

Chapter 85.
Television Cable Rates.

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Sec. 85.01. General.

(a) The City adopts the rules and regulations promulgated by the FCC pursuant to section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 543(b)) for the review of the basic service tier of cable television services and equipment necessary for the provision of such service tier.

(b) For purposes of this chapter, *basic service tier* for cable television services shall have the same meaning as that defined in 47 CFR 76.909.

Sec. 85.02. Creation of cable television advisory commission. There is created in the office of the mayor the Cable Television Advisory Commission. The mayor shall appoint a chair and the members of the Cable Television Advisory Commission.

(a) *Purpose and scope.* The purpose of the Cable Television Advisory Commission is to advise the West Lafayette Board of Public Works and Safety (the board) and the West Lafayette Common Council (the council) concerning the following:

(1) regulation of the basic service tier for cable rates consistent with Cable Television Consumer Protection and Competition Act of 1992;

(2) matters pertaining to cable franchise negotiations, agreements and renewals; and

(3) all other matters regarding cable television issues for which the board and council may seek advice from time to time.

(b) *Membership and terms.* The Cable Television Advisory Commission shall consist of five (5) members, serving without compensation. The members of the Cable Television Advisory Commission shall be appointed by the mayor, with the advice and majority consent of the common council. Of the five (5) members first appointed, two shall be appointed for two years, three shall be appointed for three years; thereafter, each appointment shall be for a term of three years.

(c) *Vacancies and removal.* In the event of the death or resignation of any member, a successor shall be appointed by the mayor to serve for the unexpired period for which such member has been appointed. Members of the Cable Television Advisory Commission may be removed by the mayor, with the consent of the common council.

(d) *Presiding officers.* The mayor shall appoint from the members of the Cable Television Advisory Commission a chairman. The members of the Cable Television Advisory Commission shall elect from its membership, once a year, a vice-chair and a secretary.

(e) *Meetings.* The commission shall hold one regular meeting each quarter and such special meetings as the chair may deem necessary. All meetings will open public meetings conducted at City Hall. All meetings shall be conducted at reasonable times. All continuations and adjournments will be open public meetings conducted at City Hall or within the corporate limits of the City.

Sec. 85.03. Powers and duties of board and council.

The board shall administer the provisions of this chapter as it pertains to the regulation of the basic service tier of cable television services and equipment necessary to provide the basic service consistent with those rules and regulations promulgated by the FCC pursuant to section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. §543(b)) pertaining to the regulation of cable rates. Without limitation and by way of illustration, the board shall have the power to:

(a) Hire consultants, cause investigations, hold joint hearings with other franchise authorities regulating the

same cable operator, collect data and submit information requests as in its judgment will aid in effectuating the purpose of regulating the basic service tier of cable television services and equipment necessary to provide the basic service.

(b) Establish rates consistent with those rules and regulations promulgated by the FCC pursuant to section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. §543(b)) pertaining to the regulation of cable rates.

(c) Otherwise take action and issue decisions as will effectuate provisions of this chapter consistent with those rules and regulations promulgated by the FCC pursuant to section 623(b) of the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. §543(b)) pertaining to the regulation of cable rates.

(d) All decisions and/or orders regarding the establishment of rates, disapproval of all or a portion of rates, reductions, refunds and rollbacks must be ratified by the common council.

Sec. 85.04. Rate filings and review.

(a) *Notice.* Upon adoption of this chapter and certification of the City by the FCC, the board shall immediately notify the cable operator by certified mail, return receipt requested, that the City intends to regulate subscriber rates charged for the basic service tier and associated equipment as authorized by the Cable Television Consumer Protection and Competition Act of 1992.

(b) *Initial rate filings.* A cable operator that is notified that its rates for basic service tier and associated equipment are subject to regulation must, within thirty (30) days, file with the board a submission containing its existing or proposed schedule of rates for the basic service tier and associated equipment along with any additional documentation justifying the reasonableness of its rates (the rate filing). Once a cable operator has been notified that its rates for basic service and associated equipment are subject to regulation, it may not thereafter increase its rates for basic service and associated equipment without prior approval of the board. This requirement applies in all cases, including with respect to increases in rates announced before the date the operator was notified that its rates were subject to regulation where increases were not implemented before the date of notice.

(c) *Subsequent rate filings.* 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. An "increase" occurs when there is an increase in rates or a decrease in program or customer service. All rate filings must be filed at least thirty (30) days in advance of the proposed effective date of the increase.

(d) *Rate filing considered filed.* Every rate filing shall be considered filed for review when the rate filing and all required copies are received by the board. Seven (7) copies of the rate filing (including all supporting materials) must be submitted.

(e) *Contents of rate filing.* Subject to any FCC regulations governing the burden of proof, a rate filing submitted by a cable operator must show that the rates that the cable operator proposes to charge for the basic service tier and equipment necessary for the provision of the basic service tier are reasonable. Except as inconsistent with FCC rules:

(1) Every rate filing must clearly state in a cover letter whether it justifies existing rates or proposes an increase in rates. The cover letter must also identify any rate that is derived in whole or in part based upon a cost-of-service showing. It must state whether any 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) Each rate filing shall contain a table of contents and pages numbered sequentially.

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

(f) *Public notice of rate filing.* The City shall promptly publish a notice of a filing and make it available for public review. The notice shall state that interested parties may comment in writing on the filing and state any objection that they may have to the filing, and shall provide interested parties seven (7) days to submit such written comments and stated objections to the City.

Sec. 85.05. Burden of proof regarding reasonableness of rates.

(a) *General.* A cable operator has the burden of proof of proving that its existing or proposed rates for basic service tier of cable television services and the

equipment necessary to provide the basic tier of service comply with the Cable Television Consumer Protection and Competition Act of 1992 and the regulation of the basic service tier or the equipment necessary to provide the basic tier or service under 47 CFR 76.922 and 76.923.

(b) *Rates based on FCC permitted tier charges (benchmark).* For an existing or proposed rate for the basic service tier or the equipment necessary to provide the basic tier of service that is within the permitted tier charge and actual cost of equipment as set forth in the regulation of the basic service tier or the equipment necessary to provide the basic tier of service under 47 CFR 76.922 and 76.923, the cable operator must submit a rate filing which includes the appropriate FCC forms.

(c) *Rates based on cost-of-service*

(1) For an existing or proposed rate for the basic service tier or the equipment necessary to provide the basic tier of service that exceeds the permitted tier charge and actual cost of equipment as set forth in the regulation of the basic service tier or the equipment necessary to provide the basic tier of service under 47 CFR 76.922 and 76.923, the cable operator must submit a rate filing which includes a cost-of-service showing to justify the proposed rate. Such cost-of-service showing must be done in accordance with 47 CFR 76.924.

(2) If a cable operator seeks to support a rate increase based upon a cost-of-service showing, the board will establish a rate that provides the cable operator an opportunity to recover the reasonable costs associated with providing basic service tier of cable television services and the equipment necessary to provide the basic tier of service, including a reasonable profit. An expense or investment is not presumed reasonable merely because the operator has incurred or made it. A cable operator is not entitled to recover monopoly rents in any form.

Sec. 85.06. Additional time for review and tolling provisions.

(a) After the cable operator has submitted its rate filing for review of its existing rates for the basic service tier and equipment necessary for the provision of the basic service tier, or a rate filing for review of a proposed increase in these rates (including increases in the baseline channel change 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 thirty (30) days from the date of submission of

the rate filing; provided, however, that the board may toll this thirty (30) day deadline for an additional time by issuing a brief written order as described in section 85.06(b) within thirty (30) days of the submission of the rate filing explaining that it needs additional time to review the rates and, if necessary, make information requests.

(b) If the board is unable to determine, based upon the rate filing 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 by 47 CFR 76.922 and 47 CFR 76.923, or if the cable operator has submitted a cost-of-service showing pursuant to 47 CFR 76.937(c) and 47 CFR 76.924, seeking to justify a rate above the FCC's basic service tier charge, then the board may toll the thirty (30) day deadline referred to in section 85.06(a) to make information requests 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.

(c) In the event that the board avails itself of the additional review time periods referred to in section 85.06(b), and no action has been taken within these additional review time periods, then the following will occur:

(1) if the cable operator proposes to increase its rates from the existing level, then the proposed rates will go into effect at the end of the applicable additional review time periods; or

(2) if the cable operator seeks to justify existing rates then the existing rates will remain in effect at the end of the applicable additional review time periods, subject to any refunds if the board subsequently issues a written decision disapproving any portion of such rates.

(d) To order refunds referred to in section 85.06(c)(2), the board must have issued a brief written order to the cable operator by the end of the applicable additional review time periods directing the 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.

Sec. 85.07. Public comment.

(a) At some time during the review or extended review time periods and before taking action on the filed rate schedule to be acted upon, the City shall hold at least one public meeting in which interested citizens may express their views and record their objections.

(b) Notice of the public meetings shall be provided in accordance with Ind. Code chapter 5-14-1.5.

Sec. 85.08. Rate establishment, reductions and refunds.

(a) *Rate Establishment.* The board may prescribe a reasonable rate for basic service tier of cable television services and the equipment necessary to provide the basic tier of service after it determines that a proposed rate is unreasonable.

(b) *Reductions.* The board may order the cable operator to implement a reduction in the rates charged for basic service tier of the cable television services and the equipment necessary to provide the basic tier of service where necessary to bring rates into compliance with the standards set forth in 47 CFR 76.922 and 76.923.

(c) *Refunds.* The board may order the cable operator to refund to subscribers a portion of previously paid rates in accordance with 47 CFR 76.942.

Sec. 85.09. Completion of review and final rate order.

(a) Upon completion of its review of existing or proposed rates for the basic service tier of cable television services and the equipment necessary to provide the basic tier of service submitted in the rate filing, the council shall adopt a formal decision in the form of a final rate order, based upon the recommendation of the board, including the reasons for the decision.

(b) In the event the cable operator's existing or proposed rates exceed the reasonable rate standards as established by the FCC in its rules and regulations, the board may order the rates to be reduced by rollbacks or refunds to the subscribers, in the manner so provided in the rules and regulations promulgated by the FCC pursuant to the Cable Television Consumer Protection and Competition Act of 1992.

(c) Each final rate order shall be effective immediately and shall be released to the cable operator and the public. In any case where the board:

- (1) approved, denies or tolls a rate;
- (2) orders that a rate may go into effect subject to a refund; or
- (3) orders reductions, rollbacks or refunds or establishes rates,

a public notice shall be published stating that the final rate order has been issued and is available for review. Any such final rate order shall be in writing and explain the basis for the decision.

Sec. 85.10. Implementation of remedial requirements.

(a) A cable operator must implement remedial requirements, including prospective rate reductions, rollbacks and refunds, within sixty (60) days of the date that the final written decision ordering a remedy is issued.

(b) Within ninety (90) days of the date of a final written decision ordering a remedy is issued, a cable operator must file a certification, signed by an authorized representative of the cable operator, stating:

- (1) whether the operator has complied fully with all provisions of the final written decision;
- (2) describing in detail the precise measures taken to implement the remedy ordered; and
- (3) showing how refunds (including interest) were calculated and distributed.

(c) It is the responsibility of the cable operator to keep books and records of account so that it can refund any amounts owed to subscribers.

Sec. 85.11. Information requests.

The board may make information requests from the cable operator. A cable operator and any other entity that has records of revenues or expenses that are allocated to the cable operator's system must respond such information requests by deadlines established by the board. A cable operator is responsible for ensuring that the cable operator or other entity responds to the information requests.

Sec. 85.12. Confidential information.

In considering the information provided by the cable operator as part of the review of its rates for the basic service tier of cable television services and the

equipment necessary to provide the basic tier of service submitted in the rate filing, all information submitted in any rate filing shall be considered public record.

Sec. 85.13. Appeal of decisions.

(a) The FCC shall be the sole forum for appeals of decisions by the City on rates for the basic service tier or associated equipment involving whether or not the City has acted consistently with the Cable Television Consumer Protection and Competition Act of 1992 and the regulation of the basic service tier or the equipment necessary to provide the basic tier of service under 47 CFR 76.922 and 76.923. Appeals of ratemaking decisions by the City that do not depend upon whether determining whether the City has acted consistently with the Cable Television Consumer Protection and Competition Act of 1992 and the regulation of the basic service tier or the equipment necessary to provide the basic tier of service under 47 CFR 76.922 and 76.923, may be heard in state or local courts.

(b) Any participant at the ratemaking proceeding level of the City may file an appeal of the decision of the City with the FCC within thirty (30) days of the release of the text of the decision of the City as computed under 47 CFR 1.4(b). Oppositions may be filed within fifteen (15) days after the appeal is filed, and must be served on the parties appealing the rate decision. Replies may be filed seven (7) days after the last day for oppositions and shall be served on the parties to the proceeding.

Sec. 85.14. Noncompliance and penalties.

(a) Failure of the cable operator to comply with the terms and conditions established by this chapter shall constitute a violation of this chapter. If the cable operator shall violate any terms or conditions of this chapter, the cable operator shall be subject to fines of not less than one thousand dollars, nor more than two thousand five hundred dollars. Each day of the noncompliance shall constitute a separate violation.

(b) The cable operator shall not be subject to forfeiture because its rate for basic service tier or the equipment necessary to provide the basic tier of service is determined to be unreasonable. (Ord. No. 8-94.)