

TITLE: ORDINANCE REGULATING STATE VIDEO FRANCHISE HOLDERS

SOURCE: CITY ATTORNEY

COMMENT: This ordinance is for the purpose of establishing the City's rights and responsibilities with regard to State cable franchise holders under a new State law AB 2987 also known as the Digital Infrastructure and Video Competition Act (DIVCA). The ordinance covers issues such as franchise fees and public programming fees the City's ability to audit business records.

The purpose of DIVCA is to promote cable and video service competition in California by establishing a State franchise process. The new law applies to all video service which is defined as video programming cable and open video system services provided through facilities located at least in part in the public rights of way without regard to delivery technology. By obtaining a State franchise the franchise holder obtains the right to operate in any City identified in its franchise agreement and to use the City's rights of way in exchange for paying franchise fees. Although the City can no longer enter into local franchise agreements with the providers the City retains certain rights and responsibilities with regard to cable and video operators as described in more detail.

The City is entitled to collect a franchise fee in the amount of 5% of gross revenues. Additionally, the City may collect a fee of 1% of gross revenues to support Public Educational and Governmental Access channels PEG and to receive capacity on the network for public access programming under certain conditions. The City may also examine business records to ensure compliance with the franchise and PEG fees, require compliance with State and federal environmental laws and to serve as the lead agency for environmental review, enforce violations of customer service standards and to establish a schedule of penalties for such violations; and enact reasonable regulations regarding the installation and placement of surface mounted utility facilities in City streets and rights of way.

A cable or video service provider operating in the City under a State franchise will be required to pay the City a franchise fee for use of the public rights of way in the amount of 5% of gross revenues derived from providing service in the City or the percentage paid by the incumbent operator's whichever is less. The franchise fee will be due and payable on a quarterly basis and subject to a late payment charge. The City may use the revenue from the franchise fee for any lawful purpose. The new State law also allows the City to collect PEG fees in a maximum amount of 1% of gross revenues derived from operating in the City under certain circumstances. These fees are for the purpose of supporting capital purposes related to public educational and governmental programming.

DIVCA authorizes the City to examine the business records of the State franchise holder once a year to ensure that appropriate franchise and PEG fees are being paid. Service providers must retain their business records for this purpose for at least four years.

Under DIVCA cable and video service facilities in public rights of way must comply with State and federal environmental laws. DIVCA authorizes the City to serve as the lead agency for any environmental review that is required for construction or alteration of facilities in the rights of way. The City's authority to conduct environmental review includes the ability to impose conditions to mitigate the environmental impacts of the facilities.

The holder of a State video service franchise is required to comply with specific customer service standards including the Cable Television and Video Provider Customer Service and Information Act Gov't Code section 53054 et seq; California Penal Code Section 637.5; and the privacy standards in section 631 of the Federal Cable Act 47 U.S.C. Section 551 et seq. The City is required by DIVCA to enforce these standards and to establish a schedule of monetary penalties for violations. Any fines collected for customer service standard violations are split between the City and the Digital Divide Account.

The City must permit the holder of a State franchise to install and maintain a network within public rights of way under the same time place and manner regulations that apply to telephone companies under applicable State and federal law. DIVCA specifically provides that one of its purposes is to protect local government revenues and control of public rights of way. Public Utilities Code section 5810 2 D.

There is one existing cable franchise in Porterville. Charter Communications currently operates under the terms of a franchise agreement with the City which is expected to expire on December 31, 2007. Beginning January 1, 2008 the incumbent operator have the option to terminate the City franchise agreement and replace it with a State franchise or to continue operating under the City franchise agreement until it expires. This office understands that Charter Communications is gearing up to apply for a State franchise and that Notice of said application could be coming any day.

RECOMMENDATION: That the City Council:

- 1) Approve and give first reading to the attached proposed Ordinance.
- 2) Authorize that a public hearing be set for the November 20, 2007 City Council Meeting, for consideration of any public testimony prior to adoption and second reading of the Ordinance.

ATTACHMENTS:

Ordinance No. _____, An Ordinance of the City Council of the City of Porterville Adding Chapter 24B, Article I, Sections 24B-1 through 24B-10 to the Porterville Municipal Code Pertaining to the Regulation of State Video Franchise Holders.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADDING CHAPTER 24B, ARTICLE I, SECTIONS 24B-1 THROUGH 24B-10 TO THE PORTERVILLE MUNICIPAL CODE PERTAINING TO THE REGULATION OF STATE VIDEO FRANCHISE HOLDERS

WHEREAS a new State law the Digital Infrastructure and Video Competition Act of 2006 AS 2987 went into effect January 1 2007;

WHEREAS under the new State law the State of California shall have sole franchising authority for new video service providers within the City;

WHEREAS although the City of Porterville will not be the franchising authority for video service providers the City continues to have certain rights and responsibilities with respect to the State franchise holders;

WHEREAS AB 2987 requires that local agencies establish their rights and responsibilities with regard to the State franchise holders by enacting local ordinances;

WHEREAS the City of Porterville shall receive a fee of 5 of gross revenues of each State video franchise holder which operates within the City of Porterville for use of the public rights of way;

WHEREAS the City of Porterville shall receive an additional fee of 1 of gross revenues of each State video franchise holder which operates within the City of Porterville for Public Educational and Government PEG purposes;

WHEREAS the City of Porterville may audit the business records of a State video franchisee once annually to ensure compliance with the payment of the franchise and PEG fees; and

WHEREAS the City of Porterville will retain authority without change over the City s current cable franchisees until such time as they no longer hold a City franchise or are no longer operating under a current or expired City franchise;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DO ORDAIN , AS FOLLOWS:

SECTION 1: Chapter 24B, Article I, Sections _____ through _____, of the Porterville Municipal Code is hereby added as follows:

Chapter 24b
VIDEO SERVICE/UTILITIES

Article I
REGULATION OF STATE VIDEO FRANCHISE HOLDERS

Sections:

24B-1	Purpose and Authority
24B-2	Definitions
24B-3	State Video Franchise and PEG Fees
24B-4	Authority to Examine Business Records
24B-5	Customer Service Penalties
24B-6	City Response to State Video Franchise Applications
24B-7	Development Review for Facilities in Streets and Public Rights-of-Way
24B-8	Construction Standards
24B-9	Environmental Review
24B-10	Severability

24B-1 Purpose and Authority. This Chapter is designed to regulate video service providers holding State video franchises and operating within the City. As of January 1, 2007, the State of California will have the sole authority to grant State video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 Act. Pursuant to the Act the City of Porterville shall receive a franchise fee and shall receive a fee for public educational and government PEG purposes from all State video franchise holders operating within the City. Additionally the City will acquire the responsibility to establish and enforce penalties consistent with State law against all State video franchise holders operating within the City for violations of customer service standards however the Act grants all authority to adopt customer service standards to the State. The Act leaves unchanged the City's authority to regulate the City's current cable franchise and the cable franchise currently in effect until such time as the cable franchisee no longer holds a City franchise or is no longer operating under a current or expired City franchise.

24B-2 Definitions. The definitions of the terms herein shall have the same meaning as defined in the California Public Utilities Code Section 5830, and as otherwise defined in the Digital Infrastructure and Video Competition Act of 2006.

24B-3 State Video Franchise and PEG Fees.

A) For any State video franchise holder operating within the boundaries of the City of Porterville there shall be a fee paid to the City equal to 5% of the gross revenue of that State video franchise holder.

B) PEG FEE: A separate fee of 1% of Gross Revenues shall be assessed on all state franchise holders that use the public rights-of-way, including all local franchisees and all holders of state franchises as consistent with state or federal law. The PEG Fee shall be paid quarterly, to be received by the City not later than 45 days after the close of each quarter of Holder's fiscal year.

- (1) On a quarterly basis, Holder shall provide the City a complete and accurate statement verified by a financial officer of Holder indicating Gross Revenues for the past quarter, listing every revenue source, and depicting gross revenue computations.
- (2) A video service provider subject to this section may recover the amount of any fee by billing a recovery fee as a separate line item on the regular bill of each Subscriber.

C) CHANNEL DESIGNATION: All video service providers that use the public rights-of-way shall designate sufficient amount of capacity on its network to allow the carriage of at least three public, educational, or governmental (PEG) access channels. For the purposes of this section, a PEG access channel is deemed activated if it is being utilized for PEG access programming within the city for at least eight hours per day. PEG access channels shall be for the exclusive use of the City or its designees to provide public, educational, or governmental channels.

- (1) Advertising, underwriting, or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG-related activities.
- (2) The PEG access channels shall all be carried on the basic service tier of Holder.
- (3) To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.
- (4) After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without the prior written consent of the City unless the change is required by federal law.
- (5) Each PEG access channel shall be capable of carrying a National Television System Committee (NTSC) television signal.
- (6) Requests by the City for additional channel capacity will be made in accordance to PUC Section §5870.

D) INTERCONNECTION. Where technically feasible, a state video franchise holder and incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. State video franchise holders and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a state video franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the state video franchise holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically feasible point for interconnection is available, the state video franchise holder shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state video franchise holder requesting the interconnection unless otherwise agreed to by the parties.

E) EMERGENCY ALERT SYSTEM AND EMERGENCY OVERRIDES. A state video franchise holder must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network. Provisions in City-issued franchises authorizing the City to provide local emergency notifications shall remain in effect, and shall apply to all state video franchise holders in the City for the duration of the City-issued franchise, or until the term of the franchise would have expired had it not been terminated pursuant to subdivision (m) of Section 5840 of the California Public Utilities Code, or until January 1, 2009, whichever is later.

F) Gross Revenue, for the purpose of this entire Section, shall have the definition set forth in California Public Utilities Code Section 5860.

24B-4 Authority to Examine Business Records. Not more than once annually, the City Manager or his or her designee may examine the business records of a holder of a State video franchise to ensure compliance with Section 24B-3, under the terms and conditions set forth in the Act.

24B-5 Customer Service Standards and Penalties. The Holder of a State video franchise shall comply with all applicable State and federal customer service and protection standards pertaining to the provision of video service.

A) Unless the customer protection and customer service obligations of a Video Provider are specified in a Franchise with the City, a Video Provider must comply with all applicable provisions of the Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.), and the Video Customer Service Act (Government Code §§ 53088, et seq.).

B) All Video Providers that are operating in the City on the effective date of this Chapter, or that intend to operate in the City after the effective date of this Chapter, and are not required under applicable law to operate under a Franchise, license, lease, or similar written agreement with the City, must register with the City. The registration form must include or be accompanied by the following:

- (1) The Video Provider's name, address, and local telephone numbers.
- (2) The names of the officers of the Video Provider.
- (3) A copy of the Video Provider's written policies and procedures relating to customer service standards and the handling of customer complaints, as required by California Government Code §§ 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:
 - (a) Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.
 - (b) Customer telephone and office hours.
 - (c) Procedures for billing, charges, refunds, and credits.
 - (d) Procedures for termination of service.
 - (e) Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.
 - (f) Complaint procedures and procedures for bill dispute resolution.
 - (g) The Video Provider's written acknowledgement of its obligation under California Government Code section 53055.1 to provide to new customers a notice describing the customer service standards specified above in subparagraphs (a) through (f) at the time of installation or when service is initiated. The notice must also include, in addition to all of the information described above in subparagraphs (a) through (f), all of the following:
 - (i) A listing of the services offered by the Video Provider that clearly describes all levels of service and the rates for each level of service.
 - (ii) The telephone number or numbers through which customers may subscribe to, change, or terminate service, request customer service, or seek general or billing information.
 - (iii) A description of the rights and remedies that the Video Provider may make available to its customers if the Video Provider does not materially meet its customer service standards.
 - (h) The Video Provider's written commitment to distribute annually to its employees and customers, and to the City, a notice describing the customer service standards

specified above in subparagraphs (a) through (f). This annual notice must include the report of the Video Provider on its performance in meeting its customer service standards, as required by California Government Code section 53055.2.

- (4) Unless a Video Provider is exempt under federal law from its payment, a registration fee in an amount established by resolution of the City Council to cover the reasonable costs incurred by the City in reviewing and processing the registration form.
 - (5) In addition to the registration fee specified above in subsection (4), the written commitment of the Video Provider to pay to the City, when due, all costs and expenses reasonably incurred by the City in resolving any disputes between the Video Provider and its Subscribers, which dispute resolution is mandated by California Government Code section 53088.2(o).
- C) The customer service obligations imposed upon Video Providers by the Video Customer Service Act (California Government Code §§53088 et seq.) consist of the following:
- (1) Every Video Provider must render reasonably efficient service, make repairs promptly, and interrupt service only as necessary.
 - (2) All Video Provider personnel contacting Subscribers or potential Subscribers outside the office of the provider must be clearly identified as associated with the Video Provider.
 - (3) At the time of installation, and annually thereafter, all Video Providers must provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address, and telephone number of the City's office that is designated for receiving complaints.
 - (4) All Video Providers must have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday through Friday, excluding holidays, during normal business hours.
 - (5) All Video Providers must provide to customers a toll-free or local telephone number for installation, service, and complaint calls. These calls must be answered promptly by the Video Providers.
 - (6) All Video Providers must render bills that are accurate and understandable.
 - (7) All Video Providers must respond promptly to a complete outage in a customer's service. The response must occur within 24 hours of the reporting of such outage to the provider, except in those situations beyond the reasonable control of the

Video Provider. A Video Provider will be deemed to respond to a complete outage when a company representative arrives at the outage location within 24 hours and begins to resolve the problem.

- (8) All Video Providers must provide a minimum of 30 days' written notice before increasing rates or deleting channels. All Video Providers must make every reasonable effort to submit the notice to the City in advance of the distribution to customers. The 30-day notice is waived if the increases in rates or deletion of channels are outside the control of the Video Provider. In those cases, the Video Provider must make reasonable efforts to provide customers with as much notice as possible.
- (9) Every Video Provider must allow every residential customer who pays his or her bill directly to the Video Provider at least 15 days from the date the bill for services is mailed to the customer, to pay the listed charges unless otherwise agreed to pursuant to a residential rental agreement establishing tenancy. Customer payments must be posted promptly. No Video Provider may terminate residential service for nonpayment of a delinquent account unless the Video Provider furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination. The notice must be mailed, postage prepaid, to the customer to whom the service is billed. Notice must not be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No Video Provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.
- (10) Every notice of termination of service pursuant to the preceding subsection 9 must include all of the following information:
 - (a) The name and address of the customer whose account is delinquent.
 - (b) The amount of the delinquency.
 - (c) The date by which payment is required in order to avoid termination of service.
 - (d) The telephone number of a representative of the Video Provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.
- (11) Service may only be terminated on days in which the customer can reach a representative of the Video Provider either in Person or by telephone.
- (12) Any service terminated without good cause must be restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check

for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar Subscriber actions.

- (13) All Video Providers must issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and following the return of the equipment supplied by the Video Provider, if service is terminated.
- (14) All Video Providers must issue security or customer deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions permitted by law.
- (15) Video providers must not disclose the name and address of a Subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the Video Providers or their Affiliates, unless the Video Providers have provided to the Subscriber a notice, separate or included in any other customer notice, that clearly and conspicuously describes the Subscriber's ability to prohibit the disclosure. Video providers must provide an address and telephone number for a local Subscriber to use without toll charge to prevent disclosure of the Subscriber's name and address.

D) Penalties for Noncompliance

- (1) Purpose. The purpose of this paragraph (D) is to authorize the imposition of monetary penalties for the violation of the customer service standards established by this Section 7759. The imposition of penalties authorized by this paragraph (D) will not prevent the City or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy as provided below in subsection (2)(d).
- (2) Administration and Appeals.
 - (a) The City Manager or the City Manager's designee is authorized to administer this paragraph (D). Decisions by the City Manager to assess monetary penalties against the holder must be in writing and must contain findings supporting the decisions. Decisions by the City Manager are final, unless appealed by the holder or aggrieved party.
 - (b) A State video franchise holder may appeal a penalty assessed by the City Manager to the City Council within 30 days of the initial assessment. The City Council shall hear all evidence and relevant testimony and may uphold modify or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.
 - (c) Schedule of Penalties. The following schedule of penalties shall apply to State Franchise Holders, in the

event of a violation of any requirement or obligation established by applicable law:

- (i) For the first occurrence of a violation, a monetary penalty of \$500 shall be imposed for each day the violation remains in effect, not to exceed \$1500 for each violation.
 - (ii) For a second violation of the same nature within 12 months, a monetary penalty of \$1000 shall be imposed for each day the violation remains in effect, not to exceed \$3000 for each violation.
 - (iii) For a third or further violation of the same nature within 12 months, a monetary penalty of \$2500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.
 - (iv) The maximum penalties referenced above may be increased by any additional amount authorized by state law.
- (d) Judicial Remedy. This paragraph does not preclude any affected party from pursuing any judicial remedy available to that party without regard to this paragraph.
- (e) Notice of Violation. The City must give the Holder written notice of any alleged violation of the consumer service standards and allow the Holder at least 30 days from receipt of the notice to remedy the specified violation.
- (f) Assessment of Monetary Penalties.
- (i) If a violation has not been corrected or cured by Holder within the time specified by the City, the monetary penalties specified above in subparagraph (c) may be assessed from the date of delivery to Holder of the City's written notice of violation.
 - (ii) In assessing monetary penalties under this paragraph, the City Manager or the City Council, as applicable, may take into account the nature, circumstances, extent and gravity of the violation and, with respect to the Holder, the degree of culpability, any history of prior violations, and such other matters as may be relevant. If warranted under the circumstances, the monetary penalty to be assessed may be less than the maximum penalty amount specified above in subparagraph (c).

E) Additional Consumer Protection and Service Standards

- (1) In addition to the consumer protection and service standards

that are specified above in paragraphs (a) through (h) of subparagraph (B)(3) of this section, the franchise agreement with a Holder may require compliance with the following:

- a. Federal statutes, and the rules, regulations, and orders of the Federal Communications Commission, including the following:
 - (i) The provisions of Section 76.309(c) of Chapter 47 of the Code of Federal Regulations, as it now exists or may later be amended.
 - (ii) The provisions of Section 76.630 of Chapter 47 of the Code of Federal Regulations, as it now exists or may later be amended.
 - (iii) The provisions of Section 551 of Chapter 47, United States Code, as it now exists or may later be amended.
 - (iv) The provisions of California Government Code Sections 53054, et seq., enChapterd the “Cable Television and Video Provider Customer Service and Information Act.”
 - (v) The provisions of California Government Code Section 53088, et seq., enChapterd the “Video Customer Service Act.”
 - (vi) The provisions of California Civil Code Section 1722(b)(1)-(6) relating to service or repair transactions between cable television companies and their subscribers.
 - (vii) The provisions of California Penal Code Section 637.5 relating to subscribers’ rights to privacy protection.

- (2) The City may, in its discretion, incorporate in a franchise agreement those customer service and protection standards referenced above in this paragraph (E)(1) that are the most stringent, and that afford the greatest protection to consumers. These standards will apply, to the extent authorized by law, to all video, voice, and data services that are provided by the Holder to its subscribers within the franchise service area.

F) A State Franchise Holder and any Franchisee, upon request by the City, shall prepare quarterly reports showing compliance customer service standards for telephone response performance. Such reports will be due to the City within 45 days from the end of each calendar quarter. The report should detail customer call center performance within all call centers serving the City showing data tracked and aggregated for the entire market area served by the call centers. The report shall include:

- (1) Calls offered to Interactive Voice Router (IVR);
- (2) Calls handled within IVR;

- (3) Percentage of calls handled within IVR;
- (4) Calls offered to agents;
- (5) Calls handled within 30 seconds;
- (6) Service level or percentage of calls answered within 30 seconds;
- (7) Number of abandoned calls;
- (8) Percentage of calls abandoned;
- (9) Average speed to answer a call;
- (10) Number of calls reaching a busy signal;
- (11) Percentage of busy calls as a function of total calls.

24B-6 City Response to State Video Franchise Applications. Applicants for State video franchises within the boundaries of the City of Porterville must concurrently provide complete copies to the City of any application or amendments to applications filed with the Public Utilities Commission. One complete copy must be provided to the City Manager. Within 30 days of receipt the City Manager will provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State video franchise.

24B-7 Development Review for Facilities in Streets and Public Rights of Way. Prior to construction or alteration of any facilities in on over under upon across and along the public streets and rights of way within the City of Porterville, a State video franchise holder shall for each facility submit plans and drawings to the Community Development and/or Public Works Directors for review pursuant to the City's applicable regulations. For purposes of this section facilities includes wires cables conductors ducts conduits vaults manholes amplifiers appliances pedestals attachments and other property and equipment as are necessary and appurtenant to the operation of the video service system.

24B-8 Construction Standards. All applicable construction standards as set forth in the City regulations shall apply to State video service franchise holders constructing or altering any facilities within the City.

24B-9 Environmental Review. The City of Porterville shall serve as the lead agency for any environmental review that is required for construction or alteration of facilities by a State video service franchise holder within the City of Porterville and may impose conditions to mitigate environmental impacts of the applicant s use of the public rights of way that may be required by the California Environmental Quality Act Division 13 commencing with Section 21000 of the Public Resources Code.

24B-10 Severability. This Chapter and the various parts thereof are hereby declared to be severable. Should any section of this Chapter be declared by a court of competent jurisdiction to be unconstitutional or invalid for any reason such decision shall not affect the validity of the Chapter as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

SECTION 2: This Ordinance shall be in full force and effect thirty (30) days from and after its passage, adoption, and approval.

Cameron Hamilton, Mayor

ATTEST:

John Longley, City Clerk

By: Patrice Hildreth, Acting Chief Deputy