

RESOLUTION NUMBER R-285127

ADOPTED ON DEC 12 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 COX CABLE SAN DIEGO, INC. ("COX"), SEEKING COMMENT WHY A PROSPECTIVE RATE REDUCTION, PRESCRIBING RATES AND CHARGES FOR BASIC SERVICE TIER, AND REFUNDS SHOULD NOT BE ORDERED, AND DIRECTING COX 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 Cox Cable San Diego, Inc. ("Cox") 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, on August 12, 1994 Cox filed with the City FCC Forms 1200, 1205 and 1210; and

WHEREAS, the City notified Cox on September 8, 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 Cox, 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 Forms 1200, 1205 and 1210, the Auditor's Report dated November 15, 1994, and other relevant written evidence; and

WHEREAS, the City has not made a final decision approving, disapproving, or conditionally approving, or otherwise, Cox's proposed rates and charges as found in the FCC Forms 1200, 1205 and 1210; 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 Forms 1200, 1205 and 1210 submitted on August 12, 1994 for Cox 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 November 15, 1994, a copy of which is incorporated into this Resolution by reference as Enclosure (1) and as if fully stated herein.

Section 2. Cox is hereby directed pursuant to Section 76.933(c) of FCC Rules and Regulations to keep an accurate account of all amounts received by Cox by reason of the rates and charges for the Basic Service Tier as found in the FCC Forms 1200, 1205 and 1210, and to further keep full and accurate records indicating on whose behalf such amounts were paid.

Section 3. Cox 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.

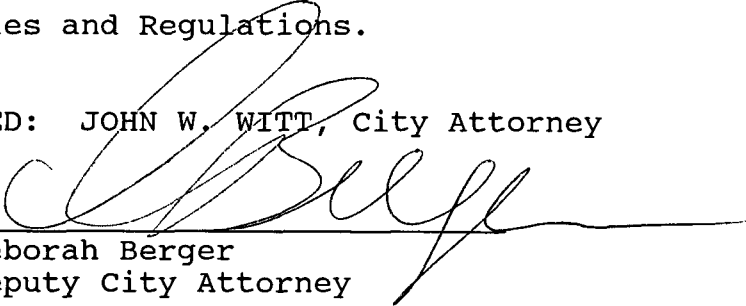
Section 5. The City Council of the City of San Diego hereby directs and orders Cox to appear in March, 1995, at a date and time specified by the Mayor and City Council at this location to

give evidence and show cause why the City should not order that Cox 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. Cox is hereby directed and ordered to provide a Refund Plan ("Refund Plan") to the City by January 5, 1995, pursuant to which it proposes how to refund to subscribers rates and charges collected by Cox in excess of the rates and charges contained in the Auditor's Report since 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

DLB:dll
11/21/94
Or.Dept:Mgr.
R-85-862
Form=r+t



THE CITY OF
SAN DIEGO
AUDIT DIVISION
OFFICE OF THE CITY AUDITOR & COMPTROLLER

Audit Division Manager
Eugene T. Ruzzini
(619) 533-3180

AUDIT REPORT

November 15, 1994

Coleman Conrad, Deputy City Manager
City Manager's Office

**SUBJECT: Cox Cable San Diego
Federal Communications Commission Form 1200 Review**

At your request, we have completed our review of Federal Communications Commission (FCC) Forms 1200, 1205, and 1210 submitted by Cox Cable San Diego (Cox) to the City for approval of basic cable service and equipment rates. Our review included testing the mathematical accuracy of the Forms, ensuring the Forms were completed according to FCC instructions, and verifying information on the Forms.

We determined Cox's current basic cable service rates exceed the maximum permitted rates by \$0.57 per month for non-upgraded subscribers and \$0.26 per month for upgraded subscribers.



BACKGROUND INFORMATION

- Pursuant to FCC regulations, the City is authorized to review and approve rates of its cable franchisees for basic cable service and equipment charges. Basic cable service includes broadcast, government and public access channels. Equipment charges include rental fees for converter boxes and remote controls.
- The FCC Form 1200 series implements the FCC's February 1994 order for cable operators to reduce rates by an additional seven percent from the previous order of a ten percent reduction. Cox restructured its rates to comply with the seven percent reduction on the required date of July 14, 1994.
- Cox offers two levels of service to subscribers in the City of San Diego. Cox refers to these levels of service as "non-upgraded" (or 300 MHz) and "upgraded" (or 550 MHz). There are approximately 103,000 non-upgraded subscribers and 42,000 upgraded subscribers in the City. Non-upgraded subscribers receive 30 total channels and upgraded subscribers receive 54 channels. Both receive the same basic cable service of 18 channels. However, because of complex FCC rules, each pays a different rate for that basic cable service. Cox's current monthly charges are:

	<u>300 MHz</u>	<u>550 MHz</u>
Basic cable service	\$12.17	\$ 8.02
Remote control	\$ 0.45	same
Converter box	\$ 1.61	same
Addressable converter box (a.k.a. "decoder")	\$ 2.80	same

- On August 12, 1994, Cox submitted two sets of FCC Forms for review; one set for non-upgraded subscribers and one for upgraded subscribers. Each set includes the following. FCC Form 1200, "Setting Maximum Initial Permitted Rates For Regulated Cable Services", establishes monthly basic cable service rates. FCC Form 1205, "Determining Regulated Equipment and Installation Costs", establishes monthly equipment charges. FCC Form 1210, "Updating Maximum Permitted Rates for Regulated Cable Services", calculates allowed increases for basic cable service rates.

* * *

The details of our review are noted below.

1. Cox's rates for basic cable service exceed the maximums permitted as follows.

Subscriber	Current Rate	Maximum Permitted Rate	DIFFERENCE
Non-upgraded	\$12.17	\$11.60	\$0.57
Upgraded	\$8.02	\$7.76	\$0.26

The components and effects of these differences are:

	<u>Non-upgraded</u>	<u>Upgraded</u>
Imputed Income	\$0.30	\$0.20
Equipment Basket	0.32	0.32
Programming Costs and Other	<u>(0.05)</u>	<u>(0.26)</u>
TOTAL	<u>\$ 0.57</u>	<u>\$ 0.26</u>
Approximate number of subscribers	103,000	42,000
NET EFFECT Per Month	\$58,710	\$10,920

RECOMMENDATION: *In conjunction with the City Attorney, take appropriate actions deemed necessary in accordance with FCC regulations.*

2. Cox continues to include "imputed income" related to decoders in calculating its basic service rate. We first identified this issue in our March 16, 1994 audit report of Cox's FCC Form 393 filing. Presently, this issue is under appeal to the FCC. Cox's inclusion of "imputed income" on Form 1200 increases the basic cable service rate for non-upgraded subscribers by \$0.30 per month and \$0.20 per month for upgraded subscribers.

RECOMMENDATION: *In conjunction with the City Attorney, take appropriate actions deemed necessary in accordance with FCC regulations.*

3. Cox understated the value of its "equipment basket" for 1991 resulting in an higher basic cable service rate. The equipment basket is calculated using Form 1205 and then deducted from cable service rates on Form 1200 to accomplish "unbundling" per FCC instructions. Thus, subtracting a smaller equipment basket on Form 1200 leaves cable service rates higher. In total, Cox understated the value of the equipment basket by \$1,188,828. This had the effect of increasing the basic cable service rate by \$0.32 per month per subscriber. Since Form 1205 computes the equipment basket for all Cox subscribers, the effect of the differences found is the same for all subscribers.
 - a. Cox understated various expenses for service installation and maintenance of equipment by \$1,081,813 on Schedule B of Form 1205. These differences were due to computational errors.
 - b. Cox did not include expenses of \$107,015 for non-returned converters on Schedule B of Form 1205.
 - c. The \$0.32 per month overcharge is calculated as follows;
 $\$1,188,828 \div 324,468$ (total subscribers for the company)
 $\div 12$ months x 1.03 inflation factor.

RECOMMENDATION: *In conjunction with the City Attorney, take appropriate actions deemed necessary in accordance with FCC regulations.*

4. We noted various differences in the computation of programming costs, channel counts, and subscriber counts, on Forms 1200 and 1210, and these differences resulted in the reductions noted in the previous table.

RECOMMENDATION: *In conjunction with the City Attorney, take appropriate actions deemed necessary in accordance with FCC regulations.*

If you have any questions, please contact me.



Eugene T. Ruzzini

ETR:EN

cc: John W. Witt, City Attorney
Jack McGrory, City Manager
Patricia T. Frazier, Financial Management Director