REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
August 19, 2008

Honorable Members of the
Law and Legislation Committee

Subject: Ordinance Amendment: Sacramento Metropolitan Cable Television Commission

Location/Council District: Citywide

Recommendation: Approve and forward to Council for adoption an ordinance amending Section 5.28.300 of the Sacramento City Code and adding Article XIX to Chapter 5.28 of Title 5 of the Sacramento City Code relating to implementation of the Digital Infrastructure and Video Competition Act of 2006 by the Sacramento Metropolitan Cable Television Commission

Contact: Michelle Heppner, Special Projects Manager, 808-1226
Patti Bisharat, Director of Governmental Affairs, 808-8197

Presenters: Patti Bisharat, Director of Governmental Affairs

Department: City Manager's Officer

Division: Government Affairs

Organization No: 0310

Description/Analysis

Issue: The Sacramento Metropolitan Cable Television Commission ("Commission"), a joint powers agency of which the City is a member, approved a Resolution on December 6, 2007 recommending that all of the member agencies adopt identical amendments to their respective cable television ordinances to implement the requirements of the Digital Infrastructure and Video Competition Act of 2006 (the "Act") which became effective on January 1, 2007. The Act provides for state video franchises and sets the rules for these franchises. The Sacramento County region currently has cable providers with local franchises (Comcast, Surewest, and STI) and one new state franchisee (AT&T).

Although under the Act the California Public Utilities Commission is now the franchise authority for the state, local agencies retain certain rights. The

proposed ordinance would implement the Act requirements by (1) delegating administration and enforcement of the Act to the Commission; (2) confirming the five percent (5%) franchise fee and the Public, Education, and Government ("PEG") Channel requirements applicable to state franchises; (3) delegating imposition of a PEG facilities fee of up to three percent (3%) to the Commission; and (4) adopting penalties for breach of the state franchise.

Policy Considerations: The JPA member agencies have previously delegated to the Commission the authority to administer and enforce cable and video franchises and licenses and the Video Customer Servicer Act. Similar to what the member agencies have done in the past, it is necessary for each member agency, including the City, to adopt identical ordinances. The County of Sacramento adopted the proposed ordinance in April, 2008.

Of note, the Act provides that local agencies may charge a PEG facilities fee of 1%, but if the local agency was imposing a higher fee before January 1, 2007, the state franchisee can be required to pay a higher PEG fee not to exceed 3%. To preserve the authority of a fee up to 3%, the Commission imposed such a fee in December, 2006 but delayed collection. Charging such a fee is a policy issue for the Commission and its member agencies. On one hand, the fee will help balance the inequity of PEG support since the incumbent local cable operators participate through in kind and I-Net support, which the Act does not allow to be required from state franchises. On the other hand, the Commission has always supported competition and low rates, and the collection of the fee would likely be passed through to subscribers.

The proposed ordinance delegates imposition of this fee to the Commission. If approved, the Commission may then impose a fee of 1%, a fee of up to 3%, or no fee at all. The imposition of this fee and any resulting controversy and potential legal challenge would be the responsibility of the Commission, not its member agencies.

Environmental Considerations: None

Rationale for Recommendation: The proposed ordinance reaffirms the Commission's role in administering cable TV matters for its member jurisdictions, including the Act, and ensures that the Commission has clear authority to enforce state franchise requirements on City's behalf. Staff believes that the Commission is the most efficient way to perform the local responsibilities of the Act to ensure a consistent process within the region and continues to be the best forum for collecting the franchise and PEG fees.

Financial Considerations: The proposed ordinance confirms that state franchisees, as with local franchisees and licensees, are required to pay 5% of gross revenues as a franchise fee. The actual revenue to be received from state franchises is unknown at this time but is likely to be a small amount initially and will increase as operators with state franchises gain more customers. If the Commission should go forward with the

PEG fee, it would be shown as a separate line item on customers' bills. In theory, the PEG fee could offset some of the franchise or license fees currently being allocated by the Commission for PEG support.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: _____
Michelle Heppner
Special Projects Manager

Approved by: _____
Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

for Patti Bisharat
RAY KERRIDGE
City Manager

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Attachment 1

BACKGROUND

The Digital Infrastructure and Video Competition Act of 2006, then called AB 2987 (Nunez), is the legislation that authorized state franchises for video providers. Over the last year or so, the Sacramento Metropolitan Cable Television Commission has continued to work through numerous issues related to state cable franchises under the Act, including PEG inter connect, PEG fees, customer service regulations, and other issues.

To that end, in December 2006, the Commission adopted a resolution recommending to the JPA member agencies a modification of their local cable ordinances to implement the requirements of the Act and ensure that the Commission has authority to enforce the state franchise requirements on the member agencies' behalf. The City is a member of the Commission and the joint powers agreement that created the Commission is included in the City's cable television franchise ordinance (SCC Chapter 5.28).

The following summarizes the provision of the proposed ordinance:

1. Delegation of Administration and Enforcement of the Act

The Act provides that cities, counties and joint powers agencies shall implement, administer, and enforce the provisions of the Act that are delegated to local agencies. Consistent with past practice for local franchisees and licensees, the ordinance delegates to the Commission the authority to administer and enforce the Act for state franchises. The JPA member agencies could, if they choose, take action in the future to either revoke this authority or exercise this authority concurrently with the Commission.

2. Franchise Fees for State Franchises

The ordinance confirms that the current franchise fee is five percent of gross revenues as defined in the Act.

3. PEG Channels

Consistent with the Act, the ordinance confirms that state franchise holders will be required to provide the same seven PEG channels that local incumbent operators currently provide. The ordinance also requires that PEG channels be carried on the basic service tier and to the extent feasible, with a quality and channel location substantially equal to that provided by incumbent local providers.

4. PEG Channel Facilities Fee

The ordinance delegates imposition of a PEG channel facilities fee to the Commission. The Commission may impose a fee of 1%, a fee of up to 3%, or no fee at all. The Act

provides that local agencies may charge a PEG channel facilities fee of 1%, but if the local agency was imposing a higher fee before January 1, 2007, the state franchisee can be required to pay a higher PEG fee not to exceed 3%. To preserve the authority of a fee up to 3%, the Commission imposed such a fee in December, 2006 but delayed collection. If approved, the Commission may impose a fee of 1%, a fee of up to 3%, or no fee at all. The imposition of this fee and any resulting controversy and potential legal challenge would be the responsibility of the Commission, not its member agencies.

5. Customer Service and Penalties

As with local franchises and licenses, the ordinance delegates to the Commission the enforcement of customer service applicable to state franchises. The ordinance also adopts maximum penalties set forth in the Act for breach of the state franchise, including customer service requirements.

The Commission deliberated on the proposed amendments at several meetings. The Commission also solicited comments from local and state franchisees and licensees, member agency staff and counsels, PEG providers, and other interested parties. Most of the comments received related to the PEG fee, both supporting and opposing the fee. In the end, the Commission unanimously approved and recommended the proposed ordinance amendment to its member jurisdictions.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 5.28.300 OF THE SACRAMENTO CITY CODE AND ADDING ARTICLE XIX TO CHAPTER 5.28 OF TITLE 5 OF THE SACRAMENTO CITY CODE RELATING TO IMPLEMENTATION OF THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 BY THE SACRAMENTO METROPOLITAN CABLE TELEVISION COMMISSION

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 5.28.300 of the Sacramento City Code is amended to read as follows:

5.28.300 Purposes.

The purposes of the cable television commission shall be as follows:

A. To administer pursuant to the terms and conditions of the franchise documents, the initial CATV franchise and any franchise subsequently issued pursuant to the provisions of this chapter;

B. To exercise any and all other powers conferred by the franchise documents.

C. To administer and enforce the Digital Infrastructure and Video Competition Act of 2006.

SECTION 2.

Article XIX is added to Chapter 5.28 of Title 5 of the Sacramento City Code to read as follows:

Article XIX

Local Administration and Enforcement of Provisions of the Digital Infrastructure and Video Competition Act of 2006

5.28.2660 Delegation of Powers.

Except as otherwise expressly provided in any action of the Sacramento City Council pursuant to its reserved powers under section 5.28.170 of Chapter 5.28, all powers, rights, duties and obligations of the City pursuant to the provisions of the Digital Infrastructure and Video Competition Act of 2006 (Public Utilities Code section 5800 et seq.) as it exists now or should hereafter be amended (the "Act"), are hereby delegated to and conferred upon the Board of Directors of the Sacramento Metropolitan Cable Television Commission (herein referred to as the "cable television commission" or "commission") as to any video provider included within the scope of the Act, including, without limitation, the Act's provisions for customer service regulation and enforcement, establishment of the percent of the franchise fees, provision of PEG channels, carriage and channel facilities fees and enforcement of the Act.

5.28.2670 Implementation of Actions

Consistent with the delegation of powers provided in section 5.28.2660 of this code and without limiting the delegation of powers, the following implementation actions provided for under the Act are hereby confirmed, ratified and delegated to the cable television commission:

A. Franchise Fee. As provided in the current cable franchise and license ordinances and established by the commission, the franchise or license fee established within the area covered by the commission, including the City, for cable franchises and/or licenses is five percent (5%) of gross revenues. Said franchise or license fee amount shall also apply to holders of state franchises under the Act who provide services within the City.

B. PEG Channels.

1. The current cable franchise designates seven (7) channels for Public, Educational and Government (PEG) programming. Local franchisees and holders of state franchises under the Act shall provide seven (7) PEG channels.

2. All state franchisees shall comply with the provisions of the Act related to PEG channels. Without limiting the foregoing, the PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

3. A state franchise holder shall have three (3) months from the date the commission requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by the Act. Any state franchise holder who believes that the designation or provision of PEG channel capacity is technically infeasible shall provide to the commission, in writing, its reasons therefor and its plan for correcting or solving the infeasibility. The commission may hold a hearing on the claim of infeasibility and, thereafter, take such action as the commission deems proper to require the designation and provision of the PEG channels on the state franchise holder's system.

C. PEG Channel Facilities Fee.

1. In December 2006, pursuant to its delegated authority, the commission imposed a PEG Channel Facilities Fee ("PEG Fee") in the amount of three percent (3%) of gross revenues of the franchisee or licensee per subscriber but delayed collection of that fee. Pursuant to its delegation of authority, the commission is hereby authorized to commence collection of a PEG Fee, a separate fee to support PEG channel facilities and equipment, of up to three percent (3%) of gross revenues applicable to state and local franchisees and licensees, in the manner and at the time the commission determines. This fee shall apply to all video franchisees, whether local or state granted, within the City. Use of the PEG Fees shall be consistent with applicable state and federal law. Any PEG Fee required to be collected may be shown as a separate line item on the regular bill of each subscriber.

2. Any franchisee or licensee that believes it is exempt from said PEG Fee or subject to a different or lower fee may file a written request for a determination of the applicability of the PEG Fee with the commission. Said request shall be filed within thirty (30) days of the effective of this ordinance or within thirty (30) days of commencement of video services within the City, whichever occurs last. Said request shall be heard by the commission.

a. Exemptions claims may be based on state or federal law, or on the provisions of existing franchise agreements.

b. Additional exemptions for claims for and action on claims for reduction in the PEG Fee to be paid to the commission may be based on monetary or in kind PEG financial support provided by the claimant based, for example, on agreements between the commission and the franchisee or licensee for support of PEG facilities and equipment and/or institutional network facilities and support provided by the franchisee or licensee.

5.28.2680 Customer Service and Protection; Monetary Penalties.

A. Local franchisees and licensees and holders of state franchises under the Act shall comply with the provisions of section 637.5 of the Penal Code and the privacy

standards contained in section 631 of the federal Cable Act (47 U.S.C. section 551 et seq.) Local franchisees and licensees and holders of state franchises shall comply with the provisions of sections 53055, 53055.1, 53055.2, and 53088.2 of the Government Code, and any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the Act. Local franchisees and licensees shall comply with any customer services standards included in the franchise and license agreements. The commission and/or the City shall enforce, in the manner set forth in the Act, all customer service and protection standards contained in section 5900 of the Act, including without limitation those standards set forth in section 5900(c). The commission has been and is hereby authorized to impose penalties for any material breach of the Act, as set forth herein.

B. The maximum monetary penalties set forth in Public Utilities Code section 5900 are hereby adopted and enacted as the applicable schedule of penalties for the material breach of the Act, including but not limited to section 5900 of the Act, by a holder of a state franchise, as follows:

1. Five hundred dollars ($500) per day for each material breach, not to exceed one thousand five hundred dollars ($1,500) for the occurrence of a material breach.

2. If a material breach has occurred and notice has been provided and a fine or penalty has been assessed, any subsequent breach of the same nature within twelve (12) months shall be subject to a penalty of 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.

3. If a third or further material breach of the same nature occurs within those same twelve (12) months, and notice has been provided and fine or penalty has been assessed, the penalties shall increased to a maximum of two thousand five hundred dollars ($2,500) for each occurrence of the material breach, not to exceed seven thousand five hundred ($7,500) for each occurrence of the material breach.

As used herein, "material breach" is defined as set forth in the Act, Public Utilities Code section 5900.

SECTION 3.

If any part or provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable and are intended to have independent viability.

REDLINE VERSION

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