

TITLE 2

BUSINESS REGULATIONS AND LICENSING

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Chapter 2.01

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2.01.005 Scope and Applicability. This Chapter governs the regulation of rates for basic service and equipment within the Town for any Operator. 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 Town will regulate and interpret its rules so that they are consistent with FCC regulations, as if those regulations were set forth in full herein; an 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. S 76.901 and the term “equipment” refers to all equipment and services subject to regulation under 47 C.F.R. S76.923. (Ord. 94-1, Jan. 18, 1994)

FILING AND REVIEW OF RATES

2.01.110 Initial Rate Filings by Operator.

- (1) 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 thirty (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 sent notice by the Town 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 Town. 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 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 rates, (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 in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement. (Ord. 94-1, S1.1.1, Jan. 18, 1994)
- (2) Filing: Where Made. Every rate filing must be submitted to the Clerk-Treasurer. A rate filing shall be considered filed for review on the date the rate filing and all required copies are received by the Clerk-Treasurer. Four (4) copies of each rate filing, (including all supporting materials, must be submitted. (Ord. 94-1, S1.1.2, Jan. 18, 1994)
- (3) Filing: 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:
 - A. 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 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 2.01.610 - 2.01.650 of this Chapter. 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.

- B. The pages of each rate filing must be numbered sequentially.
 - C. The rate filing must contain all applicable FCC forms and these forms must be correctly completed.
 - D. 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. (Ord. 94-1, S1.1.3. 18, 1994)
- (4) In addition to information the Town requires the Operator to provide and unless the Town 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 revenues 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. S522(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 identified was aggregated and show clearly how the 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 Town 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. (Ord. 94-1, S1.1.4, Jan. 18, 1994)
- (5) Notwithstanding the foregoing, an Operator is not required to submit the cost of service specified in Section 2.01.110(4) 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 forms and presenting any other information the Council, (hereinafter "Council"), deems necessary or appropriate, consistent with FCC regulations. Any cost of service submitted to justify basic service 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. (Ord. 94-1, S1.1.5, Jan. 18, 1994)

2.01.120 Initial Town Review.

- (1) The Clerk-Treasurer 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, either by written comment or in person, at a meeting of the Town Council held for this purpose. The Operator may respond to public comments or the Council's recommendations and participate in any discussion thereof. (Ord. 94-1, S1.2.1, Jan. 18, 1994)
- (2) Within thirty (30) days of the date of the filing, the Council 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 Council tolls 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 2.01.130. With respect to existing rates, tolling means the rates may remain in effect, subject to refund; with respect to rate changes, tolling means the portion of the rate change that is tolled may not go into effect. (Ord. 94-1, S1.2.2, Jan. 18, 1994)

2.01.130 Supplementary Filings.

- (1) If a proposed rate is tolled in whole or in part, the Operator shall submit a supplementary filing within twenty (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 to the recommendations of the Clerk-Treasurer or any additional information necessary to support the proposed rate. Supplementary filings must be filed in accordance with Section 2.01.110(2). (Ord. 94-1, S1.3.1, Jan. 18, 1994)
- (2) A supplementary filing also must contain such information as the Council directs the Operator to provide. (Ord. 94-1, S1.3.2, Jan. 18, 1994)
- (3) In addition to information the Council requires the Operator to provide, and unless the Council 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. S76.922(d) (1) - (2) must submit the following:
 - A. a calculation showing how each part of the adjustment was derived;
and

- B. a statement itemizing each external cost, (as defined by FCC regulations), the amount of that external cost for the two (2) 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; and
 - C. 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 twelve (12) months, the prior contract for the service; and
 - D. 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), as required by 47 C.F.R. S76.922(d) (2); affirming that the Operator has only sought to recover any external cost to the extent that cost exceeded the 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. S76.922(d) (2) (vi). (Ord. 94-1, S1.3.3, Jan. 18, 1994)
- (4) The Council 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 Council issues 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. S76.933. (Ord. 94-1, S1.3.4, Jan. 18, 1994)
- (5) The final rate order specified in Section 2.01.130(4) shall be issued ninety (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 one hundred fifty (150) days of the tolling order for any rate the Operator justified with a cost of service showing. (Ord. 94-1, S1.3.5, Jan. 18, 1994)

PROVISIONS GENERALLY APPLICABLE TO INITIAL AND FINAL RATE ORDERS

2.01.210 Final Rate Effective Immediately and Released to the Public and the Operator. Any initial or final rate order of the Council shall be effective immediately. Each rate order shall be released to the public and the Operator. (Ord. 94-1, S2.1, Jan. 18, 1994)

2.01.220 Proposed Rate or Refunds. The Council 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. However, before prescribing a rate or ordering a refund to subscribers, the Council shall ensure the Operator has had notice and opportunity to comment on the posed rate or refunds. (Ord. 94-1, S2.2, Jan. 18, 1994)

2.01.230 Changes in the FCC Benchmark. 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 Town 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. (Ord. 94-1, S2.3, Jan. 18, 1994)

OPERATORS DUTIES

2.01.310 Remedial Requirements of Operator. An Operator must implement remedial requirements, including prospective rate reductions and refunds, within sixty (60) days of the date the Council issues a final rate order mandating a remedy. (Ord. 94-1, S3.1, Jan. 18, 1994)

2.01.320 Certification. Within ninety (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:

- (1) whether the Operator has complied fully with all provisions of the Council's order; and
- (2) describing in detail the precise measures taken to implement the Council's order; and
- (3) showing how refunds, (including interest), were calculated and distributed. (Ord. 94-1, S3.2, 3.2.1, 3.2.2, 3.2.3, Jan. 18, 1994)

2.01.330 Bookkeeping. It is each Operator's responsibility to keep books and records of account so that it can refund any amounts owed to subscribers. (Ord. 94-1, S3.3, Jan. 18, 1994)

2.01.340 Complete Filing. 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. (Ord. 94-1, S3.4, Jan. 18, 1994)

2.01.350 Information Requests.

- (1) 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 Town by deadlines established by the Council. An Operator is responsible for ensuring that such other entity responds to the Town's request. (Ord. 94-1, S3.5.1, Jan. 18, 1994)
- (2) 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 2.01.120 issues within five (5) 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. (Ord. 94-1, S3.5.2, Jan. 18, 1994)

DUTIES OF CLERK-TREASURER AND TOWN COUNCIL

2.01.410 Administration. The Clerk-Treasurer shall be responsible for administering the provisions herein. Without limitation and by way of illustration:

- (1) The Clerk-Treasurer shall ensure notices are given to the public and each Operator as required herein and by FCC regulations. Any notice required by these regulations can be provided by publication, by mail, or any other reasonable means.
- (2) The Council may submit requests for information to the Operator and establish deadlines for response to them, as provided in Section 2.01.310 - 2.01.350. Requests may be made by mail or any other reasonable means. (Ord. 94-1, S4.1, 4.1.1, 4.1.2, Jan. 18, 1994)

2.01.420 Waiver. For good cause, the Council may waive any provision herein or extend any deadline for filing or response except as to such matters as are mandatory under FCC regulations. (Ord. 94-1, S4.2, Jan. 18, 1994)

2.01.500 Penalties and Forfeitures. Except as prohibited by Federal Law, an Operator shall be subject to penalties and forfeitures, the Town's attorney fees in enforcing this Chapter, and its request for approval of a rate may be denied if it:

- (1) knowingly submits false or fraudulent information to the Town in connection with any rate proceeding; and
- (2) fails to comply with any lawful order or request of the Town, including but not limited to, a request for information or an order setting rates; or
- (3) evades or attempts to evade Federal or local rate regulations. (Ord. 94-1, S5.1, 5.2, 5.3, Jan. 18, 1994)

CONFIDENTIAL INFORMATION

2.01.610 Rate Filing Public Information, unless Designated Confidential. Every rate filing (and supplementary filing) shall become the sole property of the Town and will be available to the public unless otherwise properly designated as "confidential" by Operator in accordance with applicable law. (Ord. 94-1, S5.1, Jan. 18, 1994)

2.01.620 Confidential Information to be Submitted Separately. The Operator shall submit information which it believes is confidential separately in a sealed envelope marked "confidential," or the Town will treat the information as public. (Ord. 94-1, S6.2, Jan. 18, 1994)

2.01.630 After Filing Information cannot be Designated Confidential. The Operator cannot designate information as "confidential" after a filing is made. (Ord. 94-1, S6.3, Jan. 18, 1994)

2.01.640 Requests for Confidentiality. The Council shall rule on requests for confidentiality. (Ord. 94-1, S6.4, Jan. 18, 1994)

2.01.650 Appealing Confidentiality Denial. If the Town receives a request for information submitted by the Operator as confidential and the Council determines that, in the Council's judgment, the designation is not appropriate under the applicable law, the Town will treat the information as public unless the Operator agrees to defend and indemnify the Town from any and all losses, liabilities, claims, judgments, and liens, including costs and expenses, arising out of or resulting from the Town's denial of a request for the information under Indiana's Public Records Law (I.C. 5-14-3). An Operator may appeal any decision that may result in release of information the Operator has designated as confidential within timelines contemplated within FCC regulations. (Ord. 94-1, S6.5, Jan. 18, 1994)

Chapter 2.04

VIDEO SERVICE FRANCHISE FEES

Sections:

2.04.010 Video Service Franchise Fee

2.04.020 Additional Charges

2.04.030 Collection of delinquent fees and associated legal costs

2.04.040 Separability

2.04.010 Video Service Franchise Fee. The existing video franchise fee of three percent (3%) of the gross revenue of a video franchise provider from providing video franchise services to Ferdinand is confirmed and ratified, effective as of the date any video service provider began providing video service in Ferdinand, using Town right-of-ways to provide such service, and shall apply to any video services in Ferdinand, using Town right-of-ways to provide such service, after the date this Ordinance is adopted. (Ord. 13-02, S1, Jan. 8, 2013)

2.04.020 Additional Charges. The video service franchise fee shall be in addition to and not in lieu of any additional or specific charge for use of or damage to Town infrastructure, including but not limited to utility pole rental fees. (Ord. 13-02, S2, Jan. 8, 2013)

2.04.030 Collection of delinquent fees and associated legal costs. In the event the Town files judicial or regulatory proceedings to enforce collection of delinquent video service franchise fees, it shall also be entitled to recover interest thereon at the legal rate, and its costs and attorney fees. (Ord. 13-02, S3, Jan. 8, 2013)

2.04.040 Separability. In the event any part of this Ordinance is determined to be invalid, other parts thereof shall remain valid, provided those parts can be given legal effect. (Ord. 13-02, S4, Jan. 8, 2013)