BOARD OF SUPERVISORS
AGENDA LETTER

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:	
Department Name:	General Services
Department No.:	063
For Agenda Of:	April 5, 2011
Placement:	Departmental
Estimated Tme:	20 minutes
Continued Item:	
If Yes, date from:	
Vote Requirement	Majority

TO: Board of Supervisors

FROM: Department Directors(s) Contact Info: Bob Nisbet, Director (560-1011), General Services Department

SUBJECT: **An Ordinance Amending the County's Cable Television Franchise and License Ordinances to implement the Digital Infrastructure and Video Competition Act of 2006**

County Counsel Concurrence
As to form: Yes

Auditor-Controller Concurrence
As to form: Yes

Recommended Actions:

That the Board of Supervisors:

1. Consider the introduction (first reading) of an Ordinance deleting specific sections of Chapter 2 of the Santa Barbara County Code that deal with Cable Television Franchises and amending Chapter 43, by adding new sections that implement the Digital Infrastructure and Video Competition Act (DIVCA) of 2006;

2. Continue to April 12, 2011 to:
   a. Consider the adoption (second reading) of an Ordinance deleting specific sections of Chapter 2 of the County Municipal Code that deal with Cable Television Franchise and amending Chapter 43, by adding new sections that implement the Digital Infrastructure and Video Competition Act (DIVCA) of 2006; and

   b. Find that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) by approving the attached Notice of Exemption.

Summary Text:

On September 29, 2006 the Governor signed in to law Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). The primary purpose of the DIVCA is to create a ministerial process for the granting of franchises to providers of cable and open video system services in an effort to foster the rollout of technology; encourage video, voice and broadband serve competition; and expand customer service. The primary impact of the DIVCA on the County is that the County is prohibited from issuing new cable franchises. This new law permanently changes the franchising and regulatory structure for the provision of cable television and other video services in the State of California. The Public Utilities Commission (PUC) in now the sole franchising authority for new and future video service franchises in the State. The proposed ordinance revisions align the County's current cable franchise codes with the DIVCA.

Discussion:

The DIVCA leaves largely unchanged the County's authority to enforce its current cable franchise with Cox Communications for the remaining term, which expires on January 10, 2017. The existing County Codes will remain applicable to Cox until their franchise expires (Chapter 43, Sections 43-1 through 43-39). However, Comcast's franchise in the northern portion of the County expires on June 2, 2011. Comcast has informed the County that they have applied for a franchise with the PUC for this area and will shift to that franchise effective June 2, 2011.

Although the County can no longer be the franchising authority for new video service providers serving the community, the County can acquire certain rights and responsibilities under the DIVCA with respect to any holder of State video franchise. The DIVCA provides that these rights and responsibilities must be established by local ordinance before they become effective and enforceable. The DIVCA also requires that State franchise applicants comply with numerous regulations including the County regulations and fees regarding the time, place, and manner of using the public right-of-way. To meet these requirements, staff has developed the proposed Ordinance, which adds Sections 43-40 through 43-53 to the existing Code.

The proposed new Sections 43-40 through 43-53 are designed to:

1) Explain the purpose and application of the ordinance;
2) Establish applicable definitions;
3) Establish requirements for State video franchise holders and applicants for State video franchises to notify the County of their application and all required notices;
4) Establish a franchise fee requirement of five percent (5%) of gross revenues and establish a Public, Education and Government (PEG) fee requirement of three percent (3%) of gross revenues;
5) Establish requirements for PEG channel capacity, interconnection, and signal carriage;
6) Permit the County to audit the records of any State franchisee to ensure compliance with the franchise fee and the PEG fee requirements;
7) Authorize the County to establish and to monitor customer standards to impose penalties for enforcement of customer service standards; and
8) Address emergency alert system requirements.

Franchise Fees and PEG Fees:

The DIVCA allows local government to assess a five percent (5%) franchise fee on State holders, which is currently the same amount the County is charging both Comcast and Cox under their existing franchises. This is a General Fund revenue and is considered to be a form of rent in exchange for the operator's use of the public streets and right-of-ways. The DIVCA does not require that the counties adopt by ordinance the requirement for a five percent (5%) franchise fee but it is good practice to do so. This notification can help assure timely payment of the franchise fee.

Additionally, Section 5870(n) of DIVCA states that counties may adopt a PEG fee of up to three percent (3%) of gross revenues. The PEG fee is in addition to the five percent (5%) franchise fee and is allowable under certain conditions as stated below:

> "5870(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 (l). 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, jupon the expiration of the state franchise."

When the Cox franchise was executed in 2001 and the Comcast franchise in 2004, fees for PEG were negotiated as lump sum payments up front. Although Cox and Comcast do not continue to make annual payments for PEG, staff believes the fixed payment made at the initiation of each franchise is equivalent to greater than three percent (3%) of their gross revenues if the payment was evenly spread out over the life of the franchise. Therefore, staff believes charging the maximum of three percent (3%) in the future is in accordance with Section 5870(n) of the DIVCA.

Fiscal and Facilities Impacts:

The adoption of the ordinance will facilitate timely payment of the five percent (5%) franchise fee and the three percent (3%) PEG fee. The five percent (5%) franchise fee generates approximately $1.3 million in revenue annually for the County. The three percent (3%) PEG fee will generate approximately $240,000 annually from the Comcast franchise area. Cox will not be subject to the three percent (3%) PEG fee until their current franchise expires in 2017.

There are no facilities impacts.

Special Instructions:

1. The Clerk of the Board shall notice the proposed ordinance amendments in a newspaper of general circulation in the County of Santa Barbara 10 days and again 5 days prior to the first reading and a third time in accordance with Section Four of the ordinances within 15 days after its passage.

2. The Clerk of the Board shall send a copy of the signed and numbered ordinance and minute order to the General Services Department, attention Dawn Fargas.

Attachments:

- Proposed Ordinance
- Article XIA - Small System Cable Television Franchises and Article XIB – Cable Television Franchises, and all sections therein, of Chapter 2 of the Santa Barbara County Code
- Notice of Exemption (CEQA)