

## CHAPTER 650

### CABLE COMMUNICATIONS

#### 650-1. Findings and Declaration of Purpose

- (A) Because the operation of a cable communication system requires the permission of the County to use the public ways, the Board of Commissioners determines that it is proper and expedient to franchise such systems, pursuant to Indiana Code IC 36-2-2-23 and the Cable Communications Policy Act of 1984 (47 USC 521, et al.).
- (B) The Board of Commissioners hereby finds that it is in the interests of the County that the public ways be used to make cable communication available to the people of the County. It is intended that the provisions of this chapter should facilitate and encourage orderly and responsible development of a system or systems which will provide the people of the County with cable communication service which is versatile, reliable and efficient; which is responsive to the needs and interests of the community; and which provides the widest possible diversity of information sources and services to the public. The provisions of this chapter shall be construed liberally to further this purpose.

#### 650-2. Definitions

As used in this chapter:

**"Applicant"** means any person who files an application with the Commissioners' Office under the terms of this chapter.

**"Board"** means the Board of Commissioners of Monroe County.

**"Cable Communications System," "Cable Television System," "Cable System" or "System"** means any system which receives and amplifies signals broadcast by one (1) or more television and/or radio stations and which transmits programming originated by the system itself or by another party, and distributes such signals by wire, cable, microwave, fibre, satellite or other means to persons who subscribe to such service; provided that "cable communication system" or "system" does not include any similar system not requiring the use of public ways.

**"Cable Commission" or "Commission"** means the Monroe County Cable Communication Commission, created by section 17 of this chapter.

**"Commissioners' Office"** means the administrative office of the Board of Commissioners, located on the third floor of the Monroe County Courthouse.

**"County"** means Monroe County, Indiana, a municipal corporation of the State of Indiana.

**"County Jurisdictional Area"** means that part of Monroe County which is outside the corporate limits of the City of Bloomington, the Town of Ellettsville and the Town of Stinesville.

**"FCC"** means the Federal Communications Commission and any legally appointed successor.

**"Franchise"** means the non-exclusive right to construct, operate and maintain a cable communication system.

**"Grantee", "Franchisee," "Company" or "Operator"** means the organization granted a franchise by the County under this chapter and its lawful and approved successors.

**"Public Way"** means the surface and the area above and below the surface of any public street, highway, lane, alley, sidewalk path, bridge, tunnel, right-of-way or easement and any public utility easement or right-of-way dedicated generally for public utility uses.

**"RFP"** means the document entitled "Request for Proposals" for cable communication franchises.

**"Unsolicited Cable Communications System Proposal"** means a cable communication system proposal that was not submitted to the Board pursuant to a Board approved request for proposals.

### **650-3. Administration and Enforcement**

The Board shall have the power and duty to:

- (A) execute franchising contracts under the terms and procedures provided in this chapter; and, in the event that more than one (1) franchise is granted within the County jurisdictional area, to ensure that all systems are compatible;
- (B) promulgate any and all rules and regulations which it deems necessary to enable it to carry out its duties under this chapter; and
- (C) enforce the provisions of all franchises issued by the County.

### **650-4. Previously Awarded Franchises**

This chapter shall apply to all new franchises granted after the effective date of this chapter. Nothing in this chapter shall be construed to prohibit the County's right to

renew any existing franchising agreements, pursuant to 47 USC 546(h), if such is deemed to be in the public interest.

**650-5. Authority to Approve Franchising Contracts**

Subject to the provisions of this chapter, the Board may approve and execute one (1) or more nonexclusive franchising contracts conveying the right to construct, reconstruct, operate and maintain, within the public ways in the County jurisdictional area, poles, cables and any other equipment necessary to the operation of a cable communication system.

**650-6. Initial Resolution and Approval of the RFP**

Applications will be accepted following action by the Board determining that a franchise should be granted by the County and approval by resolution of the request for proposals.

**650-7. Notice of Determination**

Within thirty (30) days after the determination that a franchise should be granted, and approval of the RFP, the Commissioners' Office shall give notice of the determination by:

- (A) posting of that notice in the Commissioners' Office and on the Courthouse bulletin board;
- (B) publication of that notice once each week for two (2) weeks in two (2) newspapers of general circulation in the County;
- (C) mailing of that notice to any person the Commissioners' Office knows to be interested in submitting an application; and
- (D) publication in at least one (1) newspaper of national circulation and trade magazine or publication of the cable industry.

**650-8. Submission of Applications**

Within sixty (60) days after the posting or the first publication provided for in section 7, whichever occurs last, all interested persons shall file with the Commissioners' Office ten (10) copies of their application containing the terms of an offered franchising contract, all information required by the RFP, other information as necessary to compare each applicant with other applicants and an appropriate request for pole usage agreements with any utility. The application shall be in the form and shall contain the information required by the Monroe County Attorney, and shall include payment of a bidding application fee of Two Thousand Dollars (\$2,000.00), payable by certified check or money order to the Treasurer of Monroe County. The application fee shall be held by the Board and shall be refunded to all unsuccessful applicants within thirty (30) days following final Board action. The bidding application fee(s) of the successful applicant(s) shall be retained by the Board and shall be applied to the award fee amount required by section 12 of this chapter.

**650-9. Applications and Public Documents**

All applications shall be public records under Indiana Code 5-14-3 and the Commissioners' Office shall make copies of the application available for inspection by any person. Anyone may obtain copies of all or parts of any application upon payment of a reasonable fee for duplication.

**650-10. Public Hearings**

Within the thirty (30) days after the final date for filing of applications, the Cable Commission shall conduct a public hearing at which any person may comment on the various applications before the Cable Commission. The Commissioners' Office shall publish notice in two (2) newspapers of general circulation in the County at least ten (10) days prior to the hearing. Any person wishing to comment at the hearing shall be given an opportunity to be heard.

**650-11. Final Action by the Board**

- (A) Within sixty (60) days after the final date for filing applications, the Cable Commission shall submit the applications with its evaluation to the Board. The Board shall have thirty (30) days from receipt of the Commission's evaluation to determine in a single resolution which applications to accept or reject. Prior to final action of the Board, the Board shall hold a public hearing at which any person may comment on the applications and evaluation by the Cable Commission to the Board. Notice of the hearing shall be given as provided in section 10.
- (B) If the Board determines after hearing that further consideration should be given to the granting of a franchise, either as proposed in an application, or otherwise, and/or that competitive bidding is further required, then the Board may order such additional hearing or hearings as it deems appropriate, and may, with good cause shown, extend any of the time limits imposed in this chapter.
- (C) Such resolution of the Board shall specify the reasons for rejection of any application and shall set forth the language of the franchising contract. A copy of such resolution shall be immediately sent to all applicants. If the language of the franchising contract varies from that proposed by the applicant, such acceptance shall be conditional upon the applicant agreeing to the recommended contract by written agreement filed with the Board no later than twenty (20) days after the Board's action. If such agreement is not filed, the application shall be deemed rejected without further action of the Board.
- (D) No provision of this chapter shall be construed to require the County to grant any franchise contract.

**650-12. Execution of Franchising Contract; Award Fee**

The final franchise contract shall be executed by the Board. Ten (10) days after the Board executes the contract, the franchising contract holder shall pay an award fee by

certified check in the amount of Ten Thousand Dollars (\$10,000.00) payable to the Treasurer of Monroe County, which sum shall be deposited in the Cable TV Fund. Such fee shall serve as compensation to the County for the costs incurred in the preparation, evaluation and award of a franchise, consultant fees and other direct and indirect costs.

#### **650-12.5      Alternative Franchising Procedure**

Sections 6 through 12 of this chapter notwithstanding, the Board may address, approve and execute unsolicited cable system franchise proposals according to the following procedure upon making a finding that the ends of this chapter would be better served thereby.

On receipt of an unsolicited cable communication system franchise proposal, the Board may distribute copies of the proposal to the Cable Commission. Excepting any submission deadline, said proposal must comply with sections 8 and 13 of this chapter.

The Board shall conduct a public hearing at which any person may comment on the proposal. During the hearing the Board and the Cable Commission may ask the applicant and the public questions. The hearing must be advertised pursuant to IC 5-3-1.

Based on the applicant's presentation, public comments and the Cable Commission's review, the Board may, by resolution, determine: that the unsolicited proposal should be accepted; that the unsolicited proposal should be rejected; or that additional consideration of the unsolicited proposal is necessary. If additional consideration is deemed necessary, the Board may order additional hearings as it deems necessary. If the unsolicited proposal is rejected, the resolution shall specify the reasons for rejection. If the unsolicited proposal is accepted, the resolution shall set forth the language of the franchise contract. Such acceptance shall be deemed conditioned on the execution of the franchise contract. No provision of this section shall be construed to require the Board to grant any franchise.

In the event the unsolicited franchise proposal calls for the provision of cable service to less than two hundred fifty (250) subscribers in the County jurisdictional area over the term of the franchise, the Board may conditionally reduce the amount of the award fee required by section 12 to an amount deemed consistent with the purpose of the fee. The amount of such a reduction shall be set forth in the resolution of acceptance. In the event such a reduction is granted and the operator provides cable service to more than two hundred fifty (250) subscribers in the County jurisdictional area, the operator shall pay the County, by certified check, the difference between the section 12 award fee amount and the reduced award fee amount which was paid by the operator.

#### **650-13.      Contents of Applications**

The Board shall reject any application containing an offered franchising contract which does not contain the following:

- (A)      A description of the area of the requested franchise;
- (B)      A construction schedule. Company shall provide service to all potential subscribers within the franchise area where the density is \_\_\_\_\_ or

more homes per strand or trench mile. Service shall be extended at no extension cost to potential subscribers. The following table fixes the minimum percentage of households located in areas of the franchise where the density is \_\_\_\_\_ or more households per mile which shall have cable communication service available within the given number of years from the date of execution of the franchise contract under the following construction schedule:

<u>Number of Years</u>	<u>Percentage of Households w/Requisite Density</u>
2 years	50%
4 years	90%

- (C) A statement that whenever possible, company shall install all necessary trunk and feeder cable conduit in new subdivisions contemporaneously with the provision of electric service to said subdivision consistent with good construction practices. Where feeder cable conduit is not necessary, company shall install all feeder cable contemporaneously with the provision of electric service consistent with good construction practices;
- (D) A schedule indicating the initial tap-in and connection charges and the monthly rates to be charged subscribers;
- (E) A description of the insurance policies to be acquired in satisfaction of the requirements specified within the RFP;
- (F) A verified statement which discloses all persons, by name and residential address, who have a beneficial interest of five percent (5%) or more in the applicant. Persons affected by this section shall also disclose any buy-sell agreements of their beneficial interest;
- (G) A statement of the corporation's current financial strength and ability to carry out the proposed franchise agreement;
- (H) A statement of the financial projections upon which County subscriber rates and system expenditures will be based;
- (I) A statement of applicant's policy for accommodating developers or contractors who wish to obtain engineering material and/or supervisory help to install feeder cable within new subdivisions; and
- (J) A copy of applicant's affirmative action policies.

#### **650-14. Criteria in Evaluating Applications**

In determining which application represents the most desirable application, the Cable Commission and the Board shall consider all factors normally considered in any case in which the Cable Commission and the Board must make such a determination, including the following:

- (A) The extent of conformity of the applicant's proposal to the requirements and intent of the RFP, including community, governmental and educational access provisions;
- (B) The financial and technical feasibility of the proposal contained in the application;
- (C) The technical ability of the applicant;
- (D) The financial ability of the applicant to construct, maintain and operate the system;
- (E) The confirmation of the applicant's reputable business practices and his community knowledge and responsibility;
- (F) The speed of construction of which the applicant is capable;
- (G) The quality of the service which the applicant promises and of which the applicant is capable, and the rates proposed for subscribers; and
- (H) Any special factors insuring that the applicant will carry out the purposes of this chapter and that the award of the franchise to the applicant is in the best interest of the County, including any other considerations deemed pertinent by the Board in its task of safeguarding the public health, safety and welfare and which will facilitate and encourage the orderly and responsible development of cable communication systems. The Board shall make its determinations based on the record with a written statement of its findings and conclusions and the reasons therefore.

**650-15. Compliance with Other Applicable Laws**

- (A) The operator shall comply with all statutes, codes, ordinances, rules and regulations applicable to its business.
- (B) A franchise granted pursuant to this chapter authorizes only the operation of a cable communication system, and does not take the place of any other franchise, license or permit which law requires of the operator.
- (C) The Board shall have the power to adopt, in addition to the provisions contained in this chapter, the franchising contract, or any other applicable ordinances or regulations, such additional ordinances or regulations as they shall find necessary in the exercise of their powers, provided that such ordinances or regulations shall be reasonable and shall not unconstitutionally conflict with the rights granted in the franchising contract.

**650-16. New Developments**

- (A) It shall be the policy of the County to liberally amend this chapter and franchising contract, upon application of the operator, when necessary to enable the operator

to take advantage of any developments in the field of cable communications that afford it an opportunity to better serve its customers. However, this section shall not be construed to require the County to initiate any such amendment.

- (B) Company shall notify County in writing of any point of conflict the Company believes to exist between federal or state government law or regulation or County ordinance and the franchise agreement.
- (C) Notwithstanding changes in FCC regulation, but to the extent allowed by such changes, the County may require compliance with such regulations and standards existing at the time of the passage of this ordinance.

**650-17. Monroe County Communications Commission**

- (A) The Commission shall be responsible to the Board in reviewing and evaluating the performance of County franchise agreements.
- (B) The Commission shall consist of five (5) voting members and one (1) non-voting member. All members shall be appointed by the Board. The non-voting member shall be appointed by the Board from the Board's membership. The five (5) voting members must be residents of Monroe County, Indiana, but may not be elected officials of Monroe County, Indiana. At least two (2) of the voting members must hold a subscription to a cable communication service in Monroe County, Indiana. The term of the non-voting member shall expire on December 31st of each year unless reappointed by the Board. The terms of three (3) of the voting members shall expire on December 31, 1999. The terms of the other two (2) voting members shall expire on December 31, 2000. Thereafter, all terms of voting members, shall be for two (2) years, expiring on the 31st day of December. The Board may remove a member for cause, which includes, but is not limited to, failure to attend two (2) consecutive regularly scheduled meetings of the Commission; provided that any member may submit, in writing to, the Board any extenuating circumstances. In the event that a vacancy occurs, the Board shall appoint a person to fill the unexpired term. If a member's term has expired, but the Board had failed to act, the appointment of the member whose term has expired carries over until the Board reappoints or appoints a successor.
- (C) Three (3) voting members of the Commission shall constitute a quorum. All action by the Commission must be approved by at least three (3) voting members. At its first meeting of each year, the Commission shall select one (1) of its members to be chairman, and another to be secretary. The secretary shall post notices of meetings, keep written minutes as required by Indiana Code chapter 5-14-1.5, preserve all official records and make them available as required by Indiana Code chapter 5-14-3. At its last meeting of the year, the Commission shall adopt a schedule of regular meetings for the following year, scheduling a minimum of one (1) meeting per quarter. A special meeting may be called by the chairman or the member from the Board. The Commission may adopt its own rules of order.



- (D) The powers and responsibilities of the Commission shall be as follows:
- (1) To evaluate the quality of subscriber service by cable communication companies;
  - (2) To evaluate whether the company is operating in satisfaction of the terms of the cable communication franchise and the applicable state and federal rules and regulations;
  - (3) To study the communication needs of the community and explore ways of using cable communication to meet those needs;
  - (4) To assist members of the public and non-profit organizations in the use of cable communication, including, to the extent of the Commission's ability, programming advice, production advice and assistance, and cable-casting arrangements;
  - (5) To seek out and retain the services of other persons, organizations, and companies for purposes of satisfying the responsibilities laid upon the Commission by this ordinance, subject to appropriation of funds by the Monroe County Council;
  - (6) To report, in writing, at least once a year to the Board on the Commission's activities and expenditures, such report to include the evaluations provided for in subsections (2) and (3) of this section, and such report further being made available to the public upon request; and
  - (7) To pursue the preceding responsibilities in the best interest of the citizens of Monroe County.
- (E) Each Commission member shall receive compensation for each Commission meeting he or she attends. The Commission members shall be compensated as follows:
- (1) The President shall receive Fifty Dollars (\$50.00) per meeting;
  - (2) The Secretary shall receive Fifty Dollars (\$50.00) per meeting;
  - (3) All other members shall receive Thirty-Five Dollars (\$35.00) per meeting.

It is the intent of this chapter that the Commission be supported from the franchise fee receipts, which are deposited in the Cable TV Fund. All such support, including the compensation of Commission members, is subject to a request for appropriation by the Board and approval of such request by the Monroe County Council.

**[end of chapter]**