

May 2, 2006

Honorable Mayor and Members of
the Hermosa Beach City Council

Regular Meeting of
May 9, 2006

AB2987 (NUNEZ) – CABLE AND VIDEO SERVICES

Recommendation:

That the City Council review and consider taking a position on AB2987

Background:

I have attached information regarding the bill that has been provided by the League of California Cities. The state legislature is in the process of changing the rules regarding cable and/or video services. This is in response to the market opening up to include telephone companies. The safeguards that we have in our franchise agreements now with both Adelphia and Verizon would be lost under the current proposal. This would include consumer services standards, services provided to schools and libraries, PEG channels and PEG support, right-of-way usage, and potential revenue loss from a statewide franchise.

It appears possible that a bill could be crafted that will take into account the issues raised by the League of California Cities. Our own experience with Verizon shows that it is possible to have a franchise that provides the safeguards.

A letter expressing these concerns could be forwarded to the legislature and, if changes are not made, then the City Council should consider opposing this bill.

Respectfully submitted,



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City Manager



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For Immediate Release

April 6, 2006

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League of California Cities Statement Regarding AB 2987 (Nunez): Cable and Video Service

SACRAMENTO, Calif. – The League of California Cities today issued the following statement regarding AB 2987 (Nunez), a bill that would create a new statewide franchise for cable and video service providers:

"The League and California cities strongly support greater competition in the delivery of video and Internet services. We understand that competition will produce more affordable services and improve the quality of telecommunications services to city residents.

"We have deep concerns, however, about a number of issues in AB 2987.

"We appreciate the leadership of Assembly Speaker Nunez and Assemblymember Levine in introducing legislation designed to address the "speed to market" concerns of new video and Internet providers," said Alex Padilla, President of the League and councilmember in the city of Los Angeles. "We stand ready to work with these leaders and other legislators to address our concerns and ensure that Californians are provided the kind of cutting edge telecommunication services that our state needs."

League of California Cities Concerns with AB 2987 (Nunez)

Build Out of Telecommunications Services. We are concerned that the build out provisions in AB 2987 will not ensure that video services will be equally available throughout a community. The bill allows video service providers three years to build out video service, and to self-define the area they will service. While they are prohibited from discriminating on the basis of income, they could gerrymander their service area and thereby avoid low income areas. Local governments will not have the authority to challenge the adequacy of the service area "footprint."

Some areas may only be provided satellite or "another alternative technology" – an option provided in the bill when the video service provider is not able to physically build out service to all areas of their service area footprint. The League is concerned that these alternatives may not be comparable to service offered in other parts of the service area.

Consumer Protection and Customer Service. The bill effectively preempts local government from adopting and enforcing customer service standards for those operators who have received a statewide franchise. This would create a two-tiered customer

service standard, with local cable operators subject to local customer service standards, and new statewide franchisees exempt from these standards.

Video Services to Libraries and Schools. Currently, most local franchises require cable companies to provide services to schools and libraries. This bill would eliminate this obligation. As a result, children and community members who can't afford the services at home will lose access to these advanced broadband services.

PEG Channels and PEG Support. Local agencies would lose control over the determination of the number of public, education and government (PEG) channels needed to properly meet a community's needs.

Public Rights-of-Way. It is not clear that local communities would retain their full control over access to local right-of-way. The League believes that the taxpayers' investment in the public right-of-way must be protected with clear city authority over access to the right-of-way.

Revenues. AB 2987 does not ensure that cities will be "kept whole" in regard to franchise revenues. While the bill upholds a city's ability to impose a utility user tax, local agencies appear to be prohibited from imposing other local fees and taxes, such as business license taxes, encroachment permit fees and building permit fees.

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AMENDED IN ASSEMBLY APRIL 6, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2987

Introduced by Assembly Members Nunez and Levine

February 24, 2006

An act to add Article 3.7 (commencing with Section 53058) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, relating to cable and video service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez. Cable and video service.

Existing law provides that any city or county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. *Existing law provides that cable and video service providers comply with specified customer service standards and performance standards.*

~~This bill would state the intent of the Legislature to create the Digital Infrastructure and Video Competition Act of 2006 and would define the term "franchise" for that purpose.~~

This bill would establish a procedure for state-issued authorizations for the provision of cable service or video service that would be administered by the Department of Corporations. The department would be the sole franchising authority of state-issued authorizations to provide cable or video services. The bill would require any person who seeks to provide cable service or video service in this state to file an application with the department for a state-issued authorization.

Current franchise holders would be eligible to apply for state-issued authorizations on the expiration of their current franchise agreements. Cities, counties, or cities and counties would receive fees for cable or video services provided within their jurisdictions, based on gross revenues, pursuant to specified procedures. The bill would require these local agencies to permit the installation of networks by holders of state-issued authorizations and would preclude enforcement of standards by the local agencies.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.7 (commencing with Section 53058) is
2 added to Chapter 1 of Part 1 of Division 2 of Title 5 of the
3 Government Code, to read:

4
5 Article 3.7. The Digital Infrastructure and Video Competition
6 Act of 2006
7

8 53058. This act shall be known and may be cited as the
9 Digital Infrastructure and Video Competition Act of 2006.

10 53058.1. (a) This article shall be known and may be cited as
11 the Digital Infrastructure and Video Competition Act of 2006.

12 (b) The Legislature finds and declares all of the following:

13 (1) Video and cable services provide numerous benefits to all
14 Californians including access to a variety of news, public
15 information, education, and entertainment programming.

16 (2) Increased competition in the cable and video service sector
17 provides consumers with more choice, lowers prices, speeds the
18 deployment of new communication and broadband technologies,
19 creates jobs, and benefits the California economy.

20 (3) To promote competition, the state should establish a
21 state-issued franchise authorization process that allows market
22 participants to use their networks and systems to provide video,
23 voice, and broadband services to all residents of the state.

24 (4) Legislation to develop this new process should adhere to
25 the following principles.

1 (i) Create a fair and level playing field for all market
2 competitors that does not disadvantage or advantage one service
3 provider or technology over another.

4 (ii) Promote the widespread access to the most technologically
5 advanced cable and video services to all California communities
6 in a nondiscriminatory manner regardless of socioeconomic
7 status.

8 (iii) Protect local government revenues and their control of
9 public rights of way.

10 (iv) Require market participants to comply with all applicable
11 consumer protection laws.

12 (v) Complement efforts to increase investment in broadband
13 infrastructure and close the digital divide.

14 (vi) Continue access to and maintenance of the public,
15 education, and government (PEG) channels.

16 53058.2. For purposes of this article, the following words
17 have the following meanings:

18 (a) "Cable operator" means any person or group of persons
19 that either provides cable service over a cable system and
20 directly, or through one or more affiliates, owns a significant
21 interest in a cable system; or that otherwise controls or is
22 responsible for, through any arrangement, the management and
23 operation of a cable system, as set forth in Section 522(5) of Title
24 47 of the United States Code.

25 (b) "Cable service" is defined as the one-way transmission to
26 subscribers of either video programming, or other programming
27 service, and subscriber interaction, if any, that is required for the
28 selection or use of video programming or other programming
29 service, as set forth in Section 522(6) of Title 47 of the United
30 States Code.

31 (c) "Cable system" is defined as set forth in Section 522(7) of
32 Title 47 of the United States Code.

33 (d) "Department" means the Department of Corporations.

34 (e) "Franchise" means an initial authorization, or renewal of
35 an authorization, issued by a franchising entity, regardless of
36 whether the authorization is designated as a franchise, permit,
37 license, resolution, contract, certificate, agreement, or otherwise,
38 that authorizes the construction and operation of a cable system
39 in public rights-of-way.

1 (f) "Franchising entity" means the city, county, or city and
2 county entitled to require franchises and impose fees on cable
3 operators, as set forth in Section 53066.

4 (g) "Incumbent cable operator" means the cable operator
5 serving the largest number of cable subscribers in a particular
6 city, county, or city and county franchise area on the effective
7 date of this article.

8 (h) "Local entity" means any city, county, or city and county
9 within the state within whose jurisdiction a holder of a
10 state-issued authorization under this article may provide cable
11 service or video service.

12 (i) "Network" means a component of a facility that is wholly
13 or partly physically located within a public right-of-way and that
14 is used to provide video service, cable service, or voice or data
15 services.

16 (j) "Public right-of-way" means the area along and upon any
17 public road or highway, or along or across any of the waters or
18 lands within the state.

19 (k) "Subscriber" means a person who lawfully receives cable
20 service or video service from the holder of a state-issued
21 authorization or franchise for a fee.

22 (l) "Video programming" means programming provided by,
23 or generally considered comparable to programming provided
24 by, a television broadcast station, as set forth in Section 522(20)
25 of Title 47 of the United States Code.

26 (m) "Video service" means video programming services
27 provided through wireline facilities located at least in part in
28 public rights-of-way without regard to delivery technology,
29 including Internet protocol technology. This definition does not
30 include any video programming provided by a commercial
31 mobile service provider defined in Section 322(d) of Title 47 of
32 the United States Code.

33 (n) "Video service provider" means an entity providing video
34 service. This term does not include a cable operator.

35 53058.3. (a) The Department of Corporations is the sole
36 franchising authority for a state-issued authorization to provide
37 cable service or video service under this article. Neither the
38 department nor any franchising entity or other local entity of the
39 state may require the holder of a state-issued authorization to
40 obtain a separate franchise or otherwise impose any fee or

1 requirement on any holder of a state-issued authorization except
2 as expressly provided in this article. Sections 53066, 53066.01,
3 53066.2, and 53066.3 shall not apply to holders of a state-issued
4 authorization.

5 (b) The application process described in subdivisions (d) and
6 (e) and the authority granted to the department under this section
7 shall not exceed the provisions set forth in this section.

8 (c) Any person who seeks to provide cable service or video
9 service in this state after the effective date of this article shall file
10 an application for a state-issued authorization with the
11 department. The department may impose a fee on the applicant
12 that shall not exceed the actual and reasonable costs of
13 processing the application and shall not be levied for general
14 revenue purposes.

15 (d) The application for a state-issued authorization shall be
16 made on a form prescribed by the department and shall include
17 all of the following:

18 (1) A sworn affidavit, signed by an officer or another person
19 authorized to bind the applicant, that affirms all of the following:

20 (A) That the applicant has filed or will timely file with the
21 Federal Communications Commission all forms required by the
22 Federal Communications Commission before offering cable
23 service or video service in this state.

24 (B) That the applicant agrees to comply with all federal and
25 state statutes, rules, and regulations, including, but not limited
26 to, the following:

27 (i) A statement that the applicant will not discriminate in the
28 provision of video or cable services as provided in Section
29 53058.7.

30 (ii) A statement that the applicant will abide by all applicable
31 consumer protection laws and rules as provided in Section
32 53058.8.

33 (iii) A statement that the applicant will remit the fee required
34 by Section 53058.4 to the local entity.

35 (iv) A statement that the applicant will provide PEG channels
36 as required by Section 53058.5.

37 (C) That the applicant agrees to comply with all lawful city,
38 county, or city and county regulations regarding the time, place,
39 and manner of using the public rights-of-way.

1 (2) *The applicant's legal name and any name under which the*
2 *applicant does or will do business in this state.*

3 (3) *The address and telephone number of the applicant's*
4 *principal place of business, along with contact information for*
5 *the person responsible for ongoing communications with the*
6 *department.*

7 (4) *The names and titles of the applicant's principal officers.*

8 (5) *The legal name, address, and telephone number of the*
9 *applicant's parent company, if any.*

10 (6) *A description of the service area footprint to be served*
11 *including the social economic information of all residents within*
12 *the service area footprint.*

13 (7) *If the applicant is a telephone corporation, as defined in*
14 *Section 234 of the Public Utilities Code, a description of the*
15 *territory in which the company provides telephone service. The*
16 *description shall include social economic information of all*
17 *residents within in the telephone corporation's service territory.*

18 (8) *The expected date for the deployment of video service in*
19 *each of the areas identified in paragraph (6).*

20 (e) (1) *The department shall notify an applicant for a*
21 *state-issued authorization whether the applicant's affidavit*
22 *described by subdivision (d) is complete or incomplete before the*
23 *30th calendar day after the applicant submits the affidavit.*

24 (2) *If the department finds the affidavit is complete, it shall*
25 *issue a certificate of state-issued authorization before the 14th*
26 *calendar day after that finding.*

27 (3) *If the department finds that the application is incomplete, it*
28 *shall specify with particularity the items in the application that*
29 *are incomplete and permit the applicant to amend the application*
30 *to cure any deficiency. The department shall have 30 calendar*
31 *days from the date the application is amended to determine its*
32 *completeness.*

33 (4) *The failure of the department to notify the applicant of the*
34 *completeness or incompleteness of the applicant's affidavit*
35 *before the 44th calendar day after receipt of an affidavit shall be*
36 *deemed to constitute issuance of the certificate applied for*
37 *without further action on behalf of the applicant.*

38 (f) *The state-issued authorization issued by the department*
39 *shall contain all of the following:*

1 (1) A grant of authority to provide cable service or video
2 service, or both, in the service area footprint as requested in the
3 application.

4 (2) A grant of authority to use the public rights-of-way in the
5 delivery of that service, subject to the laws of this state.

6 (3) A statement that the grant of authority is subject to lawful
7 operation of the cable service or video service by the applicant
8 or its successor in interest.

9 (g) The state-issued authorization issued by the department
10 may be terminated by the cable operator or video service
11 provider by submitting notice to the department.

12 (h) Subject to the notice requirements of this article, a
13 state-issued authorization may be transferred to any successor in
14 interest of the holder to which the certificate is originally
15 granted.

16 (i) In connection with, or as a condition of, receiving a
17 state-issued authorization, the department shall require a holder
18 to notify the department and any applicable local entity within 14
19 business days of any of the following changes involving the
20 holder or the state-issued authorization:

21 (1) Any transaction involving a change in the ownership,
22 operation, control, or corporate organization of the holder,
23 including a merger, an acquisition, or a reorganization.

24 (2) A change in the holder's legal name or the adoption of, or
25 change to, an assumed business name. The holder shall submit to
26 the department a certified copy of either of the following:

27 (A) The amended state-issued authorization.

28 (B) The certificate of assumed business name.

29 (3) A change in the holder's principal business address or in
30 the name of the person authorized to receive notice on behalf of
31 the holder.

32 (4) Any transfer of the state-issued authorization to a
33 successor in interest of the holder. The holder shall identify the
34 successor in interest to which the transfer is made.

35 (5) The termination of any state-issued authorization issued
36 under this article. The holder shall identify both of the following:

37 (A) The number of customers in the service area covered by
38 the state-issued authorization being terminated.

39 (B) The method by which the holder's customers were notified
40 of the termination.

1 (6) A change in one or more of the service areas of this article
2 that would increase or decrease the territory within the service
3 area. The holder shall describe the new boundaries of the
4 affected service areas after the proposed change is made.

5 (j) As a condition of receiving a state-issued authorization, the
6 holder shall notify all applicable local entities that the local
7 entity is included in the holder's service area under the
8 state-issued authorization being issued and that the holder
9 intends to provide video or cable service in the local entity's
10 jurisdiction. The holder shall give the notice required under this
11 subdivision not later than 10 days before the holder begins
12 providing video or cable service in the local entity's jurisdiction.

13 (k) The department shall develop information guides and other
14 tools to help educate local entities and other interested parties
15 about the various provisions of this article.

16 53058.4. (a) The holder of a state-issued authorization that
17 offers cable service or video service within the jurisdiction of the
18 local entity shall calculate and remit to the local entity a
19 state-issued authorization fee, as provided in this section. The
20 obligation to remit the state-issued authorization fee to a local
21 entity begins immediately upon provision of cable or video
22 service within that local entity's jurisdiction. However, the
23 remittance shall not be due until the time of the first quarterly
24 payment required under subdivision (g) that is at least 180 days
25 after the provision of service began. The fee remitted to a city or
26 city and county shall be based on gross revenues earned within
27 that jurisdiction. The fee remitted to a county shall be based on
28 gross revenues earned within the unincorporated area of the
29 county. No fee under this section shall become due unless the
30 local entity provides documentation to the holder of the
31 state-issued authorization supporting the percentage paid by the
32 incumbent cable operator serving the area within the local
33 entity's jurisdiction, as provided below. The fee shall be
34 calculated as a percentage of the holder's gross revenues, as
35 defined in subdivision (d).

36 (b) The state-issued authorization fee shall be a percentage of
37 the holder's gross revenues, as defined in subdivision (d), as
38 follows:

39 (1) If there is an incumbent cable operator, 5 percent of the
40 holder's gross revenues or the percentage applied by the local

1 entity to the gross revenue of the incumbent cable operator,
2 whichever is lesser.

3 (2) If there is no incumbent cable operator or upon the
4 expiration of the incumbent cable operator's franchise, a local
5 entity may, by ordinance, set the percentage applied to the gross
6 revenues of all cable operators and video service providers,
7 provided that the fee shall not exceed 5 percent of gross revenues
8 and shall be applied equally to all cable operators and video
9 service providers in the local entity's jurisdiction.

10 (c) No local entity or any other political subdivision of this
11 state may demand any additional fees or charges or other
12 remuneration of any kind from the holder of a state-issued
13 authorization other than as set forth in this section and may not
14 demand the use of any other calculation method or definition of
15 gross revenues. However, nothing in this section shall be
16 construed to limit a local entity's ability to impose utility user
17 taxes under other applicable provisions of state law.

18 (d) For purposes of this section, the term "gross revenues"
19 means all revenue actually received by the holder of a
20 state-issued authorization, as determined in accordance with
21 generally accepted accounting principles, that is derived from
22 the operation of the holder's network to provide cable or video
23 service within the jurisdiction of the local entity, including all of
24 the following:

25 (1) All charges billed to subscribers for any and all cable
26 service or video service provided by the holder of a state-issued
27 authorization.

28 (2) Any fees imposed on the holder of a state-issued
29 authorization by this section that are passed through to, and paid
30 by, the subscribers.

31 (3) Compensation received by the holder of a state-issued
32 authorization that is derived from the operation of the holder's
33 network to provide cable service or video service with respect to
34 commissions that are paid to the holder of a state-issued
35 authorization as compensation for promotion or exhibition of any
36 products or services on the holder's network, such as a "home
37 shopping" or similar channel, subject to paragraph (4) of
38 subdivision (e).

39 (4) A pro rata portion of all revenue derived by the holder of a
40 state-issued authorization or its affiliates pursuant to

1 compensation arrangements for advertising derived from the
2 operation of the holder's network to provide cable service or
3 video service within the jurisdiction of the local entity, subject to
4 paragraph (1) of subdivision (e). The allocation shall be based
5 on the number of subscribers in the local entity divided by the
6 total number of subscribers in relation to the relevant regional or
7 national compensation arrangement.

8 (e) For purposes of this section, the term "gross revenue" set
9 forth in subdivision (d) does not include any of the following:

10 (1) Amounts not actually received, even if billed, such as bad
11 debt; refunds, rebates, or discounts to subscribers or other third
12 parties; or revenue imputed from the provision of cable services
13 or video services for free or at reduced rates to any person as
14 required or allowed by law, including, but not limited to, the
15 provision of these services to public institutions, public schools,
16 governmental agencies, or employees other than forgone revenue
17 chosen not to be received in exchange for trades, barter, or
18 services, or other items of value.

19 (2) Revenues received by any affiliate or any other person in
20 exchange for supplying goods or services used by the holder of a
21 state-issued authorization to provide cable services or video
22 services. However, revenue received by an affiliate of the holder
23 from the affiliate's provision of cable or video service shall be
24 included in gross revenue as follows:

25 (A) To the extent that treating the revenue as revenue of the
26 affiliate, instead of revenue of the holder, would have the effect of
27 evading the payment of fees that would otherwise be paid to the
28 local entity.

29 (B) The revenue is not otherwise subject to fees to be paid to
30 the local entity.

31 (3) Revenue derived from services classified as noncable
32 services or nonvideo services under federal law, including, but
33 not limited to, revenue derived from telecommunications services
34 and information services, and any other revenues attributed by
35 the holder of a state-issued authorization to noncable services or
36 nonvideo services in accordance with Federal Communications
37 Commission rules, regulations, standards, or orders.

38 (4) Revenue paid by subscribers to "home shopping" or
39 similar networks directly from the sale of merchandise through
40 any home shopping channel offered as part of the cable services

1 or video services. However, commissions or other compensation
2 paid to the holder of a state-issued authorization by "home
3 shopping" or similar networks for the promotion or exhibition
4 products or services shall be included in gross revenue.

5 (5) Revenue from the sale of cable services or video services
6 for resale in which the reseller is required to collect a fee similar
7 to the state-issued authorization fee from the reseller's
8 customers.

9 (6) Amounts billed to and collected from subscribers to
10 recover any tax, fee, or surcharge imposed by any governmental
11 entity on the holder of a state-issued authorization, including, but
12 not limited to, sales and use taxes, gross receipts taxes, excise
13 taxes, utility users taxes, public service taxes, communication
14 taxes, and any other fee not imposed by this section.

15 (7) Revenue from the sale of capital assets or surplus
16 equipment not used by the purchaser to receive cable services or
17 video services from the seller of those assets or surplus
18 equipment.

19 (8) Revenue from directory or Internet advertising revenue,
20 including, but not limited to, yellow pages, white pages, banner
21 advertisement, and electronic publishing.

22 (9) Revenue received as reimbursement by programmers of
23 marketing costs incurred by the holder of a state-issued
24 authorization for the introduction of new programming.

25 (10) Security deposits received from subscribers, excluding
26 security deposits applied to the outstanding balance of a
27 subscriber's account and thereby taken into revenue.

28 (f) For purposes of this section, in the case of a cable service
29 or video service that may be bundled or integrated functionally
30 with other services, capabilities, or applications, the state-issued
31 authorization fee shall be applied only to the gross revenue, as
32 defined in subdivision (d), attributable to cable service or video
33 service, as reflected on the books and records of the holder kept
34 in the regular course of business in accordance with generally
35 accepted accounting principles and Federal Communications
36 Commission or Public Utilities Commission rules, regulations,
37 standards, and orders, as applicable.

38 (g) The state-issued authorization fee shall be remitted to the
39 applicable local entity quarterly, within 45 days after the end of
40 the quarter for the preceding calendar quarter. Each payment

1 shall be accompanied by a summary explaining the basis for the
2 calculation of the state-issued authorization fee.

3 (h) Not more than once annually, a local entity may examine
4 the business records of a holder of a state-issued authorization to
5 the extent reasonably necessary to ensure compensation in
6 accordance with subdivision (a). Each party shall bear its own
7 costs of the examination. Any claims by a local entity that
8 compensation is not in accordance with subdivision (a), and any
9 claims for refunds or other corrections to the remittance of the
10 holder of a state-issued authorization, shall be made within three
11 years and 45 days of the end of the quarter for which
12 compensation is remitted, or three years from the date of the
13 remittance, whichever is later. Either a local entity or the holder
14 may, in the event of a dispute concerning compensation under
15 this section, bring an action in a court of competent jurisdiction.

16 (i) The holder of a state-issued authorization may identify and
17 collect the amount of the state-issued authorization fee as a
18 separate line item on the regular bill of each subscriber.

19 53058.5. (a) The holder of a state-issued authorization shall
20 designate a sufficient amount of capacity on its network to allow
21 the provision of a comparable number of PEG channels or hours
22 of programming, at the holder's discretion, that the incumbent
23 cable operator has activated and provided within the local entity
24 under the terms of any franchise in effect in the local entity as of
25 the effective date of this article. For the purposes of this section,
26 a PEG channel is deemed activated if it is being utilized for PEG
27 programming within the municipality for at least eight hours per
28 day. The holder shall have 12 months from the date the local
29 entity requests the PEG channels to designate the capacity.
30 However, the 12-month period shall be tolled by any period
31 during which the designation or provision of PEG channel
32 capacity is technically infeasible, including any failure or delay
33 of the incumbent cable operator to make adequate
34 interconnection available, as required by this subdivision.

35 (b) If no PEG channels are activated and provided within the
36 local entity as of the effective date of this article, a local entity
37 whose jurisdiction lies within the authorized service area of the
38 holder of a state-issued authorization may request the holder to
39 designate not more than a total of three PEG channels in a
40 locality with a population of more than 50,000, or not more than

1 a total of two PEG channels in a locality with a population of
2 less than 50,000, as determined by the last decennial census.

3 The holder shall have 12 months from the date of the request to
4 designate the capacity. However, the 12-month period shall be
5 tolled by any period during which the designation or provision of
6 PEG channel capacity is technically infeasible, including any
7 failure or delay of the incumbent cable operator to make
8 adequate interconnection available, as required by this
9 subdivision.

10 (c) Any PEG channel provided pursuant to this section that is
11 not utilized by the local entity for at least eight hours per day
12 may no longer be made available to the local entity, and may be
13 programmed at the holder's discretion. At the time that the local
14 entity can certify to the holder a schedule for at least eight hours
15 of daily programming, the holder of the state-issued
16 authorization shall restore the channel or channels for the use of
17 the local entity.

18 (d) The content to be provided over the PEG channel capacity
19 provided pursuant to this section shall be the responsibility of the
20 local entity receiving the benefit of that capacity, and the holder
21 of a state-issued authorization bears only the responsibility for
22 the transmission of that content, subject to technological
23 restraints.

24 (e) The local entity shall ensure that all transmissions,
25 content, or programming to be transmitted by a holder of a
26 state-issued authorization are provided or submitted in a manner
27 or form that is capable of being accepted and transmitted by the
28 holder, without any requirement for additional alteration or
29 change in the content by the holder, over the holder's particular
30 network, and that is compatible with the technology or protocol
31 utilized by the holder to deliver services. The provision of those
32 transmissions, content, or programming to the holder of a
33 state-issued authorization shall constitute authorization for the
34 holder to carry those transmissions, content, or programming,
35 including, at the holder's option, beyond the jurisdictional
36 boundaries of that local entity.

37 (f) Where technically feasible, the holder of a state-issued
38 authorization and an incumbent cable operator shall negotiate in
39 good faith to interconnect their networks for the purpose of
40 providing PEG programming. Interconnection may be

1 accomplished by direct cable, microwave link, satellite, or other
2 reasonable method of connection. Holders of a state-issued
3 authorization and incumbent cable operators shall provide
4 interconnection of PEG channels on reasonable terms and
5 conditions and may not withhold the interconnection. If a holder
6 of a state-issued authorization and an incumbent cable operator
7 cannot reach a mutually acceptable interconnection agreement,
8 then the duty of the holder of a state-issued authorization shall be
9 discharged if the holder makes interconnection available to the
10 channel originator at a technically feasible point on the holder's
11 network.

12 (g) A holder of a state-issued authorization shall not be
13 required to interconnect for, or otherwise to transmit, PEG
14 content that is branded with the logo, name, or other identifying
15 marks of another cable operator or video service provider. The
16 local entity may require a cable operator or video service
17 provider to remove its logo, name, or other identifying marks
18 from PEG content that is to be made available through
19 interconnection to another provider of PEG capacity.

20 (h) After the effective date of this article and until the
21 expiration of the incumbent cable operator's franchise, if the
22 incumbent cable operator has existing unsatisfied obligations
23 under the franchise to remit to the local entity any cash payments
24 for the ongoing capital costs of public educational and
25 governmental access channel facilities, the local entity shall
26 divide those cash payments among all cable or video providers
27 as provided in this section. The fee shall be the holder's pro rata
28 per subscriber share of the cash payment required to be paid by
29 the incumbent cable operator to the local entity for the capital
30 costs of public, educational, and governmental access channel
31 facilities.

32 (i) In determining the fee on a pro rata per subscriber basis,
33 all cable and video service providers shall report, for the period
34 in question, to the local entity the total number of subscribers
35 served with the local entity's jurisdiction, which shall be treated
36 as confidential by the local entity and shall be used only to derive
37 the per subscriber fee required by this section. The local entity
38 shall then determine the payment due from each provider based
39 on a per subscriber basis for the period by multiplying the
40 unsatisfied cash payments for the ongoing capital costs of public,

1 educational, and governmental access channel facilities by a
2 ratio of the reported subscribers of each provider to the total
3 subscribers within the local entity as of the end of the period. The
4 local entity shall notify the respective providers, in writing, of the
5 resulting pro rata amount. After the notice, any fees required by
6 this section shall be remitted to the applicable local entity
7 quarterly, within 45 days after the end of the quarter for the
8 preceding calendar quarter, and may only be used by the local
9 entity as authorized under federal law.

10 (j) Upon the expiration of the incumbent cable operator's
11 franchise or if there is no local franchise, the holder or holders
12 of a state-issued authorization shall pay the local entity, in whose
13 jurisdiction it is offering cable or video service, a fee to support
14 the capital costs of public, educational, and governmental access
15 channel facilities and to support of institutional network facilities
16 equal to 1 percent of the holder's gross revenues, as defined in
17 Section 53058.4, earned in the local entity or, at the holder's
18 election, the per subscriber fee that was paid by the holder to the
19 local entity pursuant to subdivision (h). The local entity may only
20 use the fee for purposes allowed under federal law. The payment
21 required by this subdivision shall not become due and payable
22 until the expiration of the incumbent cable operator's franchise,
23 or 180 days after the local entity notifies the holder of the
24 expiration, whichever is later.

25 (k) The following services shall continue to be provided by the
26 incumbent cable operator that was furnishing services pursuant
27 to a franchise until January 1, 2008, or until the term of the
28 franchise expires, whichever is later:

29 (1) PEG production or studio facilities.

30 (2) Institutional network capacity, however defined or referred
31 to in the incumbent cable operator's franchise, but generally
32 referring to a private line data network capacity for use by the
33 local entity for noncommercial purposes.

34 (3) Cable services to community public buildings, such as
35 municipal buildings and public schools.

36 (l) The holder of a state-issued authorization may recover the
37 amount of any fee remitted to a local entity under this section by
38 billing a recovery fee as a separate line item on the regular bill
39 of each subscriber.

1 (m) A court of competent jurisdiction shall have exclusive
2 jurisdiction to enforce any requirement under this section or
3 resolve any dispute regarding the requirements set forth in this
4 section, and no provider may be barred from the provision of
5 service or be required to terminate service as a result of that
6 dispute or enforcement action.

7 53058.6. (a) The local entity shall allow the holder of a
8 state-issued authorization under this article to install, construct,
9 and maintain a network within public rights-of-way under the
10 same terms and conditions as applicable to telephone
11 corporations, as defined under Section 234 of the Public Utilities
12 Code, under applicable state and federal law.

13 (b) A local entity may not enforce against the holder of a
14 state-issued authorization any rule, regulation, or ordinance that
15 purports to allow the local entity to purchase or force the sale of
16 a network.

17 53058.7. (a) A cable operator or video service provider that
18 has been granted a state-issued authorization under this article
19 may not discriminate against or deny access to service to any
20 group of potential residential subscribers because of the income
21 of the residents in the local area in which the group resides, as
22 required by Section 541(a)(3) of Title 47 of the United States
23 Code.

24 (b) The holder of a state-issued authorization shall have a
25 reasonable period of time to become capable of providing cable
26 service or video service to all households within the designated
27 service area footprint as defined in as defined in paragraph (6)
28 of subdivision (d) of Section 53058.2 and may satisfy the
29 requirements of this section through the use of (1) direct-to-home
30 satellite service or (2) another alternative technology that
31 provides comparable content, service, and functionality.

32 (C) Within 36 months after issuance of the holder's first
33 state-issued authorization, and then annually for seven
34 additional years, the holder shall report the extent to which cable
35 or video service is available to potential subscribers within the
36 holder's service area, including all of the following:

37 (1) The demographics of the service area.

38 (2) The percentage of homes in the service area that have
39 access to service.

1 (3) *The demographics of the portion of the service area that*
2 *has access to service.*

3 (4) *The technology used by the holder to provide access to*
4 *service.*

5 *The report shall be filed with the Legislature, the department,*
6 *the Governor, and the Attorney General, and posted on the*
7 *holder's Web site. The holder shall not be required to report*
8 *competitively sensitive information.*

9 (c) *If there is a violation, the exclusive remedy for enforcing*
10 *the provisions of this section shall be an action in a court of*
11 *competent jurisdiction brought by the local entity, the district*
12 *attorney of the county in which the local entity is located, or the*
13 *Attorney General on behalf of the department. At least 60 days*
14 *before bringing an action, the enforcement entity shall serve the*
15 *holder of the state-issued authorization under this article with a*
16 *notice setting out the alleged violation and stating that an action*
17 *may be brought unless the provider, within the 60-day notice*
18 *period, corrects the alleged violation or enters into a binding*
19 *agreement to correct the violation. The notice shall contain a*
20 *sufficiently detailed description of the alleged violation to enable*
21 *the holder of the state-issued authorization to make a specific*
22 *response. If the holder of the state issued franchise does not*
23 *timely enter into a binding agreement to correct the violation,*
24 *then the matter shall proceed before the court of competent*
25 *jurisdiction.*

26 (d) *If the court finds that the holder of the state issued*
27 *franchise is in willful violation of Section 53058.7 herein, it may,*
28 *in addition to any other remedies provided by law, impose a fine*
29 *not to exceed 1 percent of the holder's total gross revenue of its*
30 *entire cable and service footprint in the state in the full calendar*
31 *month immediately prior to the decision.*

32 53058.8. *The holder of a state-issued authorization shall*
33 *comply with the provisions of Sections 53055, 53055.1, 53055.2,*
34 *and 53088.2. A franchising or local entity may not adopt or seek*
35 *to enforce any additional or different customer service or other*
36 *performance standards under Section 53055.3, subdivision (q),*
37 *(r), or (s) of Section 53088.2, or under any other authority or*
38 *provision of law. Any reporting or enforcement authority in those*
39 *sections shall instead be assigned solely to the department.*

1 53058.9. (a) The holder of a state-issued authorization shall
2 perform background checks of applicants for employment,
3 according to current business practices.

4 (b) A background check equivalent to that performed by the
5 holder shall also be conducted on all of the following:

6 (1) Persons hired by a holder under a personal service
7 contract.

8 (2) Independent contractors and their employees.

9 (3) Vendors and their employees.

10 (c) Independent contractors and vendors shall certify that they
11 have obtained the background checks required pursuant to
12 subdivision (f), and shall make the background checks available
13 to the holder upon request.

14 (d) Except as otherwise provided by contract, the holder of a
15 state-issued authorization shall not be responsible for
16 administering the background checks and shall not assume the
17 costs of the background checks of individuals who are not
18 applicants for employment of the holder.

19 (e) (1) Subdivision (a) only applies to applicants for
20 employment for positions that would allow the applicant to have
21 direct contact with or access to the holder's network, central
22 office, or customer premises, and perform activities that involve
23 the installation, service, or repair of the holder's network or
24 equipment.

25 (2) Subdivision (b) only applies to person that have direct
26 contact with or access to the holder's network, central office, or
27 customer premises, and perform activities that involve the
28 installation, service, or repair of the holder's network or
29 equipment.

30 (f) This section does not apply to temporary workers
31 performing emergency functions to restore the network of a
32 holder to its normal state in the event of a natural disaster or an
33 emergency that threatens or results in the loss of service.

34 53058.10. (a) A holder of a state-issued authorization
35 employing more than 750 total employees shall annually report
36 to the department all of the following:

37 (1) The number of California residents employed by the
38 workforce, calculated on a full-time or full-time equivalent basis.

39 (2) The percentage of the holder's total domestic workforce,
40 calculated on a full-time or full-time equivalent basis.

(3) The number of California residents employed by independent contractors and consultants hired by the holder, calculated on a full-time or full-time equivalent basis, when the holder has obtained this information upon requesting it from the independent contractor or consultant, and the holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor or consultant that are personally providing services to the holder, and does not apply to employees of an independent contractor or consultant not personally performing services for the holder.

(b) The department shall annually report the information required to be reported by holders of state-issued authorizations pursuant to subdivision (a), to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet Web site.

53058.11. (a) The provisions of this article are intended to be consistent with the Federal Cable Act (47 U.S.C. Sec. 521 et seq.).

(b) Nothing in this section shall be interpreted to prevent a voice provider, cable operator or video service provider, or local entity from seeking clarification of its rights and obligations under federal law or from exercising any right or authority under federal or state law.

SECTION 1. ~~Article 3.7 (commencing with Section 53058) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:~~

~~Article 3.7. The Digital Infrastructure and Video Competition Act of 2006~~

~~53058.—It is the intent of the Legislature to create the Digital Infrastructure and Video Competition Act of 2006.~~

~~53058.1. For the purposes of this article, “franchise” means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, certificate,~~

- 1 ~~agreement, or otherwise, that authorizes the construction and~~
- 2 ~~operation of a cable system in public rights-of-way.~~

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