

ALLEN COUNTY CODE TITLE 14 CABLE TELEVISION

ARTICLE 7 RATE REGULATIONS

14-7-1 Chapter 1: Scope and Applicability

This regulation governs the regulation of rates for basic service and equipment within Allen County, Indiana (hereinafter “County”) for any operator which has been notified that

- (a) the County has been certified to regulate its basic service and equipment rates; and
- (b) the County has adopted regulations governing regulation of basic service and equipment rates. The provisions set forth below are intended to be consistent with all Federal Communications Commission (“FCC”) regulations governing the regulation of basic service rates and equipment, and the County will regulate and interpret its rules so that they are consistent with FCC regulations, as if those regulations were set forth in full herein; the operator is prohibited from engaging in any activity it is prohibited from engaging in under FCC rules, as if those rules were set forth in full herein. For purposes of these provisions, the term “basic service” or “basic cable service” has the same meaning as the term “basic service” at 47 C.F.R. § 76.901 and the term “equipment” refers to all equipment and services subject to regulation under 47 C.F.R. § 76.923.

14-7-2 Chapter 2: Filing and Review Of Rates

14-7-2-1 Initial Filings by Operator

14-7-2-1a Filings: When Made

An operator that is notified that its basic service and equipment rates are subject to regulation must file a submission (“the rate filing”) within 30 days of the notification, justifying its then-existing basic service and equipment rates. All rates, for all customer classifications, must be justified. Once an operator has been so notified by the County that its rates for basic service or equipment are subject to regulation, it may not thereafter increase its rates for basic service or equipment without the prior approval of the County. This requirement applies in all cases including with respect to 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. An operator must submit a rate filing to justify any increase in basic service or equipment rates or any new

basic services or equipment rate (collectively referred to herein as “rate increases”). An “increase” occurs when there is an increase in rates or decrease in program or customer services. Rate filings proposing and supporting rate increases must be filed for review at least 30 days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement. To facilitate providing notice of filings to the public, an operator shall give the Allen County Commissioners (hereinafter “Commissioners”) notice by telephone, facsimile machine, or hand delivery of its intent to make a filing at least three (3) days before the filing is made.

14-7-2-1b Filings: Where Made

Every rate filing must be submitted to the Commissioners. A rate filing shall be considered filed for review on the date the rate filing and all required copies are received by the Commissioners. Seven (7) copies of each rate filing (including all supporting materials) must be submitted.

14-7-2-1c Filings: Contents

Subject to any FCC regulations governing the burden of proof, a rate filing submitted by an operator must show that the rates the operator proposes to charge for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

14-7-2-1c-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 Section 6 of these Regulations. It 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.

14-7-2-1c-2

The pages of each rate filing must be numbered sequentially.

14-7-2-1c-3

The rate filing must contain all applicable FCC forms and these forms must be correctly completed.

14-7-2-1c-4

If different rates are proposed for basic service 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.

14-7-2-1d

If the operator seeks to support a rate based upon a cost of service, the County will establish a rate that provides the operator an opportunity to recover the reasonable costs associated with providing basic cable service, including a reasonable profit. An expense or investment is not presumed reasonable merely because the operator has incurred or made it. An operator is not entitled to recover monopoly rents in any form.

14-7-2-1e

In addition to information the County requires the operator to provide, and unless the County grants a waiver of this provision, an operator who seeks to justify all or any part of its rates based upon its cost of service must submit a complete cost of service analysis that shows all expenses it incurs and all revenue derived from the system, directly or indirectly by the operator or any person that constitutes a cable operator of the system within the meaning of 47 U.S.C. § 522(5). The cost of service must identify the accounting level (as that term is used in the FCC's regulations) at which each expense or revenue was allocated. The operator may not include costs at an accounting level unless it also includes all revenues from that same level attributable to the system or to a group of systems of which the system serving the County is a part. The replacement cost of a comparable system must be identified and supported. The operator must identify the name and address of any entity with which it has a contract, other than a programmer, which derives revenues from the system and must state whether and how the revenues of that entity were included in the cost of service. In addition, the cost of service shall clearly show the derivation of a proposed charge per channel and the application of that charge to yield a basic service rate. It must also show and support the derivation and allocation of any amounts included in the derivation of the rate for:

- 14-7-2-1e-1 operation and maintenance expenses;
- 14-7-2-1e-2 administrative and general expenses;
- 14-7-2-1e-3 programming expenses (identifying retransmission consent costs and copyright fees separately);
- 14-7-2-1e-4 costs for PEG access and any institutional network;
- 14-7-2-1e-5 franchise fee expenses;
- 14-7-2-1e-6 investment in the system and associated depreciation;
- 14-7-2-1e-7 other expenses, including federal, state and local taxes, itemized; and
- 14-7-2-1e-8 the proposed return on equity and actual interest expense paid by the operator.

14-7-2-1f

Notwithstanding the foregoing, an operator is not required to submit the cost of service specified in Section 14-7-2-1e for a particular service or equipment rate where the FCC has prescribed the forms that must be used to support its cost of service for that service or equipment rate. Instead the operator shall complete, submit and support its costs of service using the required FCC form and presenting any other information the Board deems necessary or appropriate, consistent with FCC regulations. Any cost of service submitted to justify basic services rates must show that the cost of service does not include costs associated with equipment or services for which a separate charge other than a basic service charge is levied.

14-7-2-2 Initial County Review

14-7-2-2a

The Commissioners promptly shall publish a notice of a filing and that, except for those parts which may be withheld as confidential, it will be available for public review. The notice shall state that interested parties may comment on the filing, and shall provide interested parties seven days to submit written comments on the filing to the Commissioners. The Commissioners shall make the comments received available for public inspection. The operator may submit a response to public comments but must do so no later than three business days after receipt of copies.

14-7-2-2b

Within 30 days of the date of the filing, the Commissioners shall issue a written order (“initial rate order”), which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or tolling the proposed rate in whole or in part. If the Commissioners toll the rate in whole or in part, its written order shall explain that it requires additional time to review the rate filing and state that the operator may cure any deficiency in its filing by submitting a supplementary filing as provided in Section 14-7-2-3. With respect to existing rates, tolling means the rates may remain in effect, subject to refund; with respect to rate changes, tolling means the promotion of the rate change that is tolled may not go into effect.

14-7-2-3 Supplementary Filings

14-7-2-3a

If a proposed rate is tolled in whole or in part, the operator shall submit a supplementary filing within 20 days from the date the tolling order issues, containing corrections, if any, to its filing (including any required supplement to its cost of service filing) and any response to information filed by interested parties, or any additional information

necessary to support the proposed rate. Supplementary filings must be filed in accordance with Section 4-7-2-1b.

14-7-2-3b

A supplementary filing also must contain such information as the Commissioners direct the operator to provide.

14-7-2-3c

In addition to information the County requires the operator to provide, and unless the County grants a waiver of this provision, an operator who claims that it is entitled to a rate in whole or in part based upon the adjustments for inflation and external costs contemplated by 47 C.F.R. § 76.922(d) (1) – (2) must submit the following:

14-7-2-3c-1

A calculation showing how each part of the adjustment was derived.

14-7-2-3c-2

A statement itemizing each external cost (as defined by FCC regulations), the amount of that external cost for the two calendar years prior to the date of the filing and the year-to-date in which the filing is made; and the projected amount of the external cost for the remainder of the year in which the filing is made and for the following calendar year. The statement must specifically show any increases in revenues from programming services. “Revenues” include all revenues, in whatever form received.

14-7-2-3c-3

If the increase is attributable to any increase in programming services costs, the contract for each programming service whose cost has increased; a sworn statement identifying each programming service whose costs increased where the programmer is an affiliate of the operator (as defined by FCC regulations); and, for any contract that has been in effect less than 12 months, the prior contract for the service.

14-7-2-3c-4

A sworn statement by the operator’s chief financial officer or an independent, certified accountant stating that he or she has examined all external costs (including all programming costs) and has offset against any increase claimed, the amount of any decreases in external costs, and the amount by which any increase in external costs was below the Gross National Product Price Index published by the Bureau of Economic Analysis of the United States Department of Commerce (GNP –PI); and affirming that

the operator has not attempted to recover any increase in the cost of programming purchased by an affiliate except as provided in 47 C.F.R. § 76.922(d) (2) (vi).

14-7-2-3d

Upon receiving the supplementary filing, the Commissioners promptly shall publish a notice that a filing has been received and that it is available for public review (except those parts which may be withheld as confidential). The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty (20) days to submit written comments on the filing to the Commissioners. The comments shall be made available for public inspection. The operator may submit a response to public comments, but must do so no later than ten days after the Commissioners notifies the operator that comments and recommendations have been submitted to the Commissioners. The response shall be filed with the Commissioners.

14-7-2-3e

The Commissioners shall issue a written order (“final rate order”), which may be in any lawful form, approving the proposed rate in whole or in part; denying the proposed rate in whole or in part; or allowing the rate to go into effect in whole or in part, subject to refund. If the Commissioners issue a final rate order allowing the rates to go into effect subject to refund, it shall also direct the operator to maintain an accounting in accordance with 47 C.F.R. § 76.933.

14-7-2-3f

The final rate order specified in Section 14-7-2-3e shall be issued 90 days after the tolling order for any rate the operator justifies based on the FCC benchmark. The final rate order shall be issued within 150 days of the tolling order for any rate the operator justified with a cost of service showing.

14-7-3 Chapter 3: Provisions Generally Applicable to Initial and Final Rate Orders

14-7-3-1

Any initial or final rate order of the Commissioners shall be effective immediately. Each rate order shall be released to the public and the operator. In any case where the Commissioners approve, deny, or toll a rate; orders that a rate may go into effect subject to refund; or orders refunds or establishes rates, a public notice shall be published stating that the initial or final rate order has issued and is available for review. Any such initial or final rate order shall be in writing.

14-7-3-2

The Commissioners may take any steps that it is not prohibited from taking by federal law to protect the public interest as part of any initial or final rate order or by any other means. By way of illustration and not limitation, it may require refunds, set rates, and impose forfeitures and penalties directly or through its delegated representatives, and enforce refund orders. Any final rate order prescribing a rate must explain why the operator's proposed rate was unreasonable and why the prescribed rate is reasonable. However, before prescribing a rate or ordering a refund to subscribers, the Commissioners shall ensure the operator has had notice and opportunity to comment on the proposed rate or refunds. If the recommendations of the Commissioners propose a refund or a rate, then mailing a copy of the recommendation to the operator at the time it is submitted to the Commissioners shall be deemed to provide the operator this notice and the operator must comment on the refund or rate in its response to the recommendations.

14-7-3-3

No order approving or setting a rate using the FCC benchmarks shall be interpreted to establish the just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not limitation, should the FCC reduce the benchmarks, the County shall have the right to reduce an operator's rates and to require the operator to refund any amounts collected above the benchmark, except to the extent prohibited by federal law.

14-7-4 Chapter 4: Operator's Duties

14-7-4-1

An operator must implement remedial requirements, including prospective rate reductions and refunds, within 60 days of the date of the Board issues a final rate order mandating a remedy.

14-7-4-2

Within 90 days of the date a final rate order mandating a remedy is issued, an operator must file a certification, signed by an authorized representative of the cable company, stating:

14-7-4-2a

Whether the operator has complied fully with all provisions of the Commissioners' order;
and

14-7-4-2b

Describing in detail the precise measures taken to implement the Commissioners' order;
and

14-7-4-2c

Showing how refunds (including interest) were calculated and distributed.

14-7-4-3

It is each operator's responsibility to keep books and records of account so that it can refund any amounts owed to subscribers.

14-7-4-4

It is each operator's duty to submit as complete a filing as possible, and knowingly withholding information or making a filing that is incomplete under applicable law shall be treated as an evasion of this regulation.

14-7-4-5 Information Requests

14-7-4-5a

An operator and any other entity that has records of revenues or expenses that are allocated to the operator's system must respond to requests for information from the County by deadlines established by the Commissioners. An operator is responsible for ensuring that such other entity responds to the Commissioners' requests.

14-7-4-5b

Because federal law limits the time available for an initial response to a filing by an operator, the operator must be prepared to respond to requests for information regarding its filing that are made before the initial rate order contemplated by Section 14-7-2-2 issues within five days of the date an information request is provided to it. Such information requests may include the information the operator would be required to provide as part of any supplementary filing.

14-7-5 Chapter 5: Penalties and Forfeitures

Except as prohibited by federal law, an operator shall be subject to penalties and forfeitures under its franchise agreement, and its request for approval of a rate may be denied if it:

14-7-5-1

Knowingly submits false or fraudulent information to the County in connection with any rate proceeding;

14-7-5-2

Fails to comply with any lawful order or request of the County, including, but not limited to, a request for information or an order setting rates; or

14-7-5-3

Evades or attempts to evade federal or local rate regulation; provided that, filing for approval of a rate that is later determined to be unreasonable is not in and of itself an evasion of federal or local rate regulation.

14-7-6 Chapter 6: Confidential Information

14-7-6-1

Every rate filing (and supplementary filing) shall become the sole property of the County will be available to the public unless otherwise properly designated as “confidential” by operator in accordance with applicable law.

14-7-6-2

The 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.

14-7-6-3

The operator cannot designate information as “confidential” after a filing is made.

14-7-6-4

The Commissioners shall rule on request for confidentiality.

14-7-6-5

If the County receives a request for information submitted by the operator as confidential and the Commissioners determine that, in their judgment, the designation is not appropriate under the applicable law, the County will treat the information as public unless the operator agrees to defend and indemnify the County from any and all losses, liabilities, claims, judgments, and liens, including costs and expenses, arising out of or resulting from the County’s denial of a request for the information under Indiana’s

public records law (IC 5-14-3). An operator may appeal any decision that may result in release of information the operator has designated as confidential within timeliness contemplated with FCC regulations.

14-7-7 Chapter 7: Petition for Change in Status

14-7-7-1

The 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.

Dated this 18th day of February, 1994.

BOARD OF COMMISSIONERS
COUNTY OF ALLEN, INDIANA

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

ATTEST:

Linda Bloom
Allen County Auditor