

DATE ISSUED: September 26, 2001

REPORT NO. 01-190

ATTENTION: Honorable Mayor and City Council
Docket of October 2, 2001

SUBJECT: Time Warner Cable Television Franchise Fee Audit

SUMMARY

Issue - Should the City Council approve a compromise with Time Warner Cable Television regarding specific "Launch Fee" findings by the City Auditor concerning cable television franchise fee revenues?

Manager's Recommendation - Approve "Launch Fee" compromise with Time Warner Cable Television.

Other Recommendations - None.

Fiscal Impact - The City will realize a one-time loss of \$82,210.18 in disputed uncollected cable television franchise fee revenues. Future franchise fees associated with "Launch Fees" collectable by the City will be approximately \$50,000 per year for the remainder of Time Warner's franchise term.

BACKGROUND

Pursuant to its cable television franchise agreements with Time Warner Cable and Cox Communications, the City of San Diego receives franchise fee payments from each company for the use of the public rights-of-way. These fees currently equate to 3% of the total gross cable television service revenues of each company. Combined cable television franchise fee revenues provided to the City last fiscal year were over \$5,000,000.

On January 24, 2001, the Audit Division with the Office of the Auditor and Comptroller issued a report pertaining to the cable television franchise fees paid by Time Warner Cable for the period April 1, 1996 through March 31, 1999. In the audit report, Time Warner Cable was found to be in substantial compliance with its franchise fee payments to the City with the exception of revenues received for new cable channel marketing support referred to in the report as "Launch Fees." Specifically, "Launch Fees" are revenues received by Time Warner Cable from new channel programmers for costs associated with the marketing and other costs for the launch of these new channels. The Auditor's report disclosed that, for the period reviewed, Time Warner Cable failed to pay to the City a total of \$87,749, including late payment charges of \$17,939, for revenues received by the company associated with "Launch Fees."

On February 7, 2001, the Cable TV Office of the Department of Information Technology and Communications (IT&C) issued notice to Time Warner Cable requesting receipt of the underpaid funds as documented in the Audit Division report. Time Warner Cable responded stating that "Launch Fees" were not subject to franchise fee payments based on their interpretation of existing law and that such fees were not "revenues," but "reimbursements" from cable programming channels necessary for the initial carriage of new channels by the cable company. IT&C, coordinating with the City Attorney's Office, countered with an opinion that such revenues were subject to franchise fees under Time Warner's franchise agreement with the City.

DISCUSSION

The City and Time Warner Cable remain in dispute over the issue of applicability of cable television franchise fee payments on "Launch Fee" revenues. As a result of this dispute, Time Warner Cable has offered a compromise that will ultimately provide full payment to the City for all future "Launch Fee" revenues.

Under the proposed compromise, Time Warner Cable has agreed to pay the City franchise fees on all revenues associated with "Launch Fees" going forward from June 2001. With regard to past due fees, Time Warner is requesting that they pay to the City one-half of the past due franchise fees associated with "Launch Fees" for the period April 1996 through June 2001, excluding late payment penalties. One-half of the total contested amount equates to a one-time payment \$82,210.18.

IT&C, the City Attorney's Office, and the City Auditor & Comptroller believe that the compromise as proposed by Time Warner Cable offers a reasonable resolution which will ultimately provide the City full payment of franchise fees for revenues associated with "Launch Fees" going forward from June 2001. The proposed resolution on this matter is deemed to be in the City's best interests in order to avoid additional costs associated with attempting to resolve this matter including possible litigation.

City Council Policy 000-09 (effective 9/13/93) establishes operative language requiring Council approval of general claims with the City exceeding \$20,000. In order for the City to accept the proposed "Launch Fee" compromise offered by Time Warner, Council action is necessary.

ALTERNATIVE

Do not approve compromise agreement with Time Warner Cable.

Respectfully submitted,

RICHARD E. WILKEN
Information Technology and
Communications Director

Approved: HOWARD STAPLETON
Acting Chief Information Officer

WILKEN/MSJ

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachment: Proposed Time Warner compromise