222

223 A. The franchise holder will bring the signal of all public and/or educational television channels from the
224 Washington-Baltimore market areas into the franchise area and will make every effort to bring in more than
225 these area channels, plus the FM radio band and satellite signals. The CATV system shall be designed and
226 installed in such a way as to provide effective two-way service sufficient for local origination, public access,
227 surveillance and emergency communications purposes from at least the following points: the Town Hall, the
228 Fire Department and the Library.

229

230 B. The franchise holder shall provide the maximum number of television signals permitted by the Federal
231 Communications Commission rules, including any increase in the number of television signals permitted by
232 any relaxation of Federal Communications Commission restrictions. Any selection of television channels for
233 the CATV system shall be approved by the Town Council.

234

235 **82-14 Local programming.**

236

237 A. Beginning within one (1) year after the granting of a franchise, the franchise holder will, without charge,
238 make available to any bona fide civic group or educational institution within the town the facilities of the
239 system for local origination and distribution of television or radio programs. It is, however, understood that

240 any production costs and responsibility for the content of such programs will be borne by the educational or
241 civic group. Administration of this policy shall be consistent with applicable regulations pertaining to equal
242 opportunity and fairness doctrines such as those of the Federal Communications Commission.

243 B. The franchise holder shall provide television cameras and recorders, microphones, tripods and other
244 equipment for use by various groups in the town for the production of programs for local-origination and
245 public access purposes. This equipment will be made available on a scheduled basis to civic and/or
246 educational organizations without charge for such use or for formal wear and tear. The franchise holder
247 shall have the right to collect from such organizations the actual cost of repair of such equipment in the
248 event of damage due to mishandling or carelessness in the use, transportation and/or storage of the
249 equipment. The franchise holder may provide brief periods of instruction in the operation and care of local-
250 origination equipment without charge to civic and/or educational organizations. The franchise holder shall
251 be compensated for providing requested assistance in the production of programs.

252
253 C. Local-origination equipment provided by the franchise holder shall be available for loan to commercial
254 organizations for the production of programs and/or advertisements in return for reasonable charges payable
255 to the franchise holder. Selected programs and advertisements may be cablecast on the local-origination
256 channel for reasonable fees negotiated between the franchise holder and such commercial organizations. The
257 franchise holder shall provide information to the Town Council at quarterly intervals concerning the time
258 devoted on the local-origination channel(s) for civic and/or educational use, commercially sponsored
259 programs and advertising.

260

261 **82-15 Connection and service fees.**

262

263 A. The franchise holder shall charge reasonable fees and shall file a copy of such schedule of fees with the
264 town. The fees applying to subscribers in La Plata shall be set by agreement in the franchise.

265

266 B. A “connection” shall be construed to mean an entrance into any private residence, apartment house,
267 multifamily dwelling, place of business or governmental building, entering the building in a manner similar to
268 the provision of electric or telephone services. In the event that the distance from the right-of-way to the
269 building exceeds two hundred fifty (250) feet or if the franchise holder should be requested to provide other
270 than the usual entrance, the franchise holder shall negotiate with the subscriber to provide such service at a
271 reasonable connection charge.

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273 **82-16 (Reserved)**

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275 **82-17 Prohibited acts.**

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277 The franchise holder shall not engage, within the area served by the CATV system to be constructed under
278 the franchise, in the retail sale, service, rental, leasing or repair of home television receivers and shall not
279 engage in the sale of parts for such receivers.

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281 **82-18 Assignability.**

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A. The franchise rights and privileges herein described shall not be assignable, except as herein provided, without the consent of the town.

B. For convenience in management, accounting and ownership, the franchise holder will organize a subsidiary corporation that would have the sole purpose of serving La Plata and its environs. The franchise holder shall be permitted by the town to assign the franchise to such subsidiary corporation.

82-19 Cancellation of previous franchises.

By this chapter, the town does hereby cancel all franchises previously granted for the provision of services as herein described.

82-20 Cancellation of franchise.

If the franchise holder shall fail to perform any provision of this chapter or the franchise agreement or to make any payments as provided in this chapter within ninety (90) days after having been given written notice by the town to so perform or to make such payments, the town may give the franchise holder written notice cancelling and terminating the franchise and contract.

82-21 Applicability.

The franchise, when approved by the Town Council and made effective in the manner prescribed by law, if accepted by the apparent successful franchise awardee by signed acceptance within thirty (30) days of the date upon which the same may become effective as prescribed by law, shall have the force and effect of a contract binding upon the franchise holder and the town.

82-22 Location of certain equipment.

The head end, earth station or other signal reception equipment for the interception of television and radio signals for the Town of La Plata shall be located within the corporate limits of the Town of La Plata unless the franchise holder shall request and receive approval of the town to locate the head end elsewhere.

82-23 Federal rules.

A. The franchise holder shall provide the town copies of all major Federal Communications Commission statements concerning the number and type of television channels that may be carried on a CATV system and on any other rules and regulations of major significance to the operation of a CATV system, within thirty (30) days of publication, that may be effected by the Federal Communications Commission subsequent to the granting of this franchise.

B. Any modifications of the regulations of the Federal Communications Commission that affect the franchise or the operation of a cable television system shall be incorporated into the franchise on the 270th day

324 following the effective date of the Federal Communications Commission modification or at the time of any
325 franchise renewal, whichever occurs first.))

326

327 **((82-24)) 82-2 Franchise required.**

328 The operation of any cable and related equipment for the interception and distribution of television, radio
329 and other signals and the sale of these services related thereto to the inhabitants of the ((town)) TOWN is
330 prohibited unless a franchise is granted for these purposes by the ((town)) TOWN.

331

332 **((82-25 Installations, outages and service calls.**

333

334 A. Under normal operating conditions, each of the following standards shall be met no less than ninety- five
335 percent (95%) of the time measured on a quarterly basis:

336

337 (1) Standard installations shall be performed within seven (7) business days after an order has been placed.
338 Standard installations are those that are located up to one hundred twenty-five (125) feet from the existing
339 distribution system.

340 (2) Excluding conditions beyond the control of the cable operator, the cable operator shall begin working on
341 service interruptions promptly, and in no event later than twelve (12) hours on Monday through Friday, and
342 sixteen (16) hours on Saturday and Sunday, after the interruption becomes known to the cable operator.
343 The cable operator must begin actions to correct other service problems the next business day after
344 notification of the service problem.

345 (3) The appointment window alternatives for installations, service calls, and other installation activities will
346 be either a specific time or, at maximum, a four-hour time block during normal business hours. The cable
347 operator may schedule service calls and other installation activities outside of normal business hours for the
348 express convenience of the customer.

349 (4) A cable operator may not cancel an appointment with a customer after the close of business on the
350 business day prior to the scheduled appointment.

351 (5) If a cable operator representative is running late for an appointment with a customer and will not be able
352 to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be
353 rescheduled, as necessary, at a time which is convenient for the customer, even if outside of normal business
354 hours.

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356 B. Cable operators shall extend their cable television systems into new residential subdivisions in the town
357 as public improvements within that subdivision are being installed, as long as there are at least thirty-five
358 (35) homes per mile.

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360 C. Except as provided in Subsection A(1) of this section, if a cable operator receives a request for service
361 from at least ten (10) potential subscribers within one thousand three hundred twenty (1,320) cable-bearing
362 strand feet (one-quarter (1/4) cable mile) of its trunk or distribution cable, and if the extension of service is
363 technically feasible, the cable operator, within a reasonable time, but in no event later than eighteen (18)
364 months from the request, shall extend its cable system to such subscribers at no cost to the subscribers for

365 the extension other than usual connection fees applicable to all subscribers.

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367 D. Cable operators shall provide two hundred (200) feet of drop cable for each residential installation at the
368 operator's standard installation rate.

369

370 **82-26 Notifications to subscribers.**

371

372 A. The cable operator shall provide written information on each of the following areas at the time of
373 installation of service, at least annually to all subscribers, and at any time upon request:

374

375 (1) Products and services offered by the cable operator;

376 (2) Prices and options for programming services and conditions of subscription to programming and other
377 services;

378 (3) Installation and service maintenance policies;

379 (4) Instructions on how to use the cable service;

380 (5) Channel positions programming carried on the system; and

381 (6) Billing and complaint procedures, including the address and telephone number of the town's cable
382 television regulatory office.

383

384 B. The cable operator shall notify customers of any changes in rates, programming services or channel
385 positions as soon as possible through written announcements and, if feasible, announcements broadcast on
386 the cable system. Notice must be given to subscribers a minimum of thirty (30) days in advance of such
387 changes if the change is within the control of the cable operator. In addition, the cable operator shall notify
388 subscribers thirty (30) days in advance of any significant changes in the other information required by
389 Subsection A of this section.

390

391 **82-27 Customer billing.**

392

393 A. Bills from cable operators to subscribers shall be clear, concise and understandable. Bills must be fully
394 itemized. The itemizations shall include, but not be limited to, basic and premium service charges and
395 equipment charges. Bills also shall clearly delineate all activity during the billing period, including optional
396 charges, rebates and credits.

397

398 B. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber
399 within thirty (30) days from the operator's receipt of the complaint.

400

401 **82-28 Customer refunds and credits.**

402

403 A. A cable operator shall issue refund checks to a customer promptly, but no later than either:

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405 (1) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is
406 earlier; or

407 (2) The return of the equipment supplied by the cable operator if service is terminated.

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409 B. A cable operator shall issue credits for service to a customer no later than the customer's next billing
410 cycle following the determination that a credit is warranted.

411

412 **82-29 Picture quality.**

413

414 Cable operators shall reproduce and send to all customers cable programming on all channels which is clear,
415 audible and without distortion, and in accordance with FCC regulations. Acceptable picture and sound
416 quality shall be provided, free of fuzziness, lines or any other annoying interference.

417

418 **82-30 Books and records.**

419

420 The town, upon reasonable notice to a cable operator and for the purpose of monitoring compliance with
421 the requirements of this chapter, other laws and ordinances applicable to the cable operator and enforceable
422 by the town, and any franchise agreement between the town and the cable operator, may review the cable
423 operator's books and records at the cable operator's business office during normal business hours and on a
424 nondisruptive basis. Such records shall include, but not be limited to, any public records required to be kept
425 by the cable operator pursuant to the rules and regulations of the FCC, maps, plans, service complaint logs
426 and performance test results. Notwithstanding anything to the contrary in this section, the cable operator
427 shall not be required to disclose information which it reasonably deems, based upon practices in the cable
428 television industry, to be proprietary or confidential in nature, or subscriber information to the extent that
429 the cable operator is prohibited from disclosing such information pursuant to Section 631 of the Cable
430 Communications Policy Act of 1984. To the extent required by federal or state law, the town shall treat any
431 information disclosed by the cable operator as confidential and disclose it only to officials, employees,
432 representatives and agents of the town who have a need to see or be aware of such information in order to
433 enforce the provisions of this chapter, other laws or ordinances enforceable by the town, or any franchise
434 agreement between the town and the cable operator.

435

436 **82-31 Definitions.**

437

438 As used in this chapter, the terms defined in this section have the meanings indicated:

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440 CABLE OPERATOR -- Franchise holder.

441 CUSTOMER -- Subscriber.

442 NORMAL BUSINESS HOURS -- Those hours during which most retail and service businesses in the
443 community are open to serve customers. In all cases, "normal business hours" must include some evening
444 hours at least one (1) night per week and/or some weekend hours.

445 NORMAL OPERATING CONDITIONS -- Those service conditions which are within the control of the
446 cable operator. Those conditions which are not within the control of the cable operator include, but are not
447 limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or
448 unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator

449 include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or
450 seasonal demand periods, and maintenance or upgrade of the cable system.

451 SERVICE INTERRUPTION -- The loss of picture or sound on one (1) or more cable channels.))

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453

454 **SECTION 2: BE IT FURTHER ENACTED BY THE COUNCIL OF THE TOWN OF**
455 **LA PLATA** that Sections 84-2, 84-3, 84-4, and 84-6 of the Code of the Town of La Plata (1998 Edition as
456 amended) be and they are hereby repealed and reenacted, with amendments, to read as follows:

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Chapter 84 – Cable Television Rate Regulation

84-2 Initial review of basic cable rates.

A. Notice. The Chief Executive Officer of the ((town)) TOWN shall notify all cable operators in the ((town)) TOWN, by certified mail, return receipt requested, that the ((town)) TOWN intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Act of 1992.

B. Cable operator response. Within thirty (30) days of receiving notice from the ((town)) TOWN, a cable operator shall file with the ((town)) TOWN its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

C. Expedited determination and public hearing.

(1) If the ((Mayor and)) TOWN Council ((are)) IS able to determine expeditiously that the cable operator’s rates for the basic service tier and associated equipment are within the FCC’s reasonable rate standard, as determined by the applicable benchmark, the ((Mayor and)) TOWN Council shall:

- (a) Hold a public hearing at which interested persons may express their views; and
- (b) Act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the ((town)) TOWN.

(2) If the ((Mayor and)) TOWN Council ((take)) TAKES no action within thirty (30) days from the date the cable operator filed its basic cable rates with the ((town)) TOWN, the proposed rates will continue in effect.

D. Extended review period.

(1) If the ((Mayor and)) TOWN Council ((are)) IS unable to determine whether the rates in issue are within the FCC’s reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the ((Mayor and)) TOWN Council, within thirty (30) days from the date the cable operator filed its basic cable rates with the ((town)) TOWN and by adoption of a formal resolution, shall invoke the following additional periods of time, as applicable, to make a final determination:

- (a) Ninety (90) days if the ((Mayor and)) TOWN Council need more time to ensure that a rate is within the

491 FCC's reasonable rate standard; or

492 (b) One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to
493 justify a rate above the applicable benchmark.

494 (2) If the ((Mayor and)) **TOWN** Council ((have)) **HAS** not made a decision within the ninety- or one-
495 hundred-fifty-day period, the ((Mayor and)) **TOWN** Council shall issue a brief written order at the end of
496 the period requesting the cable operator to keep accurate account of all amounts received by reason of the
497 proposed rate and on whose behalf the amounts are paid.

498 (3) During the extended review period and before taking action on the proposed rate, the ((Mayor and))
499 **TOWN** Council shall hold at least one (1) public hearing at which interested persons may express their
500 views and record objections.

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502 E. Objections. An interested person who desires to make an objection to the proposed initial basic rate shall
503 make the objection during the public hearing or may submit the objection in writing at any time before the
504 decision resolution is adopted. An objection shall not be made part of the record unless the objector
505 provides the objector's name and address.

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507 F. Benchmark analysis. If a cable operator submits its current basic rate schedule as being in compliance
508 with the FCC's reasonable rate standard, the ((Mayor and)) **TOWN** Council shall review the rates using the
509 benchmark analysis in accordance with any regulations and forms promulgated by the FCC. Based on the
510 findings by the ((Mayor and)) **TOWN** Council, the initial basic cable rates shall be established as follows:

511

512 (1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable
513 rates and the cable operator's rates will be capped at that level.

514 (2) If the current basic cable rates exceed the benchmark, the rate shall be the greater of the cable operator's
515 per channel rate on September 30, 1992, reduced by seventeen percent (17%), or the applicable benchmark
516 adjusted for inflation and any change in the number of channels occurring between September 30, 1992 and
517 the initial date of regulation.

518 (3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was
519 below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted
520 for inflation.

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522 G. Cost-of-service showings. If a cable operator does not wish to reduce the rates to the permitted level, the
523 cable operator may submit a cost-of-service showing in an attempt to justify an initial basic cable rate above
524 the FCC's reasonable rate standard. The ((Mayor and)) **TOWN** Council shall review a cost-of-service
525 submission pursuant to FCC standards for cost-of-service review. The ((Mayor and)) **TOWN** Council may
526 approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing.
527 However, if a cost-of-service determination results in rates below the benchmark or below the cable
528 operator's September 30, 1992 rates minus seventeen percent (17%), the rates resulting from the cost-of-
529 service shall be the cable operator's new rates.

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531 H. Decision.

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533 (1) By formal resolution. After completion of their review of the cable operator’s proposed rates, the
534 ((Mayor and)) TOWN Council shall adopt their decision by formal resolution. The decision shall include
535 one of the following:

536 (a) If the proposal is within the FCC’s reasonable rate standard or is justified by a cost-of-service analysis,
537 the ((Mayor and)) TOWN Council shall approve the initial basic cable rates proposed by the cable operator;
538 or

539 (b) If the proposal is not within the FCC’s reasonable rate standard and the cost-of-service analysis, if any,
540 does not justify the proposed rates, the ((Mayor and)) TOWN Council shall establish initial basic cable rates
541 that are within the FCC’s reasonable rate standard or that are justified by a cost-of-service analysis.

542 (2) Rollbacks and refunds. If the ((Mayor and)) TOWN Council ((determine)) **DETERMINES** that the
543 initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator’s cost-of-
544 service showing justifies lower rates, the ((Mayor and)) TOWN Council may order the rates reduced in
545 accordance with Subsection F or G of this section, as applicable. In addition, the ((Mayor and)) TOWN
546 Council may order the cable operator to pay to subscribers refunds of the excessive portion of the rates with
547 interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and
548 additional tax payments), retroactive to September 1, 1993. The method for paying any refund and the
549 interest rate will be in accordance with FCC regulations as directed in the ((Mayor and)) TOWN Council’s
550 decision resolution.

551 (3) Statement of reasons for decision and public notice. If rates proposed by a cable operator are
552 disapproved in whole or in part, or if objections to the proposed rates made by other parties, the resolution
553 must state the reasons for the decision and the ((Mayor and)) TOWN Council must give public notice of its
554 decision by publication once in a newspaper of general circulation in the ((town)) TOWN.
555

556 I. Appeal. The ((Mayor and)) TOWN Council’s decision concerning rates for the basic service tier or
557 associated equipment may be appealed to the FCC in accordance with applicable federal regulations.
558

559 **84-3 Review of request for increase in basic cable rates.**
560

561 A. Notice. A cable operator in the ((town)) TOWN who desires to increase the rates for the basic service
562 tier or associated equipment shall file a request with the ((town)) TOWN and notify all subscribers at least
563 thirty (30) days before the cable operator desires the increase to take effect. This notice may not be given
564 more often than annually and not until at least one year after the determination of the initial basic cable
565 rates.
566

567 B. Expedited determination and public hearing.
568

569 (1) If the ((Mayor and)) TOWN Council ((are)) **IS** able to determine expeditiously that the cable operator’s
570 rate increase request for basic cable service is within the FCC’s reasonable rate standard, as determined by
571 the applicable price cap, the ((Mayor and)) TOWN Council ((shall)) **MAY**:

572 (a) Hold a public hearing at which interested persons may express their views; and

573 (b) Act to approve the rate increase within thirty (30) days from the date the cable operator filed its request
574 with the ((town)) TOWN.

575 (2) If the ((Mayor and)) **TOWN** Council takes no action within thirty (30) days from the date the cable
576 operator filed its request with the ((town)) **TOWN**, the proposed rates shall then become effective.
577

578 C. Extended review period.
579

580 (1) If the ((Mayor and)) **TOWN** Council ((are)) **IS** unable to determine whether the rate increase is within
581 the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-
582 of-service showing, the ((Mayor and)) **TOWN** Council, by adoption of a formal resolution, shall invoke the
583 following additional periods of time, as applicable, to make a final determination:

584 (a) Ninety (90) days if the ((Mayor and)) **TOWN** Council ((need)) **NEEDS** more time to ensure that the
585 requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap;
586 and

587 (b) One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to
588 justify a rate increase above the applicable price cap.

589 (2) The proposed rate increase is tolled during the extended review period.

590 (3) If the ((Mayor and)) **TOWN** Council ((have)) **HAS** not made a decision within the ninety- or one-
591 hundred-fifty-day period, the ((Mayor and)) **TOWN** Council shall issue a brief written order at the end of
592 the period requesting the cable operator to keep accurate account of all amounts received by reason of the
593 proposed rate increase and on whose behalf the amounts are paid.

594 (4) During the extended review period and before taking action on the requested rate increase, the ((Mayor
595 and)) **TOWN** Council shall hold at least one (1) public hearing at which interested persons may express
596 their views and record objections.
597

598 D. Objections. An interested person who desires to make an objection to the proposed rate increase shall
599 make the objection during the public hearing or may submit the objection in writing at anytime before the
600 decision resolution is adopted. An objection shall not be made part of the record unless the objector
601 provides the objector's name and address.
602

603 E. Delayed determination. If the ((Mayor and)) **TOWN** Council ((are)) **IS** unable to make a final
604 determination concerning a requested rate increase within the extended review period specified in
605 Subsection C of this section, the cable operator may put the increase into effect, subject to subsequent
606 refund if the ((Mayor and)) **TOWN** Council later ((issue)) **ISSUES** a decision disapproving any portion of
607 the increase.
608

609 F. Price cap analysis. If a cable operator presents its request for a rate increase as being in compliance with
610 the FCC's price cap, the ((Mayor and)) **TOWN** Council shall review the rate using the price cap analysis in
611 accordance with any regulations and forms promulgated by the FCC. Based on the findings of the ((Mayor
612 and)) **TOWN** Council, the basic cable rates shall be established as follows:
613

614 (1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed
615 rates shall become the new basic cable rates.

616 (2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the ((Mayor

617 and)) **TOWN** Council shall disapprove the proposed rate increase and order an increase that is in
618 compliance with the price cap.

619

620 G. Cost-of-service showings. If a cable operator submits a cost-of-service showing in an attempt to justify a
621 rate increase above the price cap, the ((Mayor and)) **TOWN** Council shall review the submission pursuant
622 to the FCC standards for cost-of-service review. The ((Mayor and)) **TOWN** Council may approve a rate
623 increase above the price cap if the cable operator makes the necessary showing. However, a cost-of-service
624 determination resulting in a rate below the price cap or below the cable operator's then current rate will
625 constitute the cable operator's new rate.

626

627 H. Decision. The ((Mayor and)) **TOWN** Council's decision concerning the requested rate increase, shall be
628 adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in
629 part, or if objections were made by other parties to the proposed rate increase, the resolution must state the
630 reasons for the decision.

631

632 I. Refunds.

633

634 (1) The ((Mayor and)) **TOWN** Council may order refunds of subscribers' rate payments with interest if:

635 (a) The ((Mayor and)) **TOWN** Council ((were)) **WAS** unable to make a decision within the extended time
636 period as described in Subsection C above; and

637 (b) The cable operator implemented the rate increase at the end of the extended review period; and

638 (c) The ((Mayor and)) **TOWN** Council ((determine)) **DETERMINES** that the rate increase as submitted
639 exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-
640 service showing, and the ((Mayor and)) **TOWN** Council disapprove any portion of the rate increase.

641 (2) The method for paying any refund and the interest rate will be in accordance with FCC regulations as
642 directed in the ((Mayor and)) **TOWN** Council's decision resolution.

643

644 J. Appeal. The ((Mayor and)) **TOWN** Council's decision concerning rates for the basic service tier or
645 associated equipment, may be appealed to the FCC in accordance with applicable federal regulations.

646

647 **84-4 Cable operator information.**

648

649 A. Town may require.

650

651 (1) In those cases when the cable operator submitted initial rates or proposed an increase that exceeds the
652 reasonable rate standard, the ((Mayor and)) **TOWN** Council may require the cable operator to produce
653 information in addition to that submitted, including proprietary information, if needed to make a rate
654 determination. In these cases, a cable operator may request the information be kept confidential in
655 accordance with this section.

656 (2) In cases where initial or proposed rates comply with the reasonable rate standard, the ((Mayor and))
657 **TOWN** Council may request additional information only in order to document that the cable operator's
658 rates are in accord with the standard.

659

660

B. Request for confidentiality.

661

662

(1) A cable operator submitting information to the ((Mayor and)) **TOWN** Council may request in writing that the information not be made available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

663

664

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

665

666

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based,

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668

(4) Casual requests which do not comply with the requirements of this subsection shall not be considered.

669

670

C. ((Mayor and)) TOWN Council action. Requests which comply with the requirements of Subsection B of this section shall be acted upon by the ((Mayor and)) **TOWN** Council. The ((Mayor and)) **TOWN** Council shall grant the request if the cable operator presents, by a preponderance of the evidence, a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling shall be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the ((Mayor and)) **TOWN** Council ((deny)) **DENIES** the request, the ((Mayor and)) **TOWN** Council shall take one (1) of the following actions:

671

672

(1) If the information has been submitted voluntarily without any direction from the ((town)) **TOWN**, the cable operator may request that the ((town)) **TOWN** return the information without considering it. Only in the unusual instance that the public interest so requires shall the information be made available for public inspection.

673

674

(2) If the information was required to be submitted by the ((Mayor and)) **TOWN** Council, the information may be made available for public inspection.

675

676

D. Appeal. If the ((Mayor and)) **TOWN** Council ((deny)) **DENIES** the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the ((Mayor and)) **TOWN** Council's decision. Release of the information will be stayed pending review if a request for review has been timely filed with the FCC by the cable operator.

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678

84-5 Automatic rate adjustments.

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A. Annual inflation adjustment. To the extent permitted by FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI Index.

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B. Other external costs.

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(1) To the extent permitted by FCC regulations, the cable operator also may increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increase in cost of

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701 those factors exceeds the GNP-PI. These factors include retransmission consent fees, programming costs,
702 state and local taxes applicable to the provision of cable television service, costs of franchise requirements,
703 and any other factors specified in FCC regulations. The total cost of an increase in a franchise fee may be
704 automatically added to the base per channel rate, without regard to its relation to the GNP-PI.

705 (2) For all categories of external costs other than retransmission consent and franchise fees, the starting date
706 for measuring changes in external costs for which the basic service per channel rate may be adjusted will be
707 the date on which the basic service tier becomes subject to regulation or February 28, 1994, whichever
708 occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees
709 or changes in those fees incurred before October 6, 1994.

710
711 C. Notification and review. The cable operator shall notify the ((town)) TOWN at least thirty (30) days in
712 advance of a rate increase based on automatic adjustment items. The ((town)) TOWN shall review the
713 increase to determine whether the item or items qualify as automatic adjustments. The cable operator shall
714 provide the ((town)) TOWN with all documents determined by the ((town)) TOWN to be reasonably
715 necessary or desirable in connection with its review. If the ((town)) TOWN makes no objection within
716 thirty (30) days of receiving notice of the increase, the increase may go into effect.

717
718 **84-6 Enforcement.**

719
720 A. Refunds. The ((Mayor and)) TOWN Council may order the cable operator to refund to subscribers a
721 portion of previously paid rates under the following circumstances:

- 722
723 (1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge
724 or above the actual cost of equipment; or
725 (2) The cable operator has failed to comply with a valid rate order issued by the ((Mayor and)) TOWN
726 Council; or
727 (3) Where such refund may be authorized by another provision of this chapter.

728
729 B. Fines.

- 730
731 (1) The failure of a cable operator to comply with a rate decision or refund order issued by the ((Mayor
732 and)) TOWN Council pursuant to this chapter is declared to be an infraction. The fine for violation shall be
733 as provided in Chapter 1, Article III, of this Code, specifically § 1-22.
734 (2) The ((Mayor and)) TOWN Council ((of the town are)) **IS** authorized and empowered to enforce this
735 chapter. Upon direction of the ((Mayor and)) TOWN Council, the Chief Executive Officer of the ((town))
736 TOWN may deliver an infraction citation to a cable operator pursuant to Subsection B(1) of this section.

737
738 **SECTION 3: AND BE IT FURTHER ENACTED** that this Ordinance shall become effective at
739 the expiration of fifteen (15) calendar days after its approval by the Council.

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742 **SEAL:** **COUNCIL OF THE TOWN OF LA PLATA**

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Gene Ambrogio, Mayor

R. Wayne Winkler, Councilman

C. Keith Back, Councilman

ATTEST:

Paretta D. Mudd, Councilwoman

Judith T. Frazier, Town Clerk
Date _____

Vic E. Newman, Councilman

EXPLANATION:
BOLD CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
((Double Parenthesis)) indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike Out~~ indicates matter stricken from bill by amendment or deleted from the law by amendment.