



Meeting Date: 07 / 22 / 08

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Martin R. Erickson

Agenda Item No. I-4

Reviewed By: City Manager [Signature]

City Attorney [Signature]

Finance [Signature]

Other (Specify) _____

DATE: July 15, 2008

TO: City Council

FROM: Martin R. Erickson, Legislative Affairs Manager
City Manager's Office

[Signature]

SUBJECT: **Amendment to Chapter 23, Article IV of the City Code Establishing Video Franchise Fees, Penalties, and Other Related Matters for State Video Franchise Agreements**

RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance adding Section 23-44 to Chapter 23, Article IV of the City Code, establishing video franchise fees, PEG fees, penalties and other related matters for state video franchise agreements.

DISCUSSION

The Digital Infrastructure and Video Competition Act, known as AB 2987 went into effect on, January 1, 2007, and created a streamlined process for franchising cable television and video operations in California by shifting franchising authority away from cities and counties to the State, with the Public Utilities Commission (PUC) becoming the sole authority for granting new franchises. AB 2987 specifies that certain rights and responsibilities must be established by local ordinance before they may become effective and enforceable against State franchise holders operating in the City of Oxnard.

On August 1, 2006, Time Warner Cable replaced Adelphia Communications as the City's sole cable operator after buying the franchise through Adelphia's bankruptcy. On October 23, 2007, Time Warner Cable submitted its ten-year state video franchise application with the California Public Utilities Commission (PUC) and provided notice to staff that it intends to operate its video service in the City under a state franchise to replace its local franchise. On November 19, 2007, Verizon California, Inc. amended its service area maps to include Oxnard and Port Hueneme in its ten-year state video franchise application with the PUC.

AB 2987 also obligates a holder of a state franchise to maintain or designate capacity to allow public, educational, and government (PEG) channel access. However, the local entity must produce all content and programming and the state franchise holder bears only the responsibility for transmitting the

content subject to being submitted in a manner and form compatible with the holder's network and technical restraints. In addition, the state franchise holder can terminate a PEG channel if the local entity produces less than eight hours per day of programming.

The attached Ordinance reserves the City's right to impose a PEG facilities fee should a PEG channel be designated. However, Federal law limits use of a PEG fee (maximum 1%) for capital spending on the channel system (hardware, cameras, etc.). It cannot be used for operational costs such as programming, camera operators, and similar recurring expenses. The holder of the state franchise can and usually does recover the amount of any PEG fee charged by the local entity as a separate line item on its subscriber's bill.

AB 2987 also requires the local franchising entity to enforce customer service and protection standards with respect to complaints received from residents within local entity's jurisdiction. The attached Ordinance accomplishes this by providing a schedule of penalties for any material breach of those standards by a holder of a state franchise.

With regard to customer service, the holder of a state franchise shall comply with the provisions of Section 53055, 53055.1, 53055.2, and 53088.2 of the Government Code (Video Customer Service Act requiring cable television operators to establish and distribute its service standards, charges, programming, noticing, billing procedures, rights and remedies to customers), and any other customer service standards pertaining to the provision of video service established by federal law or regulation or subsequently enacted by the Legislature. The holder of a state franchise shall comply with provisions of Section 637.5 of the Penal Code and the privacy standards contained in Section 63.1 of the federal Cable Act (47 U.S.C. Sec. 551 et. seq.). The holder of a state franchise shall also comply with the Emergency Alert System requirements of the Federal Communications Commission. Local jurisdictions cannot adopt or seek to enforce any additional or different customer service or other performance standards. In addition, the holders of state franchises are not considered public utilities, and the PUC has no authority to regulate rates, terms, and conditions of video services.

With regard to environmental review, the attached Ordinance contains the required CEQA exemption.

FINANCIAL IMPACT

Under state law, the City will continue to receive its franchise fee totaling five percent (5%) of gross revenues derived from video services with the City. This fiscal year 2008-09 projected revenues for cable franchise is \$1.4 million.

MRE:lal

Attachment #1 - Ordinance establishing video franchise fees

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD ESTABLISHING VIDEO FRANCHISE FEES, PEG FEES, PENALTIES AND OTHER RELATED MATTERS FOR STATE VIDEO FRANCHISE AGREEMENTS AND AMENDING THE OXNARD CITY CODE.

The City Council of the City of Oxnard does ordain as follows:

SECTION 1: Chapter 23, Article V, Section 23-55 "Defined Terms and Phrases," subsection "A" of the Oxnard Municipal Code is amended by adding thereto the definition of "State Franchisee" as a new subsection (15), to read as follows, with a renumbering of the subsequent subsections:

"State Franchisee" means any holder of a State-issued video franchise operating in the City, as defined in Public Utilities Code section 5830(p).

SECTION 2: A new Section 23-44 entitled "State Video Franchisees" is hereby added to Chapter 23, Article IV, of the Oxnard Municipal Code to read as follows:

"SEC. 23-44. STATE VIDEO FRANCHISEES

(A) PEG Fee Established. In accord with Public Utilities Code section 5870(n), any Grantee of a Franchise, or State Franchisee, must pay to the City a fee for the support of PEG channel facilities.

- (1) The amount of the PEG Fee established by this section is one percent (1%) of Gross Revenues, as defined in this Code, the applicable City-issued franchise, or Public Utilities Code section 5860(d).

(B) Franchise Fee Established. For any State Franchisee, the amount of the franchise fee imposed by Public Utilities Code section 5840(q) shall be five percent (5%) of Gross Revenues, as defined in Public Utilities Code section 5860(d).

- (1) In accordance with Public Utilities Code section 5860(a), the City Manager will prepare and provide to State Franchisees all necessary documentation supporting the percentage franchise fee paid by the incumbent cable operator serving the City.

(C) Notices from State Franchisees. Any notice a State Franchisee is required to deliver to the City by 5840(m) must be delivered to the City Manager.

(D) Nothing in this Chapter is intended to limit or restrict in any way the imposition of any existing or future generally applicable, nondiscriminatory, competitively neutral tax, fee, or charge to a State Franchisee, City franchisee or the services the franchisees provide.

(E) Customer Service Provisions for State Franchisees

- (1) All State Franchisees must comply with all applicable State and Federal laws and regulations regarding customer service and customer protection.
- (2) The City Manager may review the performance of State Franchisees for compliance with the customer service requirements specified in Public Utilities Code section 5900 (the "Customer Service Standards").
- (3) If the City believes a material breach of the Customer Service Standards has occurred, the City Manager must give the State Franchisee written notice of any alleged material breach(es). The State Franchisee must remedy the specified material breach(es) no later than thirty (30) days from receipt of the notice.
- (4) If the State Franchisee fails to remedy the specified material breach(es) within 30 days, the City Manager may impose monetary penalties on the following schedule:
 - (a) Up to five hundred dollars (\$500) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of a material breach.
 - (b) For a second material breach of the same nature within 12 months, up to one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.
 - (c) For a third or further material breach of the same nature within 12 months, up to one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.
- (5) Any monetary penalty imposed under this section may be appealed by the State Franchisee to the City Council. Appeals must be received in writing by the City Clerk within sixty (60) days of imposition of the penalty. The State Franchisee may present any relevant written or oral evidence of its choice. The City Council may uphold or reverse, in whole or in part, the imposition of the monetary penalties.

(F) The City Manager shall ensure PEG transmissions, content, and programming provided by the City to a State Franchisee is in a format compatible with the State Franchisee's system. In the alternative, the transmissions, content, and programming may be provided in a industry standard format, in accord with Public Utilities Code section 5870(g)(1).

(G) For the duration of any City-issued franchise, if that Franchisee has existing unsatisfied obligations under the franchise to pay to the City any cash payments for the ongoing costs of public, educational, and government access channel facilities or institutional networks, the fee payable by each City and State Franchisee shall be the Franchisee's pro rata per subscriber share of the cash payment required to be paid by the City franchisee to the City for the costs of PEG channel facilities.

- (1) Within 45 days of receipt of the notice required by Public Utilities Code section 5840(n), each City and State Franchisee must provide to the City Manager a written statement of the number of its subscribers within the Franchisee's service area in the City.
- (2) Within 45 days of receipt all Franchisee subscriber number statements, the City Manager must calculate the division of the cash payments among all City and State Franchisees, and provide written notice to each Franchisee of the Franchisee's share of the cash payment. This amount may expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

(H) Interconnection. To properly serve the City's interest in PEG programming, each State Franchisee and City Franchisee must comply with the PEG system interconnection requirements of Public Utility Code section 5870. The City Manager, or his or her designee, may make any interconnection determinations of the City under Public Utility Code section 5870, including requiring interconnection where the City Franchisee and State Franchisee fail to reach a mutually acceptable interconnection agreement."

SECTION 3: Repeal or amendment of any provision of the Oxnard Municipal Code herein will not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 4: If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the city council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 5: CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDING. The City Council finds that this Ordinance is enacted to provide for ministerial franchise licensing and enforcement provisions under state law that are applicable to an existing cable facility. Therefore, it can be seen with certainty that there is no possibility that this Ordinance will cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore the adoption of this ordinance is not considered a project per Section 21065 of the California Environmental Quality Act (CEQA). Accordingly, adoption of the Ordinance is hereby deemed exempt from CEQA, as amended, per Section 15268 (ministerial projects), Section 15301 (existing facilities), and Section 15321 (enforcement actions by regulatory agencies) of the State CEQA Guidelines. Therefore, no environmental impact analysis is required.

SECTION 6: The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Oxnard's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 7: Ordinance No. _____ was first read on _____, 2008, and finally adopted on _____, 2008, to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Gary Gillig, City Attorney