

CHAPTER 651

REGULATION OF CABLE RATES

651-1. Authority

The Monroe County Commissioners hereby adopt the rules and regulations established by the Federal Communications Commission pursuant to the Cable Television Consumer Protection and Competition Act of 1992 for the review and regulation of cable television rates, services and equipment. Monroe County shall retain all powers and authority granted by said FCC regulations, whether or not such powers and authority are explicitly enumerated in this ordinance.

For the purposes of this ordinance, the basic service tier of cable television services shall mean a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system), any public, educational and governmental programming required by the franchise to be carried on the basic tier, any additional video programming signals or service added to the basic tier by the cable operator.

Equipment necessary to provide the basic tier shall be defined as those items of associated equipment necessary for the reception of basic cable service by a subscriber, including, but not limited to, converter boxes, remote control units, additional outlets and installations.

651-2. General Procedures Covering all Filings

The Cable operator is required to submit justification for current or proposed increases in the basic service tier rates and related charges. Their submissions are referred to as "rate filings" and must conform with the provisions of this section.

- (A)** Every rate filing must be submitted to the Commissioners' Office by certified U.S. Mail, return receipt requested. A rate filing shall be considered filed for review on the date the properly completed rate filing and all required copies are received by the Commissioners' Office. Ten (10) copies of each rate filing (including all supporting materials) must be submitted. The cable operator shall at the same time submit two (2) copies, minus confidential information, to the Monroe County Public Library for public review.
- (B)** Subject to any FCC regulations governing the burden of proof, a rate filing submitted by an operator must show that the rates the operator charges, or proposes to charge, for basic service and equipment are reasonable. Except as inconsistent with FCC rules:
 - (1)** every rate filing must clearly state in a covering letter whether it justifies existing rates or proposes an increase in rates. The covering letter must also identify any rate that is derived in whole, or in part, based upon cost of service and that any pages of the rate filing that contain information that the operator claims is confidential have been submitted in accordance with the provisions of the ordinance covering confidentiality.

The cover letter must state whether any part of the proposed increase is based on an inflation adjustment or an alleged increase in external costs. The cover letter should also contain a brief narrative description of any proposed changes in rates or in service;

- (2) the pages of each rate filing must be numbered sequentially;
 - (3) the rate filing must contain all applicable FCC forms; those forms must be correctly completed;
 - (4) if different rates are proposed for basic services for different classes of customers, the filing must show that the classifications and the differences in the rate charged are reasonable and consistent with federal law;
 - (5) at any point during the rate review process Monroe County may require the cable operator to submit additional information for clarification of the rate filing. The cable operator shall provide the requested information in a timely manner.
- (C) In regard to the confidentiality of the filings:
- (1) every rate filing shall become the sole property of the County and all contents will be available to the public unless otherwise properly designated as "Confidential" by the cable operator in accordance with the Cable Act of 1992, FCC Regulations and consistent with the provisions of the Freedom of Information Act;
 - (2) the cable operator shall submit information which it believes is confidential separately in a sealed envelope marked "Confidential," or the County will treat the information as public;
 - (3) the cable operator cannot subsequently designate information as "Confidential" after that information has been filed;
 - (4) requests for information designated as "Confidential" shall be handled according to the procedures outlined in FCC Regulation, 47 CFR 0.459.
- (D) Unless inconsistent with FCC regulation, the review of rate filings should be an open process where meetings are public and all interested parties are afforded an opportunity to comment on the pertinent issues. The meetings should be arranged and conducted in a manner that conforms with Indiana Open Door Law.

651-3. Basic Service Rate Regulation - Current Rates and Future Increases

- (A) Upon the adoption of this ordinance, the County shall notify the cable operator by certified mail, return receipt requested, that the County intends to regulate subscriber rates charged for the basic service tier and associated equipment. Upon receipt of said notice, the cable operator shall, within thirty (30) days, file with the Commissioners' Office its current rates for the basic service tier and associated equipment along with any additional documentation justifying the reasonableness of its rates. All rates, for all customer classifications must be justified. The cable operator shall make its submissions on Federal Communications Form 393.

- (B) Once a cable operator has been notified by the County that its rates for basic service and equipment are subject to regulation, it may not thereafter increase its rates for basic service or equipment without prior approval of the County. This requirement applies in all cases, including increases in rates announced prior to the date the operator was notified its rates were subject to regulation where the increases were not implemented prior to the date of notice. A cable operator must file with the Commissioners' Office a rate filing to justify any increase in basic services or equipment rate (collectively referred to herein as "rate increases"). An "increase" occurs when there is an increase in rates or a decrease in program or customer services. Rate filings proposing and supporting rate increases must be filed for review at least thirty (30) days prior to the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

651-4. Initial Reviews of Rate Filings - Time Limits - Submission to Monroe County Communications Commission - Public Hearing - Brief Written Orders for Extension of Time and for Accounting

- (A) The Commissioners' Office shall forward the cable operator's justification of current rates (FCC Form 393) or request for a rate increase (FCC Rate Increase Form) to the Monroe County Communications Commission. The Secretary of the Commission shall establish a date and time for a public hearing before the Commission on the cable operator's justification of the current rates or request for a rate change. All interested parties shall be afforded an opportunity to comment. Notice of the public meeting shall conform with the requirements of the Indiana Open Door Law.
- (B) After a cable operator has submitted for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in these rates (including increases in the baseline channel charge that results from reductions in the number of channels in a tier), the existing rates will remain in effect or the proposed rates will become effective after thirty (30) days from the date of submission, provided, however, that the franchising authority may toll this thirty (30) day deadline for an additional time by issuing a brief written order as described below within thirty (30) days of the rate filing explaining that it needs additional time to review the rates.
- (C) If the franchising authority is unable to determine, based on the material submitted by the cable operator, that the existing or proposed rates are within the FCC's permitted basic service tier charge or actual cost of equipment, as defined in FCC regulations, or if a cable operator has submitted a cost-of-service showing, seeking to justify a rate above the FCC's basic service tier charge, as defined in FCC regulations, the franchising authority may issue a brief written in order to toll the thirty (30) day deadline to request and/or consider additional information or to consider the comments from interested parties as follows:
- (1) for an additional ninety (90) days in cases not involving cost-of-service showings; or
 - (2) for an additional one hundred fifty (150) days in cases involving cost-of-service showings. The written order tolling the thirty (30) day deadline may also include a brief written accounting order to the cable operator directing the cable operator that, in the event the existing rates remain in effect, or the proposed rates go into effect, under the scenario described in Section 5(D) below, the

cable operator shall keep an accurate amount of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid.

- (D) If the franchising authority has availed itself of the additional ninety (90) or one hundred fifty (150) days permitted for additional review, and has taken no action within these additional time periods, then:
- (1) in the case of a proposed rate increase, the proposed rates will go into effect at the end of the applicable time period; or
 - (2) in the case of a justification of existing rates, the existing rates will remain in effect at the end of the applicable time period. In either case, the rates will remain at issue and will be subject to refunds if the franchising authority subsequently issues a written decision disapproving any portion of such rates. However, in order to order refunds, the franchising authority must have issued a brief written accounting order to the cable operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid. This accounting order must be issued prior to the expiration of the ninety (90) or one hundred fifty (150) day extension.

651-5. Resolutions made by the Monroe County Communications Commission - Board of Commissioners

- (A) Upon completion of its review of the cable operator's filing, the Monroe County Communications Commission shall adopt its decision by formal resolution. The resolution shall indicate the reasons for the decision. Upon passage of the resolution, the Commission shall publish the resolution in written form and make copies available to all interested parties.
- (B) The Commission shall forward their resolution to the Commissioners' Office, which shall place the resolution on its agenda for public discussion and input. After such public discussion and input, the Commissioners may remand the resolution to the Commission for further findings, clarification and study, or the Commissioners may adopt their own resolution. Upon any remand, the Commission shall examine its resolution and supply the Commissioners with the clarifications and further findings the Commissioners require. The Commission may alter its resolution in any way consistent with these further findings and clarification and return its resolution to the Commissioners. The resolution adopted by the Commissioners shall be in the form of a "Final Rate Order" directed to the cable operator. The Final Rate Order shall explain the basis for the Commissioners' decision.

651-6. Remedies

Monroe County reserves all remedies available to it under FCC guidelines. By way of illustration, and not limitation, the remedies available to Monroe County for excessive rates include ordering the cable operator to reduce rates and ordering the cable operator to refund to subscribers a portion of previously paid rates.

Monroe County may order the cable operator to refund to subscribers a portion of

previously paid rates, including interest computed at applicable tax rates published by the Internal Revenue Service for tax refunds and additional tax payments, under the following circumstances:

- (1) a portion of the previously paid rates has been determined to be in excess of the permitted basic cable service tier charge or above the actual cost of equipment, unless the cable operator has submitted a cost-of-service showing which justifies the rate charged as reasonable; or
- (2) the cable operator has failed to comply with a valid rate order issued by Monroe County; or
- (3) if Monroe County has tolled a proposed rate increase by ninety (90) or one hundred fifty (150) additional days and has not completed its review by the end of these time periods, the rates can go into effect subject to a refund if portions of the rates are later found to be unreasonable, provided Monroe County has issued the brief written accounting order described in Section 651-4(D)(2).

Monroe County shall afford the cable operator due process by providing notice and an opportunity to participate before ordering refunds.