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June 20, 2006

Oakland City Council
Oakland, California

President De La Fuente and Members of the City Council:

RE: **Report and Resolution Opposing Assembly Bill 2987, Known as "The Digital Infrastructure and Video Competition Act of 2006"**

SUMMARY

This report provides a summary and bill analysis of Assembly Bill 2987, known as "The Digital Infrastructure and Video Competition Act of 2006". AB 2987 (Núñez/Levine) would create a new statewide franchise for cable and video service providers, issued by the California Department of Consumer Affairs.

Staff recommends that City Council oppose AB 2987 in its current form. Council direction on this telecommunications legislation pending in the State legislature will direct the City's advocacy efforts in Sacramento to pursue outcomes in the best interest of the City.

BACKGROUND

AB 2987 (Nunez, Levine) was introduced and recently amended and would create a new state-wide franchise for cable and video providers. On behalf of cities, the League of California Cities (LOCC) has been meeting with the Speaker's staff to seek amendments to the bill based on LOCC's opposition to the bill in its current form.

KEY ISSUES AND IMPACTS

The bill's supporters claim that AB 2987 will guarantee "speed to market" for telephone companies that want to offer video services that compete with cable companies. They argue that increased competition will offer consumers lower rates and better service.

The City of Oakland supports competition, but staff is greatly concerned over a number of items the bill fails to address, including:

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- Failure to specify **build-out schedules** for new market entrants, allowing broadband providers to "cherry pick" who they wish to serve
- Failure to guarantee that local agencies will have the same rights to **public access stations** and broadband services to schools and libraries as can be negotiated under current cable television franchising authority.
- Failure to **protect consumers**

The following analysis details key points in AB 2987 that would affect the City of Oakland.

- **Preempts the City's Authority in Franchise Agreements Negotiations:** To maximize consumer benefit, it is important for local governments to maintain the ability to work with providers through franchise agreements to ensure the provision of key services, including public, education and government programming channels, and that local emergency alerts and institutional networks are tailored to meet specific local needs.

AB 2987 would authorize the Department of Corporations to grant a "state-issued authorization" to provide cable service or video service. Local agencies would be prohibited from requiring any holder of a state-issued authorization to obtain a local franchise or impose "any fee or requirement...except as expressly provided" in the bill. (53058.3(a).)

Currently many local cable franchises require cable companies to help fund and carry channels, which provide educational programming, coverage of local government meetings and important public safety information. These are known as PEG channels. AB 2987 would limit funding and require local governments to bear the costs of acquiring facilities and equipment necessary to deliver the channel signals to the telephone companies' regional video hub sites. Oakland, as part of its franchise renewal process, conducted an extensive "Cable Related Needs and Interests" study. The minimal PEG benefits provided by AB 2987 do not come close to providing the level of support needed to address these identified needs and interests. Oakland has expended a great deal of time, expense and effort negotiating with its current cable provider to assure that its renewal franchise would address these needs and interests in a manner that can be required by current law. AB 2987 will totally preempt and nullify those efforts.

Oakland has also identified the need to establish an institutional network (INET) providing voice, video and data connections among public buildings throughout the City. Unlike many cities that have an established INET, Oakland requested and has negotiated with Comcast to establish an INET as a part of the franchise renewal but Comcast has not yet signed the final agreement. Absent an existing franchise providing an INET, AB 2987 would require that the City fund INET costs out of a video provider's PEG contributions, thus further reducing funds available for PEG programming.

Emergency notification is also an issue, as AB 2987 would not require new video providers to broadcast emergency management alerts. This could hinder the City's ability to communicate with the public in an emergency.

Local cable franchises require the cable company to provide their programs and channels to public schools, libraries and other government buildings free of charge. AB 2987 would preempt those requirements, eliminating a vital tool to help educate our children.

Customer service has historically been a common problem with cable and telephone service. Currently most local cable franchises establish consumer protection standards that can be enforced locally. AB 2987 would preempt these standards and local enforcement, leaving subscribers on their own to deal with many potential abuses. The consumer protection standards that will remain in place will only be enforceable by the State of Corporations in Sacramento which has no expertise in this area.

- **Does Not Ensure Service Availability to All Consumers** – Any state and federal telecommunications overhaul needs to address digital divide concerns by preventing “redlining” that picks higher income neighborhoods for service, while excluding less profitable, lower income neighborhoods and needs to specify “build-out” requirements for providers.

Currently most local cable franchises require cable companies to serve all residents without regard to income and establish firm deadlines and penalties for accomplishing this objective. AB 2987 preempts these service requirements, allowing AT&T to proceed with its plans to provide its new services primarily to “higher value” customers. AB 2987 minimally and deceptively addresses this concern by requiring the full area to be served, but that service can be provided by direct-to-home satellite service already available throughout California. There is a very real concern that AT&T will build out its new facilities in a manner that bypasses the very neighborhoods that are already underserved by broadband services.

- **Does Not Support the City’s Ability to Regulate Use of Public Rights-of-Way** – The City is an important and proven steward of the public rights-of-way, and the City is pivotal to: (1) helping to prevent public safety issues resulting from overcrowding and improper use; (2) ensuring local emergency (911) services are provided; (3) addressing customer service and local business concerns related to misuse of public rights-of-way. Local governments should retain this authority in any state and federal telecommunications reform legislation.

Local cable franchise agreements typically include extensive terms governing the design of the system, location of facilities and the time and manner in which construction may occur. A local franchise would preserve the appropriate use of the City’s right of way and mitigate the safety and aesthetics concerns with respect to the placement of these facilities. AB 2987 not only limits our ability to control the use of the right of way but appears to prevent the City from charging its normal cost recovery fees for the issuance of permits for work in the right of way and the inspection of that work.

Support and Opposition for AB 2987: Support includes AT&T California, California Chamber of Commerce, Communications Workers of America, Intel, Microsoft Corporation and Verizon. Opposition includes the California Cable & Telecommunications Association, California Common Cause, California State Association of Counties, (CSAC), League of

California Cities, individual cities and counties, Comcast, and the Utility Reform Network (TURN).

League of California Cities Summary of Reasons to Oppose AB 2987 (from www.cacities.org):

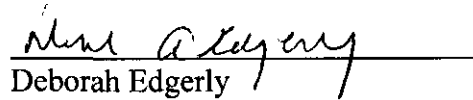
- **Discriminatory.** The bill permits video service providers to pick and choose the areas in a community that they will serve while ignoring other neighborhoods. Cities support competition services in telecommunications, but it has to be fair to all Californians. Under current law, city officials decide the deployment of video services and have a record with the cable industry to prove that all areas of a community have been served. Under this law, AT&T and Verizon will be put in charge of protecting the underserved.
- **PEG Channels.** Public access to broadcasting is not protected. The bill fails to adequately protect the community's public, education and governmental (PEG) channels. These are important assets in a community that permit the televising of community events, governmental deliberations and educational opportunities. The current language permits new video service providers to ignore this commitment to the community.
- **New State Bureaucracy Preempts Local Franchises.** The bill establishes a new state bureaucracy that will grow to regulate what are essentially local decisions about the deployment of new telecommunications services. In short, the state is taking over local streets when it comes to industries providing video services.
- **State Takes Over Local Rights-of-Way .** This bill fails to adequately protect the taxpayers' investment in public right-of-way. New entrants, primarily telephone companies, want to access local streets under rules they have written.
- **Revenue Loss.** The local government revenues from franchise fees are in jeopardy in the current language in the bill. Serious legal flaws remain. The bill in its current form is a tax under the constitution of the state. The language needs to be amended to ensure that the traditional local franchise fee for local government are maintained and not taken over and preempted by the state tax currently in the bill. Als , the bill narrows the definition of "gross revenues" that is the basis for calculating local government revenues, likely resulting in a revenue loss.

The bill text for Assembly Bill 2987 and the State's bill analysis are attached to this report for City Council review and consideration.

RECOMMENDATION

Staff recommends that City Council adopt a resolution opposing AB 2987 (Nunez, Levine), The Digital Infrastructure and Video Competition Act of 2006.

Respectfully submitted,



Deborah Edgerly
City Administrator

Prepared by:
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Assistant to the City Administrator

BILL NUMBER: AB 2987 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 6, 2006
AMENDED IN ASSEMBLY MARCH 30, 2006

INTRODUCED BY Assembly Members Nunez and Levine

FEBRUARY 24, 2006

An act to add Article 3.7 (commencing with Section 53058) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to cable and video service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez Cable and video service.

Existing law provides that any city ~~or~~, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law provides that cable and video service providers comply with specified customer service standards and performance standards.

~~This bill would state the intent of the Legislature to create the Digital Infrastructure and Video Competition Act of 2006 and would define the term "franchise" for that purpose.~~

This bill would establish a procedure for state-issued authorizations for the provision of cable service or video service that would be administered by the Department of Corporations. The department would be the sole franchising authority of state-issued authorizations to provide cable or video services. The bill would require any person who seeks to provide cable service or video service in this state to file an application with the department for a state-issued authorization. Current franchise holders would be eligible to apply for state-issued authorizations on the expiration of their current franchise agreements. Cities, counties, or cities and counties would receive fees for cable or video services provided within their jurisdictions, based on gross revenues, pursuant to specified procedures. The bill would require these local agencies to permit the installation of networks by holders of state-issued authorizations and would preclude enforcement of standards by the local agencies.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~
yes . State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 3.7 (commencing with Section 53058) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 3.7. The Digital Infrastructure and Video Competition Act of 2006

53058. This act shall be known and may be cited as the Digital

Infrastructure and Video Competition Act of 2006.

53058.1. (a) *This article shall be known and may be cited as the Digital Infrastructure and Video Competition Act of 2006.*

(b) *The Legislature finds and declares all of the following:*

(1) *Video and cable services provide numerous benefits to all Californians including access to a variety of news, public information, education, and entertainment programming.*

(2) *Increased competition in the cable and video service sector provides consumers with more choice, lowers prices, speeds the deployment of new communication and broadband technologies, creates jobs, and benefits the California economy.*

(3) *To promote competition, the state should establish a state-issued franchise authorization process that allows market participants to use their networks and systems to provide video, voice, and broadband services to all residents of the state.*

(4) *Legislation to develop this new process should adhere to the following principles.*

(i) *Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.*

(ii) *Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status.*

(iii) *Protect local government revenues and their control of public rights of way.*

(iv) *Require market participants to comply with all applicable consumer protection laws.*

(v) *Complement efforts to increase investment in broadband infrastructure and close the digital divide.*

(vi) *Continue access to and maintenance of the public, education, and government (PEG) channels.*

53058.2. *For purposes of this article, the following words have the following meanings:*

(a) *"Cable operator" means any person or group of persons that either provides cable service over a cable system and directly, or through one or more affiliates, owns a significant interest in a cable system; or that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system, as set forth in Section 522(5) of Title 47 of the United States Code.*

(b) *"Cable service" is defined as the one-way transmission to subscribers of either video programming, or other programming service, and subscriber interaction, if any, that is required for the selection or use of video programming or other programming service, as set forth in Section 522(6) of Title 47 of the United States Code.*

(c) *"Cable system" is defined as set forth in Section 522(7) of Title 47 of the United States Code.*

(d) *"Department" means the Department of Corporations.*

(e) *"Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system in public rights-of-way.*

(f) *"Franchising entity" means the city, county, or city and county entitled to require franchises and impose fees on cable operators, as set forth in Section 53066.*

(g) *"Incumbent cable operator" means the cable operator serving the largest number of cable subscribers in a particular city, county,*

or city and county franchise area on the effective date of this article.

(h) "Local entity" means any city, county, or city and county within the state within whose jurisdiction a holder of a state-issued authorization under this article may provide cable service or video service.

(i) "Network" means a component of a facility that is wholly or partly physically located within a public right-of-way and that is used to provide video service, cable service, or voice or data services.

(j) "Public right-of-way" means the area along and upon any public road or highway, or along or across any of the waters or lands within the state.

(k) "Subscriber" means a person who lawfully receives cable service or video service from the holder of a state-issued authorization or franchise for a fee.

(l) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in Section 522(20) of Title 47 of the United States Code.

(m) "Video service" means video programming services provided through wireline facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code.

(n) "Video service provider" means an entity providing video service. This term does not include a cable operator.

53058.3. (a) The Department of Corporations is the sole franchising authority for a state-issued authorization to provide cable service or video service under this article. Neither the department nor any franchising entity or other local entity of the state may require the holder of a state-issued authorization to obtain a separate franchise or otherwise impose any fee or requirement on any holder of a state-issued authorization except as expressly provided in this article. Sections 53066, 53066.01, 53066.2, and 53066.3 shall not apply to holders of a state-issued authorization.

(b) The application process described in subdivisions (d) and (e) and the authority granted to the department under this section shall not exceed the provisions set forth in this section.

(c) Any person who seeks to provide cable service or video service in this state after the effective date of this article shall file an application for a state-issued authorization with the department. The department may impose a fee on the applicant that shall not exceed the actual and reasonable costs of processing the application and shall not be levied for general revenue purposes.

(d) The application for a state-issued authorization shall be made on a form prescribed by the department and shall include all of the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms all of the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering cable service or video service in this state.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

(i) A statement that the applicant will not discriminate in the provision of video or cable services as provided in Section 53058.7.

(ii) A statement that the applicant will abide by all applicable consumer protection laws and rules as provided in Section 53058.8.

(iii) A statement that the applicant will remit the fee required by Section 53058.4 to the local entity.

(iv) A statement that the applicant will provide PEG channels as required by Section 53058.5.

(C) That the applicant agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way.

(2) The applicant's legal name and any name under which the applicant does or will do business in this state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the department.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of the service area footprint to be served including the social economic information of all residents within the service area footprint.

(7) If the applicant is a telephone corporation, as defined in Section 234 of the Public Utilities Code, a description of the territory in which the company provides telephone service. The description shall include social economic information of all residents within in the telephone corporation's service territory.

(8) The expected date for the deployment of video service in each of the areas identified in paragraph (6).

(e) (1) The department shall notify an applicant for a state-issued authorization whether the applicant's affidavit described by subdivision (d) is complete or incomplete before the 30th calendar day after the applicant submits the affidavit.

(2) If the department finds the affidavit is complete, it shall issue a certificate of state-issued authorization before the 14th calendar day after that finding.

(3) If the department finds that the application is incomplete, it shall specify with particularity the items in the application that are incomplete and permit the applicant to amend the application to cure any deficiency. The department shall have 30 calendar days from the date the application is amended to determine its completeness.

(4) The failure of the department to notify the applicant of the completeness or incompleteness of the applicant's affidavit before the 44th calendar day after receipt of an affidavit shall be deemed to constitute issuance of the certificate applied for without further action on behalf of the applicant.

(f) The state-issued authorization issued by the department shall contain all of the following:

(1) A grant of authority to provide cable service or video service, or both, in the service area footprint as requested in the application.

(2) A grant of authority to use the public rights-of-way in the delivery of that service, subject to the laws of this state.

(3) A statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

(g) The state-issued authorization issued by the department may be terminated by the cable operator or video service provider by submitting notice to the department.

(h) Subject to the notice requirements of this article, a state-issued authorization may be transferred to any successor in interest of the holder to which the certificate is originally granted.

(i) In connection with, or as a condition of, receiving a state-issued authorization, the department shall require a holder to notify the department and any applicable local entity within 14 business days of any of the following changes involving the holder or the state-issued authorization:

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the holder, including a merger, an acquisition, or a reorganization.

(2) A change in the holder's legal name or the adoption of, or change to, an assumed business name. The holder shall submit to the department a certified copy of either of the following:

(A) The amended state-issued authorization.

(B) The certificate of assumed business name.

(3) A change in the holder's principal business address or in the name of the person authorized to receive notice on behalf of the holder.

(4) Any transfer of the state-issued authorization to a successor in interest of the holder. The holder shall identify the successor in interest to which the transfer is made.

(5) The termination of any state-issued authorization issued under this article. The holder shall identify both of the following:

(A) The number of customers in the service area covered by the state-issued authorization being terminated.

(B) The method by which the holder's customers were notified of the termination.

(6) A change in one or more of the service areas of this article that would increase or decrease the territory within the service area. The holder shall describe the new boundaries of the affected service areas after the proposed change is made.

(j) As a condition of receiving a state-issued authorization, the holder shall notify all applicable local entities that the local entity is included in the holder's service area under the state-issued authorization being issued and that the holder intends to provide video or cable service in the local entity's jurisdiction. The holder shall give the notice required under this subdivision not later than 10 days before the holder begins providing video or cable service in the local entity's jurisdiction.

(k) The department shall develop information guides and other tools to help educate local entities and other interested parties about the various provisions of this article.

53058.4. (a) The holder of a state-issued authorization that offers cable service or video service within the jurisdiction of the local entity shall calculate and remit to the local entity a state-issued authorization fee, as provided in this section. The obligation to remit the state-issued authorization fee to a local entity begins immediately upon provision of cable or video service within that local entity's jurisdiction. However, the remittance shall not be due until the time of the first quarterly payment required under subdivision (g) that is at least 180 days after the provision of service began. The fee remitted to a city or city and county shall be based on gross revenues earned within that jurisdiction. The fee remitted to a county shall be based on gross revenues earned within the unincorporated area of the county. No fee under this section shall become due unless the local entity provides documentation to the holder of the state-issued authorization supporting the percentage paid by the incumbent cable operator

servicing the area within the local entity's jurisdiction, as provided below. The fee shall be calculated as a percentage of the holder's gross revenues, as defined in subdivision (d).

(b) The state-issued authorization fee shall be a percentage of the holder's gross revenues, as defined in subdivision (d), as follows:

(1) If there is an incumbent cable operator, 5 percent of the holder's gross revenues or the percentage applied by the local entity to the gross revenue of the incumbent cable operator, whichever is lesser.

(2) If there is no incumbent cable operator or upon the expiration of the incumbent cable operator's franchise, a local entity may, by ordinance, set the percentage applied to the gross revenues of all cable operators and video service providers, provided that the fee shall not exceed 5 percent of gross revenues and shall be applied equally to all cable operators and video service providers in the local entity's jurisdiction.

(c) No local entity or any other political subdivision of this state may demand any additional fees or charges or other remuneration of any kind from the holder of a state-issued authorization other than as set forth in this section and may not demand the use of any other calculation method or definition of gross revenues. However, nothing in this section shall be construed to limit a local entity's ability to impose utility user taxes under other applicable provisions of state law.

(d) For purposes of this section, the term "gross revenues" means all revenue actually received by the holder of a state-issued authorization, as determined in accordance with generally accepted accounting principles, that is derived from the operation of the holder's network to provide cable or video service within the jurisdiction of the local entity, including all of the following:

(1) All charges billed to subscribers for any and all cable service or video service provided by the holder of a state-issued authorization.

(2) Any fees imposed on the holder of a state-issued authorization by this section that are passed through to, and paid by, the subscribers.

(3) Compensation received by the holder of a state-issued authorization that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are paid to the holder of a state-issued authorization as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to paragraph (4) of subdivision (e).

(4) A pro rata portion of all revenue derived by the holder of a state-issued authorization or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder's network to provide cable service or video service within the jurisdiction of the local entity, subject to paragraph (1) of subdivision (e). The allocation shall be based on the number of subscribers in the local entity divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(e) For purposes of this section, the term "gross revenue" set forth in subdivision (d) does not include any of the following:

(1) Amounts not actually received, even if billed, such as bad debt; refunds, rebates, or discounts to subscribers or other third parties; or revenue imputed from the provision of cable services or video services for free or at reduced rates to any person as required

or allowed by law, including, but not limited to, the provision of these services to public institutions, public schools, governmental agencies, or employees other than forgone revenue chosen not to be received in exchange for trades, barter, services, or other items of value.

(2) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state-issued authorization to provide cable services or video services. However, revenue received by an affiliate of the holder from the affiliate's provision of cable or video service shall be included in gross revenue as follows:

(A) To the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the local entity.

(B) The revenue is not otherwise subject to fees to be paid to the local entity.

(3) Revenue derived from services classified as noncable services or nonvideo services under federal law, including, but not limited to, revenue derived from telecommunications services and information services, and any other revenues attributed by the holder of a state-issued authorization to noncable services or nonvideo services in accordance with Federal Communications Commission rules, regulations, standards, or orders.

(4) Revenue paid by subscribers to "home shopping" or similar networks directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services. However, commissions or other compensation paid to the holder of a state-issued authorization by "home shopping" or similar networks for the promotion or exhibition products or services shall be included in gross revenue.

(5) Revenue from the sale of cable services or video services for resale in which the reseller is required to collect a fee similar to the state-issued authorization fee from the reseller's customers.

(6) Amounts billed to and collected from subscribers to recover any tax, fee, or surcharge imposed by any governmental entity on the holder of a state-issued authorization, including, but not limited to, sales and use taxes, gross receipts taxes, excise taxes, utility users taxes, public service taxes, communication taxes, and any other fee not imposed by this section.

(7) Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive cable services or video services from the seller of those assets or surplus equipment.

(8) Revenue from directory or Internet advertising revenue, including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing.

(9) Revenue received as reimbursement by programmers of marketing costs incurred by the holder of a state-issued authorization for the introduction of new programming.

(10) Security deposits received from subscribers, excluding security deposits applied to the outstanding balance of a subscriber's account and thereby taken into revenue.

(f) For purposes of this section, in the case of a cable service or video service that may be bundled or integrated functionally with other services, capabilities, or applications, the state-issued authorization fee shall be applied only to the gross revenue, as defined in subdivision (d), attributable to cable service or video service, as reflected on the books and records of the holder kept in the regular course of business in accordance with generally accepted accounting principles and Federal Communications Commission or Public

Utilities Commission rules, regulations, standards, and orders, as applicable.

(g) The state-issued authorization fee shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the state-issued authorization fee.

(h) Not more than once annually, a local entity may examine the business records of a holder of a state-issued authorization to the extent reasonably necessary to ensure compensation in accordance with subdivision (a). Each party shall bear its own costs of the examination. Any claims by a local entity that compensation is not in accordance with subdivision (a), and any claims for refunds or other corrections to the remittance of the holder of a state-issued authorization, shall be made within three years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of the remittance, whichever is later. Either a local entity or the holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(i) The holder of a state-issued authorization may identify and collect the amount of the state-issued authorization fee as a separate line item on the regular bill of each subscriber.

53058.5. (a) The holder of a state-issued authorization shall designate a sufficient amount of capacity on its network to allow the provision of a comparable number of PEG channels or hours of programming, at the holder's discretion, that the incumbent cable operator has activated and provided within the local entity under the terms of any franchise in effect in the local entity as of the effective date of this article. For the purposes of this section, a PEG channel is deemed activated if it is being

utilized for PEG programming within the municipality for at least eight hours per day. The holder shall have 12 months from the date the local entity requests the PEG channels to designate the capacity. However, the 12-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 this subdivision.

(b) If no PEG channels are activated and provided within the local entity as of the effective date of this article, a local entity whose jurisdiction lies within the authorized service area of the holder of a state-issued authorization may request the holder to designate not more than a total of three PEG channels in a locality with a population of more than 50,000, or not more than a total of two PEG channels in a locality with a population of less than 50,000, as determined by the last decennial census.

The holder shall have 12 months from the date of the request to designate the capacity. However, the 12-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 this subdivision.

(c) Any PEG channel provided pursuant to this section that is not utilized by the local entity for at least eight hours per day may no longer be made available to the local entity, and may be programmed at the holder's discretion. At the time that the local entity can certify to the holder a schedule for at least eight hours of daily programming, the holder of the state-issued authorization shall restore the channel or channels for the use of the local entity.

(d) The content to be provided over the PEG channel capacity provided pursuant to this section shall be the responsibility of the local entity receiving the benefit of that capacity, and the holder of a state-issued authorization bears only the responsibility for the transmission of that content, subject to technological restraints.

(e) The local entity shall ensure that all transmissions, content, or programming to be transmitted by a holder of a state-issued authorization are provided or submitted in a manner or form that is capable of being accepted and transmitted by the holder, without any requirement for additional alteration or change in the content by the holder, over the holder's particular network, and that is compatible with the technology or protocol utilized by the holder to deliver services. The provision of those transmissions, content, or programming to the holder of a state-issued authorization shall constitute authorization for the holder to carry those transmissions, content, or programming, including, at the holder's option, beyond the jurisdictional boundaries of that local entity.

(f) Where technically feasible, the holder of a state-issued authorization and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a state-issued authorization and incumbent cable operators shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a holder of a state-issued authorization and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, then the duty of the holder of a state-issued authorization shall be discharged if the holder makes interconnection available to the channel originator at a technically feasible point on the holder's network.

(g) A holder of a state-issued authorization shall not be required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name, or other identifying marks of another cable operator or video service provider. The local entity may require a cable operator or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available through interconnection to another provider of PEG capacity.

(h) After the effective date of this article and until the expiration of the incumbent cable operator's franchise, if the incumbent cable operator has existing unsatisfied obligations under the franchise to remit to the local entity any cash payments for the ongoing capital costs of public educational and governmental access channel facilities, the local entity shall divide those cash payments among all cable or video providers as provided in this section. The fee shall be the holder's pro rata per subscriber share of the cash payment required to be paid by the incumbent cable operator to the local entity for the capital costs of public, educational, and governmental access channel facilities.

(i) In determining the fee on a pro rata per subscriber basis, all cable and video service providers shall report, for the period in question, to the local entity the total number of subscribers served with the local entity's jurisdiction, which shall be treated as confidential by the local entity and shall be used only to derive the per subscriber fee required by this section. The local entity shall then determine the payment due from each provider based on a per subscriber basis for the period by multiplying the unsatisfied cash payments for the ongoing capital costs of public, educational, and governmental access channel facilities by a ratio of the reported

subscribers of each provider to the total subscribers within the local entity as of the end of the period. The local entity shall notify the respective providers, in writing, of the resulting pro rata amount. After the notice, any fees required by this section shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for the preceding calendar quarter, and may only be used by the local entity as authorized under federal law.

(j) Upon the expiration of the incumbent cable operator's franchise or if there is no local franchise, the holder or holders of a state-issued authorization shall pay the local entity, in whose jurisdiction it is offering cable or video service, a fee to support the capital costs of public, educational, and governmental access channel facilities and to support of institutional network facilities equal to 1 percent of the holder's gross revenues, as defined in Section 53058.4, earned in the local entity or, at the holder's election, the per subscriber fee that was paid by the holder to the local entity pursuant to subdivision (h). The local entity may only use the fee for purposes allowed under federal law. The payment required by this subdivision shall not become due and payable until the expiration of the incumbent cable operator's franchise, or 180 days after the local entity notifies the holder of the expiration, whichever is later.

(k) The following services shall continue to be provided by the incumbent cable operator that was furnishing services pursuant to a franchise until January 1, 2008, or until the term of the franchise expires, whichever is later:

(1) PEG production or studio facilities.

(2) Institutional network capacity, however defined or referred to in the incumbent cable operator's franchise, but generally referring to a private line data network capacity for use by the local entity for noncommercial purposes.

(3) Cable services to community public buildings, such as municipal buildings and public schools.

(l) The holder of a state-issued authorization may recover the amount of any fee remitted to a local entity under this section by billing a recovery fee as a separate line item on the regular bill of each subscriber.

(m) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no provider may be barred from the provision of service or be required to terminate service as a result of that dispute or enforcement action.

53058.6. (a) The local entity shall allow the holder of a state-issued authorization under this article to install, construct, and maintain a network within public rights-of-way under the same terms and conditions as applicable to telephone corporations, as defined under Section 234 of the Public Utilities Code, under applicable state and federal law.

(b) A local entity may not enforce against the holder of a state-issued authorization any rule, regulation, or ordinance that purports to allow the local entity to purchase or force the sale of a network.

53058.7. (a) A cable operator or video service provider that has been granted a state-issued authorization under this article may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides, as required by Section 541(a) (3) of Title 47 of the United States Code.

(b) The holder of a state-issued authorization shall have a reasonable period of time to become capable of providing cable service or video service to all households within the designated service area footprint as defined in as defined in paragraph (6) of subdivision (d) of Section 53058.2 and may satisfy the requirements of this section through the use of (1) direct-to-home satellite service or (2) another alternative technology that provides comparable content, service, and functionality.

(C) Within 36 months after issuance of the holder's first state-issued authorization, and then annually for seven additional years, the holder shall report the extent to which cable or video service is available to potential subscribers within the holder's service area, including all of the following:

(1) The demographics of the service area.

(2) The percentage of homes in the service area that have access to service.

(3) The demographics of the portion of the service area that has access to service.

(4) The technology used by the holder to provide access to service.

The report shall be filed with the Legislature, the department, the Governor, and the Attorney General, and posted on the holder's Web site. The holder shall not be required to report competitively sensitive information.

(c) If there is a violation, the exclusive remedy for enforcing the provisions of this section shall be an action in a court of competent jurisdiction brought by the local entity, the district attorney of the county in which the local entity is located, or the Attorney General on behalf of the department. At least 60 days before bringing an action, the enforcement entity shall serve the holder of the state-issued authorization under this article with a notice setting out the alleged violation and stating that an action may be brought unless the provider, within the 60-day notice period, corrects the alleged violation or enters into a binding agreement to correct the violation. The notice shall contain a sufficiently detailed description of the alleged violation to enable the holder of the state-issued authorization to make a specific response. If the holder of the state issued franchise does not timely enter into a binding agreement to correct the violation, then the matter shall proceed before the court of competent jurisdiction.

(d) If the court finds that the holder of the state issued franchise is in willful violation of Section 53058.7 herein, it may, in addition to any other remedies provided by law, impose a fine not to exceed 1 percent of the holder's total gross revenue of its entire cable and service footprint in the state in the full calendar month immediately prior to the decision.

53058.8. The holder of a state-issued authorization shall comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2. A franchising or local entity may not adopt or seek to enforce any additional or different customer service or other performance standards under Section 53055.3, subdivision (q), (r), or (s) of Section 53088.2, or under any other authority or provision of law. Any reporting or enforcement authority in those sections shall instead be assigned solely to the department.

53058.9. (a) The holder of a state-issued authorization shall perform background checks of applicants for employment, according to current business practices.

(b) A background check equivalent to that performed by the holder shall also be conducted on all of the following:

(1) Persons hired by a holder under a personal service contract.

(2) Independent contractors and their employees.

(3) Vendors and their employees.

(c) Independent contractors and vendors shall certify that they have obtained the background checks required pursuant to subdivision (f), and shall make the background checks available to the holder upon request.

(d) Except as otherwise provided by contract, the holder of a state-issued authorization shall not be responsible for administering the background checks and shall not assume the costs of the background checks of individuals who are not applicants for employment of the holder.

(e) (1) Subdivision (a) only applies to applicants for employment for positions that would allow the applicant to have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(2) Subdivision (b) only applies to person that have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(f) This section does not apply to temporary workers performing emergency functions to restore the network of a holder to its normal state in the event of a natural disaster or an emergency that threatens or results in the loss of service.

53058.10. (a) A holder of a state-issued authorization employing more than 750 total employees shall annually report to the department all of the following:

(1) The number of California residents employed by the workforce, calculated on a full-time or full-time equivalent basis.

(2) The percentage of the holder's total domestic workforce, calculated on a full-time or full-time equivalent basis.

(3) The number of California residents employed by independent contractors and consultants hired by the holder, calculated on a full-time or full-time equivalent basis, when the holder has obtained this information upon requesting it from the independent contractor or consultant, and the holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor or consultant that are personally providing services to the holder, and does not apply to employees of an independent contractor or consultant not personally performing services for the holder.

(b) The department shall annually report the information required to be reported by holders of state-issued authorizations pursuant to subdivision (a), to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet Web site.

53058.11. (a) The provisions of this article are intended to be consistent with the Federal Cable Act (47 U.S.C. Sec. 521 et seq.).

(b) Nothing in this section shall be interpreted to prevent a voice provider, cable operator or video service provider, or local entity from seeking clarification of its rights and obligations under federal law or from exercising any right or authority under federal or state law.

~~SECTION 1. Article 3.7 (commencing with Section 53058) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:~~

~~Article 3.7. The Digital Infrastructure and Video Competition Act of 2006~~

~~53058. It is the intent of the Legislature to create the Digital Infrastructure and Video Competition Act of 2006.~~

~~53058.1. For the purposes of this article, "franchise" means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system in public rights-of-way.~~

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Date of Hearing: April 24, 2006

ASSEMBLY COMMITTEE ON UTILITIES AND COMMERCE

Lloyd E. Levine, Chair

AB 2987 (Nunez and Levine) - As Amended: April 6, 2006

SUBJECT : Cable and video service.

SUMMARY : Creates a mechanism for a state-issued franchise for the provision of cable and video service in California. Specifically, this bill :

- 1) Provides that the Department of Corporations (DOC) is the sole franchising authority for the state-issued authorization to provide cable and video service (video service) and that any party that seeks to provide video service in this state after the effective date of the bill shall file an application for a state-issued authorization with the DOC.
- 2) Provides that the application shall contain specified provisions including the following:
 - 2) A sworn affidavit that affirms that the applicant agrees to comply with all federal and state rules, including a statement that the applicant will not discriminate in the provision of services, will comply with all applicable consumer protection rules, that the applicant will remit fees required to be paid to local governments, and that the applicant will provide public, educational, and government (PEG channels).
 - 2) A statement that the applicant agrees to comply with all lawful local government regulations regarding the time, place, and manner of using the public rights-of-way.
 - 2) A description of the service area to be served including the socioeconomic information of all residents within the service area.
 - 2) If the applicant is an existing telephone corporation, a description of the service territory where the applicant currently provides phone service, and in the socioeconomic information of all the residents in the telephone service territory.

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- 2) The expected date for the deployment of video service in the new service territory.
- 3) Provides that the DOC shall notify the applicant whether the application is complete or incomplete within 30 days of receiving the applications and shall issue a certificate of authorization within 14 days after making the notification.
- 4) Provides that a video operator may terminate the state-issued authorization by submitting a notice to the DOC.
- 5) Requires the holder of a state-issued authorization (holder) to notify all applicable local entities that the local entity is within the holder's service area and that the holder intends to provide video service in the local entity's jurisdiction. The holder shall provide this notice at least 10 days before the holder begins offering video service in the local entity's jurisdiction.
- 6) Requires the holder to pay each local entity where it provides video service a state-issued authorization fee (franchise fee) based on the gross revenue, as defined in the statute, earned within that jurisdiction.
 - 6) If there is an incumbent cable operator in that jurisdiction the fee shall be 5% of the holder's gross revenue or percentage applied to the incumbent's gross revenue, whichever is lesser.
 - 6) If there is no incumbent cable operator or upon the expiration the incumbent's franchise, the fee shall be set by the local entity but may not exceed 5% of the holder's gross revenue.
 - 6) The local entity may not require any additional fees or charges of any kind from the holder. However, nothing in the bill shall limit the local entity's ability to impose a utility user tax.
 - 6) The holder may identify and collect the franchise fee as a separate line item in the customer's bill.
- 7) Provides that the holder shall designate a sufficient amount of capacity on its network to provide a comparable number of

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Public, Educational, and Government (PEG) channels or hours of

programming that the incumbent cable operator currently provides within the local entity. If no PEG channels are currently provided within that local entity, a local entity may request the holder to provide up to three PEG channels if their population exceeds 50,000 people or up to 2 PEG channels if the population is under 50,000 people.

- 8) Provides that if there is an incumbent cable operator, until the expiration of the incumbent's franchise, the holder shall be obligated to pay a pro rata per subscriber share of any ongoing payments the incumbent must make for the capital costs of producing PEG programming. The holder may identify and collect the fee as a separate line item in the customer's bill.
- 9) Provides that upon the expiration of the incumbent's franchise or if there is no incumbent provider, the holder shall pay the local entity a fee, not to exceed 1% of the holder's gross revenue for the support of PEG programming and institutional network facilities. The holder may identify and collect the fee as a separate line item in the customer's bill.
- 10) Provides that the incumbent cable operator shall continue to provide PEG production services and institutional network capacity in a local entity until its franchise expires or until January 1, 2008, whichever is later.
- 11) Provides that a video service provider may not discriminate against or deny access to service to any group of potential residential subscribers based on the income of residents in that local service area.
- 12) Provides that the holder shall have a reasonable time to become capable of providing video service to all households within the service territory.
- 13) Provides that the holder may satisfy this above obligation through the use of satellite television service or another alternative technology that provides comparable content, service, and function.
- 14) Provides that within 36 months of the issuance of the state-issued authorization and every year thereafter, the holder shall prepare a report on the extent to which video

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service is available within its defined service territory including the demographics of the portion of the service territory that has access to service.

- 15) Provides that the holder shall comply with the existing video

consumer service and performance standards in state law. The DOC shall have the authority to enforce these rules. A local entity may not adopt additional or different consumer service or performance standards.

- 16) Requires that a background check be performed on all applicants for employment with the holder, for employees of independent contractors and vendors to the holder who would have access to the holder's network, central office, or customer premises.
- 17) Requires all holders employing more than 750 employees to annually report to the DOC the number of California residents employed by the holder and the number of employees of independent contractors and vendors that provide service for the holder.
- 18) Provides that a court of competent jurisdiction shall have exclusive jurisdiction to enforce the provisions of this bill regarding payment of fees, provision of PEG channels and institutional networks, and discrimination in the provision of service.

EXISTING LAW

- 1) Authorizes local governments to grant additional cable television franchises in an area where a franchise has already been granted after a public hearing to discuss specified issues.
- 2) Provides that the additional franchises must serve the same geographic area as the original franchise. Such service shall be within a reasonable time and in a sequence which doesn't discriminate against lower income or minority residents.
- 3) Provides that the additional franchises must also contain the same PEG access requirements as the original franchise.
- 4) Requires all public utilities employing more than 750 total employees to annually report the number of California

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residents employed by the holder and the number of employees of independent contractors and vendors that provide service for the holder.

FISCAL EFFECT : Unknown.

COMMENTS : According to the authors the purpose of this bill is to promote competition for broadband and video service. Current law requires companies seeking a new video franchise to seek a

separate franchise in each local government entity where it wants to provide video service. A company wishing to provide service across the state would need to seek over 500 franchise agreements. This bill would allow a company to seek a state-issued franchise from the DOC. The bill is also aimed at creating a level playing field for all providers of video service by assuring that, in the future, all competitors are subject to the same set of regulatory requirements.

The authors believe that this bill will lead to a rapid deployment of new video and broadband services across the state as new companies, including the existing local telephone companies, make investments in existing and new networks needed to compete with the existing cable companies to provide video and internet services. The bill creates new investment in broadband internet networks because these networks are needed to provide competitive video services.

1) TV is no longer just "cable" : In recent years a host of new technological developments have made it possible to offer subscriber based television through a range of connections to the home beyond the traditional coaxial cable. These services include satellite (known as Direct Broadcast Satellite or DBS), fiber optic cables, traditional phone lines (using internet based technologies know as IPTV), fixed wireless, and even through a cell phone. A range of companies can now compete directly with the traditional cable companies. Regulations that were written in a time when only one technology could be used to offer subscriber based TV may no longer serve the needs of consumers. Finally, these technologies mean that we can no longer refer to subscriber based television services as "cable TV" but instead need to refer to it as "video services."

2) What is a franchise : Current law requires all companies that provide video services in California to obtain a franchise from the local entity (either the city or county) where the company

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will provide service. The franchise is a contract between the provider and the local entity that grants the provider permission to use the public rights-of-way needed to install the necessary video infrastructure. In exchange for the permission to use the rights-of-way, the provider typically agrees to pay the local entity a franchise fee, provide a set number of PEG channels, provide video and broadband service to public buildings (known as I-net), and agree to abide by consumer service standards.

Franchise agreements are negotiated agreements between a local entity and a current video provider. The negotiations can happen quickly. Cable operators have complained that in some instances

the negotiations have dragged on for years and they have been required to make uneconomic investments to get a franchise. While almost every franchise agreement contains similar provisions, the requirements are not uniform between local entities, such that companies will pay different franchise fees, have different PEG requirements and be subject to different consumer protection rules in each jurisdiction.

3) New Entrants: Today only few areas of the state have multiple video operators. Instead competition for video service comes primarily from DBS services, such as DirecTV and the DISH network, which are not required to obtain a local franchise. Today DBS service accounts for approximately 27% of the video market. A few companies are obtaining local franchise agreements to provide competing video services, but due to current franchising process this is occurring on a limited basis across the state. Some new entrants argue that the current franchising process is what has limited the number areas in the state that have multiple franchise.

The companies that wish to provide competing services claim that part of the reason why competition is slow in coming is the time it takes to negotiate individual franchise agreements across the state. They also point to another provision in state law that requires new entrants into the video market to provide video service to the entirety of the incumbent's service territory. This provision is intended to prevent new entrants from discriminating in where they decide to offer service. Some of the potential new entrants argue that this provision forces them to build their infrastructure in a manner that is uneconomical for them and, as a consequence, they will simply opt to not compete in that franchise territory at all.

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To date, all of the potential new entrants into the video markets are companies that provide or plan to provide telephone service. AT&T, Verizon, and SureWest are the successors to companies that have provided telephone service in California for over 100 years. They have defined telephone service areas that were created before cable franchise boundaries were created, which, in some cases, do not directly match cable franchise areas. Other companies like RCN and SureWest are also building new networks to provide telephone service in parts of the state already served by AT&T and are also offering their customers a complete package of video services. As competitive phone companies, these companies have a statewide service territory, but as video providers, they must seek a franchise in each locality.

4) Services not requiring a franchise : DBS (satellite TV)

providers do not use the public rights-of-way to provide service. Consequently, they do not have to obtain a local franchise. Without a franchise, they do not pay franchise fees, they do not offer PEG channels, and they do not provide I-network support. The local governments have no authority to impose these requirements on DBS providers. AT&T and Verizon both have agreements with DBS providers to co-brand their products so that AT&T and Verizon can bundle their telephone and internet products with the DBS. Under current state law AT&T and Verizon can continue to offer their services in this manner. The state does have jurisdiction to require these providers to pay similar fees as the other video providers and provide PEG channels.

Internet technologies can also be used to provide video services. Today anyone with a broadband internet connection can download recent television shows from the major networks or subscribe to live broadcast from channels like CNN and ESPN. Additionally, AT&T is planning to use the same technologies that make the internet work to deliver video over their existing telephone network (IPTV). In the instances where people used the Internet to view video, no franchise is required. AT&T has currently asked the Federal Communications Commission (FCC) to determine if their IPTV service is exempt from local franchise requirements. While to date there is no specific ruling on IPTV from the FCC, the FCC has made a distinction in regulatory approaches for using the internet to provide voice service and using IP-based technologies over a company's own network. Unlike

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situations where a company uses the internet to make voice calls, the FCC found that when a company uses IP-based technology over its own network that service should be treated as a traditional phone service. <1> Depending on how the FCC rules on these matters, the state may have authority to require IPTV to have a franchise agreement.

5) Franchise Fees : The bill requires all holders of state issued franchises to pay the local government a franchise fee that is either 5% of their gross revenue, or the franchise fee that the incumbent cable operator is paying, whichever is lower. Federal and state law already caps franchise fees at 5%. The bill also contains a provision that prohibits a local government from charging an additional franchise fee or another fee instead of the franchise fee. The intent of the authors is to capture all of the revenue that is collected through franchise fees today and guarantee that the local governments can continue to collect the same amount of revenue in the future. Local governments are concerned that certain aspects of the definition of gross revenue in the bill may reduce the amount of money they can collect and are concerned that the language that prohibits

them from collecting an additional franchise is written too broadly and may limit their ability to collect other fees such as businesses license fees. The authors state that this is not their intent.

6) Redlining : One concern when new entrants begin providing video services is that they will choose to provide the service only to higher income neighborhoods and thus provide these areas of the state with the advantages of new technologies and competition but deny the same benefits to lower income neighborhoods - a process known as redlining. Federal and state law prohibit redlining by requiring the local franchise authorities to assure that access to video service is not denied to any group of potential residential video subscribers based on income. The local franchising authority meets this requirement by negotiating with the cable company the area company must service and by requiring the company to build to the entire service territory within a specified time and/or in a specified order.

Under the state issued franchise model proposed in AB 2987, the

<1> Petition for Declaratory Ruling that AT&T's Phone- to- Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, Order, 19 FCC Rcd 7457.

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requirement that video providers cannot discriminate is maintained. The bill explicitly prohibits companies from denying access to new services based on income. However, instead of requiring a state agency to dictate when and where the companies must deploy the services, this bill used the following method: The new companies can make their own decision on where to build, but to assure that they are not redlining, video providers will be required to file annual reports on where they are offering services and on the demographics of those areas. These reports can be used to verify if the companies have discriminated and can be used in a court action to enjoin further discriminatory action by the company or to fine the company for its past actions.

Cable operators and some local governments believe that the only way to assure all areas of the state receive the advantages of competition and access to the new broadband internet networks is to require the new entrants to build out to the entirety of a predefined service area. The service area could be the areas defined by existing franchises, an area already served by a telephone company, or an area defined by the DOC. These parties are concerned that without these provisions, when new entrants seek a franchise from the DOC they will define their service territory to only include the most desirable areas of

the state.

Opponents of the bill are also concerned that the anti-redlining provisions in AB 2987 allow new entrants to meet their non-discriminatory requirements by using a variety of technologies, including offering DBS services. The concern is that since DBS cannot be used to provide broadband internet services, using a combination of direct wired connections to the home and DBS would result in some areas of the state having access to new ultra-fast broadband services and other areas without similar access.

Additionally, some parties are concerned that the reports that the video providers prepare for the state will not contain sufficient information to verify if a company is actually redlining. The bill currently requires the companies to provide information on the demographics of the service territory and of the area of the service territory that has access to service.

7) PEG Channels : In almost all instances, local franchise agreements require the video operator to offer a set number of

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channels to provide (PEG) and to either provide the monetary or in kind support needed to produce these shows. AB 2987 continues the obligation to provide the channels by requiring all video providers to provide the capacity for the same number of PEG channels the incumbent cable operator provides. If there is no incumbent operator, then the video provider must provide either 2 or 3 channels, depending on the population of the area to be served.

The bill then requires a new entrant to pay a pro-rata share of any on going cash obligations the incumbent operator has to support the production of PEG programming. If the incumbent does not have any ongoing expenses, but instead provides in kind support such as producing shows themselves, the new entrant will have no obligation support. If there is no local franchise or after the incumbent's local franchise expires, all video providers will be obligated to pay a 1% fee or the pro-rata share they paid under the prior franchise agreement to support PEG programming.

Opponents of the bill argue that these provisions could result in less monetary support of PEG programming. The intent of the authors and of this language is to insure that the PEG obligations that are required today are maintained. The difficulty comes in devising a way to support PEG when the market switches from one provider to multiple providers without requiring each company to provide separate, redundant production facilities. The bill tries to address this by requiring all

companies to provide cash contributions in support of PEG and then allows the local governments to either produce the PEG programming themselves, or contract out for the services. Depending on the existing franchise agreements this mechanism could result in a reduction in PEG contributions over time in some areas, but would also result in an increase in contributions in other areas.

Technical amendment : On page 15 lines 17 through 19, delete "at the holder's election, the per subscriber fee that was paid by the holder to the local entity pursuant to subdivision (h)." This language could result in a video provider paying no money in support of PEG programming, which is not the authors' intent of the bill.

8) I-net : Many franchise agreements require the video operator to provide free video and broadband service to public buildings

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- or I-net. Continuing this requirement in markets that have multiple competitors could lead to multiple, redundant connections to public building or some providers offering I-net services while others do not. To address this problem, the bill initially requires the incumbent provider to continue to provide I-net services, but once the local franchise expires the bill allows the local governments to fund I-net service using a portion of the fees paid by each video provider in support of the PEG programming.

9) Consumer protection : State law currently contains a thorough set of consumer service and performance standards. The local franchising authority enforces the standards. Some franchise agreements also adopt additional or more stringent standards. This means the consumer protection rules for video service varies from jurisdiction to jurisdiction and can even vary within a jurisdiction if there are multiple franchises. This bill leaves the existing statewide rules in place but transfers enforcement authority to the DOC.

Some local governments believe that the enforcement of the consumer protection rules should be left with the local entities. First, consumers will have an easier time getting problems resolved working through a local enforcement authority than they will with the DOC. Second, since the DOC does not take enforcement actions today, they would need to create new mechanisms and procedures to take on this role. Given these concerns the committee may wish to consider amending the bill to leave the enforcement authority of the state consumer protection rules with the local entities .

10) Right-of-way : Local governments are concerned that this bill

will restrict their control over the public rights-of-way when holders of the state issued franchise want to access the right-of-way to run new wires. The bill does provide that holders do have a right to use the rights of way but only to the extent that an existing telephone company does. Local governments have clear authority to regulate the time, place, and manner in which telephone companies can access the rights-of-way and the authority to collect the necessary administrative fees to pay for the cities costs of permitting and monitoring the telephone's access. This bill applies the same authority to holders of state issued franchises. Even so, the local governments believe the provisions should be clear in the bill.

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11) Emergency notification : Local governments are concerned that this bill would not require holders of the state issued franchise to broadcast message from the Emergency Management Alert System. This could hinder the government's ability to communicate with the public in an emergency. To assure that this bill does not allow new entrants into the video market to avoid broadcasting emergency messages the committee may wish to amend the bill to make it an affirmative obligation of all holders of statewide franchises to participate in the Emergency Management Alert System, regardless of the technologies they use.

12) Will telephone customers pay for video offerings: The representatives of the cable industry and The Utility Reform Network (TURN) have raised concerns that without further protections, telephone rates that are collected to fund basic telephone service could be used to subsidize the installation and operation of the telephone company's new video service which could provide a competitive advantage at the ratepayer's expense. The basic telephone rates are intended to offset the telephone company's actual costs of providing service and should not be used to fund other company investments.

REGISTERED SUPPORT / OPPOSITION :

Support

Alcatel
Alliance for Community Media
Asian Business Association
AT&T California
California Black Chamber of Commerce
California Chamber of Commerce
California Consumers United
California Independent Telephone Companies' (CITC) (if amended)

California NAACP
 California Small Business Association
 California State Council of Laborers
 Capitol Claims Services
 CHARO Community Development Corporation
 Citizens Against Regulatory Excesses (CARE)
 Communications Workers of America (CWA)
 Consumers First, Inc.
 Edmund G. "Pat" Brown Institute of Public Affairs

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Gateway to Silicon Valley
 Intel
 ITC
 La Casa de San Gabriel Community Center
 Latino Journal
 Mexican American Opportunity Foundation
 Microsoft Corporation
 Milpitas Chamber of Commerce
 Norman H.Hui, D.D.S. - Chair, California Commission on AP
 Affairs
 Pasadena Chamber of Commerce
 Project Amiga
 San Gabriel Valley National Association for the Advancement of
 Colored People (NAACP)
 Self-Help for the Elderly
 State Association of Electrical Workers
 Sure West (if amended)
 Verizon

Opposition

Access Sacramento
 Adelphia Communications
 Alliance for Community Media - Western States Region
 Business Women for the Environment
 California Cable & Telecommunications Association (CCTA)
 California Common Cause
 California State Association of Counties (CSAC)
 Charter Communications - Inland Empire
 City of Corona - Office of the Mayor
 City of Coronado
 City of Cypress
 City of Elk Grove
 City of Fairfield - Office of the Mayor
 City of Lakewood
 City of Monrovia
 City of Moreno Valley
 City of Pacifica
 City of Pasadena - Office of the Mayor
 City of Poway

City of Roseville
City of San Juan Capistrano - Office of the Mayor
City of Vista
City of Walnut Creek
City of West Hollywood

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AB 2987

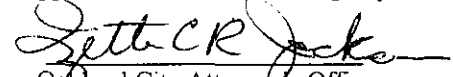
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Comcast
County of Sacramento
Goleta Union School District
League of California Cities
Marin County Board of Supervisors
Media Alliance
Sacramento Educational Cable Consortium
The Santa Barbara Channels
The Town of Apple Valley
The Utility Reform Network (TURN)
Time Warner Cable
Upland Unified School District
Urban Counties Caucus
Youth Law Center

Analysis Prepared by : Edward Randolph / U. & C. / (916)
319-2083

2006 JUN 15 PM 6:18

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLAND
OPPOSING ASSEMBLY BILL 2987, KNOWN AS "THE DIGITAL
INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006"**

WHEREAS, on May 31, 2006, the California Assembly passed Assembly Bill 2987, sponsored by Assembly Speaker Nunez and Assembly Member Levine ("AB 2987"), the "Digital Infrastructure and Video Competition Act of 2006; and

WHEREAS, AB 2987 has now been referred to the Senate, where it will initially be considered by the Energy, Utilities, and Communications Committee; and

WHEREAS, AB 2987 would establish a new regulatory framework for cable operators and telephone operators seeking to provide cable, video, data, and telecommunications services in California by replacing local government franchising with a state franchising scheme; and

WHEREAS, AB 2987, in its current form, does not contain build-out or universal service requirement which would ensure that holders of such a state franchise will make cable or video services and other advanced service equally available to the entire community;

WHEREAS, AB 2987, in its current form, preempts local government authority to require cable and video service providers to build-out and serve the entire community; and

WHEREAS, AB 2987, in its current form, does not ensure that local communities will be "kept whole" in regard to franchise fee revenues, support for Public, Educational, and Government ("PEG") programming, Institutional Networks connecting local schools and municipal buildings for the purpose of transmitting video, data, and voice communications; and other services traditionally provided to municipalities by cable operators via the franchise process in exchange for the use of the public rights-of-way;

WHEREAS, AB 2987, in its current form, would eliminate or severely restrict the authority of local governments to require that cable and video systems provide local control of emergency alert systems in the event of disasters and emergencies; and

WHEREAS, AB 2987, in its current form, would eliminate local government's authority to determine its needs and interests with respect to cable and video systems and to negotiate and issue franchises which ensure those needs and interests are adequately met; and

WHEREAS, AB 2987, in its current form, would eliminate local authority to ensure that cable and video system operators comply with federal, state, and local regulations, including customer service and consumer protection standards, and would eliminate most local compliance enforcement mechanisms; and

WHEREAS, AB 2987, in its current form, replaces local enforcement and regulatory authority with a scheme that does not establish adequate mechanisms for enforcement and regulation at the state level;

RESOLVED, that the City Council of the City of Oakland hereby opposes the passage of AB 2987 and directs the City Administrator to send this resolution to the state legislators representing the City, Assembly Speaker Nunez, Assembly Member Levine, members of the Senate Energy, Utilities, and Communications Committee, the League of California Cities, and the National Association of Telecommunications Officers and Advisers.

FURTHER RESOLVED: that the Office of the City Attorney has approved this resolution as to form and legality, and a copy will be on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20__.

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California