

(R-82-1057)

RESOLUTION NUMBER R- 257330

Adopted on OCT 12 1982

WHEREAS, City Council Policy 700-37 concerning Cable Television provides that every reasonable effort will be made to insure the continued provision of public access channels on cable television; and

WHEREAS, the Franchises between the City and the Cable Television Franchise holders provide that reasonable rules and regulations for the use of the public access channels shall be mutually established by the City and the Franchises after a public hearing by this City Council; and

WHEREAS, the City Manager and City Attorney have prepared proposed rules and regulations after consultation with the Franchise holders and a community organization involved in public access programming on cable television, a copy of which is attached to this resolution as Enclosure (1); and

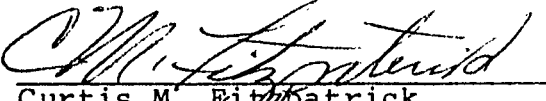
WHEREAS, the Franchise holders have agreed that the rules and regulations set forth in Enclosure (1) are reasonable and workable and would be applied by them; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the rules and regulations for Cable Television Public

Access set forth as Enclosure (1) hereto are hereby approved and adopted and the Cable Television Franchise holders are hereby authorized to operate their public access channel accordingly.

APPROVED: John W. Witt, City Attorney

By

  
Curtis M. Fitzpatrick  
Chief Deputy City Attorney

CMF:smm  
12/22/81  
Or.Dept:W.Util.  
r-82-1057  
Form:none

PUBLIC ACCESS RULES AND REGULATIONS FOR  
CABLE TELEVISION FRANCHISE HOLDERS  
ESTABLISHED BY THE CITY OF SAN DIEGO

I. Introduction

Each Cable Television Franchise Grantee ("Grantee") shall operate the public access channel provided for in their franchise agreement with the City of San Diego under the following Rules and Regulations.

II. Definitions

"Public Access" is the term used to describe the right of parties (individuals and organizations), in addition to the Grantee, to use cable system transmission facilities at no direct cost for cablecasting and free from editorial control by the cable operator (except as provided for in Section VIII) in order to communicate with the public through television programs shown on cable television channels.

For purposes of these Rules and Regulations, the term "public access channel" shall refer to the designated channel and combination of any additional channels designated by any Grantee for cablecasting of public access programs.

III. Availability of Access Channel

Any party who is qualified within the meaning of these Rules and Regulations (as provided for in Section V) will be permitted to use the Grantee's public access production facility for the purpose of producing a videotaped or live (as provided for in Section XII) public access program, or to submit a videotaped program for cablecasting on the Grantee's public access channel.

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IV. Operation of Access Channel

The Grantee shall be solely responsible for the operations of the public access channel; provided, however, that the Grantee may contract with one or more independent organizations to provide services to the Grantee to assist in and coordinate the production and cablecasting of public access programs in accordance with these Rules and Regulations.

V. Qualified User

Application to use the public access production facility or for submission of a prerecorded program for cablecasting will be accepted only from responsible persons residing within the County of San Diego and who are at least 18 years of age. It is not necessarily the intent to restrict the use of the public access channel to persons 18 years or older, but in all cases where satisfactory proof of minimum age cannot be made, an adult citizen must make formal application for the user and must accompany and supervise the user at all times while using the public access production facility. In the case of local organizations, all applications shall be signed by a responsible principal or officer of the organization who resides within the County of San Diego.

VI. Conduct of User

Applicants and users of the public access production facility must conduct themselves in a law-abiding manner and adhere to all Rules and Regulations. In cases where any applicant has previously used the public access production facility and/or public access channel and has violated any of these Rules and Regulations, or has been negligent in the

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use of access equipment, such violations can cause subsequent applications to be rejected.

Any applicant or user denied access because of alleged violations of these Rules and Regulations or alleged unlawful conduct may seek redress in accordance with the provisions of Section 73.0105(c) of the San Diego Municipal Code.

VII. Program Content and Restrictions

A. General Policy

Generally, public access programs can concern any topic or subject of a noncommercial nature and the City encourages the widest possible selection of topics and subjects. However, in order to insure compliance with Federal, State and local laws, rules and regulations, the Grantee may reject all applications for time on the public access channel if the presentation violates the restrictions set forth below.

B. Content Restrictions

Applications for time on the public access channel shall not be rejected because of the content of the program, except as provided in the following subsections:

1. Illegal Conduct

Public access programming may not be used for illegal purposes. Users responsible for illegal programming or programming containing information intended to defraud the viewer may forfeit their right to use time on the Grantee's facilities for the presentation of public access programming.

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Accordingly, there shall be no:

a. Information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.

b. Material which is intended to defraud the viewer or designed to obtain money by false or fraudulent pretenses, representations, or promises.

c. Indecent or obscene matter, as defined by law.

d. Libelous or slanderous matter, as defined by law.

2. Advertising Material

Public access programming may not be used in connection with any advertising material designed to promote the sale of commercial products.

Accordingly, there shall be no:

a. Advertising by or on behalf of a candidate for public office. However, this provision shall not preclude the use of the channel by a candidate in order to state positions on public issues, or by other discussants of political issues.

b. Messages of which the primary purpose is intended to promote a service, product, trade or business.

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c. Program material made available by persons, corporations, or institutions which have a commercial interest in the subject matter. This provisions shall not prevent the identification by name only of persons or institutions providing grants or contributions to underwrite the cost of programs unrelated to the commercial interests of the donor as defined below in Section f.

d. Material which identifies any product, service, trademark, or brand name in a manner which is not reasonably related to the noncommercial use of such product, service, trademark, or brand name on the program.

e. Audio or visual reference to any business, service, or product for which any economic consideration was received by anyone in exchange for the display, announcement and/or reference to such business, enterprise, product or service.

f. Material directly used or designed for use to solicit funds, support, or other property of value, for any business enterprise, or person engaged in a commercial or profit-making activity. However, this provision shall not restrict creative credits to writers, producers, directors, actors, etc. Additionally, it is recognized that from time to time, grants and/or other types of support may be made available to individuals or groups for the purpose of underwriting the cost of creation

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or production of programs. In such instances, a standard nondescript "patron's acknowledgment" may be placed at the beginning and end of the subject presentation (e.g., "this program was made possible by a contribution from the XYZ Corporation").

C. User Responsibility

Users of public access time assume complete responsibility for the content of the programming provided. Any disputes which arise concerning the programming shall be resolved between the user and the complaining party. The Grantee undertakes no responsibility to the user or any other party for any legal liabilities which may arise as a consequence of presentation of public access programming and users shall indemnify and hold the Grantee harmless for all liability of any kind whatsoever, including costs of legal defense arising from the presentation of public access programming by the user.

With regard to copyright, users providing public access programming shall be required to advise the Grantee whether or not their programs involve the use of copyrighted material or material subject to other ownership or royalty rights. If so, evidence that the user has obtained all necessary clearances and made all necessary arrangements with the program owners, copyright owners, and owners of any performing or royalty rights shall be provided to the Grantee by the user before the program may be presented over the facilities of the cable system.

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VIII. Use and Scheduling of the Production Facility

Use of any public access production facility shall be scheduled on a first come, first served, nondiscriminatory basis. Reservations for use of the public access production facility shall be made at the time of filing an application. There is no express time limit for use of the public access production facility during regularly scheduled hours of operation provided that no applicant will be allowed to use more than the time reasonably required for the production of the public access program, nor be permitted to monopolize the use of the production facility. It is the intent of this section to ensure fair and equitable access to the production facility.

IX. Charges for Use

No charge will be made for the cablecasting of any public access program. No charge will be made for the production facilities in producing a noncommercial program.

X. Scheduling of Programs

Public access programming refers to noncommercial programs provided by organizations and/or members of the public and retransmitted by the Grantee on the designated public access channel. Public access programming shall have priority over any other types of programming on the designated public access channel, including programming originated by the Grantee.

In the scheduling of public access programming, time shall be allocated on a first come, first served, nondiscriminatory basis. Whenever requests for time exceed availability, the following rules shall apply:

A. First time users shall have priority over regular users.

B. A previous user who has not been scheduled in prime time shall have priority for prime time scheduling.

C. Timeliness shall be considered when appropriate.

D. A priority will be given to users from the geographical area which the cable system serves.

E. Some time slots may be allocated to regularly scheduled public users so long as ample time remains available for spontaneous unscheduled community expression.

Prerecorded programs submitted by an applicant shall be scheduled at the time of filing the completed application form and programs produced at the public access production facility shall be scheduled for cablecasting upon completion of production. All programs shall be scheduled for cablecasting during the normal hours of operation of the public access channel unless another schedule is expressly approved in writing by the Grantee. In exceptional circumstances, an applicant may request a specific cablecasting date and time during the regularly scheduled hours of operation which would be in excess of the forty-five (45) days period as provided for in Section XI below. A written statement of the reasons for such a request should be submitted at the time of filing the application. The Grantee shall respond in writing within ten (10) working

days, and should the Grantee intend to deny such a request, its response must present a detailed statement of the basis for such a denial.

XI. Limitation of Program Hours

The actual cablecasting of a particular program may be delayed as a result of public access demand exceeding available programming time, but in no event may the delay exceed forty-five (45) days following submission. If a program is delayed more than 45 days, notification of such delay must be made to the City of San Diego Council's Transportation and Land Use Committee for possible consideration of the need for additional public access hours or channels.

The Grantee has the obligation to expand the hours of public access channel operation to accommodate the demand for the cablecasting of public access programming provided for the public.

XII. Live Cablecast

In order to insure compliance with these Rules and Regulations and otherwise allow for the efficient operation of the public access channel, most public access programs shall be videotaped, but some live cablecasts may be permitted under such supervision and guidelines as the Grantee directs. Any request for a live presentation shall be submitted directly to the Grantee in writing and shall include a detailed statement of the basis for such a request. The Grantee shall respond in writing to such a request within ten (10) working days, and, should the Grantee intend to deny such a request, its response must present a detailed statement of the basis for such a denial.

XIII. Grantee's Additional Procedures

All procedures established by the Grantee in order to implement public access cable television shall be consistent with these Rules and Regulations and pursuant to San Diego City Council Policy No. 700-37 (7/20/77) which states:

The City Council finds that public access television is of significant value to the community, and it shall be the policy of the City Council that the Council and the City staff shall make every reasonable effort to insure for the continued provision of public access channels. This policy may be exercised in dealing with franchisees and with other regulatory agencies.

XIV. Review of Rules and Regulations

Once adopted, the public access Rules and Regulations shall be reviewed, with appropriate notification to all public access entities, during the designated review of the Grantee's cable franchise.

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Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_, by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

By Barbara Berridge, Deputy.

Office of the City Clerk, San Diego, California

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