

**BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA**

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF SANTA BARBARA AMENDING
ITS CABLE TELEVISION FRANCHISE AND LICENSE ORDINANCES,
CHAPTER 2 AND CHAPTER 43 OF THE SANTA BARBARA COUNTY
CODE, TO IMPLEMENT THE DIGITAL INFRASTRUCTURE AND
VIDEO COMPETITION ACT OF 2006**

WHEREAS, the California State Legislature passed and the Governor signed the Digital Infrastructure and Video Competition Act of 2006 (AB 2987) (the "Act" or "DIVCA"), effective January 1, 2007, which provides for state video franchises; and

WHEREAS, the Act establishes a regulatory structure whereby effective January 1, 2007, the State, by and through the California Public Utilities Commission, as the sole franchising authority is vested with the authority to grant franchises, regulate build-out and non-discrimination standards, impose user and application fees, and establish franchise fees to video service providers; and

WHEREAS, the Act establishes that local entities, such as the County of Santa Barbara, have the authority to and are responsible for the administration and implementation of certain provisions of the Act including but not limited to managing the rights-of-way, regulating payment of fees for Public, Educational, and Government programming, requiring the provision of Public, Educational, and Government channels, and enforcing federal and state customer service standards; and

WHEREAS, the Act requires the County must establish certain rights and responsibilities, by ordinance, before such rights and responsibilities become effective and enforceable against state video franchise holders; and

WHEREAS, certain telecommunications companies which previously operated under the County franchise have indicated that they will apply to the California Public Utilities Commission for a State franchise to operate within Santa Barbara County;

NOW, THEREFORE, the Board of Supervisors of Santa Barbara County does hereby ordain and amend the Santa Barbara County Code, as follows:

SECTION ONE:

Article XIA - Small System Cable Television Franchises and Article XIB – Cable Television Franchises, and all sections therein, of Chapter 2 of the Santa Barbara County Code are hereby repealed.

SECTION TWO:

Chapter 43 of the Santa Barbara County Code shall henceforth be entitled, “Video Franchises.” The existing Article titles for existing Articles 1, 2, 3, and 4 shall be amended and retitled, using Roman numerals, as listed below. The existing sections within said Articles shall remain unchanged, as specified. The Chapter 43 article titles for Articles 1, 2, 3, and 4 (henceforth Articles I, II, III, and IV) are changed as follows:

Chapter 43

Video Franchises

Article I

County Cable TV and Video Franchises – General

[Existing Sections 43-1 through 43-16 are unchanged.]

Article II

County Cable TV and Video Franchises –Special Rules Applicable to Cable Systems

[Existing Sections 43-17 through 43-25 are unchanged.]

Article III

County Cable TV and Video Franchises – Open Video Systems

[Existing Sections 43-26 through 43-33 are unchanged.]

Article IV

County Cable TV and Video Franchises - Miscellaneous

[Existing Sections 43-34 through 43-39 are unchanged.]

SECTION THREE:

A new Section 43-40 is adopted, to be included in Article IV, and shall read as follows:

Article IV

County Cable TV and Video Franchises - Miscellaneous

...

Section 43-40. – Existing County Franchises

All county franchises previously granted by the County of Santa Barbara pursuant to this Chapter (Sections 43-1 through 43-39) shall remain in effect pursuant to the terms of that franchise unless otherwise amended, expired or cancelled by the County and until such time as those franchisees are in compliance with terms and procedures of the Digital Infrastructure and Video Competition Act of 2006 under authority of the California Public Utilities Commission. Notwithstanding this provision should it be determined by state or federal law, regulation or rule, that the County may enter into local franchises with providers of cable television, video services or other technological systems, the County reserves the right to issue such franchises.

SECTION FOUR:

Chapter 43 of the Santa Barbara County is amended by the addition of the following Article V – State Video Franchises and newly enacted sections 43-41 through 43-53 therein, which shall read as follows:

Chapter 43

Video Franchises

...

Article V

State Video Franchises

Sec. 43-41. Title

This Article V of Chapter 43 shall be known as the “State Video Franchise Ordinance.”

Sec. 43-42. Definitions Generally -- Interpretation of Language.

For purposes of this Article V, the following terms, phrases, words, and their derivations shall have the meaning given in this Chapter 43. Unless otherwise expressly stated, words not defined in this Article V shall be given the meaning set forth in Section 43-1 of the Santa Barbara County Code as may be amended from time to time, unless the context indicates otherwise. Words not defined in this Section 43-18 through 43-30 or in Section 43-1 of the Santa Barbara County Code shall have the same meaning as established in (1) the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), and if not defined therein, (2) Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The word "shall" and “will” are always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- (a) “Access,” PEG Access,” “PEG use” or “PEG” shall have the same meaning as in Public Utilities Code section 5870. These terms mean the availability of a cable or State Video franchise holder’s system for public, educational, or governmental use by the local entity or its designee(s) to provide public, educational and/or governmental channels and programming.
- (b) “Gross revenues” shall have the same meaning as in Public Utilities Code section 5860(d).
- (c) “State franchise holder” or “holder” or “franchisee” or “State franchisee” means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the unincorporated County. For purposes of the emergency alert system, the service area shall be within the entire County.

Sec. 43-43. Purposes and Implementation.

It is the purpose of this Article V to regulate video service providers holding state video franchises within the County of Santa Barbara (“County”) and implement the provisions of the

Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), Assembly Bill 2987 (Ch. 700, Stats. 2006), codified at California Public Utilities Code Sections 5800, *et seq.* (the “Act” or “DIVCA”), and the rules of the California Public Utilities Commission (“PUC”) promulgated thereunder that are applicable to a “local franchising entity” or a “local entity” as defined in Sections 5830(h) and 5830(k) of the California Public Utilities Code, respectively. Consistent with that purpose, the provisions of this chapter are to be construed in a manner that is consistent with the California Public Utilities Code and the applicable rules of the Commission promulgated thereunder.

With the passage and adoption of DIVCA, the PUC became the sole authority with power to grant new video franchises. Pursuant to DIVCA, the County shall receive a franchise fees, PEG access channels, and PEG fees from all state video franchise holders operating within the County. Additionally, the County acquired the responsibility to establish and enforce penalties, consistent with state law, against all state video franchise holders operating within the County for violations of customer service standards. DIVCA precludes the County from adopting its own standards and grants all authority to adopt customer service standards to the state agency, the PUC. DIVCA leaves unchanged the County’s authority to regulate the County’s existing local cable franchises until the expiration of any such local franchises.

Sec. 43-44. Franchise Fee

(a) Every state franchise holder operating within the unincorporated County shall pay a franchise fee to the County in the amount of five (5) percent of that state franchise holder’s gross revenues derived from the operation of its network to provide cable or video services within the County in a manner consistent with Public Utilities Code Section 5860.

(b) For purposes of this chapter, “gross revenue” shall have the meaning set forth in Section 5860 (d) and (e) of the California Public Utilities Code.

(c) A state franchise holder shall remit the franchise fee to the County quarterly, within forty-five (45) days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. If the state franchise holder does not pay the franchise fee when due, the state franchise holder shall pay, pursuant to Public Utilities Code Section 5860(h), a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%). If the state franchise holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

Sec. 43-45. PEG Channel Capacity, Interconnection, Signal Carriage and Support.

(a) Franchise holders currently operating within the County under a local franchise agreement with the County shall, pursuant to Public Utilities Code Section 5870, continue to fully provide and support PEG channel facilities and institutional networks and to provide

cable services to community buildings to the maximum extent permitted by law until the local franchise expires.

(b) A state franchise holder under the Act shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational and governmental access channels as are activated and provided as of January 1, 2007[of at least six (6) PEG channels to satisfy the requirement of state law, within the time limits specified by state law]. This section shall serve as the request for PEG channels required by California Public Utilities Code section 5870(a). A state franchise holder shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

(c) All state franchise holders shall comply with the provisions of the Act related to PEG channels. Without limiting the foregoing, the PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law and shall provide picture and sound quality and channel accessibility and location equal to, or substantially equal to, that provided by the incumbent cable providers. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law.

(d) A state franchise holder shall have three (3) months from the date County requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to take adequate interconnection available, as required by the Act.

(e) Any state franchise holder who believes that the designation or provision of PEG channel capacity is technically infeasible, shall provide to County, in writing, its reasons therefore and its plan for correcting or solving the infeasibility. In the event of such occurrence, the State franchise holder and the County shall meet to determine a mutually acceptable resolution. The County may hold a hearing on the claim of infeasibility and, thereafter, take such action as County deems proper to require the designation and provision of the PEG channels on the state franchise holder's system.

(f) Any State franchise holder operating within the unincorporated area of the County shall pay to the County a PEG support fee equal to one percent (1%) of gross revenues, as allowed by Public Utilities Code Section 5870(n). Such payment shall be paid in accordance with Public Utilities Code Section 5870 and shall include a report documenting the basis of the calculation of the fee. A state franchise holder shall remit the PEG support fee to the County quarterly, within forty-five (45) days after the end of the quarter for that calendar quarter. If

the state franchise holder does not pay the PEG support fee when due, the state franchise holder shall pay, pursuant to Public Utilities Code Section 5870, a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

(g) Any State Franchisee(s) and any incumbent cable operator shall interconnect for PEG access carriage purposes. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the County may require the incumbent cable operator to allow the state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point of interconnection is available, the state franchise holder shall make interconnection available to each PEG channel originator programming a channel in the County and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the parties.

Sec. 43-46. Audit Authority.

Not more than once annually, the County General Services Director or the Director's designee may examine and perform an audit of the business records of a holder of a state video franchise to ensure compliance with this ordinance.

Sec. 43-47. Customer Service and Protection.

(a) A state franchise holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603 and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such federal or state standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) The County shall enforce, in the manner set forth in the Act, all customer service and protection standards contained in Public Utilities Code Section 5900 of the Act, including without limitation those standards set forth in Public Utilities Code Section 5900(c). The County is authorized to impose penalties for any material breach of the Act, as set forth herein.

(c) The County General Services Director or the Director's designee shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The County General Services Director or the Director's designee shall provide the state franchise holder with written notice of any material breaches of applicable customer service standards and will allow the state video franchise holder thirty (30) days from

the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the thirty (30) day time period will be subject to the maximum penalties, as described in subsection (d) and imposed by the County.

(d) The maximum monetary penalties set forth in Public Utilities Code section 5900 are hereby adopted and enacted as the applicable schedule of penalties for the material breach of the Act, including but not limited to Public Utilities Code Section 5900 of the Act, by a holder of a state franchise, as follows:

1. For the first occurrence of a material breach, five hundred dollars (\$500) per day for each material breach, not to exceed one thousand five hundred dollars (\$1,500) for occurrence of a material breach.
2. If a material breach has occurred and notice has been provided and a fine or penalty has been assessed, for any subsequent breach of the same nature within twelve (12) months, shall be subject to a penalty of up to one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.
3. If a third or further material breach of the same nature occurs within those same twelve (12) months, and notice has provided and a fine or penalty has been assessed; the penalties shall be increased to a maximum of two thousand five hundred dollars (\$2,500) for each occurrence of the material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach.
4. No monetary penalties shall be assessed for a Material Breach if it is out of the reasonable control of the state franchise holder.

(e) As used herein, "Material Breach" is defined as set forth in the Act, Public Utilities Code Section 5900(j).

(f) A state video franchise holder may appeal a penalty assessed by the County General Services Director to the Board of Supervisors within sixty (60) days of the initial assessment. The Board of Supervisors shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The Board of Supervisors' decision on the imposition of the penalty shall be final and subject to judicial review.

Sec. 43-48. County Response to State Franchise Applications.

(a) Applicants for State Franchises within the boundaries of the County must concurrently provide complete copies to the County of any application or amendments to applications filed with the PUC. One complete copy must be provided to the Clerk of the Board of Supervisors, and one complete copy to the General Services Director.

(b) The General Services Director shall provide any appropriate comments to the PUC regarding the application or an amendment to an application for a State Franchise.

Sec. 43-49. PEG and Institutional Networks.

Any State franchisee that has held a locally issued franchise agreement shall, consistent with Public Utilities Code Section 5870, continue to fully provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings to the maximum extent permitted or required by law, until such local franchise expires or until the term of the franchise would have expired if it had not been terminated pursuant to Public Utilities Code Section 5840 (o), or until the parties mutually agree otherwise.

Sec. 43-50. Emergency Alert Systems.

- (a) Each State franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State franchise holder's network.
- (b) To the extent consistent with California Public Utilities Code section 5880, each State franchisee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an emergency override capability to permit the County to interrupt and cablecast an audio message on all channels simultaneously in the event of a disaster or public emergency. This capability shall include the entire area served by the State franchisee within the County, not merely the unincorporated County.

Sec. 43-51. Public Rights of Way.

- (a) Each State franchise holder shall comply provisions of Public Utilities Code section 5885, including but not limited to those provisions the govern the installation, construction and maintenance of its network in the public rights of way, the applicability of the California Environmental Quality Act (CEQA) to projects by a state franchisee, the approval or denial of applications for encroachment permits under section 5885(c).
- (b) Each State franchisee shall comply with all applicable provisions of the Santa Barbara County Code and the California Streets and Highways Code regarding issuance of encroachment permits and all construction or maintenance activities within public rights of way. The California Department of Transportation (CALTrans) Highway Design Manual as the same may be issued from time to time by CALTrans shall be controlling as to construction standards and is adopted herein by reference.

Sec. 43-52. Reservation of Rights.

The County of Santa Barbara reserves the right to enact ordinances or to enforce existing

provisions of Article I-IV of this Chapter 43 should it be determined by state or federal law, regulation or rule, that the County may enter into local franchises with providers of cable television, video services or other technological systems.

Sec. 43-53. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the chapter. The Board of Supervisors hereby declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION FIVE

This ordinance shall take effect and be in force thirty days from the date of its passage, and before the expiration of fifteen days after its passage it shall be published, with the names of the members of the Board of Supervisors voting for and against the same, in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

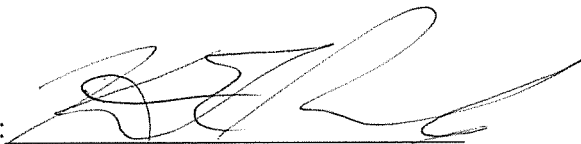
ATTEST:

CHANDRA WALLER
CLERK OF THE BOARD

By: _____
Deputy Clerk-Recorder

Chairperson, Board of Supervisors
of the County of Santa Barbara
State of California

APPROVED AS TO FORM:
DENNIS MARSHAL
COUNTY COUNSEL

By: 
Kevin Ready, Sr.
Senior Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
ROBERT GEIS
AUDITOR-CONTROLLER

By: 

