



# *CITY COUNCIL AGENDA REPORT*

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MEETING DATE: November 20, 2007

ITEM NUMBER: IX-2

**SUBJECT:** ORDINANCE AMENDING CHAPTER 1 OF TITLE 19 RELATING TO PEG ACCESS CHANNEL FEE

**DATE:** November 5, 2007

**FROM:** City Attorney's Office

**PRESENTATION BY:** Kimberly Hall Barlow, City Attorney

**FOR FURTHER INFORMATION CONTACT:** Kimberly Hall Barlow (714) 754-5399

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## **RECOMMENDATION:**

Introduce and give first reading to the attached Ordinance Amending Chapter I of Title 19 relating to state-issued video franchises and the public, education and governmental (PEG) access channel fee.

## **BACKGROUND:**

Effective January 1, 2007, the state of California enacted the Digital Infrastructure and Video Competition Act of 2006 (the "Act", (Public Utilities Code §5800 *et seq.*), to encourage competition in the cable and video service sector.

## **DISCUSSION:**

The Act allows "new" providers of cable and video services to obtain a state-issued franchise rather than complying with the City's existing cable franchise ordinance. Under the Act, a video service provider must have either a local or state franchise to operate. If a new cable or video service provider possesses a state-issued franchise, it may construct infrastructure within the City and offer video services without a City franchise, subject to the requirements of the Act. This includes requirements that the video provider comply with the City's permissible ordinances and rules regarding access to and encroachment in the public right of way. If a new video provider obtains a state-issued franchise, any incumbent cable operator and/or video service provider may then be able to obtain a state issued franchise. The local franchise agreement would ultimately terminate and be replaced by the state franchise. However, until a state franchise is issued to the incumbent provider, it must continue to abide by all obligations to provide service to the area. Public Utilities Code § 5840(o), (p). Even after a state franchise is issued, the incumbent provider must continue to serve the area it was serving as of January 1, 2007 until its franchise agreement with the city expires.

AT&T already holds a state franchise and has begun the process to construct its own system to provide video service in the City. Time Warner will now have the option to obtain a state franchise. If it does so, Time Warner will have to continue to serve the

same area it was serving was January 1, 2007 in the City until 2018 when its existing franchise with the City expires.

Under the current franchise agreement with Time Warner, a one percent (1%) fee is imposed to support, public, educational and governmental (PEG) access channel facilities. Time Warner will have to continue to pay the PEG fee until its franchise expires or until it would have expired if it is not later terminated by issuance of a state franchise to Time Warner. Thus, the City will continue to receive PEG funding from Time Warner through 2018. If Time Warner ultimately obtains a state issued franchise, the current fee would no longer be binding after 2018. Public Utilities Code § 5870(k). Furthermore, any new video service provider holding a state franchise, such as AT&T, would not be obligated to pay the fee established pursuant to our franchise requirements. However, AT&T and any other video service providers obtaining a state franchise will have to designate the same number of PEG channels as are activated by the incumbent cable operator. Public Utilities Code § 5870(a).

Under the Act, however, the City may, by ordinance, establish a fee to support PEG activities, which shall not exceed one percent (1%) of the holder's gross revenues. As to Time Warner, the fee established by this proposed ordinance would take effect upon termination of the agreement with Time Warner, in place of the franchise required PEG fee. Additionally, any new service provider would also be subject to the fee upon commencing services in the City. The holder of a state franchise may recover the PEG fee from subscribers as a separate line item on their regular bills. Public Utilities Code § 5870 (n), (o).

#### **ALTERNATIVES CONSIDERED:**

City Council could decide to not adopt the ordinance.

#### **FISCAL REVIEW:**

PEG fees currently provide approximately \$150,000 annually to fund public access channel services. If the proposed ordinance is not adopted, the City will likely face a reduction in PEG fee revenue necessary to fund the public access channel services (Channels 24, 26, 27 and 35) as soon as AT&T or another state-issued video franchise holder begins providing services in the City if any Time Warner customers switch to another non-satellite provider. The amount of any such reduction is unknown.

#### **LEGAL REVIEW:**

The City Attorney prepared this report and attached ordinance. No additional review is necessary.

**CONCLUSION:**

The proposed ordinance is intended to preserve an important source of fee revenue to support PEG activities. The City Attorney recommends that City Council adopt the ordinance.

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City Manager

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KIMBERLY HALL BARLOW  
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DISTRIBUTION: City Manager

ATTACHMENTS: 1 [Ordinance](#)