



MIAMI BEACH

OFFICE OF THE CITY MANAGER
NO. LTC # 109-2007

LETTER TO COMMISSION

2007 MAY 10 PM 12:42
CITY CLERK'S OFFICE

RECEIVED

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: May 9, 2007

SUBJECT: **ATLANTIC BROADBAND NOTIFICATION OF A CABLE RATE INCREASE**

On April 30, 2007, the Administration received notice that Atlantic Broadband, the City's cable provider, is increasing their rate by \$.70 cents per month across all of their video services effective with the customers' June 2007 billing. Exhibit "A" is a copy of the letter from Mr. Jim Waldo, Vice President and General Manager, Atlantic Broadband, explaining why the price increase is necessary.

This rate increase differs from past rate increases because Atlantic Broadband is increasing the basic tier cable rate, which the City regulates, from \$12.48 to \$13.10 per month. Atlantic Broadband recognizes that the City has the ability under Federal law to regulate the basic cable rate and has submitted Federal Communications Commission ("FCC") Forms 1210, 1235, and 1205 pursuant to the FCC's rate-setting methodology. The Forms are in the City Clerk's office and are available upon request.

Upon receiving Atlantic Broadband's rate increase notification letter the Administration consulted with the City's Legal Department and Leibowitz & Associates, P.A. to determine the City's authority to regulate the basic cable rate. See Exhibit "B", Mr. Matthew L. Leibowitz, Esq, response letter dated May 7, 2007. In short, Mr. Leibowitz states that current law grants to the City the authority to review the operator's filings to determine whether the proposed rates for the basic tier rates are in compliance with FCC formulas. If the rates are in compliance no further action is taken. If the City's analysis finds that the rates are not in compliance and the City's determination is upheld after any appeals to the FCC, the operator may then be forced to lower the basic rate to the level calculated pursuant to the FCC formula. The process of basic tier rate regulation by a local government is both costly and time consuming. In order to start the process with a preliminary review of the filing by an accountant experienced in cable rate regulations the cost is estimated to be \$5,000 plus legal fees and expenses. Ultimately, the process may cost tens of thousands of dollars, require two to three years before a final order is issued and may not necessarily result in a substantial benefit to subscribers.

Should you wish a discussion and have public input on this matter the appropriate step would be to place it on the May 16th Commission Agenda. Please notify my office if you wish to place a discussion item on the May 16, 2007 Commission Agenda and to invite a Mr. Waldo.


JMG\REP

c: Jose Smith, City Attorney
Hilda Fernandez, Assistant City Manager

F:\CLER\CLER\FORMS\Atlantic Broadband cable rate increase June 2007.doc

EXHIBIT "A"



1681 Kennedy Causeway
North Bay Village, FL 33141

305.861.8069 Phone
305.861.9047 Fax

April 27, 2007

Mr. Robert Parcher
City Clerk
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RECEIVED
2007 APR 30 AM 10:09
CITY CLERK'S OFFICE

Dear Mr. Parcher:

In 1992, Congress passed must-carry/retransmission consent provisions that gave broadcast networks, their affiliates and station owners the right to negotiate with cable operators the terms for carrying their free, over the air signals.

Until recently, the negotiations between broadcasters and cable providers were generally marked by an understanding of the mutual benefit enjoyed by carriage of local stations on cable. As a result, most retransmission carriage agreements did not involve cash payments, but rather arrangements for in kind compensation such as free advertising, or the carriage of new cable networks also owned by the broadcast networks. While these arrangements were costly to Atlantic Broadband, they did add some value to our channel lineups.

Atlantic Broadband has been negotiating to avoid a rate increase driven by local broadcasters' demands. These broadcasters think customers should pay them for the public spectrum they receive for free, and from which they already reap billions in advertising, copyright and other revenues. Despite our efforts, some broadcast groups (who will not allow us to disclose their names) have decided to charge us for continuing to carry their local network affiliates. Due to this new expense, we must implement a new Broadcast Channel Surcharge of \$0.70 across all our Video services.

Effective with customers' June 2007 billing statements, Limited Video service, now \$12.48, will be \$13.18 per month. Value Video and Digital Video service fees are also increasing as a result of this broadcast channel surcharge. Value Video service, now \$51.45, will be \$52.15/month and Digital Video service, now \$70.40, will be priced at \$71.10/month. Mundo Latino Básico service (includes Limited Video and receiver) will go from \$32.95 to \$33.15/month. Mundo Latino Valor service (includes Value Video and receiver) will go from \$71.45 to \$72.15/month. Mundo Latino Completo (includes Value Video and receiver) service will increase by \$0.70 also, from \$83.45 to \$84.15/month.

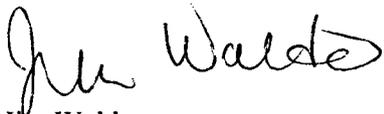
Most customers will see this new Broadcast Channel Surcharge itemized in the description under 'Monthly Charges' in the Account Detail section of their statements. (Limited Service only customers will not see this new Broadcast Channel Surcharge broken out on their invoice.)

We recognize that you have the ability under Federal law to regulate the basic rate, and are providing under separate cover, the FCC Form 1210. You will receive this information, which demonstrates that the new Limited Service monthly fee falls well within the Maximum Permitted Rate, on or before May 1.

We are pleased to let you know that we are adding two services to our lineup. PLUM will be added to the Limited lineup on channel 5, on May 1. PLUM will feature programming made in and about Miami Beach. Shows will include local artists, journalists, newsmakers and lawmakers, sport stars, stylists and restaurateurs. To accommodate this addition, the Local Origination channel is moving to channel 41. Beginning April 30, 2007, LATV will be added to the Digital service on channel 189. LATV, known as Latino Alternative, is based in Los Angeles, features Latino music and entertainment as well as original bilingual programming

Atlantic Broadband and its employees value our relationships with the communities we serve. We are committed to continued investment in our broadband communications system and to providing our customers with superior service. As always, I welcome your comments and any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Waldo". The signature is fluid and cursive, with the first name "Jim" written in a larger, more prominent script than the last name "Waldo".

Jim Waldo
Vice President & General Manager

LEIBOWITZ & ASSOCIATES, P.A.

JOSEPH A. BELISLE
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DANIEL J. MARGOLIS
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May 7, 2007

Mr. Robert Parcher
City Clerk
City of Miami Beach, FL
1700 Convention Center Drive
Miami Beach, FL 33139

RE: City of Miami Beach, FL
Cable Rate Regulation

Dear Mr. Parcher:

In response to your inquiry with respect to the notice of rate increase received by the City from Atlantic Broadband, this letter is to provide a summary of the City's authority to regulate cable television rates charged to subscribers.

Local government's authority to regulate the rates charged to subscribers by franchised cable operators is governed by federal law. Pursuant to the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"), the Federal Communications Commission ("FCC") promulgated rules regarding the cable operator's establishment of rates and local franchising authorities regulation of the rates.

Rate regulation affected two levels of cable service: the basic tier which, as a general rule, is subject to certain conditions and can be regulated by local franchising authorities; and cable programming tiers which were subject to regulation by the FCC until such authority expired on March 31, 1999. With respect to local regulation of rates for the basic tier, cable operators may be subject to regulation law unless the system is determined to be subject to "effective competition" as defined by the FCC. Note that "effective competition" will be found if 15% of households in the franchise area subscribe to satellite or any other non-Atlantic Broadband service. If "effective competition" exists, no governmental authority can regulate rates. An operator must affirmatively petition the FCC and receive from the FCC a determination of effective competition otherwise there exists a presumption of no effective competition and the operator may be subject to rate regulation. As of this date, our research indicates that Atlantic Broadband has not been deemed by the FCC to be subject to effective competition in the City of Miami Beach.

With respect to the City of Miami Beach, Leibowitz & Associates obtained certification from the FCC allowing the City to regulate rates immediately after adoption of the 1992 Cable Act. The

City, represented by the law firm, exercised its regulatory authority which resulted in a savings of over \$150,000 to subscribers to basic and expanded tiers at cost to the City of approximately \$20,000. However, under currently applicable law a similar result is virtually impossible. Current law grants to the City the authority to review the operator's filings to determine whether the proposed rates for the basic tier rates are in compliance with FCC formulas. If the rates are in compliance no further action is taken. If the City's analysis finds that the rates are not in compliance and the City's determination is upheld after any appeals to the FCC, the operator may then be forced to lower the basic rate to the level calculated pursuant to the FCC formula. However, because expanded and upper tiers are unregulated, the operator may add to the price of the expanded tier that amount by which the price of the basic tier is reduced. The majority of Atlantic Broadband subscribers in the City of Miami Beach subscribe to the expanded tier thus there would be no actual saving in the price paid by subscribers.

The process of basic tier rate regulation by a local government is both costly and time consuming. In order to start the process with a preliminary review of the filings by an accountant experienced in cable rate regulation the cost is estimated to be \$5,000 plus legal fees and expenses. Ultimately, the process may cost tens of thousands dollars, require two to three years before a final order is issued and may not necessarily result in a substantial benefit to subscribers. In the event that the process actually results in an enforceable basic rate refund, credit or reduction order, the cable operator may immediately increase the cable rate for the expanded or programming services tier thereby negating any reduction for the majority of subscribers. Moreover, there is no provision in the law providing for reimbursement of costs of rate regulation to local government.

In the event the City elects not to undertake the process of rate regulation, the Commission may wish to (a) request Atlantic Broadband to appear at a Commission meeting to discuss the rate increase or (b) adopt a resolution objecting to the proposed rate increase. While neither of these actions would have a legally enforceable impact on any rate increase, the public nature of the objection would clearly communicate the City's position to Atlantic Broadband and the public.

Please call us should the City wish to pursue this matter or if you have any questions or require additional information.

Sincerely,

/s/

Matthew L. Leibowitz, Esq.

Ila L. Feld, Esq.

ILF:tg

Cc: Jose Smith, Esq.