TO:         HONORABLE CITY COUNCIL
FROM:       CITY MANAGER               DEPARTMENT: ADMINISTRATIVE SERVICES
DATE:       JANUARY 22, 2008           CMR:119:08

SUBJECT:    ADOPTION OF AN ORDINANCE AMENDING CHAPTER 2.11 OF TITLE 2 OF THE PALO ALTO MUNICIPAL CODE TO ESTABLISH A FEE TO SUPPORT PUBLIC, EDUCATION, AND GOVERNMENT ACCESS THAT WILL APPLY TO COMCAST AS IT PROVIDES SERVICE UNDER ITS STATE VIDEO FRANCHISE

RECOMMENDATION
Staff recommends that the Council adopt an ordinance amending Chapter 2.11 of Title 2 of the Palo Alto Municipal Code to establish a fee to support Public, Education and Government (PEG) access that will apply to Comcast as it provides service under its State Video Franchise issued by the California Public Utilities Commission (Commission).

BACKGROUND
On September 29, 2006, Governor Schwarzenegger signed into law Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). The purpose of DIVCA is to create a streamlined process for the granting of video service franchises in an effort to foster the rollout of technology, encourage competition and expand customer choice. 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. Under DIVCA, video service franchises are now granted exclusively by the Commission rather than by local franchising entities.

DIVCA gives the City certain rights and responsibilities with respect to any holder of a state franchise (Holder). These rights and responsibilities must be established by local ordinance before they become effective and enforceable. On April 9, 2007 Council approved an ordinance amending and adding to several chapters of Title 2 (Administrative Code) and Title 12 (Public
Works and Utilities Code) to implement the provisions of DIVCA (CMR:171:07). On June 18, 2007, Council approved amendments to Title 19 to conform the City’s architectural review process to the requirements of DIVCA (CMR:273:07).

The Commission commenced accepting applications for state franchises in March 2007. The Commission has 30 days to determine whether a franchise application is complete, and is required to issue a state franchise within 14 days of determining an application is complete. Prior to offering video service, the state franchise holder is required to notify the local entity. The notice shall be given at least 10 days, but no more than 60 days, before the video service provider begins to offer service.

**DISCUSSION**
Under DIVCA, Comcast may seek and obtain a state franchise from the Commission after January 1, 2008, whenever another Holder (such as a competitor like AT&T) enters the Palo Alto market. AT&T filed for a state franchise to serve an area that includes Palo Alto; the Commission granted AT&T its state franchise on March 30, 2007. Comcast filed for a state franchise to serve an area that includes Palo Alto; on January 2, 2008, the Commission granted Comcast that state franchise. The City anticipates receiving notice from Comcast that it will begin service in Palo Alto under its State Video Franchise in the near future.

DIVCA allows the City to continue to collect its current PEG support fee of $0.88 per residential subscriber per month from any Holder. Comcast has been providing PEG support funding of approximately $300,000 annually. Palo Alto has designated the Media Center, as its community access organization, to operate and manage its PEG channels and to promote PEG access. The Media Center relies on the PEG support fee to bring local community media services to Palo Alto.

Upon the termination of Comcast’s local franchise, the City can by ordinance collect from Holders either its current PEG support fee ($0.88 per subscriber per month) or a PEG support fee of 1 percent of the Holder’s gross video-service revenues in the City. At the present time, a PEG fee of $0.88 per subscriber exceeds what a 1 percent PEG fee would yield by about 30 percent or $75,000. As a result, staff is proposing that Council adopt an ordinance, amending Chapter 2.11 of the Palo Alto Municipal Code, to establish a PEG fee of $0.88 per subscriber for Holders. Selecting the $0.88 option has some potential downsides. First, this option has no built in mechanism for growth and over time inflation could erode its purchasing power. In addition, if Comcast revenues continue to grow at their current rate, the 1 percent option could yield greater PEG fees than the $0.88 option in the next 4 to 5 years. However, with anticipated competition driving down prices and the expected bundling of video with non-video service revenues, it is risky to assume revenues will grow at the same rate in the future. These potential downsides notwithstanding, staff and the Media Center recommend the $0.88 option because it provides more revenue in the short-term and a stable funding amount in the long-term.

DIVCA requires the City to re-authorize by ordinance its PEG fee at the expiration and renewal of each Holder’s state franchise. Under DIVCA, the term of a state franchise will be 10 years.
It is important to note that, under DIVCA, certain obligations contained in the City’s just expired franchise with Comcast (e.g., its I-Net obligations and its obligation to provide free cable service to schools and other public and governmental buildings, etc.) will continue to apply to Comcast until the franchise would have expired by its terms, or until July 25, 2010. Holders are not obligated to provide I-Net facilities and free cable service, and Comcast will no longer be required to do so after July 25, 2010. Staff hopes to negotiate a continuation of these facilities and services with Comcast after 2010.

NEXT STEPS
In 1983, the cities of Palo Alto, Menlo Park, East Palo Alto, the Town of Atherton and portions of San Mateo and Santa Clara Counties entered into a Joint Exercise of Powers Agreement (JPA) for purposes of obtaining cable television service for residents, businesses and institutions within these jurisdictions. The JPA gives the City of Palo Alto the sole authority to grant and administer the cable franchise process on behalf of its members. Under DIVCA, Palo Alto no longer has the authority to grant franchises to providers of cable or video services in the JPA’s service area. DIVCA does, however, allow the JPA to continue to serve as the “local entity” for DIVCA purposes, thereby permitting the JPA members to continue to rely on Palo Alto for such activities as franchise fee and PEG fee collection, PEG oversight, customer service and the like with respect to all Holders in the JPA’s service area. In early 2008, the JPA plans to amend its Agreement to reflect changes in the law due to DIVCA.

RESOURCE IMPACT
The proposed ordinance provides for the continued payment of a PEG support fee by Comcast as it provides service under its State Franchise. In 2006, the JPA received PEG fees from Comcast in the amount of $316,113. In 2007, PEG fees are expected to reach about $327,000. In addition to PEG fees, Holders will continue to pay franchise fees to compensate the City for the use of its public streets and rights-of-way. In 2006, the City received franchise fees in the amount of $581,000. Staff does not currently anticipate any material impacts to these revenues as a result of DIVCA.

Although the City will continue to collect PEG and franchise fees under DIVCA, support for in-kind PEG services (e.g., free cable service to schools and other public and governmental buildings and free inclusion of PEG program information on a “TV Guide” channel, etc.) and for Institutional Network services will be discontinued at the expiration of Comcast’s current franchise. The potential loss of these services after July 25, 2010, could have a significant, but undetermined, adverse fiscal impact on government facilities and schools in the JPA’s service area.

POLICY IMPLICATIONS
This proposed ordinance is consistent with the current State law for video service franchises.
ENVIRONMENTAL REVIEW
This is not a project under the CEQA.

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ATTACHMENTS:
Attachment A: Ordinance