

File No. 091408

Committee Item No. _____

Board Item No. 24

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 8-5-10

Board of Supervisors Meeting

Date 9-14-10

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Youth Commission Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- * Public Correspondence

OTHER

(Use back side if additional space is needed)

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Completed by: Linda Wong

Date September 9, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Approving ~~Settlement~~ of Unlitigated Claim Against the City by Comcast.]

2
3 **Resolution approving settlement of an unlitigated claim made by Comcast Cable**
4 **Communications, LLC against the City and County of San Francisco.**

5
6 WHEREAS, In 2006, the State of California enacted the Digital Infrastructure and
7 Video Competition Act ("DIVCA") (Cal. Pub. Util. Code, § 5800, et seq.); and

8 WHEREAS, In DIVCA the State of California granted the California Public Utilities
9 Commission ("CPUC") exclusive right to grant video franchises; and

10 WHEREAS, As allowed under DIVCA, Comcast Cable Communications, LLC
11 ("Comcast") elected to abrogate its cable franchise with the City and County of San
12 Francisco ("City"); and

13 WHEREAS, Since January 2, 2008, Comcast has been providing video services in
14 San Francisco under a franchise issued by the CPUC; and

15 WHEREAS, Under DIVCA, the City may establish by ordinance a fee to be paid by
16 state video franchise holders providing services in San Francisco to support the City's public,
17 educational and governmental access channel facilities ("PEG Fee") (Cal. Pub. Util. Code, §
18 5870(n)); and

19 WHEREAS, On March 3, 2009, the Board of Supervisors introduced an ordinance that
20 would establish a PEG Fee in the amount of three percent (3%) of a state franchise holder's
21 gross revenues from providing state video services in San Francisco; and

22 WHEREAS, Comcast informed the City that Comcast believed the PEG Fee proposed
23 in the ordinance would violate DIVCA, and Comcast expressed its intention to pursue legal
24 action against the City on this basis; and

25


1 WHEREAS, In Ordinance 99-09, the City established a PEG Fee in the amount of one
2 and one-fifteenth percent (1.15%) of a state video franchise holder's annual gross revenues
3 from providing state video services in San Francisco; and

4 WHEREAS, Comcast is willing to resolve this matter by entering into the Settlement
5 Agreement on file with the Clerk of the Board of Supervisors in File No. ⁰⁹¹⁴⁰⁸, which is hereby
6 declared to be a part of this resolution as if set forth fully herein; now, therefore, be it

7 RESOLVED, That pursuant to Section 10.22 of the San Francisco Administrative Code,
8 the Board of Supervisors authorizes the City Attorney and the Department of Technology to
9 settle the unlitigated claim made by Comcast against the City on the terms and conditions
10 contained in the Settlement Agreement.

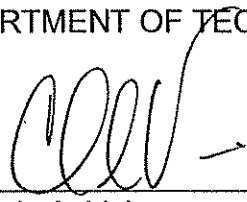
11 APPROVED:

12 DENNIS J. HERRERA
13 City Attorney

14 By: 
15 _____
16 William K. Sanders
17 Deputy City Attorney

RECOMMENDED:

DEPARTMENT OF TECHNOLOGY

18 By: 
19 _____
20 Chris A. Vein
21 Director and Chief Information Officer

Settlement Agreement
City and County of San Francisco, California (“City”), and Comcast Cable Communications, LLC

This Agreement is made and entered into this 2nd day of June, 2009, by and between the City and County of San Francisco, California (“City”), and Comcast Cable Communications, LLC, and its affiliates and subsidiaries (herein referred to individually and collectively as “Comcast”).

RECITALS

WHEREAS, in 2006, the State of California enacted the Digital Infrastructure and Video Competition Act (“DIVCA”) (Cal.Pub.Util.Code, § 5800, et seq.);

WHEREAS, in DIVCA, the State of California established the California Public Utilities Commission (“CPUC”) as the exclusive video franchisor;

WHEREAS, as allowed under DIVCA, Comcast elected to abrogate its cable franchise with the City;

WHEREAS, since January 3, 2007, Comcast and has been providing video services in San Francisco under a state franchise issued by the CPUC;

WHEREAS, under DIVCA, local entities may establish by ordinance a fee to support channel facilities and activities related to Public, Educational and Government Access television (the “PEG Fee”) (Cal.Pub.Util.Code, § 5870(n));

WHEREAS, on March 3, 2009, the Board of Supervisors introduced an ordinance that would establish a PEG Fee in the amount of three percent (3%) of a state franchise holder’s gross revenues; and

WHEREAS, Comcast has informed the City that Comcast believes the proposed PEG Fee in the amount of three percent (3%) would violate DIVCA.

WHEREAS, in Ordinance 99-09, the City established that any Sate Video Franchise holder providing State Video Service in the City shall pay to the City a fee to support the ongoing costs of public, educational, and government access channel facilities in the amount of one and on-fifteenth percent of the State Video Franchise holder's annual Gross Reveneus from proving State Video Services in the City.

NOW, THEREFORE, Comcast and the City, in consideration of the promises contained herein and subject to the terms and conditions set forth below, agree as follows.

TERMS

1. **Payment to the City.** Comcast shall pay the City the sum of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS (\$375,000.00), which amount shall be due and payable within fourteen (14) days of final execution of this Agreement. The City may use the payment required herein to support the City's public access channels, including paying the operating expenses of those channels. The payment required herein is not a "Franchise Fee" as that term is defined in Section 622(b) of the Cable Act (47 U.S.C. § 542(b)). Comcast will not include the payment required herein as a separate line item, or as part of its PEG Fee line item, on its bills to San Francisco video service subscribers.
2. **Initial PEG Fee.** The initial PEG Fee that the City will require from Comcast under Cal.Pub.Util.Code, § 5870(n) will not exceed one and one-fifteenth percent (1.15%) of Comcast's gross revenues, calculated in a manner consistent with DIVCA.
3. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties regarding the subject matter of this Agreement. No statements, promises, or inducements inconsistent with this Agreement made by any party shall be valid or binding, unless in writing and executed by all parties.
4. **Governing Law.** This Agreement shall be interpreted, governed by, and construed under the laws of the State of California. Jurisdiction of any disputes hereunder shall be had in San Francisco.

5. **Modification.** No modification or change to this Agreement shall be binding or effective unless executed in writing by both sides. No oral statement shall in any manner modify or affect the terms and conditions set forth herein.

6. **Non-waiver.** The waiver by either party of any breach of any term, covenant or condition contained in this Agreement, or any default in the performance of any obligation under this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of the same.

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

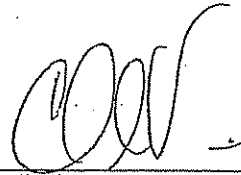
8. **Authorization.** Each person executing this Agreement warrants to the other party that he or she is fully authorized to enter into this Agreement in the capacity indicated by his or her signature below.

9. **Board of Supervisors Approval.** The City shall cause this Agreement to be submitted to the Board for approval. Notwithstanding anything herein to the contrary, Comcast understands and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Board shall taken an action approving this Agreement, and such action has been approved by the City's Mayor or become effective without the Mayor's approval. Therefore, any obligations of the City hereunder are contingent upon such approvals, and this Agreement shall not be effective unless and until such approvals are obtained in accordance with the City's Charter. In the event this Agreement is not approved by March 31, 2010, then this Agreement shall terminate and shall be of no force and effect whatsoever. In the event that the City approves this Agreement, the effective date of the approving action shall be the effective date of this Agreement, (the "Effective Date").

10. Negotiated Settlement. Each of the Parties hereto and their respective counsel and advocates have contributed to the preparation of this Settlement Agreement. Accordingly, the Parties agree that no provision of this Settlement Agreement shall be construed against any Party because that Party or its counsel drafted the provision. This Settlement Agreement shall become effective among the Parties on the date the last Party executes the Settlement as indicated below.

In witness whereof, intending to be legally bound, the Parties hereto have duly executed this Settlement Agreement on behalf of the Parties they represent.

Dated: _____



Chris Vein
Title: Chief Information Officer,
Director, Department of Technology

Dated: 10-23-2009

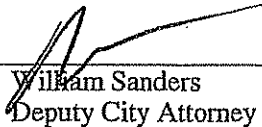


Comcast Cable Communications LLC

Title: VP-Finance & Accounting

Approved as to Form

Dated: 11/02/09



William Sanders
Deputy City Attorney

