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**Title:** BILL - (For introduction) - An uncodified ordinance reauthorizing the public, education, and government access (PEG) fee on state video franchise holders operating within the City.

**Sponsors:** Office of Mayor & City Manager

**Indexes:**

**Code sections:**

**Attachments:** 1. Ordinance.pdf

| Date      | Ver. | Action By    | Action   | Result |
|-----------|------|--------------|----------|--------|
| 4/27/2017 | 1    | City Council | approved | Pass   |

**REPORT TO THE CITY COUNCIL**

**April 27, 2017**

**FROM:** BRUCE RUDD, City Manager

**BY:** MARK STANDRIFF, Director of Communications & Public Affairs

**SUBJECT**

BILL - (For introduction) - An uncodified ordinance reauthorizing the public, education, and government access (PEG) fee on state video franchise holders operating within the City.

**RECOMMENDATION**

The Administration recommends that the City Council adopt an uncodified ordinance to exercise the City’s right to continue to collect Public, Education and Government (PEG) fees from its cable/video TV operators.

**EXECUTIVE SUMMARY**

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) as codified in *California Public Utilities Code Section 5800, et seq.*, preempt a California local entity’s right to franchise its cable and video TV operators by transferring cable franchising authority to the California Public Utilities Commission (CPUC). However, DIVCA does allow local governments to establish by ordinance a PEG fee equal to 1% of gross revenues.

In 2007, the City adopted Fresno Municipal Code Section 9-235, which took legal effect on December 4, 2007. By adopting of Section 9-235, the City, among other things, authorized the collection of a 5% franchise fee and 1% PEG fee from holders of state video franchises. The Finance Department oversees the collection of those fees.

## **BACKGROUND**

DIVCA states that state video franchises issued by the CPUC are given a term of 10 years. The current state-issued franchises to the City's cable/video providers will expire on March 31, 2017, for AT&T and on January 1, 2018, for Comcast. These state video franchises can and are being reviewed under a highly streamlined procedure adopted by the CPUC.

This is significant because the section of DIVCA that authorizes the City to create the PEG fee ordinance also states that "the ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise." At this time, the law is unclear as to whether the "expiration clause" applies to the City ordinance. A reasonable argument can be made that the clause does not apply for reasons outside the scope of this report. Because substantial funding could be lost *unless* the 1% fee is reauthorized, the Administration recommends immediate approval by the City of an uncodified ordinance reauthorizing the collection of the PEG fee.

Council's failure to take such action may result in the loss of cable/video TV PEG revenue upon which the Community Media Access Collaborative (CMAC) are dependent. CMAC receives 100% of the PEG revenues collected, in an amount exceeding \$750,000 last year.

## **ENVIRONMENTAL FINDINGS**

This is not a project for the purpose of CEQA.

## **LOCAL PREFERENCE**

Local preference is not applicable because this item does not involve an award of a construction or consulting contract.

## **FISCAL IMPACT**

Over the past three years (2014 - 2106), the City of Fresno received an average of \$221,600 from AT&T and \$577,100 from Comcast. Those figures represent 16.67% (1/6<sup>th</sup>) of the \$4.9 million in Franchise Fees the City collects from these two companies. The loss of the PEG would create an estimated \$800,000 (\$221,600 + \$577,100) shortfall in CMAC's finance. This loss in revenue would considerably impact CMAC's ability to operate, including the possibility of ceasing operations. The contract between the City and AT&T and Comcast is written as such that the money generated from these fees can only be used for CMAC or other similar video projects.

Attachment:  
Ordinance