



DATE ISSUED: January 30, 2008 REPORT NO. 08-006

ATTENTION: Council President and City Council

Agenda of February 4, 2008

SUBJECT: AN ORDINANCE AMENDING CHAPTER 7, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE TO CREATE A NEW DIVISION 2 TITLED "VIDEO SERVICE PROVIDER FEES AND CUSTOMER SERVICE REGULATIONS FOR STATE FRANCHISED VIDEO SERVICE PROVIDERS."

REFERENCE: December 6, 2007 meeting of the Rules, Open Government and Intergovernmental Relations Committee.

**REQUESTED ACTION:** Review and approve an ordinance amending Chapter 7, Article 3, of the San Diego Municipal Code to create a new Division 2 titled "Video Service Provider Fees and Customer Service Regulations for State Franchised Video Service Providers."

**STAFF RECOMMENDATION:** Review and approve an ordinance amending Chapter 7, Article 3, of the San Diego Municipal Code to create a new Division 2 titled "Video Service Provider Fees and Customer Service Regulations for State Franchised Video Service Providers."

## **SUMMARY:**

### **Overview**

The Governor approved AB 2987, the Digital Infrastructure and Video Competition Act of 2006 ("the Act") on September 29, 2006. The Act brings about dramatic changes to how video franchises are handled at the State and Local level. Up until the passage of the Act, video franchises were granted and administered at the local level. The City of San Diego currently has two local video franchisees---Cox Communications and Time Warner Cable. Effective January 1, 2007, the California Public Utilities Commission (CPUC) has the authority to grant state franchises for the provision of video service including cable television service and open-video systems.

### **Current State Franchises in the City of San Diego**

The CPUC began accepting applications for a State franchise on April 1, 2007. AT&T filed for a statewide franchise at that time and the franchise was granted. In addition, Cox Communications filed for a state franchise to offer service outside of its current local franchise territory. That too was granted.

Prior to offering video service in a local entity's jurisdiction, a State franchise holder must notify the local entity that the video service provider will provide video service in the local entity's jurisdiction. The notice shall be given at least 10 days, but no more than 60 days, before the video service provider begins to offer service. Cox notified the City on April 27, 2007 that it intended to offer service in some newly developed north City of San Diego areas currently served by Time Warner Cable. AT&T notified the City of San Diego on May 21, 2007 that it intended to offer video service in the City of San Diego and has begun to roll out its service.

## **Impact on Existing City of San Diego Franchise Agreement**

The City of San Diego currently has video franchise agreements with Cox Communications and Time Warner Cable. The Cox franchise is set to expire in 2019. Time Warner's franchise expires in 2020. However, with the passage of the Act, there is the opportunity for these local franchise agreements to be abrogated prior to their expiration.

Under the Act, any video service provider that currently holds a franchise with a local franchising entity is entitled to abrogate its local franchise agreement and seek a state franchise upon meeting any one of the following conditions:

- The expiration, prior to any renewal or extension of its local franchise.
- A mutually agreed upon date by the parties.
- When a video service provider holding a state franchise provides the required notice to the local jurisdiction that it intends to initiate providing service in all or part of the jurisdiction. The notice is to be provided at least 10 days, but no more than 60 days, before the video service provider begins to offer service.

The City may also require that all incumbent cable operators seek a state franchise when a video service provider that holds state franchise provides notice that it intends to initiate providing service. A state franchise issued to any incumbent cable operator may not become effective prior to January 2008.

As stated above, AT&T has been granted a state franchise and has notified the City of its intention to offer service. Thus, Cox and Time Warner will have the ability to abrogate their existing local franchises after January 2, 2008. Should either provider not wish to abrogate, then the City could require all incumbent operators to seek a State franchise and terminate the local franchise after the specified January 2008 date.

## **Franchise Fees**

The current video franchises generate approximately \$15 Million a year in revenue for use of the public rights-of-way. The City requires a franchise fee of 5% of the annual gross revenues of each video provider. Under the Act, the City will continue to receive franchise fees based on 5% of gross revenues. If our current agreements remain in place, the City will continue to be entitled to the agreed upon fees contained in our local franchise agreements.

The Act requires state franchisees to pay fees to the City for state franchises and the City has begun to receive franchise fees from AT&T. Currently, the amount is minimal, but it will grow as their customer base grows. Should the Cox and/or Time Warner franchises be abrogated, then they will have state franchises and be required to pay fees to the City under the terms of the Act. The Act establishes a State franchise fee of 5% of annual gross revenue as a rent or toll for use of the public rights-of-way. In the case of a video service that is "bundled" with other services, the State franchise fee shall be applied only to the gross revenue attributable to video service. As allowed under Federal law, incumbent cable operators and State franchise holders may identify and collect the amount of the franchise fee as a separate line item on the monthly bill of each subscriber.

Under the Act, a local entity may audit the franchise fees paid not more than once annually. If the examination shows that the franchise holder has underpaid franchise fees by more than 5%, the franchise holder shall pay all reasonable and actual costs of the examination.

### **Public, Educational and Governmental Access Channel Provisions (PEG)**

The City's current franchises provide for Public, Education, and Government (PEG) access channels. CityTV 24, County Office of Education ITV-16, and public access are made possible because of the PEG requirements contained in our franchises. State franchises also have PEG requirements. The holder of a State franchise shall designate the same number PEG channels as are carried by the incumbent operators.

The City is responsible for ensuring that all PEG programming is transmitted to the franchise holder in a manner or form that is standard in the industry. This is already in place for Cox and Time Warner. Staff has been working with AT&T to accomplish the PEG channel connections to their system.

All obligations to support PEG channels and to provide cable services to community buildings contained in a locally issued franchise existing on December 31, 2006 shall continue until the local franchise expires, or until the term of the franchise would have expired if the agreement has been abrogated, or until January 1, 2009, whichever is later. This means that the service drops and no cost cable television service that the City currently receives from Cox and Time Warner should remain in place through 2019 and 2020 respectively regardless of whether their agreements are abrogated.

In order to support PEG channels through a State franchise, the City may adopt an ordinance to establish a separate PEG support fee at any time, not to exceed 1% of gross revenues. PEG fees may be recovered by a State franchise holder as a separate line item on subscriber bills. Those fees can only be used to support PEG programming such as that carried on CityTV 24.

### **Customer Service Standards**

The City currently enforces video service customer service standards through its existing franchise agreements. That role will not change relative to Cox and Time Warner. Regarding the State franchises, under the Act, State franchise holders must comply with the provisions of California Government Code sections 53055, 53055.1 and 53088.2 and any other customer service standards pertaining to the provision of video service established by Federal law or regulation. The State franchise holder also shall comply with provisions of State Penal Code and Federal law related to subscriber privacy protections.

The Act directs the City to enforce all customer service and protection standards applicable under law with respect to complaints received from residents within the City's jurisdiction. In order to accomplish this, the City shall, by resolution or ordinance, provide a schedule of penalties for any material breach of any applicable customer service and protection standards by a holder of a state franchise.

The City may adopt a schedule of provisions for any material breach of the customer service standards that is within the reasonable control of the State franchise holder. Damages shall not

exceed \$500 for each day of material breach and not to exceed \$1,500 for each occurrence of a material breach. If a subsequent material breach occurs within 12 months, the penalties may be increased to \$1,000 per day, not to exceed \$3,000. If a third or further material breach occurs within those same 12 months, and the local entity has provided notice and a fine or penalty has been assessed, the penalties may be increased to \$2,500 for each day of material breach, not to exceed \$7,500. The City must provide written notice and at least 30 days from the receipt of the notice to cure the specified material breach.

**FISCAL CONSIDERATIONS:**

The amount of video franchise fees received by the City are not expected to change significantly in the foreseeable future. To the extent that Cox, Time Warner, and AT&T are successful in moving current broadcast only and satellite customers over to their systems, video franchise fees will increase. Regarding the potential PEG support fees, the impact is unknown at this time. As AT&T's customer base grows and the incumbent cable operators convert to a state franchise, the City's ability to fund PEG channel programming will be significantly increased and support funding will no longer have to rely solely on general fund revenues.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

June 12, 2006: Council received an update and discussion of pending State legislation (AB 2987 Statewide Cable TV Franchise) and its potential policy and fiscal impacts on cities.

June 19, 2006: Council passed a Resolution on Pending State Legislation (AB 2987 Statewide Cable TV Franchise) and its Potential Significant Policy and Fiscal Impacts on Cities.

December 6, 2007: Approved on consent by the Rules, Open Government and Intergovernmental Relations Committee.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Staff forwarded drafts of the proposed changes to the Municipal Code to Cox Communications, Time Warner Cable, and AT&T.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Cox Communications, Time Warner Cable, AT&T and video customers within the City of San Diego.

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Julie Dubick, Policy Director  
Community and Legislative Services

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Jay Goldstone  
Chief Operating Officer