

**STAFF REPORT**  
**City of Lancaster, California**

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Date: January 22, 2008

To: Mayor Hearn and City Council Members

From: David R. McEwen, City Attorney

Subject: Introduce an Ordinance to Implement Provisions of the Digital Infrastructure and Video Competition Act of 2006

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**RECOMMENDATION:**

Introduce Ordinance No. 897 implementing certain provisions of the Digital Infrastructure and Video Competition Act of 2006 (Cal. Pub. Util. Code § 5800 et seq.) (the “Act” or “DIVCA”).

**FISCAL IMPACT:**

If a competitive state video franchise holder provides services in the City of Lancaster (the “City”) in competition with the incumbent cable provider and expands the population of franchised video service subscribers, the proposed ordinance will likely increase the franchise fees and Educational and Governmental Access support fees paid by the providers to the City. Possible costs related to enforcement are not known at this time, but will likely be consistent or less than those expenses associated with existing City expenses for regulating cable franchises.

**BACKGROUND:**

In 2006, the California State Legislature adopted AB 2987, which is known as the Digital Infrastructure and Video Competition Act of 2006 (Cal. Pub. Util. Code § 5800 et seq.) (the “Act” or “DIVCA”). The Governor signed AB 2987 on September 29, 2006 and the Act became effective as of January 1, 2007.

Historically, the City has had the power to grant and renew franchises to provide cable service within the City. The Act establishes a regulatory structure whereby the authority to grant and renew video service franchises is vested in the State of California (the “State”). The California Public Utilities Commission is the State agency that has been charged with administering the Act (and therefore has the authority to authorize video service franchises). Local entities, such as the City, are responsible for administration and implementation of certain provisions of the Act.

The Act requires that the City establish, by ordinance, financial support provisions for the City’s Educational and Governmental Access Channel (Cal. Pub. Util. Code § 5870(n)), and by ordinance or resolution certain prescribed penalties for enforcement of State authorized customer service standards (Cal. Pub. Util. Code § 5900(d)). The ordinance proposed for consideration by

the City Council implements the foregoing, as well as other provisions of the Act.

The Act has no immediate impact on the City's authority to regulate the City's existing cable franchise. Consequently, the franchise agreement (the "Franchise Agreement") entered into on or about March 22, 2005 by and between the City and Time Warner Cable (the "Incumbent Cable Operator"), which Franchise Agreement was entered into pursuant and subject to the terms and conditions set forth in the City's cable system regulatory ordinance (Article I of Chapter 5.16 of the Lancaster Municipal Code), remains unchanged and will continue to be enforceable according to its terms.

However, at such time as a State franchise holder provides the City with notice of intent to provide service, the Incumbent Cable Operator referenced above *may* "opt-out" of the Franchise Agreement and may instead seek a State franchise. If this option is exercised by the Incumbent Cable Operator, the existing Educational and Governmental Access obligations survive such termination and continue to remain in force until expiration of the original Franchise Agreement expires according to its terms. The Incumbent Cable Operator's exercise of this "opt-out" option is also subject to other conditions and restrictions related to continued service.

In the event no State franchise holder introduces service in the City, the City's franchise agreement with the Incumbent Cable Operator will continue and remain in force according to its terms.