

CHAPTER 810
Cable Television Rate Regulations

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CROSS REFERENCES

Construction and maintenance of facilities – see M.C.L.A. Secs.
247.183 et seq.

Television and radio generally – see M.C.L.A. Secs. 484.301 et seq.,
750.507 et seq.

Cables improperly located; insurance – see M.C.L.A. Sec. 500.3123

Cable television contracts - see B.R. & T. Ch. 808

810.01 DEFINITIONS.

For purposes of this chapter, the following words and phrases shall have the meanings set forth herein:

- (a) "Act" means the Communications Act of 1934, as amended (and specifically as amended by the Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385), and as may be amended from time to time;
- (b) "Associated equipment" means all equipment and services subject to regulation pursuant to 47 CFR 76.923;

- (c) "Basic cable service" means basic service, as defined in the FCC Rules, and any other cable television service which is subject to rate regulation by the City pursuant to the Act and the FCC Rules;
- (d) "FCC" means the Federal Communications Commission;
- (e) "FCC Rules" means all rules of the FCC promulgated from time to time pursuant to the Act;
- (f) "Increase in rates" means an increase in rates or a decrease in programming or customer services.

All other words and phrases used in this chapter shall have the same meanings given in the Act and the FCC Rules. (Ord. 93-5. Passed 10-19-93.)

810.02 PURPOSES; INTERPRETATION.

The purposes of this chapter are to:

- (a) Adopt regulations consistent with the Act and the FCC Rules with respect to basic cable service rate regulation; and
- (b) Prescribe procedures to provide a reasonable opportunity for consideration of the views of interested parties in connection with basic cable service rate regulation by the City.

This chapter shall be implemented and interpreted to be consistent with the Act and the FCC Rules. (Ord. 93-5. Passed 10-19-93.)

810.03 RATE REGULATIONS.

In connection with the regulation of rates for basic cable service and associated equipment, the City shall follow all FCC Rules. (Ord. 93-5. Passed 10-19-93.)

810.04 FILING OF SCHEDULE OF RATES; ADDITIONAL INFORMATION REQUIRED; BURDEN OF PROOF OF COMPLIANCE WITH ACT AND FCC RULES.

(a) A cable operator shall submit its schedule of rates for the basic service tier and associated equipment or a proposed increase in such rates in accordance with the Act and the FCC Rules. The cable operator shall include as part of its submission such information as is necessary to show that its schedule of rates or its proposed increase in rates complies with the Act and the FCC Rules. The cable operator shall file ten copies of the schedule or proposed increase with the City Clerk. For purposes of this chapter, such filing by the cable operator shall be deemed to have been made when at least ten copies have been received by the City Clerk. Council may, by resolution or otherwise, where reasonable, adopt rules and regulations prescribing the information, data and calculations which must be included as part of the cable operator's filing of its schedule of rates or a proposed increase.

(b) In addition to the information and data required by rules and regulations of the City pursuant to subsection (a) hereof, a cable operator shall provide all information requested by the City Manager in connection with the City's review and regulation of existing rates for the basic service tier and associated equipment or a proposed increase in these rates. The City Manager may establish deadlines for submission of the requested information, and the cable operator shall comply with such deadlines.

(c) A cable operator will provide appropriate support that its schedule of rates for the basic service tier and associated equipment, or a proposed increase in such rates, complies with the Act and the FCC Rules including, without limitation, 47 USC 543 and 47 CFR 76.922 and 76.923. (Ord. 93-5. Passed 10-19-93.)

810.05 PROPRIETARY INFORMATION.

(a) If this chapter, any rules or regulations adopted by the City pursuant to Section 810.04(a), or any request for information pursuant to Section 810.04(b), requires the production of proprietary information, the cable operator shall produce the information. However, at the time the alleged proprietary information is submitted, the cable operator may request that specific identified portions of its response be treated as confidential and withheld from public disclosure. The request must state the reason why the information should be treated as proprietary and the facts that support these reasons.

The request for confidentiality will be granted if the City determines that the preponderance of the evidence shows that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 USC 552. The City shall place, in a public file, for inspection, any decision that results in information being withheld. If the cable operator requests confidentiality and the request is denied, then, where the cable operator is proposing a rate increase, it may withdraw the proposal, in which case the alleged proprietary information will be returned to it. Alternatively, the cable operator may seek review within five working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

(b) Any interested party may file a request to inspect material withheld as proprietary with the City. The City shall weigh the policy considerations favoring nondisclosure against the reasons cited for permitting inspection in light of the facts of the particular case. The City will then promptly notify the requesting entity and the cable operator that submitted the information as to the disposition of the request. The City may grant, deny or condition a request. The requesting party or the cable operator may seek review of the decision by filing an appeal in an appropriate forum. Disclosure will be stayed pending resolution of any appeal.

(c) The procedures set forth in this section shall be construed as analogous to and consistent with the rules of the FCC regarding requests for confidentiality, including, without limitation, 47 CFR 459. (Ord. 93-5. Passed 10-19-93.)

810.06 PUBLIC NOTICE; INITIAL REVIEW OF RATES.

Upon the filing of ten copies of a schedule of rates or a proposed increase in rates pursuant to Section 810.04(a), the City Clerk shall publish a public notice in a newspaper of general circulation in the City which shall state that the filing has been received by the City Clerk and (except that those parts which may be withheld as proprietary) is available for public inspection and copying and that interested persons are encouraged to submit written comments on the filing to the City Clerk not later than seven days after the public notice is published. The City Clerk shall give notice to the cable operator of the date, time and place of the meeting at which Council shall first consider the schedule of rates or the proposed increase. This notice shall be mailed, by first class mail, at least three days before the meeting. In addition, if a written staff or consultant's report on the schedule of rates or the proposed increase is prepared for consideration by Council, then the City Clerk shall mail a copy of the report, by first class mail, to the cable operator at least three days before the meeting at which Council shall first consider the schedule of rates or the proposed increase. (Ord. 93-5. Passed 10-19-93.)

810.07 EFFECTIVE DATE OF RATES; TOLLING ORDER.

After a cable operator has filed its existing schedule of rates or a proposed increase in these rates, the existing schedule of rates will remain in effect or the proposed increase in rates will become effective after thirty days from the date of filing under Section 810.04(a), unless Council (or another properly authorized body or official) tolls the thirty-day deadline pursuant to 47 CFR 76.933 by issuing a brief written order, by resolution or otherwise, within thirty days of the date of filing. Council may toll the thirty-day deadline for an additional ninety days in cases not involving cost-of-service showings, and for an additional 150 days in cases involving cost-of-service showings. (Ord. 93-5. Passed 10-19-93.)

810.08 PUBLIC NOTICE; HEARING RE RATES FOLLOWING TOLLING OF THIRTY-DAY DEADLINE.

If a written order has been issued pursuant to Section 810.07 and 47 CFR 76.933 to toll the effective date of existing rates for the basic service tier and associated equipment or a proposed increase in such rates, the cable operator shall submit to the City any additional information required or requested pursuant to Section 810.04. In addition, Council shall hold a public hearing to consider the comments of interested persons within the additional ninety-day or 150-day period, as the case may be.

The City Clerk shall publish a public notice of the public hearing in a newspaper of general circulation within the City which shall state the date, time and place at which the hearing shall be held, that interested persons may appear in person, by agent or by letter at such hearing to submit comments on or objections to the existing rates or the proposed increase in rates, and that copies of the schedule of rates or the proposed increase in rates and related information (except those parts which may be withheld as proprietary) are available for inspection or copying from the office of the City Clerk. The public notice shall be published not less than fifteen days before the hearing. In addition, the City Clerk shall mail, by first-class mail, a copy of the public notice to the cable operator not less than fifteen days before the hearing. (Ord. 93-5. Passed 10-19-93.)

810.09 STAFF OR CONSULTANT REPORT; WRITTEN RESPONSE.

Following a public hearing, the City Manager shall cause a report to be prepared for Council, which shall include a recommendation for the decision of Council pursuant to Section 810.10, based on the filing of the cable operator, the comments or objections of interested persons, information requested from the cable operator, and its response, a staff or consultant's review, and other appropriate information. The City Clerk shall mail a copy of the report to the cable operator by first-class mail not less than twenty days before Council acts under Section 810.10. The cable operator may file a written response to the report with the City Clerk. If at least ten copies of the response are filed by the cable operator with the City Clerk within ten days after the report is mailed to the cable operator, the City Clerk shall forward them to the Council.

(Ord. 93-5. Passed 10-19-93.)

810.10 RATE DECISIONS AND ORDERS.

Council shall issue a written order, by resolution or otherwise, which, in whole or in part, approves the existing rates for basic cable service and associated equipment or a proposed increase in such rates, denies the existing rates or proposed increase, allows the existing rates or proposed increase to become effective, subject to refund, or orders other appropriate relief, in accordance with the FCC Rules. If Council issues an order allowing the existing rates or proposed increase to become effective, subject to refund, it shall also direct the cable operator to maintain an accounting pursuant to 47 CFR 76.933. An order issued pursuant to this section shall be issued within ninety days of a tolling order set forth in Section 810.07 in all cases not involving a cost-of-service showing. An order shall be issued within 150 days after a tolling order set forth in Section 810.07 in all cases involving a cost-of-service showing.

810.11 REFUNDS; NOTICE.

Council may order a refund to subscribers as provided in 47 CFR 76.942. Before Council orders any refund to subscribers, the City Clerk shall give at least seven days written notice to the cable operator, by first-class mail, of the date, time and place at which Council shall consider issuing a refund order and shall provide an opportunity for the cable operator to comment. The cable operator may appear in person, by agent or by letter at such time for the purpose of submitting comments to Council.

(Ord. 93-5. Passed 10-19-93.)

810.12 WRITTEN DECISIONS; PUBLIC NOTICE.

Any order of Council issued pursuant to Section 810.10 or 810.11 shall be in writing, shall be effective upon adoption by Council and shall be deemed to be released to the public upon adoption. The City Clerk shall publish a public notice of any such written order in a newspaper of general circulation in the City, which notice shall summarize the written decision and state that copies of the text of the written decision are available for inspection or copying from the office of the City Clerk. In addition, the City Clerk shall mail a copy of the text of the written decision to the cable operator by first-class mail.

(Ord. 93-5. Passed 10-19-93.)

810.13 RULES AND REGULATIONS.

In addition to rules promulgated pursuant to Section 810.04, Council may, by resolution or otherwise, adopt rules and regulations for basic cable service rate regulation proceedings (including, without limitation, the conduct of hearings), consistent with the Act and the FCC Rules.

(Ord. 93-5. Passed 10-19-93.)

810.14 EFFECT OF FAILURE TO GIVE NOTICE OR TO MAIL COPIES OF REPORTS.

The failure of the City Clerk to give the notices or to mail copies of the reports required by this chapter shall not invalidate the decisions or proceedings of Council.

(Ord. 93-5. Passed 10-19-93.)

810.15 ADDITIONAL HEARINGS.

In addition to the requirements of this chapter, Council may hold additional public hearings upon such reasonable notice as Council in its sole discretion shall prescribe.

(Ord. 93-5. Passed 10-19-93.)

810.16 POWER OF CITY.

The City shall possess all powers conferred by the Act, the FCC Rules, the cable operator's franchise and all other applicable laws. The powers exercised pursuant to the Act, the FCC Rules and this chapter shall be in addition to powers conferred by law or otherwise. The City may take any action not prohibited by the Act and the FCC Rules to protect the public interest in connection with basic cable service rate regulation.

(Ord. 93-5. Passed 10-19-93.)

810.17 CONFLICTS OF LAWS.

In the event of a conflict between any of the provisions of this chapter and a provision of any prior ordinance or any franchise, permit, consent agreement or other agreement with a cable operator, the provisions of this chapter shall control.

(Ord. 93-5. Passed 10-19-93.)

810.18 FAILURE TO COMPLY; REMEDIES.

The City may pursue any and all legal and equitable remedies against a cable operator (including, without limitation, all remedies provided under a cable operator's consent agreement with the City) for failure to comply with the Act, the FCC Rules, any orders or determinations made by the City pursuant to this chapter, any requirements of this chapter or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the City pursuant to this chapter, any requirements of this chapter or any rules and regulations promulgated hereunder, shall also be sufficient grounds for revocation or denial of the renewal of a cable operator's consent agreement. (Ord. 93-5. Passed 10-19-93.)

810.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 of the Administration Code for the general Code penalty if no specific penalty is provided.)