
HOUSE BILL No. 1131

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-34.

Synopsis: Video service franchise fees. Provides that a provider of video service to Indiana customers under: (1) a certificate of franchise authority issued by the utility regulatory commission (IURC); or (2) an unexpired local franchise issued by a local unit before July 1, 2006; may not be required to pay a franchise fee to any local unit with respect to any calendar quarter or other reporting period that begins after June 30, 2012. Provides for the expiration of a definition that becomes obsolete upon the expiration of the statutes in which the definition is used. Amends incorrect references to federal telecommunications law. Amends an incorrect reference to a date in the state's video service franchising law.

Effective: July 1, 2011.

Koch

January 6, 2011, read first time and referred to Committee on Utilities and Energy.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1131



A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-34-5, AS ADDED BY P.L.27-2006, SECTION
2 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2011]: Sec. 5. (a) As used in this chapter, "gross revenue" means all
4 consideration of any kind or nature, including cash, credits, property,
5 and in kind contributions:

- 6 (1) received by a holder from the operation of a video service
7 system in a particular unit in Indiana; and
- 8 (2) calculated by the holder under section 23 of this chapter.

9 **(b) This section expires January 1, 2014.**

10 SECTION 2. IC 8-1-34-17, AS AMENDED BY P.L.1-2007,
11 SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]: Sec. 17. (a) Not later than fifteen (15) business days
13 after the commission receives an application under section 16 of this
14 chapter, the commission shall determine whether the application is
15 complete and properly verified. If the commission determines that the
16 application is incomplete or is not properly verified, the commission
17 shall notify the applicant of the deficiency and allow the applicant to



1 resubmit the application after correcting the deficiency. If the
 2 commission determines that the application is complete and properly
 3 verified, the commission shall issue the applicant a certificate of
 4 franchise authority. A certificate issued under this section must
 5 contain:

6 (1) a grant of authority to provide the video service requested in
 7 the application;

8 (2) a grant of authority to use and occupy public rights-of-way in
 9 the delivery of the video service, subject to:

10 (A) state and local laws and regulations governing the use and
 11 occupancy of public rights-of-way; and

12 (B) the police powers of local units to enforce local ordinances
 13 and regulations governing the use and occupancy of public
 14 rights-of-way; and

15 (3) a statement that the authority granted under subdivisions (1)
 16 and (2) is subject to the holder's lawful provision and operation of
 17 the video service.

18 (b) Except as provided in subsection (c) and sections 16(c) and 28
 19 of this chapter, the commission may not require a provider to:

20 (1) satisfy any build-out requirements;

21 (2) deploy, or make investments in, any infrastructure, facilities,
 22 or equipment; or

23 (3) pay:

24 (A) an application fee;

25 (B) a document fee;

26 (C) a state franchise fee;

27 **(D) a local franchise fee under section 24 of this chapter**
 28 **(before its expiration on January 1, 2014) with respect to**
 29 **any calendar quarter that begins after June 30, 2012;**

30 (E) a service charge; or

31 (F) any fee other than ~~the~~ a franchise fee ~~paid~~ owed to a local
 32 unit under section 24 of this chapter **(before its expiration on**
 33 **January 1, 2014) for a calendar quarter that begins before**
 34 **July 1, 2012;**

35 as a condition of receiving or holding a certificate under this chapter.

36 (c) This section does not limit the commission's right to enforce any
 37 obligation described in subsection (b) that a provider is subject to
 38 under the terms of a settlement agreement approved by the commission
 39 before July 29, 2004.

40 (d) The general assembly, a state agency, or a unit may not adopt a
 41 law, rule, ordinance, or regulation governing the use and occupancy of
 42 public rights-of-way that:

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- 1 (1) discriminates against any provider, or is unduly burdensome
- 2 with respect to any provider, based on the particular facilities or
- 3 technology used by the provider to deliver video service; or
- 4 (2) allows a video service system owned or operated by a unit to
- 5 use or occupy public rights-of-way on terms or conditions more
- 6 favorable or less burdensome than those that apply to other
- 7 providers.

8 A law, a rule, an ordinance, or a regulation that violates this subsection
9 is void.

10 SECTION 3. IC 8-1-34-21, AS ADDED BY P.L.27-2006,
11 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2011]: Sec. 21. (a) For purposes of this section, a provider is
13 considered to be a holder of a local franchise on June 30, 2006, if:

- 14 (1) the provider; or
 - 15 (2) any affiliate or successor entity of the provider;
- 16 holds a local franchise to provide video service in a unit on June 30,
17 2006.

18 (b) After June 30, 2006, a provider that is the holder of a local
19 franchise on June 30, 2006, regardless of whether the provider is the
20 incumbent provider in the local franchise service area, may elect to:

- 21 (1) continue providing video service under the local franchise
- 22 until the local franchise expires; or
- 23 (2) subject to section 22 of this chapter, terminate the local
- 24 franchise and apply to the commission for a certificate under this
- 25 chapter.

26 (c) A provider that elects to terminate a local franchise under
27 subsection (b) must provide written notice of the provider's election to:

- 28 (1) the commission; and
- 29 (2) the affected unit;

30 not later than November 1, 2006. The local franchise is terminated on
31 the date the commission issues a certificate to the provider under this
32 chapter.

33 (d) Not later than ninety (90) days after a local franchise is
34 terminated under subsection (c), the provider that terminated the local
35 franchise shall remit to the affected unit any accrued but unpaid
36 franchise fees due under the local franchise. If the provider has credit
37 remaining from any prepaid franchise fees, the provider may deduct the
38 amount of the credit from any future fees or taxes owed to the affected
39 unit.

40 **(e) A provider that elects under subsection (b)(1) to continue**
41 **providing video service under a local franchise:**

- 42 **(1) is not required to pay the franchise fee prescribed under**

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1 section 24 of this chapter (before its expiration on January 1,
2 2014); and

3 (2) shall pay any franchise fee that:

4 (A) is imposed under the terms of the local franchise; and

5 (B) is due and owing with respect to any:

6 (i) calendar quarter; or

7 (ii) other reporting period specified under the terms of
8 the local franchise;

9 that begins before July 1, 2012.

10 A provider that elects under subsection (b)(1) to continue
11 providing video service under a local franchise may not be
12 required to pay a franchise fee to any unit for a calendar quarter
13 or other reporting period that begins after June 30, 2012,
14 regardless of the terms of the local franchise. If the provider has
15 credit remaining from any prepaid franchise fees, the provider
16 may deduct the amount of the credit from any future fees or taxes
17 owed to the affected unit.

18 SECTION 4. IC 8-1-34-23, AS AMENDED BY P.L.1-2007,
19 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2011]: Sec. 23. (a) Except as provided in subsection (b), the
21 holder of a certificate under this chapter shall, at the end of each
22 calendar quarter **that begins before July 1, 2012**, determine under
23 subsections (c) and (d) the gross revenue received during that quarter
24 from the holder's provision of video service in each unit included in the
25 holder's service area under the certificate.

26 (b) This subsection applies to a holder or other provider providing
27 video service in a unit in which a provider of video service is required
28 on June 30, 2006, to pay a franchise fee based on a percentage of gross
29 revenues. The holder's or provider's gross revenue shall be determined
30 as follows:

31 (1) If only one (1) local franchise is in effect on June 30, 2006, the
32 holder or provider shall determine gross revenue as the term is
33 defined in the local franchise in effect on June 30, 2006.

34 (2) If:

35 (A) more than one (1) local franchise is in effect on June 30,
36 2006; and

37 (B) the holder or provider is subject to a local franchise in the
38 unit on June 30, 2006;

39 the holder or provider shall determine gross revenue as the term
40 is defined in the local franchise to which the holder or provider is
41 subject on June 30, 2006.

42 (3) If:

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1 (A) more than one (1) local franchise is in effect on June 30,
 2 2006; and
 3 (B) the holder is not subject to a local franchise in the unit on
 4 June 30, 2006;
 5 the holder shall determine gross revenue as the term is defined in
 6 the local franchise in effect on June 30, 2006, that is most
 7 favorable to the unit.
 8 (c) This subsection does not apply to a holder that is required to
 9 determine gross revenue under subsection (b). The holder shall include
 10 the following in determining the gross revenue received during the
 11 quarter with respect to a particular unit:
 12 (1) Fees and charges charged to subscribers for video service
 13 provided by the holder. Fees and charges under this subdivision
 14 include the following:
 15 (A) Recurring monthly charges for video service.
 16 (B) Event based charges for video service, including pay per
 17 view and video on demand charges.
 18 (C) Charges for the rental of set top boxes and other
 19 equipment.
 20 (D) Service charges related to the provision of video service,
 21 including activation, installation, repair, and maintenance
 22 charges.
 23 (E) Administrative charges related to the provision of video
 24 service, including service order and service termination
 25 charges.
 26 (2) Revenue received by an affiliate of the holder from the
 27 affiliate's provision of video service, to the extent that treating the
 28 revenue as revenue of the affiliate, instead of revenue of the
 29 holder, would have the effect of evading the payment of fees that
 30 would otherwise be paid to the unit. However, revenue of an
 31 affiliate may not be considered revenue of the holder if the
 32 revenue is otherwise subject to fees to be paid to the unit.
 33 (d) This subsection does not apply to a holder that is required to
 34 determine gross revenue under subsection (b). The holder shall not
 35 include the following in determining the gross revenue received during
 36 the quarter with respect to a particular unit:
 37 (1) Revenue not actually received, regardless of whether it is
 38 billed. Revenue described in this subdivision includes bad debt.
 39 (2) Revenue received by an affiliate or any other person in
 40 exchange for supplying goods and services used by the holder to
 41 provide video service under the holder's certificate.
 42 (3) Refunds, rebates, or discounts made to subscribers,

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1 advertisers, the unit, or other providers leasing access to the
2 holder's facilities.
3 (4) Revenue from providing service other than video service,
4 including revenue from providing:
5 (A) telecommunications service (as defined in 47 U.S.C.
6 153(46));
7 (B) information service (as defined in 47 U.S.C. 153(20)),
8 other than video service; or
9 (C) any other service not classified as cable service or video
10 programming by the Federal Communications Commission.
11 (5) Any fee imposed on the holder under this chapter that is
12 passed through to and paid by subscribers, including the franchise
13 fee:
14 (A) imposed under section 24 of this chapter for the quarter
15 immediately preceding the quarter for which gross revenue is
16 being computed; and
17 (B) passed through to and paid by subscribers during the
18 quarter for which gross revenue is being computed.
19 (6) Revenue from the sale of video service for resale in which the
20 purchaser collects a franchise fee under:
21 (A) this chapter; or
22 (B) a local franchise agreement in effect on July 1, 2006;
23 from the purchaser's customers. This subdivision does not limit
24 the authority of a unit, or the commission on behalf of a unit, to
25 impose a tax, fee, or other assessment upon the purchaser under
26 ~~42~~ 47 U.S.C. 542(h).
27 (7) Any tax of general applicability:
28 (A) imposed on the holder or on subscribers by a federal, state,
29 or local governmental entity; and
30 (B) required to be collected by the holder and remitted to the
31 taxing entity;
32 including the state gross retail and use taxes (IC 6-2.5) and the
33 utility receipts tax (IC 6-2.3).
34 (8) Any forgone revenue from providing free or reduced cost
35 cable video service to any person, including:
36 (A) employees of the holder;
37 (B) the unit; or
38 (C) public institutions, public schools, or other governmental
39 entities, as required or permitted by this chapter or by federal
40 law.
41 However, any revenue that the holder chooses to forgo in
42 exchange for goods or services through a trade or barter

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1 arrangement shall be included in gross revenue.

2 (9) Revenue from the sale of:

3 (A) capital assets; or

4 (B) surplus equipment that is not used by the purchaser to
5 receive video service from the holder.

6 (10) Reimbursements that:

7 (A) are made by programmers to the holder for marketing
8 costs incurred by the holder for the introduction of new
9 programming; and

10 (B) exceed the actual costs incurred by the holder.

11 (11) Late payment fees collected from customers.

12 (12) Charges, other than those described in subsection (c)(1), that
13 are aggregated or bundled with charges described in subsection
14 (c)(1) on a customer's bill, if the holder can reasonably identify
15 the charges on the books and records by the holder in the regular
16 course of business.

17 (e) If, under the terms of the holder's certificate, the holder provides
18 video service to any unincorporated area in Indiana, the holder shall
19 calculate the holder's gross income received from each unincorporated
20 area served in accordance with:

21 (1) subsection (b); or

22 (2) subsections (c) and (d);

23 whichever is applicable.

24 (f) If a unit served by the holder under a certificate annexes any
25 territory after the certificate is issued or renewed under this chapter, the
26 holder shall:

27 (1) include in the calculation of gross revenue for the annexing
28 unit any revenue generated by the holder from providing video
29 service to the annexed territory; and

30 (2) subtract from the calculation of gross revenue for any unit or
31 unincorporated area:

32 (A) of which the annexed territory was formerly a part; and

33 (B) served by the holder before the effective date of the
34 annexation;

35 the amount of gross revenue determined under subdivision (1);
36 beginning with the calculation of gross revenue for the calendar quarter
37 in which the annexation becomes effective. The holder shall notify the
38 commission of the new boundaries of the affected service areas as
39 required under section 20(a)(7) of this chapter.

40 **(g) This section expires January 1, 2014.**

41 SECTION 5. IC 8-1-34-24, AS ADDED BY P.L.27-2006,
42 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2011]: Sec. 24. (a) Subject to subsection (e), not later than
2 forty-five (45) days after the end of each calendar quarter **that begins**
3 **before July 1, 2012**, the holder shall pay to each unit included in the
4 holder's service area under a certificate issued under this chapter a
5 franchise fee equal to:

6 (1) the amount of gross revenue received from providing video
7 service in the unit during the most recent calendar quarter, as
8 determined under section 23 of this chapter; multiplied by

9 (2) a percentage equal to one (1) of the following:

10 (A) If a local franchise has never been in effect in the unit
11 before July 1, 2006, five percent (5%).

12 (B) If no local franchise is in effect in the unit on July 1, 2006,
13 but one (1) or more local franchises have been in effect in the
14 unit before July 1, 2006, the percentage of gross revenue paid
15 by the holder of the most recent local franchise in effect in the
16 unit, unless the unit elects to impose a different percentage,
17 which may not exceed five percent (5%).

18 (C) If there is one (1) local franchise in effect in the unit on
19 July 1, 2006, the percentage of gross revenue paid by the
20 holder of that local franchise as a franchise fee to the unit,
21 unless the unit elects to impose a different percentage, which
22 may not exceed five percent (5%). Upon the expiration of a
23 local franchise described in this clause, the percentage shall be
24 determined by the unit but may not exceed five percent (5%).

25 (D) If there is more than one (1) local franchise in effect with
26 respect to the unit on July 1, 2006, a percentage determined by
27 the unit, which may not exceed the greater of:

- 28 (i) five percent (5%); or
- 29 (ii) the percentage paid by a holder of any local franchise in
30 effect in the unit on July 1, 2006.

31 (b) If the holder provides video service to an unincorporated area in
32 Indiana, as described in section 23(e) of this chapter, the holder shall:

33 (1) calculate the franchise fee with respect to the unincorporated
34 area in accordance with subsection (a); and

35 (2) remit the franchise fee to the county in which the
36 unincorporated area is located.

37 If an unincorporated area served by the provider is located in one (1)
38 or more contiguous counties, the provider shall remit part of the
39 franchise fee calculated under subdivision (1) to each county having
40 territory in the unincorporated area served. The part of the franchise fee
41 remitted to a county must bear the same proportion to the total
42 franchise fee for the area, as calculated under subdivision (1), that the

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1 number of subscribers in the county bears to the total number of
2 subscribers in the unincorporated area served.

3 (c) With each payment of a franchise fee to a unit under this section,
4 the holder shall include a statement explaining the basis for the
5 calculation of the franchise fee. A unit may review the books and
6 records of:

7 (1) the holder; or

8 (2) an affiliate of the holder, if appropriate;

9 to the extent necessary to ensure the holder's compliance with section
10 23 of this chapter in calculating the gross revenue upon which the
11 remitted franchise fee is based. Each party shall bear the party's own
12 costs of an examination under this subsection. If the holder and the unit
13 cannot agree on the amount of gross revenue on which the franchise fee
14 should be based, either party may petition the commission to determine
15 the amount of gross revenue on which the franchise fee should be
16 based. A determination of the commission under this subsection is
17 final, subject to the right of direct appeal by either party.

18 (d) A franchise fee owed by a holder to a unit under this section may
19 be passed through to, and collected from, the holder's subscribers in the
20 unit. To the extent allowed under ~~43~~ 47 U.S.C. 542(c), the holder may
21 identify as a separate line item on each regular bill issued to a
22 subscriber:

23 (1) the amount of the total bill assessed as a franchise fee under
24 this section; and

25 (2) the identity of the unit to which the franchise fee is paid.

26 (e) A ~~holder~~ **provider** that elects under section 21(b)(1) of this
27 chapter to continue providing video service under a local franchise is
28 not required to pay the franchise fee prescribed under this section, but
29 shall pay any franchise fee imposed under the terms of the local
30 franchise.

31 **(f) This section expires January 1, 2014.**

32 SECTION 6. IC 8-1-34-25, AS ADDED BY P.L.27-2006,
33 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2011]: Sec. 25. (a) This section applies in a unit that:

35 (1) is included in the service area of a holder of a certificate
36 issued under this chapter; and

37 (2) requires a provider described in section 21(a) of this chapter
38 to provide PEG channel capacity, facilities, or financial support
39 under a local franchise issued to the provider by the unit before
40 July 1, 2006, regardless of whether the provider elects to:

41 (A) continue the local franchise under section 21(b)(1) of this
42 chapter; or

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1 (B) terminate the local franchise under section 21(b)(2) of this
 2 chapter and continue providing video service in the unit under
 3 a certificate issued under this chapter.
 4 (b) As used in this section, "PEG channel" refers to a channel made
 5 available by a provider on the provider's video service system for
 6 public, educational, and governmental programming.
 7 (c) The holder of a certificate under this chapter shall provide in the
 8 unit at least the number of PEG channels that the provider described in
 9 section 21(a) of this chapter is required to provide in the unit under the
 10 terms of the local franchise described in subsection (a)(2).
 11 (d) If the local franchise described in subsection (a)(2) requires the
 12 provider described in section 21(a) of this chapter to provide financial
 13 support for public, educational, or governmental programming in the
 14 unit, the holder of a certificate under this chapter shall pay the unit the
 15 same cash payments on a per subscriber basis that the provider
 16 described in section 21(a) of this chapter is required to pay the unit
 17 under the terms of the local franchise. The holder shall remit payments
 18 under this subsection to the unit on a quarterly basis **for each calendar**
 19 **quarter that begins after the certificate under this chapter takes**
 20 **effect. For a calendar quarter that begins before July 1, 2012, the**
 21 **holder shall remit the payments under this subsection** along with
 22 the franchise fee paid to the unit under section 24 of this chapter
 23 **(before its expiration on January 1, 2014).** For each calendar quarter,
 24 the holder shall remit to the unit an amount equal to:
 25 (1) the cash payment for the quarter due from the provider
 26 described in section 21(a) of this chapter; multiplied by
 27 (2) a fraction, the numerator of which equals the number of
 28 subscribers served by the holder in the unit, and the denominator
 29 of which equals the total number of subscribers served by all
 30 providers in the unit.
 31 (e) Any payments remitted to a unit under subsection (d):
 32 (1) are made:
 33 (A) for the purposes set forth in 47 U.S.C. 531; and
 34 (B) under the unit's authority under 47 U.S.C. 541(a)(4)(B);
 35 and
 36 (2) may not be credited against the franchise fee payable to the
 37 unit under section 24 of this chapter **(before its expiration on**
 38 **January 1, 2014).**
 39 SECTION 7. IC 8-1-34-29, AS ADDED BY P.L.27-2006,
 40 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2011]: Sec. 29. (a) This section applies to a provider that
 42 holds a local franchise to provide video service in a unit at any time

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1 before July 1, 2009, regardless of whether:
2 (1) the provider elects:
3 (A) under section 21(b)(1) of this chapter, to continue
4 providing video service under the local franchise; or
5 (B) under section 21(b)(2) of this chapter, to terminate the
6 local franchise and provide video service in the unit under a
7 certificate issued under this chapter;
8 if the local franchise is in effect on June 30, ~~2009~~; **2006**; or
9 (2) the provider will provide video service in the unit under a
10 certificate issued under this chapter, if the local franchise expires
11 before July 1, 2009.
12 (b) As used in this section, "local franchise" refers to:
13 (1) the existing local franchise, if subsection (a)(1)(A) applies;
14 (2) the terminated local franchise, if subsection (a)(1)(B) applies;
15 or
16 (3) the most recent local franchise held by the provider in the unit,
17 if subsection (a)(2) applies.
18 (c) A holder to which this section applies shall continue to provide
19 the following services under the terms of the local franchise until
20 January 1, 2009, or until the local franchise will expire or would have
21 expired, whichever is later:
22 (1) Institutional network capacity, however defined or referenced
23 in the local franchise, but generally including private line data
24 network capacity for use by the unit for noncommercial purposes.
25 Institutional network capacity provided under this subdivision
26 shall continue to be provided at the same capacity as required
27 under the terms of the local franchise.
28 (2) Video service to community public buildings, such as
29 municipal buildings and public schools, however defined or
30 referenced in the local franchise, but generally including cable
31 drop connections to the buildings and a particular tier of video
32 service provided to the buildings. Video service provided under
33 this subdivision shall continue to be provided to the same extent
34 as required under the terms of the local franchise.
35 Beginning January 1, 2009, or upon the date on which the local
36 franchise will expire or would have expired, whichever is later, a
37 provider that provides services under this subsection shall continue to
38 provide the services under this subsection if the unit requests that the
39 services continue after December 31, 2008, or after the date the local
40 franchise will expire or would have expired, whichever is later.
41 (d) This subsection applies to services described in subsection (c)
42 that are provided after December 31, 2008, or after the date the local

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1 franchise will expire or would have expired, whichever is later. The
2 incremental costs of the services shall be apportioned among all
3 holders of a franchise to provide video service within the unit. The
4 amount of the incremental costs borne by a particular holder is equal
5 to the total cost of providing the services multiplied by a fraction
6 calculated as follows:
7 (1) The numerator of the fraction equals the number of
8 subscribers to whom the holder provides video service in the unit.
9 (2) The denominator of the fraction equals the total number of
10 subscribers to whom all holders provide video service in the unit.

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