City of Culver City, California

City Council Agenda Item Report

Meeting Date: 12/17/07	Item Number: A-4
AGENDA ITEM: Introduction and Adoption of an Urgency Ordinance, under Culver City Charter Section 614, Implementing Video and Cable Television Regulations by Adding Section 11.21.480, Relating to Holders of State Video Franchises, to the Culver City Municipal Code	
Contact Person/Dept.: Roland Miranda/City Attorney's Ofc.	Phone Number: (310) 253-5660
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [x]	Attachments: [x]
Public Notification: Master Notification List (12/12/07); Time Warner Cable (12/12/07); AT&T (12/12/07); Verizon Communications (12/12/07)	
Department Approval: Carol A. Schwab (12/13/07)	City Attorney Approval: Carol A. Schwab (by R. Miranda) (12/13/07)
Fiscal Impact Approval: Jeff Muir (by M. Noller) (12/13/07)	City Manager Approval: Jerry B. Fulwood (12/13/07)

RECOMMENDATION:

Staff recommends the City Council introduce and adopt an urgency ordinance implementing Culver City's video and cable television regulatory authority under the state's Digital Infrastructure and Video Competition Act of 2006.

Enactment of an urgency ordinance requires a 4/5 vote.

BACKGROUND:

In California, as in many other states, local agencies (including cities) have had the authority to regulate various businesses through the negotiation and issuance of franchise agreements. Under this decades-old, traditional process, Culver City has issued franchise agreements for cable television services. Under the existing franchise, cable television services are provided to Culver City residents by Time Warner Cable. Under the terms of a franchise agreement, local agencies could provide for various terms under which the franchisee would operate. Some major areas traditionally regulated via the franchise process included: (1) the amount of the franchise fee payable to the local agency, (2) the availability and funding mechanism for public, educational, and government (PEG) channels, and (3) minimum customer service standards required of the franchisee – including penalties for non-compliance.

Over time, federal and state legislation has significantly reduced the authority local agencies have over cable television providers. For example, local authorities once had the authority to set maximum cable television rates and provide significant input on channels offered in the local markets. Both areas of regulation are now pre-empted or forbidden by federal and state law.

In late 2006, the State Legislature enacted the Digital Infrastructure and Video Competition Act ("DIVCA", aka AB 2987). In enacting DIVCA, the Legislature's voiced intent was to respond to changes in technology and to provide a single, statewide franchising process for all video providers in the state.

Local agencies throughout the state (including Culver City) voiced significant concerns to the Legislature in attempting to create a "one size fits all" regulatory environment in a state with such varied communities. Ultimately, the Legislature enacted DIVCA without thoroughly addressing many concerns voiced by local agencies. Further, the legislation itself either (1) did not clearly address many issues contained in the various franchises issued throughout the state or (2) did not address those issues at all.

During the year since the enactment of DIVCA, local agencies have been attempting to (1) determine what regulatory authority remained with local agencies and (2) how best to exercise the local authority remaining under DIVCA.

DISCUSSION:

A. Under DIVCA, What Authority Remains in the Purview of Local Agencies?

Among other things, DIVCA provides for statewide franchising, by the state Public Utilities Commission, of new video services providers. Under DIVCA, the definition of "video services" encompasses both video and cable television services. Any ***new*** video service providers must apply to the Public Utilities Commission for a statewide franchise. Under DIVCA, the holder of a statewide franchise will not need to obtain a franchise from the municipality in which it will be providing its video services. Existing cable television providers (such as Time Warner in Culver City) may apply for and be granted a statewide franchise but cannot begin operating under a statewide franchise until January 2, 2008.

Municipalities, however, retain their control over the public rights-of-way and may require an encroachment permit in order for a statewide franchise holder to access the public rights-of-way. Under DIVCA, the franchise fee is set at 5% of gross revenues. Municipalities can choose to enact a lower franchise rate; however, such a change is not recommended at this time.

Time Warner recently notified the City of its application for a statewide franchise. Once Time Warner has obtained a statewide franchise, Time Warner could (and most likely will) terminate its franchise with Culver City.

Under DIVCA, the soonest that Time Warner could begin operating under a statewide franchise would be January 2, 2008. However, under DIVCA, a new holder of a statewide video franchise must also notify a municipality of its intent to begin offering video services at least 10 days prior to commencing offering video services in that municipality. In this case, Time Warner would need to give the City notice, but service should continue without interruption.

B. The Need for Enactment of This Ordinance

Prior to the enactment of DIVCA, items such as the franchise fee rate, financial and operational support for PEG channels and some aspects of customer service standards were established in the franchise agreements negotiated between municipalities and their cable operators. In contrast, under DIVCA, cable operators and video service providers will not need a municipally-issued franchise in order to offer their services. Under DIVCA, however, local agencies retain the following limited areas of regulatory authority:

1. Municipalities can enact fees, up to 1% of a cable operator's gross revenues, to be used to support PEG channels. Such fees may be and are routinely passed on to the consumer by the video service provider.

2. Customer service standards are set solely by state and federal law. However, these customer service standards are to be enforced by the local municipalities. In order to enforce these customer service standards, municipalities must enact penalties, as prescribed by DIVCA.

3. The franchise fee will be 5% unless a municipality adopts a lower franchise fee rate. The City's current franchise fee is 5% (and staff recommends continuing this long-standing rate).

Once Time Warner has been issued a statewide franchise and has provided the City with the required 10 days' notice, Time Warner could begin operations under a statewide video franchise as early as January 2, 2008. In addition, AT&T, which has already obtained a statewide video franchise and a related Culver City encroachment permit, can be expected to begin offering video services in Culver City in the near future. Also, Verizon has made initial contacts with the City relating to its desire to offer video and other related services in Culver City. Similar to AT & T, staff expects Verizon will submit an application for an encroachment permit in the near future.

Therefore, in order for Culver City to be ready to maintain the public peace, health, or safety through exercise of its regulatory authority under DIVCA by the time that any provider begins offering video services in Culver City pursuant to a statewide video franchise, staff is recommending adoption of the attached urgency ordinance which would:

1. Reserve the City's right to enact the maximum PEG fee, 1% of the video provider's gross revenues, allowable under DIVCA.

2. Enact the maximum penalties allowable under DIVCA for violations of the customer service standards which, under DIVCA, are to be enforced by the involved municipalities.

3. Enact a franchise fee of 5% of the video provider's gross revenues. Although 5% is the default rate, the telecommunications expert whom staff consulted regarding implementation of DIVCA recommended that the City adopt this rate as part of any ordinance implementing DIVCA.

C. The Urgency for This Ordinance

As stated above, it is possible that a video service provider, such as Time Warner Cable, could begin offering video services under DIVCA in Culver City as early as January 2, 2008. Therefore, to maintain the public peace, health, or safety, the City should be prepared by having the regulatory authority to enforce the DIVCA customer service standards as early as January 2, 2008. It is important that the City be able to ensure its residents and businesses that video services, which are a vital source of information, are operating in compliance with applicable customer service standards. Thus, staff is recommending that the ordinance be adopted as an urgency ordinance, which would go into effect immediately, pursuant to Culver City Charter Section 614. Under Section 614, the City Council must make a finding that urgency exists and that it is necessary to adopt the urgency ordinance in order to preserve the public peace, health or safety. As discussed above, public safety could be impaired if the City lacked the ability to adequately enforce standards regulating video services—which are a primary source of public news and information and which may include vital emergency announcements.

So that the City is prepared to enforce the customer service standards applicable to video service providers offering services under a state franchise, staff recommends adoption of the attached urgency ordinance.

FISCAL ANALYSIS:

Should the City Council, at some time in the future, determine to impose the PEG fees authorized under DIVCA and this Urgency Ordinance, based upon the franchise fees collected from Time Warner in Fiscal Year 2006/2007 of approximately $320,000, such PEG fees could generate up to $64,000 annually for use in operating the City's PEG channels.

On a related note, staff will be presenting a comprehensive report on a major upgrade to the City's Cable Government Channel (the "G" in PEG) in the first quarter of 2008. As part of that report, staff will include a recommendation with respect to PEG fees for the City Council's consideration.

ATTACHMENTS:

- Digital Infrastructure and Video Competition Act (Govt. Code sections 5800 – 5970)
- Proposed Ordinance No. 07-____

MOTION:

That the City Council:

Introduce and adopt Urgency Ordinance No. 07-_____, pursuant to Culver City Charter Section 614, adding a new section to Chapter 11.21, Cable Systems, of the Culver City Municipal Code, relating to State Video Franchise Holders and implementing the City of Culver City's regulatory authority under the Digital Infrastructure and Video Competition Act of 2006 .

(Adoption of an urgency ordinance requires a 4/5 vote)