NOT YET APPROVED

ORDINANCE NO. ______
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
AMENDING SECTION 2.11.070 OF 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

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. The definitions set forth in Section 2.11.020 of Chapter 2.11 of Title 2 the Palo Alto Municipal Code shall apply to this ordinance.

SECTION 2. Section 2.11.070 of Chapter 2.11 of Title 2 of the Palo Alto Municipal Code is hereby amended to read, as follows:

"2.11.070 Public, Educational and Governmental Access Channel Capacity and Support.

(a) PEG Channel Capacity.

(1) A state franchisee shall designate and activate seven (7) PEG channels on its network. The state franchisee shall designate and activate the seven (7) PEG channels within three (3) months from the date that the state franchisee receives a state franchise to provide video service in an area including the City, provided, however, that this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee’s ability to designate or provide such PEG capacity is technically infeasible, as provided in Section 5870(a) of the California Public Utilities Code.

(2) A state franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to be responsible for PEG access channel capacity and support.

(b) PEG Support.

(1) Amount of PEG support fee.

(A) Except as provided in subparagraphs (B) and (C), every state franchisee operating within the jurisdictional boundaries of the City shall pay a PEG support fee to the City in the amount of eighty-eight cents ($0.88) per month per subscriber within the jurisdictional boundaries of the City.
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(B) Upon the expiration of the Comcast Franchise or its earlier termination pursuant to Section 5840(o)(3) of the California Public Utilities Code, every state franchisee operating within the jurisdictional boundaries of the City shall, by ordinance, establish pay a new PEG support fee to the City equal to—either (i) in the amount of set forth in paragraph (b)(1)(A) eighty-eight cents ($0.88) per month per subscriber in the City, or (ii) one percent (1%) of a state franchisee’s gross revenue.

(C) The PEG support fee established by the City pursuant to paragraph (b)(1)(B) shall expire with respect to a particular state franchisee upon the expiration of that state franchisee’s state franchise, and the City shall, by ordinance, reauthorize the PEG support fee for that state franchisee upon such expiration.

(2) The PEG support fee shall be used by the City for PEG purposes consistent with state and federal law.

(3) A state franchisee shall remit the PEG support fee to the City quarterly, within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the PEG support fee.

(4) If a state franchisee fails to pay the PEG support fee, when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at an annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one percent (1%) or the highest rate allowed by California law, whichever is lower.

(c) PEG Carriage and Interconnection.

(1) State franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels on the state franchisee’s lowest cost tier of service unless the PEG signal is provided to the state franchisee at a lower quality or with less functionality.

(2) If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator’s network at a technically feasible point on the state franchisee’s network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to the PEG channel originator and shall provide the facilities necessary for the
interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

(d) Institutional Network and Other In-Kind PEG Facilities and Cable Service Support Obligations.

The incumbent cable operator’s obligation to provide and support PEG channel facilities and institutional networks and to provide free cable service to schools and other public buildings as provided in the Comcast Franchise shall continue until July 25, 2010.”

SECTION 3. This ordinance is the ordinance that may be adopted in accordance with the requirements of Section 5840(n) of the California Public Utilities Commission, which requires the adoption of an ordinance to establish a PEG support fee upon the expiration or termination of the Comcast Franchise.

SECTION 4. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 5. The Council hereby finds that this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of this ordinance.
SECTION 6. This ordinance shall become effective upon the commencement of the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

NOT PARTICIPATING:

ABSENT:

ATTEST:                           APPROVED:

__________________________________________
City Clerk

APPROVED AS TO FORM:

__________________________________________
City Manager

__________________________________________
Senior Asst. City Attorney

__________________________________________
Director of Administrative Services

Mayor