

**TITLE XI: BUSINESS REGULATIONS**

Chapter

**110.CABLE TV REGULATIONS**

**Business Regulations**

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**CHAPTER 110: CABLE TV REGULATIONS**

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## General Provisions

### § 110.01 TITLE.

The following regulations are hereby adopted and shall be known as the Cable TV Regulations for the City of Meadowlakes, Texas.  
(Ord. 93-11-13, passed 11-13-93)

### § 110.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

**AFFILIATED PROGRAMMER.** A programmer with an ownership interest of 5% or more, including general partnership interests, direct ownership interests, and stock interests in a corporation where the stockholders are officers or directors or who directly or indirectly own 5% or more of the outstanding stock, whether voting or nonvoting. The interests include limited partnership interests of 5% or greater.

**BASIC SERVICE TIER.** The **BASIC SERVICE TIER** shall, at a minimum, include 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 the station, regardless of how the 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, and any additional video programming signals or service added to the basic tier by the cable operator.

**CABLE OPERATOR.** Any person or group of persons who provides cable service over a cable system within the city under a franchise issued by the city, and who directly or through one or more affiliates owns a significant interest in the cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

**CABLE PROGRAMMING SERVICE.** This includes any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of video programming, other than the following.

- (1) Video programming carried on the basic service tier as defined in this section.
- (2) Video programming offered on a pay-per-channel or pay-per-program basis.
- (3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
  - (a) Consists of commonly identified video programming.
  - (b) Is not bundled with any regulated tier of service.

**CITY.** The City of Meadowlakes, Texas.

**COMMISSION.** The Federal Communications Commission.

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***SMALL SYSTEM.*** A cable television system that serves fewer than 1,000 subscribers. The service area of a small system is determined by the number of subscribers that are served by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to the system's principal headend.  
(Ord. 93-11-13, passed 11-13-93)

### **§ 110.03 REQUIRED MONTHLY BILLING INFORMATION.**

A cable operator must provide the following information to subscribers on monthly bills.

(A) A statement substantially the same as the following: "The basic service tier rates and related equipment and installation charges are regulated by the city. If you have any questions or comments regarding these rates, you may call 830-693-6840 or write the city at 177 Broadmoor, Suite A, Meadowlakes, Texas 78654."

(B) The FCC community unit identifier for the cable system.  
(Ord. 93-11-13, passed 11-13-93; Am. Ord. 2006-29, passed 11-7-06) Penalty, see § 10.99

### **§ 110.04 NEGATIVE OPTION BILLING.**

A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. This provision, however, shall not preclude the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier of service, or the restructuring or division of existing tiers of service that do not result in a fundamental change in the nature of an existing service or tier of service, provided that the change is otherwise consistent with applicable regulations. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.  
(Ord. 93-11-13, passed 11-13-93) Penalty, see § 10.99

### **§ 110.05 BILL ITEMIZATION.**

(A) Cable operators may identify as a separate line item of each regular subscriber bill the following.

(1) The amount of the total bill assessed as a franchise fee.

(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. In order for a governmental fee or assessment to be separately identified under this section, it must be directly imposed by a governmental body on a transaction between a subscriber and an operator.

(B) The charge identified on the subscriber bill as the total charge for cable service should include all fees and costs itemized pursuant to this section.  
(Ord. 93-11-13, passed 11-13-93)

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### § 110.15 BASIC SERVICE TIER RATES.

(A) *Basic service tier rates.* Basic service tier rates are subject to regulation by the city in order to assure that they are in compliance with the requirements of 47 USC 543. Rates that are demonstrated, in accordance with this chapter, not to exceed the “Initial Permitted Per Channel Charge” or the “Subsequent Permitted Per Channel Charge” as described in this section, or the equipment charges as specified in § 110.16, will be accepted as in compliance. The maximum monthly charge per subscriber for the basic service tier offered by a cable operator shall consist of a permitted per channel charge multiplied by the number of channels on the tier, plus a charge for franchise fees. The maximum monthly charges for the basic service tier shall not include any charges for equipment or installations. Charges for equipment and installations are to be calculated separately pursuant to § 110.16 of this chapter.

(B) *Initial permitted per channel charge.*

(1) For purposes of this section, the initial date of regulation for the basic service tier shall be the date on which the city gives written notice to the cable operator that the city has been certified by the Commission to regulate rates for the basic service tier and the date that this chapter has been adopted by the city.

(2) For purposes of this section, rates “in effect on the initial date of regulation” or “in effect on September 30, 1992,” shall be the rates charged to subscribers for service received on that respective date.

(3) The permitted per channel charge on the initial date of regulation shall be, at the election of the cable operator, either:

- (a) A charge determined pursuant to a cost-of-service proceeding; or
- (b) The charges specified in the following subdivisions.

1. If the operator’s per channel charge for the basic service tier and equipment in effect on the date of initial regulation is equal to or below the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992, to the date of initial regulation, then the permitted per channel charge shall be the per channel charge in effect on the date of initial regulation, adjusted for equipment.

2. If the operator's per channel charge for the basic service tier and equipment in effect on the date of initial regulation is above the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992, until the initial date of regulation, and the operator's per channel charge for the basic service tier and equipment in effect on September 30, 1992, was above the benchmark per channel charge, then the permitted per channel charge is 9/10 the per channel charge in effect on September 30, 1992, but no lower than the benchmark per channel charge, additionally adjusted for inflation from September 30, 1992, to the initial date of regulation, for equipment, and for any changes in the number of channels offered on the basic service tiers.

3. If the operator's per channel charge for the basic service tier and equipment in effect on the date of initial regulation is above the benchmark per channel charge, as adjusted forward for inflation from September 30, 1992, until the initial date of regulation, and the operator's per channel charge for the basic service tier and equipment in effect on September 30, 1992, was below the benchmark per channel charge, then the permitted per channel charge is the benchmark rate per channel adjusted for inflation from September 30, 1992, to the initial date

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of regulation, for equipment, and for any changes in the number of channels offered on the basic service tier.

(C) *Subsequent permitted per channel charge.* After the initial date of regulation, the permitted channel charge for the basic service tier shall be, at the election of the cable operator, either of the following.

(1) A per channel rate determined pursuant to a cost-of-service showing, or:

(2) The prior permitted per channel charge previously approved by the city, adjusted for inflation and external costs in accordance with the price cap requirements set forth in division (D) of this section.

(D) *Price cap requirements.*

(1) *Inflation adjustments.* Permitted per channel charges for the basic service tier may be adjusted periodically on account of inflation. Adjustments to permitted per channel charges on account of inflation shall be based on changes in the Gross National Product Price Index (GNP-PI) published by the Bureau of Economic Analysis of the United States Department of Commerce.

(2) *External costs.* Permitted per channel charges for the basic service tier may also be adjusted for changes in external costs measured on a per channel per-subscriber basis. To the extent external cost increases are greater or less than the GNP-PI for the relevant period, the per channel charge will be adjusted accordingly. Per channel charges may not be increased if external costs other than franchise fees increase at a rate less than inflation. Permitted per channel charges also shall be decreased on account of external costs to the extent such costs decrease from previous levels.

(a) External costs shall consist of costs in the following categories.

1. State and local taxes applicable to provisions of cable television service.
2. Franchise fees.
3. Costs of complying with franchise requirements, including costs of providing public, educational, and governmental access channels as required by the city.
4. Retransmission consent fees.
5. Programming costs.

(b) The permitted per channel charge for the basic service tier shall be adjusted on account of programming costs and retransmission consent fees only for programming or broadcast signals offered on that tier.

(c) The permitted per channel charge shall not be adjusted for costs of retransmission consent fees or charges in those fees incurred prior to October 6, 1994.

(d) The starting date for adjustments due to external costs for the basic service tier shall be the initial date of regulation, or 180 days from September 1, 1993, if the initial date of regulation occurs on or after 180 days from September 1, 1993.

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(e) Changes in franchise fees shall not result in an adjustment to permitted per channel charges, but rather shall be calculated separately as part of the maximum monthly charge per subscriber for the basic service tier.

(f) Adjustments to permitted per channel charges due to increases in costs of programming obtained from affiliated programmers shall be the lesser of actual increases or the previous permitted rate level increased by the amount of inflation.

(g) Adjustments to permitted per channel charges due to increases in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer.  
(Ord. 93-11-13, passed 11-13-93)

#### **§ 110.16 RATES FOR EQUIPMENT AND INSTALLATION USED TO RECEIVE BASIC SERVICE TIER.**

(A) *Scope.*

(1) The equipment regulated under this section consists of all equipment in a subscriber's location that is used to receive the basic service tier, regardless of whether the equipment is additionally used to receive other tiers of regulated programming service and/or unregulated service. The equipment shall include, but is not limited to the following.

- (a) Converter boxes.
- (b) Remote control units.
- (c) Connections for additional television receivers.
- (c) Other cable home wiring.

(2) Subscriber charges for this equipment shall not exceed charges based on actual costs in accordance with the requirements set forth below.

(B) *Unbundling.* A cable operator shall establish rates for remote control units, converter boxes, other customer equipment, installation, and additional connections separate from rates for basic service tier. In addition, the rates for equipment and installations shall be unbundled one from the other.

(C) *Equipment basket.* A cable operator shall establish an equipment basket, which will include all costs associated with providing customer equipment and installation under this section. Equipment basket costs shall be limited to the direct and indirect material and labor costs of providing, leasing, installing, repairing, and servicing customer equipment, as determined in accordance with the cost accounting and cost allocation requirements of § 110.17. The equipment basket shall not include general administrative overhead including general marketing expenses. The equipment basket may include a reasonable profit.

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(D) *Hourly service charge.* A cable operator shall establish charges for equipment and installation using the Hourly Service Charge (HSC) methodology. The HSC shall equal the operator's annual equipment basket costs, excluding the purchase cost of customer equipment, divided by the total person hours involved in installing, repairing, and servicing customer equipment during the same period. The purchase cost of customer equipment shall include the cable operator's invoice price plus all other costs incurred with respect to the equipment until the time it is provided to the customer. The HSC is calculated according to the following formula:

$$\text{HSC} = \frac{\text{EB} - \text{CE}}{\text{H}} \quad \text{In which, EB} = \text{annual Equipment Basket Cost.}$$

CE = annual purchase cost of all customer equipment.

H = person hours involved in installing and repairing equipment per year.

(E) *Installation charges.* Installation charges shall be either of the following.

- (1) The HSC multiplied by the actual time spent on each individual installation; or
- (2) The HSC multiplied by the average time spent on a specific type of installation.

(F) *Remote charges.*

(1) Monthly charges for rental of a remote control unit shall consist of the average annual unit purchase cost of the type of remote leased, including acquisition price and incidental costs such as sales tax, financing and storage up to the time it is provided to the customer, added to the product of the HSC multiplied by the average number of hours annually repairing or servicing a remote, divided by 12 to determine the monthly lease rate for a remote according to the following formula:

$$\text{Monthly Charge} = \frac{\text{UCE} + (\text{HSC} \times \text{HR})}{12} \quad \text{In which, HR} = \text{average hours repair per year; and}$$

UCE = average annual unit cost of remote.

(2) Separate charges shall be established for each significantly different type of remote control unit.

(G) *Other equipment charges.* The monthly charges for rental of converter boxes and other customer equipment shall be calculated in the same manner as for remote control units. Separate charges shall be established for each significantly different type of converter box and each significantly different type of other customer equipment.

(H) *Additional connection charges.* The costs of installation and monthly use of additional connections shall be recovered as charges associated with the installation and equipment cost categories, and at rate levels determined by the actual cost methodology presented in divisions (E), (F), and (G) of this section. An operator may recover additional programming costs and the

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costs of signal boosters on the customers premises, if any, associated with the additional connection as a separate monthly unbundled charge for additional connections.

(I) *Charges for equipment sold.* A cable operator may sell customer premises equipment to a subscriber. The equipment price shall recover the operator's cost of the equipment, including costs associated with storing and preparing the equipment for sale up to the time it is sold to the customer, plus a reasonable profit. An operator may sell service contracts for the maintenance and repair of equipment sold to subscribers. The charge for a service contract shall be the HSC multiplied by the estimated average number of hours for maintenance and repair over the life of the equipment.

(J) *Promotions.* A cable operator may offer equipment or installation at charges below those determined under divisions (E) through (G) of this section, as long as those offerings are reasonable in scope in relation to the operator's overall offerings in the equipment basket and not unreasonably discriminatory. Operators may not recover the cost of a promotional offering by increasing charges for other equipment basket elements, or by increasing programming service rates above the maximum monthly charge per subscriber prescribed by this chapter. As part of a general cost-of-service showing, an operator may include the cost of promotions in its general system overhead costs.

(K) *Franchise fees.* Equipment charges may include a properly allocated portion of franchise fees paid to the city.  
(Ord. 93-11-13, passed 11-13-93)

### § 110.17 COST ACCOUNTING AND COST ALLOCATION REQUIREMENTS.

(A) *Applicability.* The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost-of-service showings.

(B) *Generally accepted accounting principles.* Cable operators shall maintain their accounts in accordance with generally accepted accounting principles, except as otherwise directed by the city.

(C) *Accounts required.* Cable operators shall maintain accounts in a manner that will enable identification of appropriate costs and application of the city's cost assignment and allocation procedures, to cost categories necessary for rate adjustments due to changes in external costs and for cost-of-service showings. Such categories shall be sufficiently detailed and supported to permit verification and audit against the company's accounting records.

(D) *Accounting level.* Except to the extent indicated below, cable operators shall aggregate expenses and revenues at either the franchise, system, regional, or company level in a manner consistent with practices of the operator as of April 3, 1992. However, in all events, cable operators shall identify at the franchise level their costs of franchise requirements, franchise fees, local taxes, and local programming.

(E) *Cost allocation requirements.*

(1) For purposes of establishing expenses at the franchise level, cable operators shall allocate expenses and revenues aggregated at higher levels to the franchise level based on the ratio of the total number of subscribers served at the franchise level to the total number of subscribers served at the higher level.

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(2) Except to the extent indicated below, all categories of costs allocated to, or identified at, the franchise level shall be allocated to the basic service tier based on the ratio of channels in the basic tier to the total number of channels offered in the franchise area, including non-regulated and leased commercial access channels. These costs shall be allocated to each tier of cable programming services based on the ratio of channels in that tier to the total number of channels offered in the franchise area.

(3) Costs of programming and retransmission consent fees, however, shall be allocated only to the tier on which the programming or broadcast signal at issue is offered.

(4) Costs of franchise fees shall be allocated among equipment and installations, program service tiers and subscribers in a manner that is most consistent with the methodology of assessment of franchise fees by the city.

(5) Costs of public, educational, and governmental access channels carried on the basic tier shall be directly assigned to the basic tier where possible.

(F) *Common costs.* Expenses which cannot be assigned to any single expense or service category shall be described as common costs. Common costs shall be allocated to expense categories as follows.

(1) Wherever possible, common costs are to be allocated to service cost categories based on direct analysis of the origin of the costs themselves.

(2) When direct analysis is not possible, common costs shall, if possible, be allocated to service cost categories based on an indirect, cost-causative linkage to other costs directly assigned or allocated to the service cost category.

(3) When neither direct nor indirect measures of cost allocation can be found, common costs shall be allocated to each service cost category based on the ratio of all costs directly assigned and attributed to a service cost category over total costs directly assignable and attributable.

(G) *Unrelated expenses and revenues.* Cable operators shall exclude from cost categories used to develop rates for the provision of basic service tier and equipment, any direct or indirect expenses and revenues not related to the provision of such services. Common costs of providing basic service tier and equipment, and unrelated activities shall be allocated between them in accordance with division (F) of this section.

(H) *Part-time channels.* In situations where a single channel is divided on a part-time basis and is used to deliver service associated with different tiers or with pay-per-channel or pay-per-view service, a reasonable and documented allocation of that channel between services shall be required along with the associated revenues and costs.  
(Ord. 93-11-13, passed 11-13-93)

### **§ 110.18 COSTS OF FRANCHISE REQUIREMENTS.**

(A) The costs of satisfying franchise requirements to support public, educational, and governmental channels shall consist of the sum of the following

(1) All per channel costs for the number of channels used to meet franchise requirements for public, educational, and governmental channels.

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- (2) Any direct costs of meeting franchise requirements.
- (3) A reasonable allocation of general and administrative overhead.

(B) The costs of satisfying any other requirement under the franchise shall consist of the direct and indirect costs, including a reasonable allocation of general and administrative overhead.

(Ord. 93-11-13, passed 11-13-93)

### **§ 110.19 CHARGES FOR CUSTOMER CHANGES.**

(A) This section shall govern charges for any changes in service tiers or equipment provided to the subscriber that are initiated at the request of a subscriber after initial service installation.

(B) The charge for customer changes in service tiers effected solely by coded entry on a computer terminal or by other similarly simple methods shall be a nominal amount, not exceeding actual costs, as defined in division (C) of this section.

(C) The charge for customer changes in service tiers or equipment that involve more than coded entry on a computer or other similarly simple method shall be based on actual cost. The actual cost charge shall be either the HSC, as defined in § 110.15 of this chapter, multiplied by the number of person hours needed to implement the change, or the HSC multiplied by the average number of person hours involved in implementing customer changes.

(D) A cable operator may establish a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, subject to approval by the city, for a subscriber changing service tiers more than two times in a 12-month period, except for such changes ordered in response to a change in price or channel line-up. If a cable system adopts such an increased charge, the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12-month period.

(E) Downgrade charges that are the same as, or lower than, upgrade charges are evidence of the reasonableness of such downgrade charges.

(F) For 30 days after notice of retiering or rate increases, a customer may obtain changes in service tiers at no additional charge.

(Ord. 93-11-13, passed 11-13-93)

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### **§ 110.30 NOTIFICATION OF PROPOSED RATE INCREASE.**

(A) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice shall include a provision stating that protests to the prices may be filed with the city at 177 Broadmoor, Suite A, Meadowlakes, Texas 78654. The notice shall also include a statement that protests must be filed with the city no later than 30 days after the notice is received by the subscriber.

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(B) In addition to the notice required in division (A), the cable operator shall give the city a minimum of 30 days advance written notification of any changes in rates for cable programming service or associated equipment.

(Ord. 93-11-13, passed 11-13-93; Am. Ord. 2006-29, passed 11-7-06) Penalty, see § 10.99

### **§ 110.31 INITIATION OF REVIEW OF BASIC CABLE SERVICE AND EQUIPMENT RATES.**

A cable operator shall file its schedule of rates for the basic service tier and associated equipment with the city within 30 days of receiving written notification from the city that the city has been certified by the Commission to regulate rates for the basic service tier, or by November 15, 1993, whichever is later.

(Ord. 93-11-13, passed 11-13-93) Penalty, see § 10.99

### **§ 110.32 REVIEW OF RATES AND EQUIPMENT COSTS BY CITY.**

(A) After a cable operator has submitted to the city 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 30 days from the date of submission to the city. Provided, however, that the city may toll this 30-day deadline for an additional time by issuing a brief written order as described in division (D) of this section within 30 days of the rate submission, explaining that it needs additional time to review the rates. The city may, at any time, require the cable operator to produce additional information, including proprietary information, that the city deems necessary in order to make a rate determination. If proprietary information is provided, the provisions of § 110.33 hereof will apply to such information.

(B) Upon receipt by the city, the cable operator's submittal shall be available for public inspection and copying. Comments on the submittal by interested persons may be submitted in writing or orally at a City Council meeting held at any time during the initial 30-day review period. Written comments shall be addressed to the Mayor, and must be received prior to the end of the 30-day review period.

(C) If a cable operator submits a proposed rate increase for review that appears to exceed the presumptively reasonable level and does not include a cost-of-service showing to justify the rate, the city will permit the cable operator to cure this deficiency and submit a cost-of-service showing.

(D) (1) If the city is unable to determine, based upon the material submitted by the cable operator, that the existing or proposed rates are within the permitted basic service tier charge or actual cost of equipment as defined in §§ 110.15 and 110.16 hereof, or if a cable operator has submitted a cost-of-service showing pursuant to §§ 110.17 and 110.34 hereof, seeking to justify a rate above the basic service tier charge as defined in §§ 110.15 and 110.16 hereof, the city may toll the 30-day deadline in division (A) of this section to request and/or consider additional information or to consider the comments from interested parties as follows.

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- (a) For an additional 90 days in cases not involving cost-of-service showings; or
- (b) For an additional 150 days in cases involving cost-of-service showings.

(2) The order tolling the effective date of the proposed rate shall explain why the city could not make the necessary determination, and it shall also provide the cable operator an opportunity to cure any deficiencies in its original filing. During the additional time periods provided in this subdivision, comments from interested persons may be submitted in writing, as provided in division (B) of this section, or orally during at least one City Council meeting during the period of abatement.

(E) If the city has availed itself of the additional 90 or 150 days permitted in division (C) of this section, and has taken no action within these additional time periods, then the proposed rates will go into effect at the end of the 90 or 150-day periods, or existing rates will remain in effect at such times, subject to refunds if the city subsequently issues a written decision disapproving any portion of the rates. Provided, however, that in order to order refunds, the city must have issued a brief written order to the cable operator by the end of the 90 or 150-day period permitted in division (C) of this section, 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. (Ord. 93-11-13, passed 11-13-93)

### **§ 110.33 PROPRIETARY INFORMATION.**

(A) If the city has required the cable operator to produce proprietary information under the provisions of this chapter, the cable operator may submit therewith a request that the information not be made routinely available for public inspection. A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply. If this is not feasible, the portion of the materials to which the request applies shall be identified.

(B) Each request shall contain a statement of the reasons for withholding the materials from inspection and of the facts upon which those reasons are based. If the request is that the materials be withheld from inspection for a limited period of time, that period shall be specified.

(C) Casual requests which do not comply with the requirements of divisions (A) and (B) of this section will not be considered.

(D) Upon receipt of a request in compliance with paragraphs (A) and (B), the city will not grant routine public access to the materials. A letter to that effect will be placed in a public file in lieu of the materials withheld from public inspection.

(E) Provided, however, if a written request for the materials is received by the city pursuant to the Open Records Act, Tex. Gov't Code, Chapter 552, the city will notify the person providing the materials of the request for the materials. If the person providing the materials requests the city to do so, the city will request an opinion from the Attorney General, pursuant to the Open Records Act, regarding the public availability of the materials. If the person providing the materials does not request the city to request an opinion from the Attorney General, the city may, at its option, either request such an opinion or provide the materials to the public.

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(F) If the Attorney General issues an opinion or letter ruling requiring the city to make the materials available to the public, the materials will be made available for public inspection.

(G) If no request for confidentiality is submitted, the city assumes no obligation to consider the need for non-disclosure.  
(Ord. 93-11-13, passed 11-13-93)

#### **§ 110.34 BURDEN OF PROOF.**

(A) A cable operator has the burden of proving that its existing or proposed rates for basic service and associated equipment comply with 47 USC 543, and §§ 110.15 and 110.16 of this chapter.

(B) For an existing or a proposed rate for basic service tier or associated equipment that is within the permitted tier charge and actual cost of equipment as set forth in §§ 110.15 and 110.16, the cable operator must submit the appropriate FCC form to the city.

(C) For an existing or a proposed rate for basic service tier that exceeds the permitted tier charge as set forth in §§ 110.15 and 110.16 hereof, the cable operator must submit to the city a cost-of-service showing to justify the proposed rates. The cost-of-service showing must in conformance with Accounting and Cost Allocation Requirements as adopted and amended by the Commission for cable system operators.  
(Ord. 93-11-13, passed 11-13-93)

#### **§ 110.35 SMALL SYSTEMS.**

(A) A small system, as defined in § 110.02, may certify that the small system's rates for basic service and associated equipment, and subsequent rate increases comply with § 110.15 of this chapter. A certification by a small system under this section for its initial rates shall be filed with the city within 30 days of receiving written notification from the city that the city has been certified by the Commission to regulate rates for the basic service tier. Certifications for subsequent rate increases shall be filed with the city at the same time that notice is given to the small system's subscribers of the proposed rate increase, in conformance with § 110.30 of this chapter. All certifications shall be in writing, shall be signed by the General Manager of the system, and shall be verified.

(B) Certification shall be subject to verification by the city on its own motion or upon complaint by a subscriber. The city may request additional information from the operator in order to verify the certification. In the event proprietary information is requested by the city, the provisions of § 110.33 shall control the availability of the information to the public.

(C) If the city determines that the small system's certification is in error, it shall so notify the small system operator and shall require the small system to comply with all filing requirements for non-small systems in this chapter.  
(Ord. 93-11-13, passed 11-13-93)

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### **§ 110.36 WRITTEN DECISION.**

(A) The city shall issue a written decision in a rate making proceeding whenever it disapproves an initial rate for the basic service tier or associated equipment in whole or in part, disapproves a request for a rate increase in whole or in part, or approves a request for an increase in whole or in part over the objections of interested parties. The city is not required to issue a written decision that approves an unopposed existing or proposed rate for the basic service tier or associated equipment.

(B) Public notice shall be given of any written decision required in division (A) of this section, by making the text of any written decision available to the public, and by publication of the decision one time in the official newspaper of the city.  
(Ord. 93-11-13, passed 11-13-93)

### **§ 110.37 REDUCTION OR PRESCRIPTION OF RATES.**

(A) The city may order a cable operator to implement a prospective reduction in basic service tier or associated equipment rates where necessary to bring rates into compliance with the standards set forth in §§ 110.15 and 110.16.

(B) The city may prescribe a reasonable rate for the basic service tier or associated equipment after it determines that a proposed rate is unreasonable.  
(Ord. 93-11-13, passed 11-13-93)

### **§ 110.38 REFUNDS.**

(A) The city may order a cable operator to refund to subscribers that portion of previously paid rates determined by the city to be in excess of the permitted tier charge or above the actual cost of equipment, unless the operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Before ordering a cable operator to refund previously paid rates to subscribers, the city shall give the operator notice and opportunity to comment. The operator's opportunity to comment upon the proposed refunds may be at any meeting of the City Council during the city's period of review of the operator's rates. If the city has extended its review period under § 110.32, and has issued an accounting order under § 110.32(E), then the operator, prior to refunds being ordered, may request an opportunity to appear before the City Council to comment upon the proposed refunds.

(B) An operator's liability for refunds is limited to a one-year period, except that an operator that fails to comply with a valid rate order issued by the city shall be liable for refunds commencing from the effective date of the order until such time as it complies with the order.

(C) The refund period shall run as follows.

(1) From the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

(2) From the date the city issues an accounting order pursuant to § 110.32(D) of this chapter, and ending on the date the operator implements a prospective rate reduction ordered by the city or one year, whichever is shorter.

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(D) The cable operator, in its discretion, may implement a refund in the following manner.

(1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or

(2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.

(E) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments.  
(Ord. 93-11-13, passed 11-13-93)

#### **§ 110.39 GOVERNING LAW; VENUE.**

This chapter shall be construed under and in accordance with the laws of the State of Texas [and the City Charter] and City Codes to the extent that the [Charter and] Codes are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas. All obligations of the parties hereunder are performable in Burnet County, Texas. In the event that any proceeding is brought to enforce the terms of this chapter, the same shall be brought in Burnet County, Texas.  
(Ord. 93-11-13, passed 11-13-93)

#### **§ 110.40 COMPLIANCE WITH OPEN MEETINGS ACT.**

It is hereby officially found and determined that the meeting at which this chapter was passed was open to the public as required by law, and that public notice of the time, place, and purpose of the meeting was given as required, in accordance with Tex. Gov't Code, Chapter 551.  
(Ord. 93-11-13, passed 11-13-93)

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