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July 3, 2007

Oakland City Council
Oakland, CA

RE: Supplemental Report To An Ordinance Amending the Oakland Municipal Code to Add Chapter 5.17, Adopting Provisions of the Digital Infrastructure and Video Competition Act of 2006, Codified in California Public Utilities Code Section 5800 et seq., which Provides Rules For State Video Franchise Applications and which the City is Required to Administer and Enforce throughout the City

President De La Fuente and Members of the City Council,

At the June 26th Finance and Management Committee, staff was asked to prepare a supplemental report with a chart showing a comparison between local cable franchise holders and state franchise holders and the services they are required to provide to the City. This chart is shown in *Attachment A*.

Subsequent to the Finance & Management Committee of June 26th, staff realized that a portion of a section of the City's Cable Regulatory Ordinance had inadvertently been omitted from the Undergrounding section (Chapter 5.17.400, Section I.) of the enclosed Ordinance. This section was intended to mirror that of the existing Oakland Municipal Code Chapter 5.16.390, Section F. Because certain language was omitted, staff has deleted this entire section so that it is not in conflict with the Cable Regulatory Ordinance. The amended Ordinance is included with this report as *Attachment B*.

Item: 5-24
ORA/City Council
July 3, 2007

City Council also asked staff to return with details on how the 1% PEG (Public, Educational and Governmental) channel fee will be spent. At this time, staff has not developed a proposal for how to spend these funds. Staff will return to City Council at a later date with a proposal for how these funds should be spent, when the amount of revenue that can be expected from this fee has been determined.

Additionally, at the June 21st Special Budget Hearing, City Council asked staff to come to the June 26th Finance & Management Committee meeting prepared to discuss the Project Manager position for Cable Franchise matters that was included in the funding request for the FY 2007-09 Proposed Policy Budget. This report provides additional detail on the position and requests that City Council accept a resolution at the July 17, 2007 City Council meeting authorizing this position in the FY 2007-09 Adopted Policy Budget.

Over the past two fiscal years, there has not been a position funded specifically for project management related to Cable Franchise matters. These services have been provided by a field inspector in the Public Works Agency, as needed. It has become clear that one full-time position is needed to handle the ongoing negotiations and litigation with Comcast, the ongoing Comcast franchise compliance audit, and the new state legislation passed to allow state franchise holders to enter the market. This position is being proposed to be added back into the City's FY 2007-09 Adopted Policy Budget to handle this area of expertise. The major tasks to be handled by this position are as follows:

- 1) **Negotiate and Monitor Contracts for Compliance:** Manage and monitor, for compliance, the Cable Franchise Agreement. Monitor technical, operational and other performance standards pursuant to franchise agreements between the City and cable corporations. Review technical and financial reports and documents pursuant to terms of the franchise agreements. Ensure that contractors comply with the language in the contract. Negotiate cable franchise contracts. Review and complete questionnaires submitted by contractors seeking cable and telecommunications franchise agreements with the City of Oakland. Review and monitor telecom issues (Wi-fi, cellular telephone, DSL, Broadband and other telecommunication mediums). Review laws related to telecommunication and franchise agreements/contracts. Utilize knowledge of trends and innovations in technology to ensure that the City's agreements are in accordance with recent technological trends and advancements.
- 2) **Liaison for telecommunication and cable franchise matters:** Serve as the City's contact person for cable franchise and telecommunication right-of-way matters. Responds to all citizen and subscriber complaints and questions regarding cable franchise issues. The work performed in this position enables the City to collect permit fees and fines in a timely and more consistent manner, as contracts will be monitored closely.
- 3) **Coordinate activities with departments and cable & telecommunication companies:** Coordinate with City departments on cable franchise and telecom related matters. Work closely with City departments to develop policies and procedures for citywide telecommunication projects and permit processes.

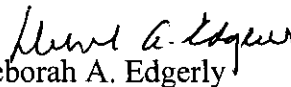
Item: _____
ORA/City Council
July 3, 2007

- 4) **Financial and analytical reports:** Prepares analytical reports pursuant to the Cable Franchise Agreement.

The compliance function performed by this position is critical to ensure that local and state franchise holders meet their obligations to the City as set forth in all local, state and federal legislation. The fully burdened cost of this position is \$180,000. Funding is available for this position from the five percent (5%) franchise fee established by DIVCA. The funds from this fee will be deposited into the Telecommunications Fund (1760). Fees in excess of the costs for this position will also be deposited in the Telecommunications Fund and staff will return to Council with a proposal for how to spend the funds.

A resolution will be prepared and placed on the agenda for the City Council meeting of July 17, 2007 to request approval for this position.

Respectfully submitted,


Deborah A. Edgerly
City Administrator

Attachment A: Comparison Chart – Local
Cable Franchise / State Cable
Franchise Service Requirements

Attachment B: Amended ordinance

Item: 5-24
ORA/City Council
July 3, 2007

Comparison Chart Showing Services Provided and Fees Collected from Local and State Franchise Holders

Attachment A

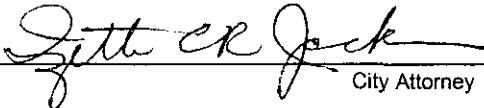
	Current City Franchise	State Franchise Under DIVCA	Included in Negotiated Comcast Renewal Franchise -- Under Litigation	Available in Standard Local Franchise Renewal
Provide Free Cable TV to All City Buildings	yes	no	yes	yes
Franchise Fee - 5% of Gross Revenue	yes	yes	yes	yes
PEG funding above the Franchise Fee	no	yes - up to 1% of gross revenues for PEG - no funding for I-Net	yes - 17.4 million in PEG and I-Net funding	yes
INET	no	no	yes	yes
Universal Service Build-out Required to all City of Oakland residents	yes	no - there are no local build-out requirements. The build-out standards are state-wide numbers.	yes	yes
Enforcement Mechanisms to ensure franchise compliance	liquidated damages; revocation of franchise; denial of renewal; limited statutory penalties for customer service violations	limited - statutory penalties for customer service violations only; complaint at PUC available only for violation of build-out/non-discrimination standards; court action required for all other disputes and violations	liquidated damages; revocation of franchise; denial of renewal; limited statutory penalties for customer service violations	liquidated damages; revocation of franchise; denial of renewal; limited statutory penalties for customer service violations
Fee Audits Available; Reimbursement of Audit Costs if Underpayment is Found	yes	yes	yes	yes
Number of PEG channels	Up to 5	must match number activated by incumbent under local franchise; trigger language for additional channels	Up to 7	open to negotiation
Emergency Service Alert	no	limited -Compliance with FCC EAS standards and match any standards in a local franchise	yes	yes (all channels)
City Approval of Transfers	yes	No - pro-forma approval of transfers by the PUC	yes	yes
Right-of-way Management Authority	yes	Limited - to Time/Place/Manner as it is for telephone companies	yes	Yes
Protection of City	Insurance; Indemnity; Bonds	Limited - Insurance, Indemnity, and Bonds only as they can be required under ROW time/place/manner management authority	Insurance; Indemnity; Bonds	Insurance; Indemnity; Bonds

City Council
July 3, 2007

OFFICE OF THE CITY CLERK
2007 JUN 08 PM 7:57

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____


City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

An Ordinance Amending the Oakland Municipal Code to Add Chapter 5.17, Adopting Local Regulations Applicable to Holders of State Video Franchises Issued by the California Public Utilities Commission Pursuant to the Digital Infrastructure and Video Competition Act of 2006, Codified in California Public Utilities Code Section 5800 et seq.

WHEREAS, the California Legislature adopted the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”) establishing a state video franchising scheme under which holders of state-issued video franchises would be partially regulated by the California Public Utilities Commission (“CPUC”) and partially regulated by local governments; and

WHEREAS, under DIVCA, the CPUC has authority to grant state franchises, regulate build-out and non-discrimination standards for state franchise holders, enforce anti-subsidy provisions, and impose user and application fees; and

WHEREAS, under DIVCA, the City has authority to manage the rights-of-way, regulate the payment of state franchise fees and Public Education and Government (“PEG”) fees, require the provision of PEG channels, and enforce federal and state customer service standards; and

WHEREAS, amending the Oakland Municipal Code is necessary in order to preserve the City’s authority to regulate state video franchise holders to the extent permitted under DIVCA; now, therefore

S-24

ORACOUNCIL

JUL 03 2007

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Oakland Municipal Code, TITLE 5, BUSINESS LICENSES AND REGULATIONS is hereby amended to add Chapter 5.17, entitled “State Video Service Franchises,” to read as follows:

Chapter 5.17

STATE VIDEO SERVICE FRANCHISES

Part 1 GENERAL PROVISIONS

- 5.17.010 Purpose**
- 5.17.020 Rights reserved**
- 5.17.030 Compliance**

Part 2 DEFINITIONS

- 5.17.100 Definitions generally – Interpretation of language**
- 5.17.110 Public, Education and Government (“PEG”) Access**
- 5.17.120 City**
- 5.17.130 City Administrator**
- 5.17.140 Gross Revenues**
- 5.17.150 Network**
- 5.17.160 Person**
- 5.17.170 Public rights-of-way**
- 5.17.180 State Franchise Holder**

Part 3 FEES

- 5.17.200 State franchise fees**
- 5.17.210 PEG fees**
- 5.17.220 Payment of fees**
- 5.17.230 Audits**
- 5.17.240 Late payments**
- 5.17.250 Lease of city-owned network**

Part 4 CUSTOMER SERVICE

- 5.17.300 Customer service and consumer protection standards**
- 5.17.310 Penalties for violations of standards**

Part 5 PERMITS AND CONSTRUCTION

- 5.17.400 General requirements**
- 5.17.410 Identification required**

Part 6 PUBLIC, EDUCATION AND GOVERNMENT (“PEG”) REQUIREMENTS

- 5.17.500 Emergency Alert Systems**
- 5.17.510 Interconnection for PEG programming**

Part 7 REPORTS AND NOTICES

- 5.17.600 Reports to the City Administrator**
- 5.17.610 Notices**

Part 1
GENERAL PROVISIONS

5.17.010 **Purpose**

This Chapter is intended to be applicable to video service providers who are applying for, or have been awarded, a state video franchise under California Public Utilities Code section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006), to serve any area of the City.

5.17.020 **Rights reserved**

The rights reserved to the City under this Chapter are in addition to all other applicable rights of the City, whether reserved by other provisions of the Oakland Municipal Code or as otherwise authorized by law, and no action, proceeding, or exercise of a right shall affect any other rights which may be held by the City.

5.17.030 **Compliance**

Nothing contained in this Chapter shall be construed to exempt a State Franchise Holder from compliance with all applicable ordinances, rules, or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or California Public Utilities Code section 5800 *et seq.*

Part 2
DEFINITIONS

5.17.100 Definitions generally – Interpretation of language

For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this Chapter shall be given the meaning set forth in Division 2.5 of the California Public Utilities Code, section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006) and the provisions of Title 1, Chapter 1.04, GENERAL PROVISIONS, of the Oakland Municipal Code.

- A. References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority.

- B. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

- C. Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

5.17.110 Public, Education and Government (“PEG”) Access

“PEG access,” or “PEG use” refers to the availability of a cable or video system for public, education or government use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to distribute programming not under a State Franchise Holder's editorial control.

5.17.120 City

“City” means the City of Oakland and all departments, divisions, and agencies thereof; except that, when used to describe a geographic area, the term refers to the boundaries of the City of Oakland, California, as they exist now or may exist in the future.

5.17.130 City Administrator

“City Administrator” means the City Administrator of the City of Oakland or his or her designee.

5.17.140 Gross Revenues

“Gross Revenues” means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the areas of the City, subject to the specifications of California Public Utilities Code section 5860.

5.17.150 Network

“Network” means a component of a facility that is wholly or partly physically located within the public right-of-way that is used to provide video service or cable service.

5.17.160 Person

“Person,” unless it otherwise appears from the context as used, means and includes any person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or other trust, public agency, school district, the State of California, its political subdivisions and/or instrumentalities, or any other legal entity, but not the City.

5.17.170 Public rights-of-way

“Public rights-of-way” or “rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, parkstrip,

drive, or right-of-way or easement generally available to and used by utilities, communication companies, or for travel by the public, now or hereafter existing within the City which may be properly used and the City has the authority to allow the use of.

5.17.180 State Franchise Holder

"State Franchise Holder" or "holder" means a person or group of persons that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the areas of the City.

Part 3

FEES

5.17.200 State franchise fees

Each State Franchise Holder operating within the areas of the City shall pay to the City a state franchise fee equal to five percent (5%) of gross revenues.

5.17.210 PEG fees

Each State Franchise Holder operating within the areas of the City shall pay to the City a PEG fee equal to one percent (1%) of gross revenues.

5.17.220 Payment of fees

The state franchise fee required pursuant to Section 5.17.200, and the PEG fee required pursuant to Section 5.17.210, shall each be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The State Franchise Holder shall deliver to the City, by check or other means agreeable to the City, a payment for the state franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

5.17.230 Audits

The City may audit the business records of the holder of a state franchise in a manner not inconsistent with California Public Utilities Code section 5860(i).

5.17.240 **Late payments**

In the event a State Franchise Holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

5.17.250 **Lease of city-owned network**

To the extent not inconsistent with California Public Utilities Code section 5840(q)(2)(B), in the event a State Franchise Holder leases access to a network owned by the City, the City may set a franchise fee for access to the city-owned network separate and apart from the franchise fee charged to State Franchise Holders pursuant to Section 5.17.200.

Part 4

CUSTOMER SERVICE

5.17.300 Customer service and consumer protection standards

Each State Franchise Holder shall comply with all applicable customer service and consumer protection standards, including, to the extent not inconsistent with California Public Utilities Code section 5900, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation.

5.17.310 Penalties for violations of standards

- A. The City shall monitor compliance with and enforce the provisions of Section 5.17.300.
- B. For any material breach, as defined in California Public Utilities Code section 5900(j), by a State Franchise Holder of applicable customer service and consumer protection standards, the City may impose the following penalties:
 - 1. For the first occurrence of a material breach, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.
 - 2. For a second material breach of the same nature within 12 months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.
 - 3. For a third or further material breach of the same nature within 12 months, a fine of \$2,500.00 shall be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.
- C. Any penalties imposed by the City shall be imposed in a manner not inconsistent with California Public Utilities Code section 5900.
- D. To the extent not inconsistent with California Public Utilities Code section 5900, the City may waive, modify, or defer the imposition of a penalty.

Part 5

PERMITS AND CONSTRUCTION

5.17.400 General requirements

- A. The construction, operation, upgrade and repair of a State Franchise Holder's Network shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. By way of example, and not limitation, this includes the relevant portions of the Oakland Municipal Code (e.g., the City's zoning regulations), ordinances, regulations and policies to preserve or protect the public safety, construction standards, regulations for providing notice to Persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Persons engaged in the construction, operation, upgrade or repair of a State Franchise Holder's Network shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. A State Franchise or a local franchise is required before a permit may be issued for work associated with the construction, operation, upgrade or repair of a network. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with the City's demand.
- C. Construction, operation, upgrade or repair of a State Franchise Holder's Network shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in

strict accordance with the conditions of the permit. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable timeline set forth by the City. A State Franchise Holder shall reimburse the City for costs incurred in inspecting construction projects undertaken in the course of major or minor upgrades, installation of fiber optics, minor and major repairs, all other work for which the City requires inspection, and permit review and processing.

- D. The City Administrator shall either approve or deny a State Franchise Holder's application for any permit within sixty (60) days of receiving a completed permit application from the State Franchise Holder. An application for a permit shall not be complete until the applicant has complied with applicable laws and regulations, including but not limited to, all applicable requirements of Division 13 of the California Public Resources Code section 21000 *et seq.* (the California Environmental Quality Act).
- E. If the City Administrator denies a State Franchise Holder's application for a permit, the City Administrator shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
- F. A State Franchise Holder that has been denied a permit by final decision of the City Administrator may appeal the denial to the City Council whose decision shall be final. Upon receiving a notice of appeal, the City Council shall take one of the following actions:
 - 1. Affirm the action of the City Administrator without a hearing; or
 - 2. Refer the matter back to the City Administrator for further review with or without instructions.

- G. Interference with the use of the Public rights-of-way by others must be minimized. The City may require, except as prohibited by law, a Person using the Public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the Public rights-of-way.
- H. To the extent possible, State Franchise Holders shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Administrator, which permission shall not be unreasonably withheld.
- I. Undergrounding
1. Whenever all existing utilities are located underground in an area in the City, the installation of the Network of every State Franchise Holder shall conform to and be governed by the Oakland Municipal Code, Sub-section F of Section 5.16.390 of Chapter 5.16 entitled "Cable Systems and Open Video Systems. every State Franchise Holder installing its Network in the same area must locate its Network underground.
 2. ~~Whenever the owner of a pole locates or relocates underground within an area of the City, every State Franchise Holder in the same area shall concurrently relocate its cables, wires or fiber optics underground.~~
- J. Any and all public or private property that is disturbed or damaged during the construction, operation, upgrade or repair of a State Franchise Holder's Network shall be promptly repaired by the Holder. Public property must be restored to a condition as good as before the disturbance or damage occurred. Public rights-of-way must be restored to a condition consistent with City standards that are generally applicable to all persons performing construction or excavation in the Public rights-of-way.

K. Relocation

1. A State Franchise Holder shall at no cost to the City and by a time specified by City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the City by reason of traffic conditions; public safety; Public rights-of-way construction and repair (including regrading, resurfacing or widening); vacating Public rights-of-way ; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the State Franchise Holder's Network. Collectively, such matters are referred to below as the "public work."

2. The City shall provide written notice to the State Franchise Holder describing where the public work is to be performed at least three (3) weeks prior to the deadline by which the State Franchise Holder must protect, support, temporarily disconnect, relocate or remove its facilities. The State Franchise Holder may seek an extension of the time to perform the work. The City shall not unreasonably deny such an extension where the State Franchise Holder demonstrates it can not perform the work by the deadline even with the exercise of due diligence. Provided that, in an emergency, or where a State Franchise Holder's Network creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Network without prior notice, and charge the State Franchise Holder for costs incurred; however, the City will make reasonable efforts, considering the circumstances, to provide prior notice.

L. Construction activities of others

1. To accommodate the construction, operation, upgrade or repair of the facilities of another person authorized to use the Public rights-of-way or public property, a State Franchise Holder shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The State Franchise Holder shall be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time the work will commence. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Network that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action. In cases where the requesting person is required under this section 5.17.400(L)(1) to bear the cost of relaying, relocation or temporary removal, a State Franchise Holder may require the person to agree, before the work is performed, to pay the reasonable actual cost of the work. If the State Franchise Holder does so, it must provide an estimate of the cost of the work and support for that estimate.
2. A State Franchise Holder shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A State Franchise Holder shall be given not less than fifteen (15) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the Person requesting the same.

M. Abandonment

1. A State Franchise Holder may abandon any property in place in the Public rights-of-way or upon public property upon written notice to the City. However, if,

within ninety (90) days of the receipt of written notice of abandonment, the City determines that the safety, appearance, functioning or use of the Public rights-of-way or the public property and facilities in the Public rights-of-way or on the public property will be adversely affected, the property must be removed by a date specified by the City. In specifying a date for removal, the City shall take into account the amount of work to be performed.

2. A State Franchise Holder that abandons its property must, upon request, transfer ownership of the property to the City at no cost, and execute necessary quitclaim deeds provided that nothing in the preceding sentence prevents a State Franchise Holder from bringing an action in a court of competent jurisdiction if it believes that the Network was not abandoned. Whether or not ownership is transferred, the State Franchise Holder must indemnify the City against future costs associated with mitigating or eliminating any hazard associated with the abandoned property.
- N. Every Network shall be subject to inspection by the City. Each State Franchise Holder must timely and fully respond to requests for information regarding its system and plans for the system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.
- O. Each State Franchise Holder that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The State Franchise Holder shall locate its facilities for the City at no charge.
- P. At least ninety (90) days prior to commencing construction, each State Franchise Holder shall provide the City a construction plan for any initial construction, operation or repair or for any substantial rebuild, upgrade or extension of its Network, which shall show its

timetable for construction of each phase of the project, and the areas of the City that will be affected. The construction plans and timetables shall be reviewed by the City. The City acknowledges that certain portions of the construction plan may be tentative. The State Franchise Holder shall provide additional information requested by the City within thirty (30) days of receipt of the request; to the extent such information is available. During construction, notice of changes to the construction plans and/or timetables must be provided to the City forty-eight (48) hours in advance. To the extent that any portion of such plan is tentative, the State Franchise Holder shall provide the City with an update reasonably in advance of initiating such construction and repair.

5.17.410 Identification required

A State Franchise Holder, its employees, agents, contractors, and subcontractors shall be properly identified as agents of the State Franchise Holder prior to and during entry on private and public property. Identification shall include the name and telephone number of the State Franchise Holder on all trucks and vehicles used by installation personnel.

Part 6

PUBLIC, EDUCATION AND GOVERNMENT (PEG) REQUIREMENTS

5.17.500 Emergency Alert Systems

Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's Network.

5.17.510 Interconnection for PEG programming

Each State Franchise Holder and each incumbent cable operator operating under a City franchise, shall negotiate with each other in good faith to interconnect their networks for the purpose of providing PEG programming including, but not limited to, the exclusive City use channel. Interconnection may be accomplished by any means authorized under California Public Utilities Code section 5870(h). Each State Franchise Holder and each cable operator shall provide interconnection of PEG channels including the exclusive City use channel on reasonable terms and conditions and may not withhold the interconnection. If a State Franchise Holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the State Franchise Holder to interconnect its network with the incumbent cable operator's network at a technically feasible point identified by the State Franchise Holder on the State Franchise Holder's Network. If no technically feasible point for interconnection is available, the State Franchise Holder shall make an interconnection available to each channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the State Franchise Holder requesting the interconnection unless otherwise agreed to by the State Franchise Holder and the incumbent cable operator. To the extent not inconsistent with California Public Utilities Code section 5870(h), the City may waive, modify, or defer this requirement of interconnection.

Part 7
REPORTS AND NOTICES

5.17.600 Reports to the City Administrator

Each State Franchise Holder, within sixty (60) days after the expiration of each calendar year, shall file a report with the City Administrator, which shall contain a streets and Public rights-of-way map or maps of any convenient scale on which shall be plotted the location of the entire transmission and distribution system or systems as of the last day of the just expired calendar year, with the system or systems located in the City rights-of-way indicated by distinctive coloration or symbols.

5.17.610 Notices

- A. Each State Franchise Holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the State Franchise Holder or applicant is required to file with the California Public Utilities Commission.
- B. Unless otherwise specified in this Chapter, all notices or other documentation that a State Franchise Holder is required to provide to the City under this Chapter or the California Public Utilities Code shall be provided to the City Administrator.

SECTION 2. No Conflict With Federal or State Law.

Nothing in this Ordinance shall be interpreted or implied so as to create any requirement, power or duty in conflict with any federal or state law.

SECTION 3. Severability

If any article, section, subsection sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

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

5-34

ORA/COUNCIL

JUL 03 2007

OFFICE OF THE CITY CLERK
1 320

CITY OF OAKLAND



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City Administrator

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June 26, 2007

Finance & Management Committee
Oakland City Council
Oakland, California

RE: An Ordinance Amending the Oakland Municipal Code to Add Chapter 5.17, Adopting Local Regulations Applicable to Holders of State Video Franchises Issued by the California Public Utilities Commission Pursuant to the Digital Infrastructure and Video Competition Act of 2006, Codified in California Public Utilities Code Section 5800 et seq.

Dear Chairperson Quan and Members of the Committee:

SUMMARY

California Assembly Bill 2987, the Digital Infrastructure and Video Competition Act (DIVCA), was adopted in 2006 and became effective on January 1, 2007. On March 5, 2007, the California Public Utilities Commission mailed its Decision and General Order implementing rules under which state video franchise applications would be accepted. Under DIVCA, persons who wish to provide video services in the City, for which a franchise has not already been issued, may apply for a state franchise. In addition, existing local cable franchisees may obtain a state franchise under certain conditions. AT&T was granted a state franchise to provide video service in certain areas of the state, including Oakland, on March 30, 2007.

Under DIVCA, administration of certain provisions of the state franchise scheme, including the issuance of state franchises and the enforcement of build-out and non-discrimination provisions, is designated to the Public Utilities Commission ("PUC"). Administration of other provisions of DIVCA are designated to local government control, including collection of franchise fees, PEG issuance, enforcement of customer service standards, and management of public rights-of-way. The adoption of this ordinance enables the City, consistent with DIVCA, to: 1) obtain additional revenue equal to one percent (1%) gross revenue of the State Franchise Holder for Public, Educational, and Government Channels ("PEG"), 2) enforce the state statutory schedule of penalties for Customer Services violations, 3) preserve time, place and manner management and control the City's rights-of-way, and 4) clarify reporting requirements.

S-24
ORACOUNCIL
JUL 03 2007

Item
Finance & Management Committee
June 26, 2007

FISCAL IMPACT

Providers of video services operating under a state franchise shall pay to the City a state franchise fee equal to five percent (5%) of the state franchise holder's gross revenue. In addition, the state franchise holder shall pay to the City a PEG fee equal to one percent (1%) of gross revenues, which can be used by the City for PEG purposes consistent with federal law. City staff will monitor the video service providers through reporting requirements, compliance audits and complaints received.

BACKGROUND

The new State law (DIVCA) requires that any new video service provider apply for a state video franchise before providing video services in the State of California, and allows incumbent cable operators to obtain, and begin operating under, a state franchise upon the expiration of their local franchise, starting on January 2, 2008. The City will administer certain provision of DIVCA by adoption of the attached ordinance.

KEY ISSUES AND IMPACTS

With the adoption of the ordinance attached, the City will preserve, to the extent permitted by DIVCA, the ability to collect franchise fees and PEG fees, enforce customer service standards, and manage and control construction in the public rights-of-way by state franchise holders.

Ordinance Description

The *State Video Service Franchises* ordinance implements the following requirements through DIVCA:

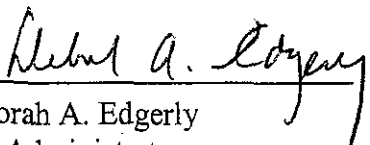
- Requires payment of a PEG fee in the amount of one percent (1%) of the state franchise holder's gross revenues.
- Requires payment of a franchise fee in the amount of five percent (5%) of the state franchise holder's gross revenues.
- Establishes construction standards.
- Requires maintenance of adequate books and records.
- Sets forth audit requirements.
- Provides minimum standards for Emergency Service Alert equal to the FCC

- Provides for public access, educational and government channels interconnection requirements.
- Authorizes penalties for violations of customer services standards.

ACTION REQUESTED OF THE COUNCIL

It is recommended that the City Council accept this report and approve the attached regulatory ordinance.

Respectfully submitted,


Deborah A. Edgerly
City Administrator

Reviewed by:
Anne Campbell Washington
Office of the City Administrator

Prepared by:
Brian Tino Granados

5-24
CRA/COUNCIL

JUL 03 2007

2007 JUN 14 P. 3: 08

APPROVED AS TO FORM AND LEGALITY

Debra R. Jackson
City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

An Ordinance Amending the Oakland Municipal Code to Add Chapter 5.17, Adopting Local Regulations Applicable to Holders of State Video Franchises Issued by the California Public Utilities Commission Pursuant to the Digital Infrastructure and Video Competition Act of 2006, Codified in California Public Utilities Code Section 5800 et seq.

WHEREAS, the California Legislature adopted the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") establishing a state video franchising scheme under which holders of state-issued video franchises would be partially regulated by the California Public Utilities Commission ("CPUC") and partially regulated by local governments; and

WHEREAS, under DIVCA, the CPUC has authority to grant state franchises, regulate build-out and non-discrimination standards for state franchise holders, enforce anti-subsidy provisions, and impose user and application fees; and

WHEREAS, under DIVCA, the City has authority to manage the rights-of-way, regulate the payment of state franchise fees and Public Education and Government ("PEG") fees, require the provision of PEG channels, and enforce federal and state customer service standards; and

WHEREAS, amending the Oakland Municipal Code is necessary in order to preserve the City's authority to regulate state video franchise holders to the extent permitted under DIVCA; now, therefore

524
CITY COUNCIL
JUL 03 2007

~~FINANCIAL MANAGER DATE
JUN 26 2007~~

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The Oakland Municipal Code, TITLE 5, BUSINESS LICENSES AND REGULATIONS is hereby amended to add Chapter 5.17, entitled “State Video Service Franchises,” to read as follows:

Chapter 5.17
STATE VIDEO SERVICE FRANCHISES

Part 1 GENERAL PROVISIONS

- 5.17.010 Purpose**
- 5.17.020 Rights reserved**
- 5.17.030 Compliance**

Part 2 DEFINITIONS

- 5.17.100 Definitions generally – Interpretation of language**
- 5.17.110 Public, Education and Government (“PEG”) Access**
- 5.17.120 City**
- 5.17.130 City Administrator**
- 5.17.140 Gross Revenues**
- 5.17.150 Network**
- 5.17.160 Person**
- 5.17.170 Public rights-of-way**
- 5.17.180 State Franchise Holder**

Part 3 FEES

- 5.17.200 *State franchise fees*
- 5.17.210 *PEG fees*
- 5.17.220 *Payment of fees*
- 5.17.230 *Audits*
- 5.17.240 *Late payments*
- 5.17.250 *Lease of city-owned network*

Part 4 CUSTOMER SERVICE

- 5.17.300 *Customer service and consumer protection standards*
- 5.17.310 *Penalties for violations of standards*

Part 5 PERMITS AND CONSTRUCTION

- 5.17.400 *General requirements*
- 5.17.410 *Identification required*

Part 6 PUBLIC, EDUCATION AND GOVERNMENT (“PEG”) REQUIREMENTS

- 5.17.500 *Emergency Alert Systems*
- 5.17.510 *Interconnection for PEG programming*

Part 7 REPORTS AND NOTICES

- 5.17.600 *Reports to the City Administrator*
- 5.17.610 *Notices*

Part 1
GENERAL PROVISIONS

5.17.010 **Purpose**

This Chapter is intended to be applicable to video service providers who are applying for, or have been awarded, a state video franchise under California Public Utilities Code section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006), to serve any area of the City.

5.17.020 **Rights reserved**

The rights reserved to the City under this Chapter are in addition to all other applicable rights of the City, whether reserved by other provisions of the Oakland Municipal Code or as otherwise authorized by law, and no action, proceeding, or exercise of a right shall affect any other rights which may be held by the City.

5.17.030 **Compliance**

Nothing contained in this Chapter shall be construed to exempt a State Franchise Holder from compliance with all applicable ordinances, rules, or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or California Public Utilities Code section 5800 *et seq.*

Part 2
DEFINITIONS

5.17.100 Definitions generally – Interpretation of language

For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this Chapter shall be given the meaning set forth in Division 2.5 of the California Public Utilities Code, section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006) and the provisions of Title 1, Chapter 1.04, GENERAL PROVISIONS, of the Oakland Municipal Code.

- A. References to governmental entities (whether Persons or entities) refer to those entities or their successors in authority.

- B. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

- C. Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

5.17.110 Public, Education and Government (“PEG”) Access

“PEG access,” or “PEG use” refers to the availability of a cable or video system for public, education or government use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to distribute programming not under a State Franchise Holder's editorial control.

5.17.120 **City**

“City” means the City of Oakland and all departments, divisions, and agencies thereof, except that, when used to describe a geographic area, the term refers to the boundaries of the City of Oakland, California, as they exist now or may exist in the future.

5.17.130 **City Administrator**

"City Administrator" means the City Administrator of the City of Oakland or his or her designee.

5.17.140 **Gross Revenues**

"Gross Revenues" means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the areas of the City, subject to the specifications of California Public Utilities Code section 5860.

5.17.150 **Network**

“Network” means a component of a facility that is wholly or partly physically located within the public right-of-way that is used to provide video service or cable service.

5.17.160 **Person**

“Person,” unless it otherwise appears from the context as used, means and includes any person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or other trust, public agency, school district, the State of California, its political subdivisions and/or instrumentalities, or any other legal entity, but not the City.

5.17.170 **Public rights-of-way**

“Public rights-of-way” or “rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, parkstrip,

drive, or right-of-way or easement generally available to and used by utilities, communication companies, or for travel by the public, now or hereafter existing within the City which may be properly used and the City has the authority to allow the use of.

5.17.180 State Franchise Holder

"State Franchise Holder" or "holder" means a person or group of persons that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the areas of the City.

Part 3

FEES

5.17.200 State franchise fees

Each State Franchise Holder operating within the areas of the City shall pay to the City a state franchise fee equal to five percent (5%) of gross revenues.

5.17.210 PEG fees

Each State Franchise Holder operating within the areas of the City shall pay to the City a PEG fee equal to one percent (1%) of gross revenues.

5.17.220 Payment of fees

The state franchise fee required pursuant to Section 5.17.200, and the PEG fee required pursuant to Section 5.17.210, shall each be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The State Franchise Holder shall deliver to the City, by check or other means agreeable to the City, a payment for the state franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

5.17.230 Audits

The City may audit the business records of the holder of a state franchise in a manner not inconsistent with California Public Utilities Code section 5860(i).

5.17.240 **Late payments**

In the event a State Franchise Holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

5.17.250 **Lease of city-owned network**

To the extent not inconsistent with California Public Utilities Code section 5840(q)(2)(B), in the event a State Franchise Holder leases access to a network owned by the City, the City may set a franchise fee for access to the city-owned network separate and apart from the franchise fee charged to State Franchise Holders pursuant to Section 5.17.200.

Part 4

CUSTOMER SERVICE

5.17.300 Customer service and consumer protection standards

Each State Franchise Holder shall comply with all applicable customer service and consumer protection standards, including, to the extent not inconsistent with California Public Utilities Code section 5900, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation.

5.17.310 Penalties for violations of standards

- A. The City shall monitor compliance with and enforce the provisions of Section 5.17.300.
- B. For any material breach, as defined in California Public Utilities Code section 5900(j), by a State Franchise Holder of applicable customer service and consumer protection standards, the City may impose the following penalties:
 - 1. For the first occurrence of a material breach, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.
 - 2. For a second material breach of the same nature within 12 months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.
 - 3. For a third or further material breach of the same nature within 12 months, a fine of \$2,500.00 shall be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.
- C. Any penalties imposed by the City shall be imposed in a manner not inconsistent with California Public Utilities Code section 5900.
- D. To the extent not inconsistent with California Public Utilities Code section 5900, the City may waive, modify, or defer the imposition of a penalty.

Part 5

PERMITS AND CONSTRUCTION

5.17.400 General requirements

- A. The construction, operation, upgrade and repair of a State Franchise Holder's Network shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. By way of example, and not limitation, this includes the relevant portions of the Oakland Municipal Code (e.g., the City's zoning regulations), ordinances, regulations and policies to preserve or protect the public safety, construction standards, regulations for providing notice to Persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Persons engaged in the construction, operation, upgrade or repair of a State Franchise Holder's Network shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. A State Franchise or a local franchise is required before a permit may be issued for work associated with the construction, operation, upgrade or repair of a network. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with the City's demand.
- C. Construction, operation, upgrade or repair of a State Franchise Holder's Network shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in

strict accordance with the conditions of the permit. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable timeline set forth by the City. A State Franchise Holder shall reimburse the City for costs incurred in inspecting construction projects undertaken in the course of major or minor upgrades, installation of fiber optics, minor and major repairs, all other work for which the City requires inspection, and permit review and processing.

- D. The City Administrator shall either approve or deny a State Franchise Holder's application for any permit within sixty (60) days of receiving a completed permit application from the State Franchise Holder. An application for a permit shall not be complete until the applicant has complied with applicable laws and regulations, including but not limited to, all applicable requirements of Division 13 of the California Public Resources Code section 21000 *et seq.* (the California Environmental Quality Act).
- E. If the City Administrator denies a State Franchise Holder's application for a permit, the City Administrator shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
- F. A State Franchise Holder that has been denied a permit by final decision of the City Administrator may appeal the denial to the City Council whose decision shall be final. Upon receiving a notice of appeal, the City Council shall take one of the following actions:
 - 1. Affirm the action of the City Administrator without a hearing; or
 - 2. Refer the matter back to the City Administrator for further review with or without instructions.

- G. Interference with the use of the Public rights-of-way by others must be minimized. The City may require, except as prohibited by law, a Person using the Public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the Public rights-of-way.
- H. To the extent possible, State Franchise Holders shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Administrator, which permission shall not be unreasonably withheld.
- I. Undergrounding
1. Whenever all existing utilities are located underground in an area in the City, every State Franchise Holder installing its Network in the same area must locate its Network underground.
 2. Whenever the owner of a pole locates or relocates underground within an area of the City, every State Franchise Holder in the same area shall concurrently relocate its cables, wires or fiber optics underground.
- J. Any and all public or private property that is disturbed or damaged during the construction, operation, upgrade or repair of a State Franchise Holder's Network shall be promptly repaired by the Holder. Public property must be restored to a condition as good as before the disturbance or damage occurred. Public rights-of-way must be restored to a condition consistent with City standards that are generally applicable to all persons performing construction or excavation in the Public rights-of-way.
- K. Relocation

1. A State Franchise Holder shall at no cost to the City and by a time specified by City, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the City by reason of traffic conditions; public safety; Public rights-of-way construction and repair (including regrading, resurfacing or widening); vacating Public rights-of-way ; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the State Franchise Holder's Network. Collectively, such matters are referred to below as the "public work."

2. The City shall provide written notice to the State Franchise Holder describing where the public work is to be performed at least three (3) weeks prior to the deadline by which the State Franchise Holder must protect, support, temporarily disconnect, relocate or remove its facilities. The State Franchise Holder may seek *an extension of the time to perform the work. The City shall not unreasonably deny such an extension where the State Franchise Holder demonstrates it can not perform the work by the deadline even with the exercise of due diligence.* Provided that, in an emergency, or where a State Franchise Holder's Network creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Network without prior notice, and charge the State Franchise Holder for costs incurred; however, the City will make reasonable efforts, considering the circumstances, to provide prior notice.

L. Construction activities of others

1. To accommodate the construction, operation, upgrade or repair of the facilities of another person authorized to use the Public rights-of-way or public property, a

State Franchise Holder shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The State Franchise Holder shall be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time the work will commence. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Network that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action. In cases where the requesting person is required under this section 5.17.400(L)(1) to bear the cost of relaying, relocation or temporary removal, a State Franchise Holder may require the person to agree, before the work is performed, to pay the reasonable actual cost of the work. If the State Franchise Holder does so, it must provide an estimate of the cost of the work and support for that estimate.

2. A State Franchise Holder shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A State Franchise Holder shall be given not less than fifteen (15) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the Person requesting the same.

M. Abandonment

1. A State Franchise Holder may abandon any property in place in the Public rights-of-way or upon public property upon written notice to the City. However, if, within ninety (90) days of the receipt of written notice of abandonment, the City determines that the safety, appearance, functioning or use of the Public rights-of-

way or the public property and facilities in the Public rights-of-way or on the public property will be adversely affected, the property must be removed by a date specified by the City. In specifying a date for removal, the City shall take into account the amount of work to be performed.

2. A State Franchise Holder that abandons its property must, upon request, transfer ownership of the property to the City at no cost, and execute necessary quitclaim deeds provided that nothing in the preceding sentence prevents a State Franchise Holder from bringing an action in a court of competent jurisdiction if it believes that the Network was not abandoned. Whether or not ownership is transferred, the State Franchise Holder must indemnify the City against future costs associated with mitigating or eliminating any hazard associated with the abandoned property.
- N. Every Network shall be subject to inspection by the City. Each State Franchise Holder must timely and fully respond to requests for information regarding its system and plans for the system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.
- O. Each State Franchise Holder that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The State Franchise Holder shall locate its facilities for the City at no charge.
- P. At least ninety (90) days prior to commencing construction, each State Franchise Holder shall provide the City a construction plan for any initial construction, operation or repair or for any substantial rebuild, upgrade or extension of its Network, which shall show its timetable for construction of each phase of the project, and the areas of the City that will be affected. The construction plans and timetables shall be reviewed by the City. The

City acknowledges that certain portions of the construction plan may be tentative. The State Franchise Holder shall provide additional information requested by the City within thirty (30) days of receipt of the request; to the extent such information is available. *During construction, notice of changes to the construction plans and/or timetables must be provided to the City forty-eight (48) hours in advance. To the extent that any portion of such plan is tentative, the State Franchise Holder shall provide the City with an update reasonably in advance of initiating such construction and repair.*

5.17.410 Identification required

A State Franchise Holder, its employees, agents, contractors, and subcontractors shall be properly identified as agents of the State Franchise Holder prior to and during entry on private and public property. Identification shall include the name and telephone number of the State Franchise Holder on all trucks and vehicles used by installation personnel.

Part 6

PUBLIC, EDUCATION AND GOVERNMENT (PEG) REQUIREMENTS

5.17.500 Emergency Alert Systems

Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's Network.

5.17.510 Interconnection for PEG programming

Each State Franchise Holder and each incumbent cable operator operating under a City franchise, shall negotiate with each other in good faith to interconnect their networks for the purpose of providing PEG programming including, but not limited to, the exclusive City use channel. Interconnection may be accomplished by any means authorized under California Public Utilities Code section 5870(h). Each State Franchise Holder and each cable operator shall provide interconnection of PEG channels including the exclusive City use channel on reasonable terms and conditions and may not withhold the interconnection. If a State Franchise Holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the State Franchise Holder to interconnect its network with the incumbent cable operator's network at a technically feasible point identified by the State Franchise Holder on the State Franchise Holder's Network. If no technically feasible point for interconnection is available, the State Franchise Holder shall make an interconnection available to each channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the State Franchise Holder requesting the interconnection unless otherwise agreed to by the State Franchise Holder and the incumbent cable operator. To the extent not inconsistent with California Public Utilities Code section 5870(h), the City may waive, modify, or defer this requirement of interconnection.

Part 7
REPORTS AND NOTICES

5.17.600 Reports to the City Administrator

Each State Franchise Holder, within sixty (60) days after the expiration of each calendar year, shall file a report with the City Administrator, which shall contain a streets and Public rights-of-way map or maps of any convenient scale on which shall be plotted the location of the entire transmission and distribution system or systems as of the last day of the just expired calendar year, with the system or systems located in the City rights-of-way indicated by distinctive coloration or symbols.

5.17.610 Notices

- A. Each State Franchise Holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the State Franchise Holder or applicant is required to file with the California Public Utilities Commission.
- B. Unless otherwise specified in this Chapter, all notices or other documentation that a State Franchise Holder is required to provide to the City under this Chapter or the California Public Utilities Code shall be provided to the City Administrator.

SECTION 2. No Conflict With Federal or State Law

Nothing in this Ordinance shall be interpreted or implied so as to create any requirement, power or duty in conflict with any federal or state law.

SECTION 3. Severability

If any article, section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

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-

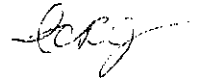
ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

5-24
CRA/COUNCIL

JUL 03 2007

~~FINANCIAL MANAGEMENT SERVICES
JUN 26 2007~~



NOTICE AND DIGEST

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD CHAPTER 5.17, ADOPTING LOCAL REGULATIONS APPLICABLE TO HOLDERS OF STATE VIDEO FRANCHISES ISSUED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION PURSUANT TO THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006, CODIFIED IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 5800 ET SEQ.

This ordinance codifies a new chapter 5.17 of the Oakland Municipal Code under Title 5, Business Licenses and Regulations, entitled "State Video Service Franchises" which implements the requirements of the state law, *Digital Infrastructure and Video Competition Act* ("DIVCA"), and thereby enables the City to manage and control construction initiated by state franchise video providers in the public rights-of-way, receive for Public, Educational and Government Channels ("PEG") 1% of the gross revenues of the state franchise video providers serving City residents and regulate consumer protections for those video customers.