



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Receive Report and Consider Options for Cable Television Broadcasts of City Council Meetings

MEETING DATE: August 19, 2009

PREPARED BY: City Manager's Office

RECOMMENDED ACTION: Receive the report and consider options for cable television broadcasts of City Council meetings.

BACKGROUND INFORMATION: Comcast recently notified the City it will no longer provide staffing or other support to broadcast City Council meetings after August 2009. Comcast's decision stems from provisions within the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which allows cable TV companies to bypass franchise agreements with local governments in favor of a one-size-fits-all State franchise. Comcast's franchise agreement with the City expired in 2008.

While DIVCA calls for cable companies to pay 5 percent of revenues to the local jurisdiction as a franchise fee, it does not require them to staff events, provide equipment, free cable services to public facilities or other non-cash support, as Comcast has in the past.

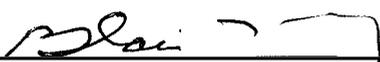
Because Comcast will no longer be an active partner in the broadcast of City Council meetings, City staff will absorb those duties to avoid a new appropriation of funds. Other options include hiring an experienced local camera operator for \$40 per hour or part-time stage technicians for roughly \$20 an hour.

Another impact of Comcast's switch to a State franchise is that the cable company will no longer provide free service to City Hall, the Carnegie Forum or Electric Utility. It is offering to provide limited free service to the police and fire stations. Although there are no funds appropriated for cable TV service in the FY 2009/10 budget, it is prudent to purchase minimal service to the Carnegie Forum. Without the service, expected to cost approximately \$200 a year, the City would need to install a closed-circuit video system within the Carnegie Forum for two purposes:

- 1) To provide video and audio of Council meetings to the overflow crowd in the foyer; and
- 2) To provide the video/audio signal for the Granicus video archiving system and live web streaming, which is currently taken from the Comcast cable signal.

Another element of DIVCA is the ability of local governments to collect an additional 1 percent of cable TV revenue to support Public, Education and Government (PEG) channels. We have not sought the additional 1 percent PEG fee from Comcast because, until now, the cable company has agreed to continue providing staffing and other non-cash support for City Council meetings.

APPROVED:


Blair King, City Manager

Although staff prefers the decades-old practice of cable companies providing support for public channels, we can no longer rely on Comcast to replace aging equipment. Funds needed to replace that equipment, or enhance current facilities, may be obtained by collecting the additional 1 percent for PEG programming. Otherwise, the General Fund would be used to pay for equipment repairs, maintenance or replacement.

For Lodi, an additional 1 percent would mean roughly \$80,000 in annual PEG revenue from Comcast and AT&T, the latest entry into Lodi's cable broadcast market. AT&T received a State video franchise on March 30, 2007, and the City is projecting \$425,000 in cable TV franchise revenue in the 2009/10 fiscal year. For customers, the cost would vary with the subscription. For a subscriber to Comcast's "Digital Starter" service (\$52.15 monthly), the PEG fee would add 52 cents.

Although DIVCA prohibits local agencies from using the additional revenue for operations, these funds could be used to replace outdated and failing video and audio equipment at the Carnegie Forum, install the necessary infrastructure at Hutchins Street Square so that large community meetings there could be televised and construct a local access studio, among other improvements.

Other key points of DIVCA include the right of cities to audit State franchise holders' records, the requirement that incoming State video franchise holders and incumbent systems negotiate to interconnect systems to provide PEG programming, and that State franchise holders comply with existing State and federally mandated customer service standards.

The City Council would need to adopt an ordinance before the PEG revenue could be collected and customer service standards could be enforced.

FISCAL IMPACT: Estimated \$200/year to continue cable television signal to Carnegie Forum. Using part-time stage technicians to operate video cameras will cost an additional \$2,000 per year; or \$4,000 for an experienced camera operator

FUNDING AVAILABLE: General Fund, specific source not identified.


Jordan Ayers, Deputy City Manager


Jeff Hood
Communications Specialist

Attachments: California Public Utilities Code Sec. 5870 (PEG fee)

5870. (a) The holder of a state franchise shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access (PEG) channels, as are activated and provided by the incumbent cable operator that has simultaneously activated and provided the greatest number of PEG channels within the local entity under the terms of any franchise in effect in the local entity as of January 1, 2007. 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 three months from the date ~~the~~ local entity requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity **is** technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section.

(b) The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities. The PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is **required** by federal law. Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(c) (1) If less than three PEG channels are activated and provided within the local entity as of January 1, 2007, a local entity whose jurisdiction lies within the authorized service area of the holder of a state franchise may initially request the holder to designate not more than a total of three PEG channels.

(2) The holder shall have three months from the date of ~~the~~ request to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the

incumbent cable operator to make adequate interconnection available, as required by this section.

(d) (1) The holder shall provide an additional PEG channel when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television.

(2) For the purposes of this section, “locally produced video programming” means programming produced or provided by any local resident, the local entity, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

(e) Any PEG channel provided pursuant to this section that is not utilized by the local entity for at least eight hours per day as measured on a quarterly basis 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 franchise shall restore the channel or channels for the use of the local entity.

(f) The content to be provided over the **PEG** channel capacity provided pursuant to this section shall be the responsibility of the local entity or its designee receiving the benefit of that capacity, and the holder of a state franchise bears only the responsibility for the transmission of that content, subject to technological restraints.

(g) (1) The local entity shall ensure that all transmissions, content, or programming to be transmitted by a holder of a state franchise are provided or submitted in a manner or form that is compatible with the holder’s network, if the local entity produces or maintains the PEG programming in that manner or form. If the local entity does not produce or maintain PEG programming in that manner or form, then the local entity may submit **or** provide PEG programming in a manner or form that is standard in the industry. The holder shall be responsible for any changes in the form of the transmission necessary to make it compatible with the technology *or* protocol utilized by the holder to deliver services. If the holder is required to change the form of the transmission, the local entity shall permit the holder to do so in a manner that is most economical to the holder.

(2) The provision of those transmissions, content, or programming to the holder of a state franchise shall constitute authorization for the holder to carry those transmissions, content, or programming. **The** holder may carry the transmission, **content, or** programming **outside of the local** entity’s jurisdiction if the holder agrees to pay the local entity or its designee any incremental licensing costs incurred by the local entity or its designee associated with that transmission. Local entities shall be prohibited from entering into licensing agreements that impose higher

proportional costs for transmission to subscribers outside the local entity's jurisdiction.

(3) The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

(h) Where technically feasible, the holder of a state franchise 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 franchise and incumbent cable operators shall provide interconnection of the PEG channels on reasonable terms and conditions and may not withhold the interconnection. **If** a holder of a state franchise and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the local entity may require the incumbent cable operator to allow the holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network **as** identified by the holder. If no technically feasible point for interconnection is available, the holder of a state franchise shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the holder requesting the interconnection **unless** otherwise agreed to by the parties.

(i) A holder of a state franchise 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. For purposes of this section, PEG content is not branded if it includes only production credits or other similar information displayed at the conclusion of a program. 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.

(j) In addition to any provision for the PEG channels required under subdivisions (a) to (i), inclusive, the holder shall reserve, designate, and, upon request, activate a channel for carriage of state public affairs programming administered by the state.

(k) **All** obligations to provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings contained in a locally issued franchise existing on December 31, 2006, shall continue until the local franchise expires, until the term of the franchise would have expired if it had not been terminated pursuant to subdivision (c) of Section 5840, or until **January** 1, 2009, whichever is later.

(l) After January 1, 2007, 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 costs of public, educational, and government access channel facilities or institutional networks, 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 costs of PEG channel facilities. All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities and institutional networks, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

(m) In determining the fee on a pro rata per subscriber basis, a cable and video service providers shall report, for the period in question, to the local entity the total number of subscribers served within 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 PEG 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.

(n) A local entity may, by ordinance, establish a fee to support PEG channel facilities consistent with federal law that would become effective subsequent to the expiration of any fee imposed pursuant to paragraph (2) of subdivision (f). If no such fee exists, the local entity may establish the fee at any time. The fee shall not exceed 1 percent of the holder's gross revenues, as defined in Section 5860. Notwithstanding this limitation, if, on December 31, 2006, a local entity is imposing a separate fee to support PEG channel facilities that is in excess of 1 percent, that entity may, by ordinance, establish a fee no greater than that separate fee, and in no event greater than 3 percent, to support PEG activities. The ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise.

(o) The holder of a state franchise 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.

(p) 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

by barred from the provision of service or be required to terminate service as a result of that dispute or enforcement action.

Cable Television

Options for the City of Lodi

Lodi City Council

August 19, 2009



Operating cameras, equipment

- No support by Comcast after tonight
- Three options for continuing:
 - Use overtime-exempt staff as operators (\$0)
 - Hire part-time theater technicians (approx. \$20/hour)
 - Hire experienced independent contractor (\$40/hour)
- Or, discontinue broadcasts



Background

- Local franchise agreements for 40 years in Lodi
- State law passed in 2006 created state franchising system (CPUC)
- Franchise agreement with Comcast expired in 2008
- AT&T now providing video service
- No Public, Education, Government (PEG) funding currently required



State franchise basics

- 10-year franchise issued by CPUC
- State franchise holder can terminate its franchise at its discretion
- State franchise holder must pay franchise fees to local government
- PEG obligations easily triggered, if not part of incumbent franchise



Local DIVCA ordinance allows City to:

- Collect up to 1% PEG fee
- Enforce State customer service standards
- Conduct an annual audit



Where do we go from here?

- Direction on staffing cameras
- Explore PEG ordinance?

