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(O-2002-115) Cor. Copy
04-26-02

ORDINANCE NUMBER O- 19059 (NEW SERIES)

ADOPTED ON MAY 14 2002

WHEREAS, The City of San Diego [City] has by Ordinance No. 15213 [Cable Franchise] granted to American Television and Communications Corporation the non-exclusive right, privilege and franchise to lay and use lines, wires, coaxial cable and appurtenances for transmitting, distributing and supplying radio and cable television service along, across and upon public streets, ways, alleys and places within certain areas of the City; and

WHEREAS, the City has by Ordinance No. O-18809, consented to the transfer of the Cable Franchise to Time Warner Entertainment Advance/Newhouse Partnership ["Time Warner"]; and

WHEREAS, the City is seeking approval of a surcharge through the filing of an Advice Letter at the California Public Utility Commission [CPUC] to approve the City's undergrounding program; and

WHEREAS, Time Warner has agreed not to protest the Advice Letter and not pass through to ratepayers its costs related to the undergrounding program in exchange for the undergrounding program absorbing a certain portion of Time Warner's undergrounding costs;

NOW, THEREFORE,

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

Section 1. That subsection (e) be added to Section 16 of Ordinance No. O-15213 to read as follows:

- (e) Subject to California Public Utility Commission's [CPUC] for obtaining the approval of the City's entire undergrounding surcharge proposal, City's undergrounding program will assume responsibility for that portion of the joint trench costs related to extra depth trenching and the installation of conduit and substructures, with the balance of any undergrounding costs associated with Grantee's facilities to be paid by Grantee, without any pass through of those costs to Grantee's Subscribers.

Section 2. That Section 19 of Ordinance No. O-15213 be amended to read as follows:

Grantee shall, at its sole expense, protect, support, temporarily disconnect, relocate in the same street, alley, or public place, or removal from any street, alley or public place, any Franchise Property when required by the City Manager provided, however, that Grantee shall have the privilege and be subject to the obligation to abandon Franchise Property in place as provided in Section 18; and provided further that Grantee shall have the benefit of any local, state or federal law or regulation providing for reimbursement of or contribution toward Grantee's expense necessitated by such improvements.

Section 3. That Section 21(c) of Ordinance No. O-15213 be amended to read as follows:

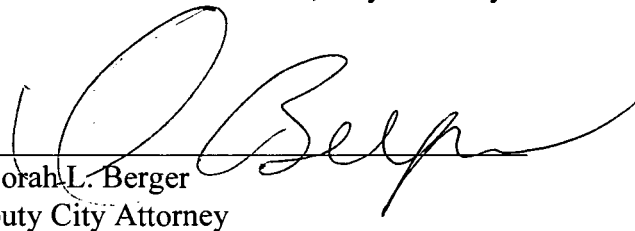
- (c) Payments made to the City by Grantee pursuant to this section for any calendar year shall be as a rental for use of the public right of way. Any Grantor imposed fees for right of way usage [Right of Way Fee] shall be credited with consideration paid herein. Subject

to the provisions of section 16 (e), any revenues which remain after this credit of Right of Way Fees will be credited toward any additional fees Grantor imposes for inspection, trenching, cutting or deterioration of the right of way.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. That this ordinance shall take effect and be in force as of the effective date of the CPUC approval of the Advice Letter implementing an undergrounding surcharge as approved by the City Council.

APPROVED: CASEY GWINN, City Attorney

By: 
Deborah L. Berger
Deputy City Attorney

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03-07-02
03-25-02 Cor. Copy
03-29-02 Cor. Copy
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Aud.Cert:N/A
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