

CHAPTER 1332: FAIR COMPETITION IN CABLE OPERATIONS

1332.01 Fair competition in cable operations definitions.

As used in sections 1332.01 to 1332.10 of the Revised Code:

(A) "Applicable generally accepted accounting principles" means accounting principles and standards set forth in all applicable pronouncements of the governmental accounting standards board.

(B) "Cable service," "cable system," "franchise," and "franchising authority" have the same meanings as in the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title III, Sections 301(a) and 302 (b)(2), 110 Stat. 114, 124, 47 U.S.C.A. 522.

(C) "Cable service provider" means any person or group of persons that is engaged in the provision of cable service over a cable system and directly or indirectly owns a significant interest in the cable system, or that through any arrangement otherwise controls or is responsible for the management and operation of the cable system.

(D) "Color of office," "public office," and "public official" have the same meanings as in section 117.01 of the Revised Code.

(E) "Direct costs" means all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which they relate were discontinued.

(F) "Full cost accounting" means, in accordance with applicable generally accepted accounting principles, accounting for all direct and indirect costs, including capital costs, that are incurred in the ownership, management, or operation of a cable system or provision of cable service over a cable system.

(G) "Indirect costs" means all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. Indirect costs that support multiple services or functions shall be allocated among those services and functions in proportion to the relative burden each service or function places on the cost category and by any reasonable method consistent with applicable generally accepted accounting principles.

(H) "Person" includes any individual, corporation, partnership, limited liability company, association, trust, or political subdivision.

(I) "Private cable service provider" means any cable service provider other than a public cable service provider.

(J) "Private cable service regulation" means any regulation, rule, requirement, or restriction of or by a political subdivision of this state that applies, by resolution, ordinance, rule, regulation, franchising agreement, or otherwise, to the terms and conditions of service, conditions of access to public property, permits for pole attachments, or any other matter concerning or affecting the provision of cable service over a cable system by a private cable service provider.

(K) "Public cable service provider" means any cable service provider that is a political subdivision of this state.

(L) "Public cable service recipient" means any household or business that receives cable service or benefits from video programming service, transmission service, distribution service, repair service, billing service, or customer service that is provided by, originates from, or is controlled by a public cable service provider of a political subdivision.

(M) "Public money" means any of the following:

(1) Any money received, collected by, or due a public official under color of office;

(2) Any money collected by any person on behalf of a public office or as a purported representative or agent of the public office;

(3) Any money received by any person, whether directly or indirectly, from the United States, this state, a county, municipal corporation, township, or any other public office for the purpose of performing or assisting with a governmental function or program authorized by or the responsibility of the United States, this state, a county, municipal corporation, township, or any other public office.

Effective Date: 10-05-2000

1332.02 Fair competition in cable service operations.

It is the public policy of this state under sections 1332.01 to 1332.10 of the Revised Code to:

(A) Ensure fair competition in the provision in this state of cable service over a cable system, consistent with the procompetitive policies of the "Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C.A. 151, for the purposes of providing the widest possible diversity of entertainment, information, and news sources to the general public; advancing the unfettered exercise of rights under the first amendment to the United States Constitution to free speech and the free flow of information; enhancing the development and widespread use of technological advances in the provision of cable service over a cable system; and encouraging improved customer service at competitive rates;

(B) Ensure that all cable service over a cable system is provided in this state within a comprehensive and nondiscriminatory federal, state, and local scheme.

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1332.03 No determination as to public utility status of cable service operation.

(A) Nothing in sections 1332.01 to 1332.10 of the Revised Code is a determination by the general assembly that the provision of cable service over a cable system by a municipal corporation does or does not constitute a public utility pursuant to Section 4 of Article XVIII, Ohio Constitution.

(B) Nothing in sections 1332.01 to 1332.10 of the Revised Code confers authority on a political subdivision of this state to own, lease, or operate a cable system or to provide cable service over a cable system; rather, that authority, if any, is as otherwise may be conferred by law.

(C) Except as expressly provided in sections 1332.01 to 1332.10 of the Revised Code, nothing in those sections restricts the authority of a political subdivision of this state, otherwise conferred by law, to grant a franchise to provide cable service.

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1332.04 Prohibitions.

(A) No political subdivision of this state shall provide cable service over a cable system, whether bundled with other services or unbundled, except in accordance with sections 1332.01 to 1332.10 of the Revised Code.

(B)(1) No political subdivision of this state that is a public cable service provider or contracts with a public cable service provider for cable service over a cable system shall, by any means, do any of the following:

(a) Prefer or advantage any public cable service provider or discriminate against any private cable service provider in any material matter affecting the provision, within the jurisdiction of the political subdivision, of cable service over a cable system;

(b) Fail to apply any private cable service regulation without discrimination to a public cable service provider within the jurisdiction of the political subdivision;

(c) Fail to pay all applicable fees, including, but not limited to, franchise fees, permit fees, pole attachment fees, or the equivalent of any such fees;

(d) Require from a person providing video service within the jurisdiction of the political subdivision any direct or in-kind charge or a payment of any kind in exchange for PEG channel programming or other content produced by the political subdivision or by an entity created by or partially supported by the political subdivision. As used in division (B)(1)(d) of this section, "PEG channel" and "video service" have the same meanings as in section 1332.21 of the Revised Code.

(2) Nothing in division (B)(1) of this section requires the application of a private cable service regulation to a public cable service provider if that application would be without legal or practical consequence, such as the application of a private cable service regulation requiring provision of an insurance bond, which application to a public cable service provider would require it to insure its performance to itself.

(C) No political subdivision of this state that is a public cable service provider shall have extraterritorial public cable service recipients in excess of fifty per cent of the number of public cable service recipients that reside within the geographical limits of the political subdivision. Nothing in this division prohibits public cable service providers from jointly owning and operating head-end equipment. Each such public cable service provider shall pay that proportion of the full costs of owning and operating such head-end equipment, including, but not limited to, the costs of construction, acquisition, installation, improvement, enhancement, modification, financing, maintenance, repair, and operation, equal to the total population of the political subdivision that is such public cable service provider divided by the total population of all political subdivisions that are public cable service providers jointly owning and operating such head-end equipment, determined annually or with such frequency as such public cable service providers otherwise agree.

(D) No political subdivision of this state that is a franchising authority shall unreasonably withhold a request by a cable service provider to transfer, modify, or renew, in accordance with the terms of the franchise and in accordance with the provisions of the "Telecommunications Act of 1996," Pub. L. No. 104-104, Title III, Section 301(i), 110 Stat. 117, 47 U.S.C.A. 537, the "Cable Communications Policy Act of 1984," Pub. L. No. 98-549, Section 2, 98 Stat. 2790, 47 U.S.C.A. 545, or the "Cable Television Consumer Protection and Competition Act of 1992," Pub. L. No. 102-385, Section 18, 106 Stat. 1493, 47 U.S.C.A. 546, its existing franchise to provide cable service over a cable system.

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1332.05 Legislation expending public moneys for cable service.

(A)(1) In addition to satisfying any other applicable notice and hearing requirements, the legislative authority of a political subdivision of this state shall provide notice in accordance with division (B) of this section of its consideration of an ordinance or resolution that would authorize the expenditure of public money for a cable system or the provision of cable service over a cable system, including, but not limited to, an ordinance or resolution that would authorize any of the following:

(a) A feasibility study, marketing study, or any cost-benefit analysis concerning the establishment, acquisition, construction, improvement, financing, leasing, management, or operation of a cable system or the provision of cable service over a cable system;

(b) The acquisition, construction, installation, improvement, financing, lease, or agreement for management or operation of facilities capable of providing cable service over a cable system;

(c) An agreement or arrangement for the use of a cable system or for the provision of cable service over a cable system;

(d) Approval of the terms of a franchise agreement for the political subdivision as a public cable service provider, if any such agreement exists, or with any other public cable service provider to provide cable service over a cable system.

(2) Any ordinance or resolution enacted by the legislative authority of a political subdivision of this state authorizing the formation of a public cable service provider by the political subdivision shall include a comprehensible statement of the general plan for financing the acquisition, construction, installation, improvement, or lease of the cable system. No such ordinance or resolution shall be deemed an emergency ordinance or resolution or a measure necessary for the immediate preservation of the public peace, health, or safety in the political subdivision, and no such ordinance or resolution shall take effect sooner than thirty days after its date of enactment. If, within thirty days after such date of enactment, a petition signed by ten per cent of the electors of the political subdivision, based upon the total number of votes cast at the last preceding general election of the political subdivision, shall be filed with the appropriate office demanding a referendum on the ordinance or resolution, the ordinance or resolution shall not take effect until submitted to the electors and approved by a majority of those voting on it.

(3) Divisions (A)(1) and (2) of this section apply only with respect to the first time an ordinance or resolution described, respectively, in division (A)(1) or (2) of this section is

considered or enacted, respectively, by a legislative authority, and a legislative authority need not comply with division (A)(1) or (2) of this section regarding any ordinance or resolution that pertains to the same cable system and that is considered or enacted, respectively, subsequent to an ordinance or resolution that was enacted and that complied with division (A)(1) or (2) of this section, respectively.

(B) Notice under division (A)(1) of this section shall be given at least forty-five days prior to the enactment of the ordinance or resolution and shall be given to all persons that have filed a pending application with the political subdivision to provide within its jurisdiction cable service over a cable system or are providing cable service over a cable system pursuant to a franchise granted by the political subdivision. The notice shall be in writing, delivered to the address designated by the person as the address for receipt of notices or, if no such designation has been made, to the operating address of that person as registered with the political subdivision. The notice shall be delivered by certified mail, registered mail, overnight delivery, or a similar method of receipted delivery.

(C) No political subdivision shall fail to comply with division (A) of this section.

Effective Date: 10-05-2000

1332.06 Special fund for cable system - annual report.

(A) A political subdivision of this state that is a public cable service provider shall maintain a special fund for its cable system and the provision of cable service over that cable system and shall be subject, with respect to that special fund, to sections 5705.09, 5705.10, 5705.14, 5705.15, 5705.16, 5705.39, 5705.40, 5705.41, 5705.44, and 5705.45 and any other applicable provision of Chapter 5705. of the Revised Code concerning the establishment or maintenance of the special fund.

(B) A political subdivision of this state that is a public cable service provider shall prepare and publish, on or before the first day of June of each year for the prior calendar year, an annual report on its cable system and the provision of cable service over that cable system. The report shall be substantially in accordance with full cost accounting and shall include disclosure of the amount, source, and cost of working capital utilized for its cable system and the provision of cable service over that cable system and estimates of the amount of any franchise fee, regulatory fee, occupation tax, pole attachment fee, property tax, or other fee or tax that would be applicable to its cable system and the provision of cable service over that cable system but for any exemption by reason of its status as a political subdivision, which exemption is authorized by law. Nothing in sections 1332.01 to 1332.10 of the Revised Code requires any elected official of the political subdivision to maintain a log or other record of the time the official spends on the business of the public cable service provider in the course of official duties.

(C) No political subdivision shall fail to comply with division (A) or (B) of this section.

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1332.07 Effect of violation by political subdivision.

A violation of any provision of division (B) of section 1332.04 of the Revised Code by a political subdivision, whether as a franchising authority, public cable service provider, or otherwise, relieves any other cable service provider in the jurisdiction of the political subdivision from any obligation to comply with or perform any regulation, rule,

requirement, or restriction that is the subject of the violation, and entitles any such other cable service provider to equivalent treatment, right, or benefit.

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1332.08 Arbitration of disputes - procedure.

(A) A dispute for which a civil action is authorized under section 1332.09 of the Revised Code may first be submitted to arbitration in accordance with the procedures and subject to the conditions set forth in divisions (B) to (D) of this section.

(B) Prior to initiating a civil action under section 1332.09 of the Revised Code, a person authorized to bring such an action may provide written notice of proposed arbitration under this section to all persons that would be party to the civil action. The notice shall describe with reasonable specificity the issues that would be the subject of the civil action. The issues shall be submitted to arbitration only if each person receiving such a notice of proposed arbitration gives its written consent not later than seven days after the date of receipt of the notice.

(C) Arbitration under this section shall be conducted and decided by a panel of three arbitrators in accordance with procedures established by the American arbitration association. The persons that would be the complainants in a civil action under section 1332.09 of the Revised Code regarding the issues submitted to arbitration shall select one of the arbitrators, the persons that would be the respondents in the civil action shall select another one of the arbitrators, and the two arbitrators so selected shall jointly select the third arbitrator. If the two arbitrators selected are unable to agree on a third arbitrator within seven days after the latest date either of the two arbitrators was selected, they are removed, and the parties to the proposed arbitration shall each select one substitute arbitrator in the same manner as previously provided in this division, and the two substitute arbitrators so selected shall jointly select the third arbitrator. If the substitute arbitrators are unable to agree on a third arbitrator within seven days after the latest date either such substitute arbitrator was selected, they are removed, and the issues shall not be submitted to arbitration.

(D) Not more than one hundred twenty days after the date a panel of arbitrators is selected under division (C) of this section, the panel shall issue a written opinion setting forth findings and decisions respecting the issues submitted to arbitration. The findings and decisions of the majority of the arbitrators on the panel shall be deemed the findings and decisions of the panel. The findings and decisions shall not be binding but shall be admissible into evidence in any civil action brought under section 1332.09 of the Revised Code respecting the issues submitted to arbitration. The arbitrators shall not have continuing jurisdiction after the written opinion required by this division is issued.

(E) Issues submitted to arbitration under this section may be resolved at any time by binding settlement agreement among the parties to the arbitration.

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1332.09 Actions for declaratory or injunctive relief - findings of arbitration opinion.

(A) A political subdivision subject to division (A), (B), or (C) of section 1332.04 or division (C) of section 1332.05 of the Revised Code may bring a civil action for declaratory relief in the court of common pleas in the county in which the political subdivision is located or in any county of this state in which the political subdivision is a public cable service provider.

(B) A person that is or is likely to be adversely affected by a violation of division (A), (B), or (C) of section 1332.04 or division (C) of section 1332.05 of the Revised Code may bring a civil action for declaratory or injunctive relief in such a court of common pleas. Such person that is or is likely to be adversely affected includes a person that provides, or has filed a pending application to provide, within the jurisdiction of the political subdivision, cable service over a cable system, and includes any other political subdivision in which such allegedly noncomplying political subdivision is, or has filed a pending application to become, a public cable service provider.

(C)(1) If an arbitration opinion under section 1332.08 of the Revised Code contains a finding of a violation by a political subdivision of division (A), (B), or (C) of section 1332.04 or division (C) of section 1332.05 of the Revised Code and the political subdivision fails to rectify the violation promptly, and any person adversely affected by the violation substantially prevails in a subsequent civil action against the political subdivision under division (B) of this section regarding the violation not promptly rectified, the political subdivision is liable to the person for the person's costs and reasonable attorney's fees incurred in connection with the civil action.

(2) If an arbitration opinion under section 1332.08 of the Revised Code does not contain a finding of a violation by a political subdivision of division (A), (B), or (C) of section 1332.04 or division (C) of section 1332.05 of the Revised Code and the political subdivision substantially prevails in a subsequent civil action brought against it under division (B) of this section respecting an alleged violation, the complainants in the civil action are liable to the political subdivision for its costs and reasonable attorney's fees incurred in connection with the civil action.

(3) The court shall exercise its equitable discretion in determining the appropriate amount of attorney's fees to be awarded under division (C)(1) or (2) of this section. In exercising that discretion, the court shall consider at least all of the following: the degree to which the party partially prevailed, the reasonableness of the party's action, the reasonableness of the arbitrator's decision, the effort or lack of effort of the parties to reach a settlement, and the good faith or lack of good faith of the parties.

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1332.10 Right of action, remedy or penalty is in addition to others.

Any right of action, remedy, or penalty under section 1332.08 or 1332.09 of the Revised Code is in addition to any right of action, remedy, or penalty otherwise available under law.

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