



OFFICE OF THE CITY ATTORNEY  
Long Beach, California

**ORD-33**

ROBERT E. SHANNON  
City Attorney

HEATHER A. MAHOOD  
Chief Assistant City Attorney

MICHAEL J. MAIS  
Assistant City Attorney

September 4, 2007

HONORABLE MAYOR AND CITY  
COUNCIL  
City of Long Beach  
California

**RECOMMENDATION:**

Adopt 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 read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

**DISCUSSION**

Pursuant to your request of July 10, 2007, this office has prepared and submits the above-described Ordinance for your consideration.


The amendment is shown in Attachment "A".

**SUGGESTED ACTION:**

Approve recommendation.

Very truly yours,

ROBERT E. SHANNON, City Attorney

By:   
GARY ANDERSON  
Deputy City Attorney

GA:lk  
Enclosure

PRINCIPAL DEPUTIES

Barbara D. de Jong  
Dominic Holzhaus  
Belinda R. Mayes  
J. Charles Parkin

DEPUTIES

Gary J. Anderson  
Richard F. Anthony  
Christina L. Checel  
Alysha P. Choi  
Lori A. Conway  
Randall C. Fudge  
Charles M. Gale  
Monte H. Machit  
Anne C. Lattime  
Lisa Peskay Malmsten  
Barry M. Meyers  
Cristyl Meyers  
Howard D. Russell  
Tiffani L. Shin

RED-LINED VERSION

Chapter 15.75

REGULATION OF STATE VIDEO FRANCHISE HOLDERS

**15.75.010 Purpose and authority.**

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

As of January 1, 2007, the State of California has sole authority to grant state video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 (the "Act"). Pursuant to the Act, City is entitled to receive a franchise fee and a fee for Public, Educational and Government (PEG) purposes from all state video franchise holders operating within the City. Additionally, the Act permits City to establish and enforce penalties, consistent with state law, against all state video franchise holders operating 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.**

1.1 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.

1.2 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.

1           1.3   Gross revenue, for the purposes of A and B above, shall have  
2           the definition set forth in California Public Utilities Code § 5860.

3           **15.75.030   Audit authority.**

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

7           **15.75.040   Customer service penalties under State Franchises.**

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

11          B.   The City Manager or his/her designee shall monitor the  
12          compliance of State Franchises with respect to state and federal customer  
13          service and protection standards. The City Manager or designee shall  
14          provide the state franchisee(s) holder written notice of any material  
15          breaches of applicable customer service standards, and shall allow the  
16          State Franchisee(s) Thirty (30) days from the receipt of the notice to remedy  
17          the specified material breach. Material breaches not remedied within the  
18          30-day time period shall be subject to the following penalties to be imposed  
19          by the City:

20               1.3.1   For the first occurrence of a violation, a penalty of  
21               \$500.00 shall be imposed for each day the violation remains in effect, not to  
22               exceed \$1,500.00 for each violation.

23               1.3.2   For a second violation of the same nature within 12  
24               months, a penalty of \$1,000.00 shall be imposed for each day the violation  
25               remains in effect, not to exceed \$3,000.00 for each violation.

26               1.3.3   For a third or further violation of the same nature within  
27               12 months, a penalty of \$2,500.00 shall be imposed for each day the  
28               violation remains in effect, not to exceed \$7,500.00 for each violation.

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

6           **15.75.050** City response to State Franchise applicants.

7           A. Applicants for state video franchises within the boundaries of  
8           the City must concurrently provide complete copies to the City of any  
9           application or amendments to applications filed with the PUC. One  
10           complete copy must be provided to the City Clerk, and one complete copy  
11           to the City Manager.

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

ORDINANCE NO.

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

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

5 15.75.020 State video franchise and PEG fees.

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

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

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

15 15.75.030 Audit authority.

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

19 15.75.040 Customer service penalties under State Franchises.

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

23 B. The City Manager or his/her designee shall monitor the  
24 compliance of State Franchises with respect to state and federal customer  
25 service and protection standards. The City Manager or designee shall  
26 provide the state franchisee(s) holder written notice of any material  
27 breaches of applicable customer service standards, and shall allow the  
28 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 \_\_\_\_\_, 2007, by the following votes:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor