

ORDINANCE NO. ORD-07-0041

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 15.75
IMPLEMENTING AB 2987, RELATED TO VIDEO
FRANCHISE FEES, CUSTOMER SERVICE AND OTHER
VIDEO-RELATED MATTERS WITHIN THE CITY OF LONG
BEACH

WHEREAS, AB 2987, the Digital Infrastructure and Video Competition Act
of 2006 (the "Act") became effective January 1, 2007; and

WHEREAS, under the Act, the State of California has sole franchising
authority for new video service providers within the City; and

WHEREAS, the City of Long Beach ("City"), although not the franchising
authority, acquired certain rights and responsibilities with respect to the new state video
franchise holders; and

WHEREAS, pursuant to the Act, certain rights and responsibilities must be
established by local ordinance before they may become effective and enforceable
against state video franchise holders; and

WHEREAS, the City shall receive a fee of 5% of gross revenues of each
state video franchisee which operates within the City for use of the public rights-of-way;
and

WHEREAS, the City shall receive an additional fee of 1.04% of gross
revenues of each state video franchisee which operates within the City for Public,
Educational and Government (PEG) purposes; and

WHEREAS, the City may audit the business records of a state video
franchisee once annually to ensure compliance with the requirement to remit franchise

1 and PEG fees; and

2 WHEREAS, the City may establish and enforce penalties against state
3 video franchisees for violations of customer service rules consistent with state law; and

4 WHEREAS, the City will retain authority, without change, over the City's
5 current cable franchisee until such time as it no longer holds a City franchise, or is no
6 longer operating under a current or expired City franchise; and

7 WHEREAS, the terms "video service" and "video franchise" shall have the
8 same meaning as the terms "cable service" and "franchise" as they are defined in
9 Chapter 15.74;

10 NOW, THEREFORE, the City Council of the City of Long Beach does
11 ordain as follows:

12
13 Section 1. The Long Beach Municipal Code is amended by adding
14 Chapter 15.75 to read as follows:

15 Chapter 15.75

16 REGULATION OF STATE VIDEO FRANCHISE HOLDERS

17
18 15.75.010 Purpose and authority.

19 This Chapter is designed to regulate video service providers holding
20 state video franchises and operating within the City.

21 As of January 1, 2007, the State of California has sole authority to
22 grant state video franchises pursuant to the Digital Infrastructure and Video
23 Competition Act of 2006 (the "Act"). Pursuant to the Act, City is entitled to
24 receive a franchise fee and a fee for Public, Educational and Government
25 (PEG) purposes from all state video franchise holders operating within the
26 City. Additionally, the Act permits City to establish and enforce penalties,
27 consistent with state law, against all state video franchise holders operating
28 within the City for violations of customer service standards. The Act leaves

unchanged the City's authority to regulate the City's current cable franchise in accordance with Chapter 15.74, until such time as the current cable franchisee no longer holds a City franchise or is no longer operating under a current or expired city franchise.

15.75.020 State video franchise and PEG fees.

A. Any state video franchise holder ("State Franchise") operating within the boundaries of the City of Long Beach, shall pay a fee to the City equal to five percent (5%) of the gross revenue of that State Franchise.

B. Any state franchise operating within the boundaries of the City of Long Beach, shall pay an additional fee to the City equal to 1.04% of the gross revenue of that State Franchise, which fee shall be used by the City for PEG purposes consistent with state and federal law.

C. Gross revenue, for the purposes of A and B above, shall have the definition set forth in California Public Utilities Code § 5860.

15.75.030 Audit authority.

Not more than once annually, the City Manager or his/her designee may examine and perform an audit of the business records of a State Franchise to ensure compliance with this Chapter.

15.75.040 Customer service penalties under State Franchises.

A. The holder of a State Franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

B. The City Manager or his/her designee shall monitor the compliance of State Franchises with respect to state and federal customer service and protection standards. The City Manager or designee shall provide the state franchisee(s) holder written notice of any material breaches of applicable customer service standards, and shall allow the State Franchisee(s) Thirty (30) days from the receipt of the notice to remedy

1 the specified material breach. Material breaches not remedied within the
2 30-day time period shall be subject to the following penalties to be imposed
3 by the City:

4 1. For the first occurrence of a violation, a penalty of
5 \$500.00 shall be imposed for each day the violation remains in effect, not to
6 exceed \$1,500.00 for each violation.

7 2. For a second violation of the same nature within 12
8 months, a penalty of \$1,000.00 shall be imposed for each day the violation
9 remains in effect, not to exceed \$3,000.00 for each violation.

10 3. For a third or further violation of the same nature within
11 12 months, a penalty of \$2,500.00 shall be imposed for each day the
12 violation remains in effect, not to exceed \$7,500.00 for each violation.

13 C. A State Franchise holder may appeal a penalty assessed by
14 the City Manager to the City Council within 60 days of the initial
15 assessment. The City Council shall hear all evidence and relevant
16 testimony and shall vote to either uphold, modify or vacate the penalty. The
17 City Council's decision on the imposition of a penalty shall be final.

18 15.75.050 City response to State Franchise applicants.

19 A. Applicants for state video franchises within the boundaries of
20 the City must concurrently provide complete copies to the City of any
21 application or amendments to applications filed with the PUC. One
22 complete copy must be provided to the City Clerk, and one complete copy
23 to the City Manager.

24 B. The City Manager shall provide any appropriate comments to
25 the PUC regarding an application or an amendment to an application for a
26 State Franchise in a timely manner.

27
28 Section 2. Severability. If any section, sentence, clause or phrase of this

Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this ordinance and adopted this Chapter and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 3. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of September 11, 2007, by the following votes:

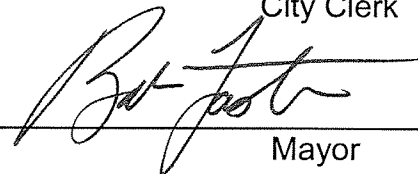
Ayes: Councilmembers: B. Lowenthal, S. Lowenthal, Schipske,
Andrews, Reyes Uranga, Gabelich, Lerch.

Noes: Councilmembers: None.

Absent: Councilmembers: DeLong, O'Donnell.



City Clerk



Mayor

Approved: 9-14-07
(Date)