

CITY OF LOS ANGELES

CALIFORNIA

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When making inquiries  
relative to this matter,  
please refer to the Council  
File No.

06-2818

December 4, 2008

Municipal Policy Access Board  
c/o Information Technology Agency

Councilmember Huizar  
Councilmember Rosendahl  
City Attorney

Councilmember Wesson  
Councilmember Cardenas  
Information Technology Agency

RE: CITY'S FUTURE CABLE PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

At the meeting of the Council held December 3, 2008, the following action was taken:

Attached report adopted as amended .....	<u>          X          </u>
Attached amending motion (Huizar - Rosendahl) adopted .....	<u>          X          </u>
Attached amending motion (Rosendahl - Wesson) adopted .....	<u>          X          </u>
FORTHWITH .....	<u>                          </u>
Mayor concurred .....	<u>                          </u>
To the Mayor FORTHWITH .....	<u>                          </u>
Motion adopted to approve communication recommendation(s) .....	<u>                          </u>
Motion adopted to approve committee report recommendation(s) .....	<u>                          </u>
Ordinance adopted .....	<u>                          </u>
Ordinance number .....	<u>                          </u>
Publication date.....	<u>                          </u>
Effective date .....	<u>                          </u>
Mayor vetoed.....	<u>                          </u>
Mayor approved .....	<u>                          </u>
Mayor failed to act - deemed approved .....	<u>                          </u>
Findings adopted .....	<u>                          </u>
Negative Declaration adopted .....	<u>                          </u>
Categorically exempt.....	<u>                          </u>
Generally exempt .....	<u>                          </u>

City Clerk  
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TO THE COUNCIL OF THE  
CITY OF LOS ANGELES

Your INFORMATION TECHNOLOGY AND GENERAL SERVICES COMMITTEE

reports as follows:

INFORMATION TECHNOLOGY AND GENERAL SERVICES COMMITTEE REPORT relative to the City's future cable Public, Educational and Governmental Access (PEG Access).

Recommendation for Council action:

APPROVE Option No. 1 as detailed in the June 16, 2008 Joint Board of Information Technology Commissioners/Municipal Access Policy Board report and attached to the Committee report.

Fiscal Impact Statement: Neither the City Administrative Officer (CAO) or the Chief Legislative Analyst (CLA) has completed a financial analysis of this report.

Community Impact Statement: Yes  
For Proposal: Greater Valley Glen Neighborhood Council

SUMMARY

On November 18, 2008, your Committee considered a Joint Board of Information Technology Commissioners/Municipal Access Policy Board (BITC/MAPB) report relative to the City's future PEG Access. According to the BITC/MAPB, in 1984, Congress gave local franchising authorities the legal power to require cable television operators (cable operators) to; (a) set aside cable channels for Public, Educational and Governmental (PEG) Access use; (b) provide facilities and equipment to enable PEG Access users to create programming for these channels; and, (c) pay up to a 5% franchise fee to the franchising authority on all of the cable operator's gross annual revenues (cities could use these franchise fees for any purpose). Congress however, did not give cities the power to require cable operators to set aside funds to manage and facilitate the PEG Access channels and services. As a result, many franchising authorities, including Los Angeles, negotiated with cable operators and gave them certain benefits (e.g., longer franchises) in exchange for voluntary agreements that would provide capital and operating expenses for production studio facilities for PEG Access use over the life of the franchise.

In 1987, the City entered into franchise agreements with local cable operators. The cable operators agreed to set aside six PEG Access channels: two channels to be dedicated for Public Access use; two for Educational Access use; and, two for Governmental Access use. Ultimately, the City utilized two of the six access channels as City-wide interconnected channels and two in each local franchise area. The two interconnected channels, LA CityView channel 35 (LA CityView) and the Los Angeles Cable Television Access Corporation, channel 36 (LA36), are wholly (LA CityView) and partially (LA36) financially supported by the City, whereas the two local area access channels utilized for Public and Educational Access purposes are solely supported and operated by the City's cable operators.

On January 1, 2007, the California Digital Infrastructure and Video Competition Act (DIVCA) took effect. It directly affects the facilities and the amount of money available to the City for PEG Access, and also limits how the City can use the funds it receives under DIVCA. Under DIVCA, the City is

\*Adopted as amended by Council action of DEC 03 2008

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entitled to receive an additional 1% gross revenue fee (1% fee) from its cable and video TV operators franchised by the State that operate within the City, to be used for PEG Access. Pursuant to state and federal law, the City may utilize the 1% fee solely for PEG Access capital costs. ITA estimates that by January 1, 2009, the 1% fee paid annually to the City for PEG Access capital costs will be approximately \$5 million. Some of the operators take the position that these monies do not need to be paid until mid-2009; however, the City disagrees strongly with this position.

In addition, the City currently collects, and is entitled to continue to collect, a 5% gross revenue franchise fee which in 2007 was approximately \$25 million from which current Educational and Governmental Access operations and facilities are supported in the amount of approximately \$3.6 million. It is unclear whether the City may enter into agreements with the video TV providers to permit the City to utilize the 1% fee for operational support (programming staff salaries and other ongoing operational costs) notwithstanding current federal law that may impede the City's use of the 1% fee for such costs. According to the City Attorney, due to DIVCA's novelty, it is unlikely that current examples of such agreements under DIVCA can be found, and there are few precedents from other jurisdictions outside California. The appropriateness of such agreements may hinge upon whether those agreements are considered "voluntary" under federal law. Although the risk of a lawsuit from a third party (such as a subscriber) to the use of such agreements is low, there may be some small potential for the invalidation of such agreements. A judgment unfavorable to the City in such a suit could prospectively limit the City's use of PEG fees to capital costs or (in the worst case) involve a refund from the City for past PEG fees.

For more than twenty years, the City, pursuant to local franchises issued to its cable television operators, has required the City's cable operators to provide at their own expense, Public Access facilities and channel carriage, on a "first-come, first-serve basis" to the City's residents. The "first-come, first-serve" rule also applies to the City's Educational Access channels for educators and non-profits. At that same time the City augmented the Public and Educational Access services with the creation of a City-wide Governmental Access channel managed by the City, financed through cable-television franchise fees, with programming oversight provided by the Municipal Access Policy Board (MAPB).

Following the creation of the City-wide Governmental Access channel, LA CityView, the City then assisted with the formation of a new non-profit organization that was given the responsibility to operate and manage a new City-wide Educational Access channel, LA36. LA36 is operated by an independent board of directors, the Los Angeles Cable Television Access Corporation, or LACTAC. By 1996 12 local Public and Educational Access facilities throughout the City were fully operational, and two city-wide interconnected access channels were fully functioning. Currently, most of the City's Public Access systems are seen by their users as being in decay, as the incumbent cable operators have allowed them to decline in anticipation of the reduced requirements under DIVCA. The Public Access systems remain wholly supported and operated by the incumbent cable operators as an in-kind service as required by the City's local franchise agreements.

The financial and in-kind support received by the City for PEG Access will change under the new requirements imposed by DIVCA. The City will have fewer facilities available for PEG Access under DIVCA, and new technological requirements will likely demand a larger piece of that funding. The central issues to which the City must face and resolve prior to January 1, 2009 are whether the City can continue the PEG Access system in its present form and, if not, what kind of PEG Access system would best serve the needs of Los Angeles citizens within the financial constraints of DIVCA.

On January 1, 2009, the current incumbents will cease to provide the facilities, equipment and operations of the City's existing Public Access system. The cable and video TV providers must carry the City's PEG Access channels at no cost to the City on the providers' basic service tier under federal law and DIVCA unless the City agrees to a change to a different service tier for the channel designation of any of its PEG Access channels. Channels 35 and 36, the Government and Educational Access channels must be carried on their currently designated channel number by all video TV providers. Currently, the City is entitled to the use of a total of four PEG Access channels on the provider's basic service tier at no cost to the City. There is a legal argument that if the City does not use one or more of these channels, they could be lost.

Next, the BITC/MAPB detailed four policy options that the City could potential adopt in order to address the issues that have arisen with the advent of DIVCA (full details on each option are provided in the June 16, 2008 Joint BITC/MAPB report and is attached to the Committee report). The BITC/MAPB noted that each option is based in part on legal assumptions that remain unsettled and are being researched by the City Attorney's Office. The financial limitations on the use of the 1% PEG Access fee is of utmost concern and each of the four options presented presume that the City may be entitled to the use of the 1% PEG fee for operational and capital costs, where indicated, including maintaining, repairing or improving personnel costs for its PEG Access system under DIVCA.

Finally the BITC/MAPB stated that it strongly recommends that the City preserve a minimum of four PEG Access channels as these are property entitlements to the City. The recommendation is made with the understanding that the City's current financial situation would severely limit the City's ability to fund, wholly or in part, the Public or Community Access portion of the PEG Access system.

After further consideration and having provided an opportunity for public comment, the Committee moved to recommend approval of Option No. 1 as contained in the June 16, 2008 Joint BITC/MAPB report. This matter is now submitted to Council for its consideration.

Respectfully submitted,

INFORMATION TECHNOLOGY AND GENERAL SERVICES COMMITTEE

*Tony Cardenas*  
*Bernard L. Fisher*

MEMBER	VOTE
CARDENAS:	YES
PARKS:	YES
WESSON:	ABSENT

ARL  
11/19/08  
#062818C

ATTACHMENT

NOV 25 2008 - CONTINUED TO Dec 3, 2008  
*Rpt*

**ADOPTED**

DEC 03 2008  
*\* As Amended of*  
LOS ANGELES CITY COUNCIL  
*See Attached Motions*

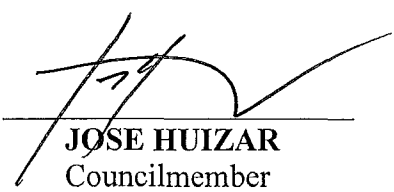
- Not Official Until Council Acts -

## AMENDING MOTION - ITEM 4 A

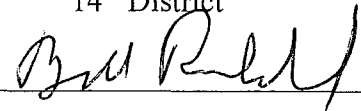
I MOVE that the matter of the INFORMATION TECHNOLOGY AND GENERAL SERVICES COMMITTEE REPORT relative to approving Option No. 1 as detailed in the June 16, 2008 Joint Board of Information Technology Commissioners/Municipal Access policy Board report regarding the City's future cable Public, Educational and Government Access on today's Council agenda (CF#06-2818), BE AMENDED to include the following staff instructions:

- 1) Request that the Information Technology Agency (ITA) and City Attorney report to Council in closed session relative the legal ramifications of the City Attorney's lawsuit against Time Warner.
- 2) Instruct the CLA, CAO and request that the Community Development Department and ITA to report within a week relative to the status of the Boyle Heights Technology Center studio production facility and potential funding sources that could be used to maintain existing staff positions at this site, which is the only one of the 14 access centers in the City that is located on public property.

PRESENTED BY:

  
JOSE HUIZAR  
Councilmember  
14<sup>th</sup> District

SECONDED BY:



*Amending  
Motion*

**ADOPTED**

DEC 03 2008

LOS ANGELES CITY COUNCIL

DEC - 3 2008

**VERBAL MOTION**

I HEREBY MOVE that Council AMEND the Information Technology and General Services Committee Report (Item No. 4, CF 06-2818) relative to the City's future cable Public, Educational and Governmental Access (PEG Access), as follows:

**REFER the following issues to the Budget and Finance Committee:**

- a. **Funding from the Technology Development Account for public access studios (entire program) to the Budget and Finance Committee to look at the 40 percent.**
- b. **That the channel designated as the electronic bulletin board be moved to a public access channel as soon as possible when funding is available.**

PRESENTED BY \_\_\_\_\_  
BILL ROSENDAHL  
Councilmember, 11th District

SECONDED BY \_\_\_\_\_  
HERB J. WESSON, JR.  
Councilmember, 10th District

December 3, 2008

CF 06-2818

*Amending Motion*  
**ADOPTED**

DEC 03 2008

**LOS ANGELES CITY COUNCIL**