

Agenda Report

March 19, 2007

TO: CITY COUNCIL

FROM: CITY MANAGER

SUBJECT: AMENDMENTS TO PASADENA MUNICIPAL CODE TITLE 18 –
CABLE, VIDEO AND TELECOMMUNICATIONS SERVICE
PROVIDERS

RECOMMENDATION

It is recommended that the City Council direct the City Attorney to prepare an amendment to Title 18 of the Municipal Code – Cable, Video and Telecommunications Service Providers, to conform that Chapter to recently enacted state video franchising laws, and return to Council in 60 days.

BACKGROUND

Title 18 of the Municipal Code governs the City's regulation of cable TV and other telecommunications systems. It was last amended in the year 2000 to address federal regulations and new technologies, and to incorporate local customer service standards.

Last year, the State of California enacted legislation (AB 2987) that shifts video franchising from the local to the state level. The legislation was designed to facilitate the telephone companies' entrance into the video services market and spur development of broadband telecommunications networks. Under the new state law, the California Public Utilities Commission (CPUC) has responsibility for video franchising of both new entrants to the video market and incumbent cable TV operators. New entrants may apply for a state video franchise as early as January 1, 2007. The CPUC must be ready to act on applications beginning April 1, 2007, and will follow a streamlined 44-day application review process. Existing cable TV operators have the option of switching to a state franchise after January 1, 2008 or following notice that a video service provider franchised by the state intends to offer video service in the cable TV company's franchise area, whichever comes first.

Staff recommends that Title 18 be amended to incorporate new requirements for video providers franchised by the state, in conformance with the new law in following areas:

Franchise Fees: State law allows cities to collect a franchise fee from state video franchisees of up to five percent of gross revenues, based on the definition of gross revenues adopted in the state legislation. Title 18 should formally institute the five percent franchise fee so that the City can collect the fee from state franchisees operating in Pasadena.

Funding for Public, Educational and Governmental Access: Historically, cities have negotiated local franchise obligations to support community Public, Educational and Governmental (PEG) access. Under the new state law, state video franchises will no longer include PEG access support obligations. Instead, cities have the option of adopting and assessing PEG access support fees of up to one percent of a state video franchisee's gross revenues. An update to Title 18 should establish a one percent PEG access support fee so that state video franchisees operating in Pasadena are required to help fund local PEG access operations.

PEG Access Channels and Interconnection: Under state law, cities may require state video franchisees to provide the same number of PEG access channels as incumbent cable TV operators. The new law also requires state video franchisees to work with local cable TV companies to create interconnections between their networks for the purpose of sharing PEG access programming. Title 18 should require that state franchisees provide four PEG access channels in Pasadena, as Charter does. In addition, Title 18 should require network interconnection with Charter to ensure that PEG access programming will be available on state franchisees' video networks.

Audit Authority: Traditionally, local franchise agreements have given cities the authority to audit cable TV operators' franchise fee payments. Title 18 should provide the City authority to conduct these audits of state video franchisees.

Customer Service Penalties: Title 18 currently includes Pasadena-specific customer service and protection standards and associated penalties for failure to comply. The new state law precludes local governments from adopting and enforcing local customer service and protection standards for state video franchisees. However, cities retain the responsibility for enforcing state and federal standards. Title 18 should be amended to include a schedule of penalties for material breaches of state and federal customer service and protection standards by state video franchisees in conformance with the maximum penalties allowed under state law. These penalties are as follows:

- 1) \$500 a day, not to exceed \$1,500 for each occurrence of a material breach;

- 2) \$1,000 per day, not to exceed \$3,000 for each occurrence of an additional material breach of the same nature within 12 months; and
- 3) \$1,500 per day, not to exceed \$7,500 per occurrence for a third or further material breach of the same nature within 12 months.

State law requires that one-half of any penalty actually received by the City must be remitted to the California Digital Divide Account (an account administered by the State).

Emergency Alert: Local franchises typically include provisions that allow activation of the emergency alert system to broadcast disaster and emergency messages over the video network. State law requires that state franchisees comply with the Federal Communications Commission (FCC) emergency alert requirements, which include:

- Wired video systems serving 5,000 or more customers must install Emergency Alert System (EAS) equipment and provide EAS audio and video messages on all channels;
- Wired video systems serving fewer than 5,000 customers must either provide EAS messages on all channels OR install EAS equipment, alert viewers on all programmed channels that the EAS has been activated, and provide the actual EAS message in audio and video form on at least one channel;
- Video providers must make local emergency information accessible to persons with hearing disabilities;
- Rules for prioritization of EAS messages originating at the Presidential, national, state, and local levels; and
- System testing requirements.

Many cities reiterate this requirement to comply with the FCC emergency alert provisions in their telecommunications ordinances to delineate clearly for the public and staff the state statutory requirements with which state franchisees must comply.

Notice of State Franchise Applications and Amendments: Title 18 should require that applicants for state video franchises provide the City with copies of their applications, as well as any requested amendments.

FISCAL IMPACT

Amendments to Title 18 will provide the mechanism for the collection of franchise and PEG fees from video service providers franchised by the State. At this point,

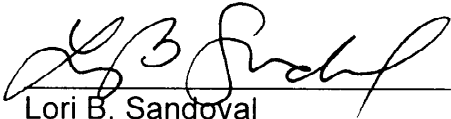
it is unclear if there will be any revenue impacts from the state video franchising legislation. Staff will monitor revenues as this industry continues to evolve.

Respectfully submitted,



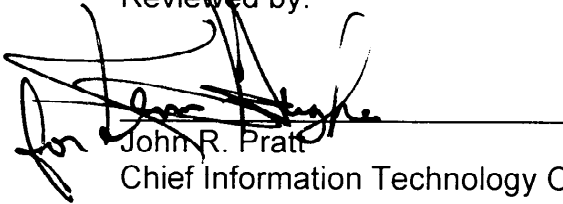
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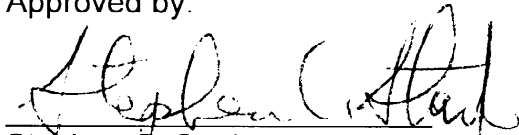
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