

RESOLUTION NUMBER R-

203526

ADOPTED ON

MAR 28 1994

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO, CALIFORNIA, PURSUANT TO SECTIONS 76.933(C), 76.936, 76.940, 76.941 AND 76.942 OF THE RULES AND REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION ("FCC") PROPOSING THE DISAPPROVAL OF EXISTING RATES AND CHARGES FOR THE BASIC SERVICE TIER AND ASSOCIATED EQUIPMENT FOR SOUTHWESTERN CABLE TV ("SOUTHWESTERN"), SEEKING COMMENT WHY A PROSPECTIVE RATE REDUCTION, PRESCRIBING RATES AND CHARGES FOR BASIC SERVICE TIER, AND REFUNDS SHOULD NOT BE ORDERED, AND DIRECTING SOUTHWESTERN TO KEEP AN ACCURATE ACCOUNT OF ALL AMOUNTS RECEIVED BY REASON OF THE RATES IN ISSUE AND ON WHOSE BEHALF SUCH AMOUNTS WERE PAID

WHEREAS, the City of San Diego (the "City") was certified by the Federal Communications Commission ("FCC") to regulate the Basic Service Tier, and associated equipment on November 11, 1993; and

WHEREAS, the City provided written notice of said certification to Southwestern Cable TV ("Southwestern") on November 22, 1993; and

WHEREAS, the City has adopted regulations with respect to the Basic Service Tier and associated equipment that are consistent with the regulations prescribed by the FCC; and

WHEREAS, the City has adopted procedural laws and regulations applicable to rate regulation proceedings which provide a reasonable opportunity for consideration of the views of interested parties; and

WHEREAS, the City delivered a written request to Southwestern to file their schedule of rates for the Basic Service Tier and associated equipment with the City on November 22, 1993; and

WHEREAS, on December 16, 1993 Southwestern filed with the City a FCC Form 393 dated December 1, 1993; and

WHEREAS, the City notified Southwestern on January 10, 1994 pursuant to Section 76.933(b) of the FCC Rules and Regulations that it was unable to determine based upon the materials submitted by Southwestern that the existing or proposed rates were within FCC's permitted Basic Service Tier charge or actual cost of equipment and that the City was tolling the thirty-day deadline found in Section 76.933(a) of FCC Rules and Regulations for an additional ninety days for the purpose of requesting and/or considering additional information; and

WHEREAS, the City has reviewed all relevant information including, but not limited to, the FCC Form 393, the Auditor's Report, and other relevant written evidence; and

WHEREAS, the City has not made a final decision approving, disapproving, or conditionally approving, or otherwise, Southwestern's proposed rates and charges as found in the FCC Form 393; and

WHEREAS, the City hereby expresses its intent to reserve the right to order future refunds and/or credits if the City subsequently issues a written decision disapproving any portion of such proposed rates and charges for the Basic Service Tier and associated equipment pursuant to Section 76.933(c) of FCC Rules

and Regulations; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN DIEGO DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The existing and proposed rates and charges for the Basic Service Tier and associated equipment as identified in the FCC Form 393 dated December 1, 1993 for Southwestern do not appear to be in conformity with FCC benchmark standards in whole (or in part) for the reasons, and on the grounds, as contained in the Auditor's Report dated March 16, 1994, a copy of which is incorporated into this Resolution by reference as Enclosure (1) and as if fully stated herein.

Section 2. Southwestern is hereby directed pursuant to Section 76.933(c) of FCC Rules and Regulations to keep an accurate account of all amounts received by Southwestern by reason of the rates and charges for the Basic Service Tier as found in the FCC Form 393, and to further keep full and accurate records indicating on whose behalf such amounts were paid.

Section 3. Southwestern is hereby directed to provide copies of the accounts and records specified in Section 2 above to the City Manager upon his and/or her written direction.

Section 4. The City hereby reserves any right and remedies which it may possess in relation to rates and charges for the Basic Service Tier which are found to be in excess of the amounts authorized by FCC Rules and Regulations.

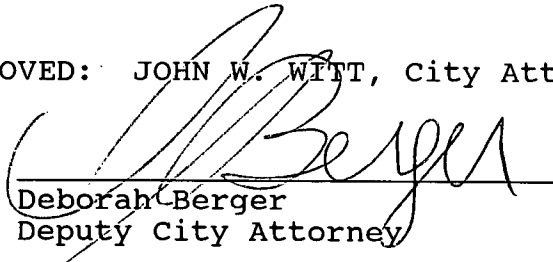
Section 5. The City Council of the City of San Diego hereby directs and orders Southwestern to appear at 2:00 p.m. on June 6, 1994, at this location to give evidence and show cause

why the City should not order that Southwestern implement a prospective rate reduction and refund previously paid rates and charges to subscribers in excess of the rates and charges deemed reasonable pursuant to FCC Rules and Regulations Section 76.923 and 76.941 and 47 USC Section 453.

Section 6. Southwestern is hereby directed and ordered to provide a Refund Plan ("Refund Plan") to the City within thirty (30) days prior to the date of the June 6, 1994 hearing, pursuant to which it proposes how to refund to subscribers rates and charges collected by Southwestern in excess of the rates and charges contained in the Auditor's Report since September 1, 1993, or the earliest date from which the refund period may run pursuant to FCC Rules and Regulations, along with such written evidence and documentation demonstrating the reasonableness and appropriateness of said Refund Plan under the standards set forth in Section 76.942 of FCC Rules and Regulations.

APPROVED: JOHN W. WITT, City Attorney

By


Deborah Berger
Deputy City Attorney

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