

R. 75-720

RESOLUTION NO. 211724

OCT 8 1974

WHEREAS, the City Council has adopted Council Policy No. 700-33 by Resolution No. 211723; and

WHEREAS, Council Policy No. 700-33 requires that certain procedures be followed for cable television rate applications or investigations; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the "Rules and Procedures Governing Cable Television Rate Applications," on file in the office of the City Clerk as Document No. 748858, be and the same is hereby adopted.

APPROVED: JOHN W. WITT, City Attorney

By 
Robert J. Logan, Deputy

RJL:rp
9-25-74
File 011.1
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RULES AND PROCEDURES GOVERNING CABLE
TELEVISION RATE APPLICATIONS.

APPLICATIONS FOR AUTHORITY TO INCREASE RATES

1. Rate Increase Applications. This rule applies to applications for authority to raise any rate, rental or charge, or so to alter any classification, contract, practice, or rule as to result in such an increase. Such applications shall contain the following data, either in the body of the application or as exhibits annexed thereto or accompanying the application:

(a) A balance sheet as of the latest available date, together with an income statement covering period from close of last year for which an annual report has been filed with the City to the date of the balance sheet attached to the application.

(b) A statement of the presently effective rates, rentals, or charges which are proposed to be increased, or the classification, contract, practice, or rule proposed to be altered. Such statement need not be in tariff form.

(c) A statement of the proposed increases or charges which will result in increases, which applicant requests authority to make effective. Such statement need not be in tariff form, but shall set forth the proposed rate structure with reasonable clarity. The statement shall also show the amount of proposed gross revenues, together with the percentage of increase estimated to result from the

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proposed rates. The proposed revenue increase, including the percentage of increase, shall be shown by appropriate rate classifications.

(d) A general rate increase application shall contain a general description of applicant's property and equipment, or reference to such description in a recent prior application, and a statement of the original cost thereof, together with a statement of the depreciation reserve applicable thereto. If it is impossible to state original cost, the facts creating such impossibility shall be set forth.

(e) A summary of earnings (rate of return summary) on a depreciated rate base for the test period or periods upon which applicant bases its justification for an increase. If adjusted or estimated results are shown for successive periods they should be on a consistent basis. Wherever adjusted results are shown the recorded results for the same periods should also be shown.

(f) In rate applications involving an entity having more than one department, district or system, the earnings results should be presented for the total cable television operations for the company, as well as for the part of the operations for which rate increases are sought.

(g) Applicant's exhibits must accompany the application and applicant shall state the date it will be ready to proceed with its showing.

(h) The application for a general rate increase shall contain a statement by the applicant as to which of the optional methods provided in the Internal Revenue Code applicant has elected to employ in computing the depreciation deduction for the purpose of determining its federal income tax payments, and whether applicant has used the same method or methods in calculating federal income taxes for the test period for rate fixing purposes.

(i) The application for a general rate increase shall contain a statement of any material financial interests of associated or affiliated companies with the power to direct or cause direction of the management and policies of a company and involving transactions with persons deemed to have material financial interests having occurred or proposed subsequent to the period covered by the last annual report filed by applicant; or, if no such matters are known to have so occurred or are known to be then proposed, a statement to that effect; provided that an applicant whose capital stock, or that of its parent company, is listed on a "national securities exchange" as defined in the Securities Exchange Act of 1934 (15 U.S.C. 78(a) et seq.), in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company if not previously filed with the City, provided, further, that an applicant whose capital stock, or that of its parent company, is registered with the Securities and Exchange Commission (S.E.C.) pursuant to the

provisions of Section 12(g) of said Securities Exchange Act of 1934, in lieu of the statement required by this rule shall include in the application a copy of the latest proxy statement sent to stockholders by it or its parent company containing the information required by the rules of the S.E.C. if not previously filed with the City.

(j) In the event that applicant desires to revise the level of rates shown in its original application before hearing on the same, the applicant shall file an Amendment to Application. Such amendment shall contain a complete revised statement of proposed changes required by subsection (c) hereof, and the information required by subsections (e) and (f) shall also be revised accordingly.

(k) Rate increase filings shall conform with any applicable requirements relative to any price regulation or monitoring.

2. Service of Rate Increase Applications. Applicant shall name in its application and, within ten days after filing its application with the City mail a notice to any parties whom applicant deems appropriate stating in general terms the proposed increases in rates. Applicant shall promptly notify the City of such mailing. Said notice shall also state that a copy of the application and related exhibits will be furnished by applicant upon written request. Applicant shall also mail copies of said application and related exhibits to such parties and within such times as may be required by the City.

Applicant, within ten days after the filing of the application, shall publish at least once in a newspaper of general circulation in the City of San Diego a notice in general terms of the proposed increases in rates or charges. Such notice shall state that a copy of said application and related exhibits may be examined at the City Clerk's office in San Diego and in such offices of the applicant as are specified in the notice, and shall state the locations of such offices. Proof of such publication shall be filed with the City at or prior to the opening of such hearing as may be had upon the application.

3. Verification or Certification and Signatures. The original of each application shall be verified under oath or certified under penalty of perjury, and shall be signed by the applicant, a responsible officer thereof, or by an agent to whom power of attorney has been given.

4. Contents. Applications shall state clearly and concisely the authority or relief sought and:

(a) The legal name, mailing address and telephone number of the applicant.

(b) The present rates, charges or rules which are proposed to be changed and those proposed to be established.

(c) Clearly, specifically, and in detail, the justification in support of each authority sought.

(d) The position of interested parties regarding the application insofar as known to applicant.

5. Copy of Application Upon Request. Applicant shall promptly furnish a copy of the application to each interested party making a written request therefor to applicant.

6. Protests. Anyone interested may file a protest which shall:

(a) State the protestant's full name, mailing address and telephone number.

(b) State the facts constituting the grounds for protest and show how protestant is affected and why the proposed increase may not be justified.

(c) State the names of each applicant or its attorney or agent upon whom a copy of the protest is being served.

(d) Be verified under oath or certified under penalty of perjury and be signed by protestant or its attorney.

(e) Be addressed to the City Clerk, City Administration Building, 202 C Street, San Diego, CA 92101.

(f) Be forwarded so as to reach the City Clerk not later than the thirtieth day following the listing of the application in the newspaper of general circulation.

7. Service. One copy of each protest shall simultaneously be served upon each applicant or its attorney or agent. Service shall be made personally or by deposit in the United States mail of a sealed envelope with first class postage prepaid, containing a true copy of the documents to be served and addressed to the party to be served at the last known address of such party.

8. Copy of Protest Upon Request. Protestant shall promptly furnish a copy of the protest to each party making a written request therefor to protestant.

HEARINGS

9. Notice. In rate application proceedings, the City will give notice of hearing at least ten days before such hearing. Comparable notice ordinarily will be given when hearings are held in application proceedings.

10. Publication of Notice. In rate increase applications, unless specifically exempted or otherwise provided for by the City, the applicant, not less than five nor more than thirty days prior to the initial hearing, shall give notice of hearing to entities or persons who may be affected thereby, (1) by posting hearing notice in public places and (2) by publishing notice in a newspaper, or newspapers, of general circulation in the area or areas concerned, of the time, date and place of such hearing. If ordered by the assigned committee, applicant shall give notice by bill inserts or by mail to the last known billing address of customers on applicant's records. Proof of such publication and sample copies of the other notices must be filed at or before the hearing.

11. Order of Procedure. All applications and investigations shall be heard by the Transportation and Land Use Committee. In hearings on applications, applicant shall open and close.

In other investigation proceedings, the City's staff shall open and close. Interveners shall follow the parties in whose behalf the intervention is made. The committee chairman, where circumstances warrant, may vary the order of presentation.

12. Limiting Number of Witnesses. To avoid unnecessary cumulative evidence, the committee chairman may limit the number of witnesses or the time for testimony upon a particular issue.

COMMITTEE CHAIRMAN

13. Designation. When evidence is to be taken in a proceeding before the Transportation and Land Use Committee, one committee member may preside at the hearing.

Authority. The committee chairman may set hearings and control the course thereof; administer oaths; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. He may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which he functions and with the rules and policies of the City Council.

EVIDENCE

14. Form and Admissibility. Although technical rules of evidence ordinarily need not be applied in hearings before the City, substantial rights of the parties shall be preserved.

15. Rulings. The committee chairman shall rule on the admissibility of all evidence. Such rulings may be reviewed

by the City Council in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the City Council is necessary to promote substantial justice, the committee chairman may refer the matter to the City Council for determination.

16. Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

17. Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

18. Prepared Testimony. With the approval of the committee chairman, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the committee chairman, the witness shall deliver copies thereof to the committee, the Clerk, and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the committee chairman deems that substantial saving in time will result, and where the parties so agree, prepared testimony may be identified and accepted as an exhibit or copied into the record without reading, provided that copies thereof shall have been served upon all parties and the committee ten days before the hearing or such prior service is waived.

19. Documentary Evidence. If relevant and material matter offered in evidence is embraced in a document containing other matter, the party offering it shall designate specifi-

cally the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence but, at the discretion of the committee chairman, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

20. Exhibits. Exhibits shall be legible and either prepared on paper not exceeding 8-1/2 x 11 inches in size, or bound or folded to that approximate size. Wherever practicable, the sheets of each exhibit should be numbered and rate comparisons and other figures shall be set forth in tabular form. Copies of exhibits must be clear and permanently legible.

21. Copies. When exhibits are offered in evidence the original shall be furnished to the committee chairman and a copy to the reporter and to each party, unless the committee chairman directs otherwise.

22. City Records. If any matter contained in a document on file as a public record with the City is offered in evidence, unless directed otherwise by the committee chairman, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and are competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the committee chairman.

23. Official Notice of Facts. Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California.

24. Additional Evidence. At the hearing, the committee chairman may require the production of further evidence upon any issue. Upon agreement of the parties he may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving exhibit numbers therefor.

BRIEFS AND ORAL ARGUMENTS

25. Briefs. The committee chairman may require and may fix the time for the filing of briefs. Concurrent briefs are preferable. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty (20) pages shall contain a subject index and a table of authorities. Requests for extension of time to file briefs must be made to the committee in writing and a copy thereof served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter has been submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the committee agreeing to same. The original of each brief shall contain a certification that copies have been served upon or mailed to each party or his attorney.

26. Oral Argument. If the committee or the committee chairman is of the opinion that the complexity or importance of the issues so warrant, the committee or the committee chairman may direct or permit the presentation of oral argument.

DECISIONS AND PROPOSED REPORTS

27. Issuance of Decisions. A proceeding shall stand submitted for decision by the committee after the taking of evidence and the filing of such briefs or the presentation of such oral argument as may have been prescribed by the committee or the committee chairman.

28. Proposed Reports. The committee shall prepare and file a proposed report. The City Clerk's office shall cause copies thereof to be served upon all parties to the proceeding. Such proposed report shall contain recommended findings and conclusions.

29. Exceptions. A party may serve and file exceptions to a proposed report with the City Clerk within ten days after service thereof. Exceptions shall be specific, and stated and numbered separately. Exceptions to factual findings shall specify the portions of the record relied upon; proposed substitute findings; and proposed additional findings, with supporting reasons. Exceptions to conclusions shall cite statutory provisions of principal authorities relied upon; proposed substitute conclusions; and proposed additional conclusions.

30. Replies to Exceptions. Replies may be served and filed within ten days after service of exceptions.

31. Within thirty (30) days after submission of the proposed report the City Council shall direct the clerk to place the recommendation of the committee on docket for consideration.

32. The City Council shall consider all the evidence and recommendations and shall thereafter make the proper findings and conclusions supporting a decision setting forth just and reasonable rates. Said rates shall be set by resolution.

33. Service of Decision. Decisions of the City Council shall be served by the City Clerk's office by mailing copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative shall be deemed to be service upon the party.

34. Effective Date. Decisions and orders in application or investigation proceedings shall become effective immediately unless otherwise specified in the resolution.

REOPENING PROCEEDINGS

35. Petition to Set Aside Submission. After conclusion of hearings, but before issuance of a decision, a party to the proceeding may serve on all other parties and file with the City Council a petition to set aside submission and reopen the proceeding for the taking of additional evidence. Such petition shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence and explain why such evidence was not previously adduced. Said petition may be granted or denied by the City Council.

36. Petitions for Rehearing. Petitions for rehearing of an order or a decision shall be served upon all parties and should be filed before the effective date thereof, or, if the City Council has fixed a date earlier than the tenth day after the issuance as the effective date of the order or decision, then before the tenth day after the date of issuance. Petitions shall set forth specifically the grounds on which petitioner considers the order to be unlawful or erroneous.

37. The City Council by resolution may institute its own investigation into rates being charged to determine if they are just and reasonable. The hearing on such an investigation shall be in accordance with the rules set forth hereinabove.

OCT 8 1974

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Bates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By *Patricia Polen*, Deputy.

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Office of the City Clerk, San Diego, California

Resolution Number **211724** Adopted **OCT 8 1974**