

**ASSEMBLY BILL**

**No. 1715**

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**Introduced by Committee on Utilities and Commerce (Levine (Chair), Keene (Vice Chair), Bass, Blakeslee, Davis, Huffman, Jones, Krekorian, Smyth, and Tran)**

March 1, 2007

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An act to amend Sections 5810, 5830, 5840, 5850, 5860, 5870, 5880, 5890, 5900, 5910, 5930, and 5960 of the Public Utilities Code, and to amend Section 107.7 of the Revenue and Taxation Code, relating to cable and video service.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as introduced, Committee on Utilities and Commerce. Public utilities: Digital Infrastructure and Video Competition Act.

Existing law, the Digital Infrastructure and Video Competition Act of 2006, establishes a procedure for the issuance of state franchises for the provision of video service, defined to include cable service and open-video systems, administered by the Public Utilities Commission. Under existing law, any person or corporation that seeks to provide video service in this state is required to file an application with the commission for a state franchise with specified information, signed under penalty of perjury.

Existing property tax law specifies the manner in which local tax assessors determine the value of cable television possessory interests that are created in a cable television franchise or license that is granted by a local government. Under existing law, this valuation method also applies to possessory interests created in a cable franchise or license or a franchise to provide video services that is granted by the state under the act.

This bill would make technical, nonsubstantive, clarifying, and conforming changes in these provisions of the law.

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

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

- 1 SECTION 1. Section 5810 of the Public Utilities Code is  
2 amended to read:  
3 5810. (a) The Legislature finds and declares all of the  
4 following:  
5 (1) Increasing competition for video and broadband services is  
6 a matter of statewide concern for all of the following reasons:  
7 (A) Video and cable services provide numerous benefits to all  
8 Californians including access to a variety of news, public  
9 information, education, and entertainment programming.  
10 (B) Increased competition in the cable and video service sector  
11 provides consumers with more choice, lowers prices, speeds the  
12 deployment of new communication and broadband technologies,  
13 creates jobs, and benefits the California economy.  
14 (C) To promote competition, the state should establish a  
15 state-issued franchise authorization process that allows market  
16 participants to use their networks and systems to provide video,  
17 voice, and broadband services to all residents of the state.  
18 (D) Competition for video service should increase opportunities  
19 for programming that appeals to California's diverse population  
20 and many cultural communities.  
21 (2) Legislation to develop this new process should adhere to  
22 the following principles:  
23 (A) Create a fair and level playing field for all market  
24 competitors that does not disadvantage or advantage one service  
25 provider or technology over another.  
26 (B) Promote the widespread access to the most technologically  
27 advanced cable and video services to all California communities  
28 in a nondiscriminatory manner regardless of socioeconomic status.  
29 (C) Protect local government revenues and control of public  
30 rights-of-way.  
31 (D) Require market participants to comply with all applicable  
32 consumer protection laws.

1 (E) Complement efforts to increase investment in broadband  
2 infrastructure and close the digital divide.

3 (F) Continue access to and maintenance of the public, education,  
4 and government (PEG) channels.

5 (G) Maintain all existing authority of the California Public  
6 Utilities Commission as established in state and federal statutes.

7 (3) The public interest is best served when sufficient funds are  
8 appropriated to the commission to provide adequate staff and  
9 resources to appropriately and timely process applications of video  
10 service providers and to ensure full compliance with the  
11 requirements of this division. It is the intent of the Legislature that,  
12 although video service providers are not public utilities or common  
13 carriers, the commission shall collect any fees authorized by this  
14 division in the same manner and under the same terms as it collects  
15 fees from common carriers, electrical corporations, gas  
16 corporations, telephone corporations, telegraph corporations, water  
17 corporations, and every other public utility providing service  
18 directly to customers or subscribers subject to its jurisdiction such  
19 that it does not discriminate against video service providers or  
20 their subscribers.

21 (4) Providing an incumbent cable operator the option to secure  
22 a state-issued franchise through the preemption of an existing cable  
23 franchise between a cable operator and any political subdivision  
24 of the state, including, but not limited to, a charter city, county, or  
25 city and county, is an essential element of the new regulatory  
26 framework established by this act as a matter of statewide concern  
27 to best ensure equal protection and parity among providers and  
28 technologies, as well as to achieve the goals stated by the  
29 Legislature in enacting this act.

30 (b) It is the intent of the Legislature that a video service provider  
31 shall pay as rent a franchise fee to the local entity in whose  
32 jurisdiction service is being provided for the continued use of  
33 streets, public facilities, and other rights-of-way of the local entity  
34 in order to provide service. The Legislature recognizes that local  
35 entities should be compensated for the use of the public  
36 rights-of-way and that the franchise fee is intended to compensate  
37 them in the form of rent or a toll, similar to that which the court  
38 found to be appropriate in *Santa Barbara County Taxpayers*  
39 *Association v. Board of Supervisors for the County of Santa*  
40 *Barbara* (1989) 257 Cal. App. 615 209 Cal. App. 3d 940.

1 (c) It is the intent of the Legislature that collective bargaining  
2 agreements be respected.

3 (d) It is the intent of the Legislature that the definition of gross  
4 revenues in this division shall result in local entities maintaining  
5 their existing level of revenue from franchise fees.

6 SEC. 2. Section 5830 of the Public Utilities Code is amended  
7 to read:

8 5830. For purposes of this division, the following words have  
9 the following meanings:

10 (a) "Broadband" means any service defined as broadband in the  
11 most recent Federal Communications Commission inquiry pursuant  
12 to Section 706 of the Telecommunications Act of 1996 (P.L.  
13 104-104).

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

20 (c) "Cable service" is defined as the one-way transmission to  
21 subscribers of either video programming, or other programming  
22 service, and subscriber interaction, if any, that is required for the  
23 selection or use of video programming or other programming  
24 service, as set forth in Section 522(6) of Title 47 of the United  
25 States Code.

26 (d) "Cable system" is defined as set forth in Section 522(7) of  
27 Title 47 of the United States Code.

28 (e) "Commission" means the Public Utilities Commission.

29 (f) "Franchise" means an initial authorization, or renewal of an  
30 authorization, issued by a franchising entity, regardless of whether  
31 the authorization is designated as a franchise, permit, license,  
32 resolution, contract, certificate, agreement, or otherwise, that  
33 authorizes the construction and operation of any network in the  
34 right-of-way capable of providing video service to subscribers.

35 (g) "Franchise fee" means the fee adopted pursuant to Section  
36 5840.

37 (h) ~~"Local franchising entity" means the city, county, city and~~  
38 ~~county, or joint powers authority entitled to require franchises and~~  
39 ~~impose fees on cable operators, as set forth in Section 53066 of~~  
40 ~~the Government Code "Holder" or "holder of a state franchise"~~

1 means a person or group of persons that has been issued a state  
2 franchise from the commission pursuant to this division.

3 (i) ~~“Holder” means a person or group of persons that has been~~  
4 ~~issued a state franchise from the commission pursuant to this~~  
5 ~~division~~ “Incumbent cable operator” means a cable operator or  
6 OVS serving subscribers under a franchise in a particular city,  
7 county, or city and county franchise area on January 1, 2007.

8 (j) ~~“Incumbent cable operator” means a cable operator or OVS~~  
9 ~~serving subscribers under a franchise in a particular city, county,~~  
10 ~~or city and county franchise area on January 1, 2007~~ “Local entity”  
11 means any city, county, city and county, or joint powers authority  
12 within the state within whose jurisdiction a holder of a state  
13 franchise under this division may provide cable service or video  
14 service.

15 (k) ~~“Local entity” means any city, county, city and county, or~~  
16 ~~joint powers authority within the state within whose jurisdiction~~  
17 ~~a holder of a state franchise under this division may provide cable~~  
18 ~~service or video service~~ “Local franchising entity” means the city,  
19 county, city and county, or joint powers authority entitled to require  
20 franchises and impose fees on cable operators, as set forth in  
21 Section 53066 of the Government Code.

22 (l) “Network” means a component of a facility that is wholly  
23 or partly physically located within a public right-of-way and that  
24 is used to provide video service, cable service, voice, or data  
25 services.

26 (m) “Open-video system” or “OVS” means those services set  
27 forth in Section 573 of Title 47 of the United States Code.

28 (n) “OVS operator” means any person or group of persons that  
29 either provides cable service over an open-video system directly,  
30 or through one or more affiliates, owns a significant interest in an  
31 open-video system, or that otherwise controls or is responsible for,  
32 through any arrangement, the management of an open-video  
33 system.

34 (o) ~~“Public right-of-way”~~ *rights-of-way* means the area along  
35 and upon any public road or highway, or along or across any of  
36 the waters or lands within the state.

37 (p) “State franchise” means a franchise that is issued pursuant  
38 to this division.

39 (q) “Subscriber” means a person who lawfully receives video  
40 service from the holder of a state franchise for a fee.

1 (r) “Video programming” means programming provided by, or  
2 generally considered comparable to programming provided by, a  
3 television broadcast station, as set forth in Section 522(20) of Title  
4 47 of the United States Code.

5 (s) “Video service” means video programming services, cable  
6 service, or OVS service provided through facilities located at least  
7 in part in public rights-of-way without regard to delivery  
8 technology, including Internet protocol or other technology. This  
9 definition does not include (1) any video programming provided  
10 by a commercial mobile service provider defined in Section ~~322(d)~~  
11 332(d) of Title 47 of the United States Code, or (2) video  
12 programming provided as part of, and via, a service that enables  
13 users to access content, information, electronic mail, or other  
14 services offered over the public Internet.

15 (t) “Video service provider” means an entity providing video  
16 service.

17 SEC. 3. Section 5840 of the Public Utilities Code is amended  
18 to read:

19 5840. (a) The commission is the sole franchising authority for  
20 a state franchise to provide video service under this division.  
21 Neither the commission nor any local franchising entity or other  
22 local entity of the state may require the holder of a state franchise  
23 to obtain a separate franchise or otherwise impose any requirement  
24 on any holder of a state franchise except as expressly provided in  
25 this division. Sections 53066, 53066.01, 53066.2, and 53066.3 of  
26 the Government Code shall not apply to holders of a state franchise.

27 (b) The application process described in this section and the  
28 authority granted to the commission under this section shall not  
29 exceed the provisions set forth in this section.

30 (c) Any person or corporation who seeks to provide video  
31 service in this state for which a franchise has not already been  
32 issued, after January 1, 2008, shall file an application for a state  
33 franchise with the commission. The commission may impose a  
34 fee on the applicant that shall not exceed the actual and reasonable  
35 costs of processing the application and shall not be levied for  
36 general revenue purposes.

37 (d) No person or corporation shall be eligible for a state-issued  
38 franchise, including a franchise obtained from renewal or transfer  
39 of an existing franchise, if that person or corporation is in violation  
40 of any final nonappealable order relating to either the Cable

1 Television and Video Provider Customer Service and Information  
2 Act (Article 3.5 (commencing with Section 53054) of Chapter 1  
3 of Part 1 of Division 2 of Title 5 of the Government Code) or the  
4 Video Customer Service Act (Article 4.5 (commencing with  
5 Section 53088) of Chapter 1 of Part 1 of Division 2 of Title 5 of  
6 the Government Code).

7 (e) The application for a state franchise shall be made on a form  
8 prescribed by the commission and shall include all of the following:

9 (1) A sworn affidavit, signed under penalty of perjury by an  
10 officer or another person authorized to bind the applicant, that  
11 affirms all of the following:

12 (A) That the applicant has filed or will timely file with the  
13 Federal Communications Commission all forms required by the  
14 Federal Communications Commission before offering cable service  
15 or video service in this state.

16 (B) That the applicant or its affiliates agrees to comply with all  
17 federal and state statutes, rules, and regulations, including, but not  
18 limited to, the following:

19 (i) A statement that the applicant will not discriminate in the  
20 provision of video or cable services as provided in Section 5890.

21 (ii) A statement that the applicant will abide by all applicable  
22 consumer protection laws and rules as provided in Section 5900.

23 (iii) A statement that the applicant will remit the fee required  
24 by subdivision (a) of Section 5860 to the local entity.

25 (iv) A statement that the applicant will provide PEG channels  
26 and the required funding as required by Section 5870.

27 (C) That the applicant agrees to comply with all lawful city,  
28 county, or city and county regulations regarding the time, place,  
29 and manner of using the public rights-of-way, including, but not  
30 limited to, payment of applicable encroachment, permit, and  
31 inspection fees.

32 (D) That the applicant will concurrently deliver a copy of the  
33 application to any local entity where the applicant will provide  
34 service.

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

37 (3) The address and telephone number of the applicant's  
38 principal place of business, along with contact information for the  
39 person responsible for ongoing communications with the  
40 ~~department~~ *commission*.

- 1 (4) The names and titles of the applicant’s principal officers.
- 2 (5) The legal name, address, and telephone number of the
- 3 applicant’s parent company, if any.
- 4 (6) A description of the video service area footprint that is
- 5 proposed to be served, as identified by a collection of United States
- 6 Census Bureau Block numbers (13 digit) or a geographic
- 7 information system digital boundary meeting or exceeding national
- 8 map accuracy standards. This description shall include the
- 9 socioeconomic status information of all residents within the service
- 10 area footprint.
- 11 (7) If the applicant is a telephone corporation or an affiliate of
- 12 a telephone corporation, as defined in Section 234, a description
- 13 of the territory in which the company provides telephone service.
- 14 The description shall include socioeconomic status information of
- 15 all residents within the telephone corporation’s service territory.
- 16 (8) The expected date for the deployment of video service in
- 17 each of the areas identified in paragraph (6).
- 18 (9) Adequate assurance that the applicant possesses the financial,
- 19 legal, and technical qualifications necessary to construct and
- 20 operate the proposed system and promptly repair any damage to
- 21 the public right-of-way caused by the applicant. To accomplish
- 22 these requirements, the commission may require a bond.
- 23 (f) The commission may require that a corporation with wholly
- 24 owned subsidiaries or affiliates is eligible only for a single
- 25 state-issued franchise and prohibit the holding of multiple
- 26 franchises through separate subsidiaries or affiliates. The
- 27 commission may establish procedures for a holder of a state-issued
- 28 franchise to amend its franchise to reflect changes in its service
- 29 area.
- 30 (g) The commission shall commence accepting applications for
- 31 a state franchise no later than April 1, 2007.
- 32 (h) (1) The commission shall notify an applicant for a state
- 33 franchise and any affected local entities whether the applicant’s
- 34 application is complete or incomplete before the 30th calendar day
- 35 after the applicant submits the application.
- 36 (2) If the commission finds the application is complete, it shall
- 37 issue a state franchise before the 14th calendar day after that
- 38 finding.
- 39 (3) If the commission finds that the application is incomplete,
- 40 it shall specify with particularity the items in the application that

1 are incomplete and permit the applicant to amend the application  
2 to cure any deficiency. The commission shall have 30 calendar  
3 days from the date the application is amended to determine its  
4 completeness.

5 (4) The failure of the commission to notify the applicant of the  
6 completeness or incompleteness of the application before the 44th  
7 calendar day after receipt of an application shall be deemed to  
8 constitute issuance of the certificate applied for without further  
9 action on behalf of the applicant.

10 (i) The state franchise issued by the commission shall contain  
11 all of the following:

12 (1) A grant of authority to provide video service in the service  
13 area footprint as requested in the application.

14 (2) A grant of authority to use the public rights-of-way, in  
15 exchange for the franchise fee adopted under subdivision (q), in  
16 the delivery of video service, subject to the laws of this state.

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

20 (j) The state franchise issued by the commission may be  
21 terminated by the video service provider by submitting at least 90  
22 days prior written notice to ~~customers~~ *subscribers*, local entities,  
23 and the commission.

24 (k) It is unlawful to provide video service without a state or  
25 locally issued franchise.

26 (l) Subject to the notice requirements of this division, a state  
27 franchise may be transferred to any successor in interest of the  
28 holder to which the certificate is originally granted, provided that  
29 the transferee first submits all of the information required of the  
30 applicant by this section to the commission *and is in compliance*  
31 *with Section 5970*.

32 (m) In connection with, or as a condition of, receiving a state  
33 franchise, the commission shall require a holder to notify the  
34 commission and any applicable local entity within 14 business  
35 days of any of the following changes involving the holder ~~or~~ *of*  
36 the state franchise:

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

- 1 (2) A change in the holder’s legal name or the adoption of, or  
 2 change to, an assumed business name. The holder shall submit to  
 3 the commission a certified copy of either of the following:  
 4 (A) The proposed amendment to the state franchise.  
 5 (B) The certificate of assumed business name.
- 6 (3) A change in the holder’s principal business address or in the  
 7 name of the person authorized to receive notice on behalf of the  
 8 holder.
- 9 (4) Any transfer of the state franchise to a successor in interest  
 10 of the holder. The holder shall identify the successor in interest to  
 11 which the transfer is made.
- 12 (5) The termination of any state franchise issued under this  
 13 division. The holder shall identify both of the following:  
 14 (A) The number of ~~customers~~ *subscribers* in the service area  
 15 covered by the state franchise being terminated.  
 16 (B) The method by which the holder’s ~~customers~~ *subscribers*  
 17 were notified of the termination.
- 18 (6) A change in one or more of the service areas of *the holder*  
 19 *of a state franchise pursuant to* this division that would increase  
 20 or decrease the territory within the service area. The holder shall  
 21 describe the new boundaries of the affected service areas after the  
 22 proposed change is made.
- 23 (n) Prior to offering video service in a local entity’s jurisdiction,  
 24 the holder of a state franchise shall notify the local entity that the  
 25 video service provider will provide video service in the local  
 26 entity’s jurisdiction. The notice shall be given at least 10 days, but  
 27 no more than 60 days, before the video service provider begins to  
 28 offer service.
- 29 (o) Any video service provider that currently holds a franchise  
 30 with a local franchising entity is entitled to seek a state franchise  
 31 in the area designated in that franchise upon meeting any of the  
 32 following conditions:  
 33 (1) The expiration, prior to any renewal or extension, of its local  
 34 franchise.  
 35 (2) A mutually agreed upon date set by both the local franchising  
 36 entity and video service provider to terminate the franchise  
 37 provided in writing by both parties to the commission.  
 38 (3) When a video service provider that holds a state franchise  
 39 provides the notice required pursuant to subdivision ~~(m)~~ *(n)* to a  
 40 local jurisdiction that it intends to initiate providing video service

1 in all or part of that jurisdiction, a video service provider operating  
2 under a franchise issued by a local franchising ~~authority~~ *entity* may  
3 elect to obtain a state franchise to replace its locally issued  
4 franchise. The franchise issued by the local franchising entity shall  
5 terminate and be replaced by a state franchise when the ~~state~~  
6 ~~franchising authority~~ *commission* issues a state franchise for the  
7 video service provider that includes the entire service area served  
8 by the video service provider and the video service provider notifies  
9 the local entity that it will begin providing video service in that  
10 area under a state franchise.

11 (p) Notwithstanding any rights to the contrary, an incumbent  
12 cable operator opting into a state franchise under this ~~subdivision~~  
13 *section* shall continue to serve all areas as required by its local  
14 franchise agreement existing on January 1, 2007, until that local  
15 franchise otherwise would have expired. However, an incumbent  
16 cable operator that is also a telephone corporation with less than  
17 1,000,000 telephone customers in California and is providing video  
18 service in competition with another incumbent cable operator shall  
19 not be required to provide service beyond the area in which it is  
20 providing video service as of January 1, 2007.

21 (q) (1) There is hereby adopted a state franchise fee payable as  
22 rent or a toll for the use of the public ~~right-of-way~~ *rights-of-way*  
23 by holders of the state franchise issued pursuant to this division.  
24 The amount of the state franchise fee shall be 5 percent of gross  
25 revenues, as defined in subdivision (d) of Section 5860, or the  
26 percentage applied by the local entity to the gross revenue of the  
27 incumbent cable operator, whichever is less. If there is no  
28 incumbent cable operator or upon the expiration of the incumbent  
29 cable operator's franchise, the amount of the state franchise fee  
30 shall be 5 percent of gross revenues, as defined in subdivision (d)  
31 of Section 5860, unless the local entity adopts an ordinance setting  
32 the amount of the franchise fee at less than 5 percent.

33 (2) (A) The state franchise fee shall apply equally to all video  
34 service providers in the local entity's jurisdiction.

35 (B) Notwithstanding subparagraph (A), if the video service  
36 provider is leasing access to a network owned by a local entity,  
37 the local entity may set a franchise fee for access to the network  
38 different from the franchise fee charged to a video service provider  
39 for access to the rights-of-way to install its own network.

1 SEC. 4. Section 5850 of the Public Utilities Code is amended  
2 to read:

3 5850. (a) A state-issued franchise shall only be valid for 10  
4 years after the date of issuance, and the ~~video service provider~~  
5 *holder* shall apply for a renewal of the state franchise for an  
6 additional 10-year period if it wishes to continue to provide video  
7 services in the area covered by the franchise after the expiration  
8 of the franchise.

9 (b) Except as provided in this section, the criteria and process  
10 described in Section 5840 shall apply to a renewal registration,  
11 and the commission shall not impose any additional or different  
12 criteria.

13 (c) Renewal of a state franchise shall be consistent with federal  
14 law and regulations.

15 (d) The commission shall not renew the franchise if the video  
16 service provider is in violation of any final nonappealable court  
17 order issued pursuant to this division.

18 SEC. 5. Section 5860 of the Public Utilities Code is amended  
19 to read:

20 5860. (a) The holder of a state franchise that offers video  
21 service within the jurisdiction of the local entity shall calculate  
22 and remit to the local entity a state franchise fee, adopted pursuant  
23 to subdivision (q) of Section 5840, as provided in this section. The  
24 obligation to remit the franchise fee to a local entity begins  
25 immediately upon provision of video service within that local  
26 entity’s jurisdiction. However, the remittance shall not be due until  
27 the time of the first quarterly payment required under subdivision  
28 ~~(g)~~ (h) that is at least 180 days after the provision of service began.  
29 The fee remitted to a city or city and county shall be based on gross  
30 revenues, as defined in subdivision (d), derived from the provision  
31 of video service within that jurisdiction. The fee remitted to a  
32 county shall be based on gross revenues earned within the  
33 unincorporated area of the county. No fee under this section shall  
34 become due unless the local entity provides documentation to the  
35 holder of the state franchise supporting the percentage paid by the  
36 incumbent cable operator serving the area within the local entity’s  
37 jurisdiction, ~~as provided below~~. The fee shall be calculated as a  
38 percentage of the holder’s gross revenues, as defined in subdivision  
39 (d). The fee remitted to the local entity pursuant to this section  
40 may be used by the local entity for any lawful purpose.

1 (b) The state franchise fee shall be a percentage of the holder's  
2 gross revenues, as defined in subdivision (d).

3 (c) No local entity or any other political subdivision of this state  
4 may demand any additional fees or charges or other remuneration  
5 of any kind from the holder of a state franchise based solely on its  
6 status as a provider of video or cable services other than as set  
7 forth in this division and may not demand the use of any other  
8 calculation method or definition of gross revenues. However,  
9 nothing in this section shall be construed to limit a local entity's  
10 ability to impose utility user taxes and other generally applicable  
11 taxes, fees, and charges under other applicable provisions of state  
12 law that are applied in a nondiscriminatory and competitively  
13 neutral manner.

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

20 (1) All charges billed to subscribers for any and all cable service  
21 or video service provided by the holder of a state franchise,  
22 including all revenue related to programming provided to the  
23 subscriber, equipment rentals, late fees, and insufficient fund fees.

24 (2) Franchise fees imposed on the holder of a state franchise by  
25 this section that are passed through to, and paid by, the subscribers.

26 (3) Compensation received by the holder of a state franchise  
27 that is derived from the operation of the holder's network to  
28 provide cable service or video service with respect to commissions  
29 that are paid to the holder of a state franchise as compensation for  
30 promotion or exhibition of any products or services on the holder's  
31 network, such as a "home shopping" or similar channel, subject  
32 to paragraph (4) of subdivision (e).

33 (4) A pro rata portion of all revenue derived by the holder of a  
34 state franchise or its affiliates pursuant to compensation  
35 arrangements for advertising derived from the operation of the  
36 holder's network to provide video service within the jurisdiction  
37 of the local entity, subject to paragraph (1) of subdivision (e). The  
38 allocation shall be based on the number of subscribers in the local  
39 entity divided by the total number of subscribers in relation to the  
40 relevant regional or national compensation arrangement.

1 (e) For purposes of this section, the term “gross revenue” set  
2 forth in subdivision (d) does not include any of the following:

3 (1) Amounts not actually received, even if billed, such as bad  
4 debt; refunds, rebates, or discounts to subscribers or other third  
5 parties; or revenue imputed from the provision of cable services  
6 or video services for free or at reduced rates to any person as  
7 required or allowed by law, including, but not limited to, the  
8 provision of these services to public institutions, public schools,  
9 governmental agencies, or employees except that forgone revenue  
10 chosen not to be received in exchange for trades, barter, services,  
11 or other items of value shall be included in gross revenue.

12 (2) Revenues received by any affiliate or any other person in  
13 exchange for supplying goods or services used by the holder of a  
14 state franchise to provide cable services or video services.  
15 However, revenue received by an affiliate of the holder from the  
16 affiliate’s provision of cable or video service shall be included in  
17 gross revenue as follows:

18 (A) To the extent that treating the revenue as revenue of the  
19 affiliate, instead of revenue of the holder, would have the effect  
20 of evading the payment of fees that would otherwise be paid to  
21 the local entity.

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

24 (3) Revenue derived from services classified as noncable  
25 services or nonvideo services under federal law, including, but not  
26 limited to, revenue derived from telecommunications services and  
27 information services, other than cable services or video services,  
28 and any other revenues attributed by the holder of a state franchise  
29 to noncable services or nonvideo services in accordance with  
30 Federal Communications Commission rules, regulations, standards,  
31 or orders.

32 (4) Revenue paid by subscribers to “home shopping” or similar  
33 networks directly from the sale of merchandise through any home  
34 shopping channel offered as part of the cable services or video  
35 services. However, commissions or other compensation paid to  
36 the holder of a state franchise by “home shopping” or similar  
37 networks for the promotion or exhibition *of* products or services  
38 shall be included in gross revenue.

1 (5) Revenue from the sale of cable services or video services  
2 for resale in which the reseller is required to collect a fee similar  
3 to the franchise fee from the reseller's ~~customers~~ *subscribers*.

4 (6) Amounts billed to, and collected from, subscribers to recover  
5 any tax, fee, or surcharge imposed by any governmental entity on  
6 the holder of a state franchise, including, but not limited to, sales  
7 and use taxes, gross receipts taxes, excise taxes, utility users taxes,  
8 public service taxes, communication taxes, and any other fee not  
9 imposed by this section.

10 (7) Revenue from the sale of capital assets or surplus equipment  
11 not used by the purchaser to receive cable services or video services  
12 from the seller of those assets or surplus equipment.

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

16 (9) Revenue received as reimbursement by programmers of  
17 specific, identifiable marketing costs incurred by the holder of a  
18 state franchise for the introduction of new programming.

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

22 (f) For the purposes of this section, in the case of a video service  
23 that may be bundled or integrated functionally with other services,  
24 capabilities, or applications, the state franchise fee shall be applied  
25 only to the gross revenue, as defined in subdivision (d), attributable  
26 to video service. Where the holder of a state franchise or any  
27 affiliate bundles, integrates, ties, or combines video services with  
28 nonvideo services creating a bundled package, so that subscribers  
29 pay a single fee for more than one class of service or receive a  
30 discount on video services, gross revenues shall be determined  
31 based on an equal allocation of the package discount, that is, the  
32 total price of the individual classes of service at advertised rates  
33 compared to the package price, among all classes of service  
34 comprising the package. ~~The fact that the holder of a state franchise~~  
35 ~~offers~~ *holder's offering* a bundled package shall not be deemed a  
36 promotional activity. If the holder of a state franchise does not  
37 offer any component of the bundled package separately, the holder  
38 of a state franchise shall declare a stated retail value for each  
39 component based on reasonable comparable prices for the product

1 or service for the purpose of determining franchise fees based on  
2 the package discount ~~described above~~.

3 (g) For the purposes of determining gross revenue under this  
4 division, a video service provider shall use the same method of  
5 determining revenues under generally accepted accounting  
6 principals as that which the video service provider uses in  
7 determining revenues for the purpose of reporting to national and  
8 state regulatory agencies.

9 (h) The state franchise fee shall be remitted to the applicable  
10 local entity quarterly, within 45 days after the end of the quarter  
11 for that calendar quarter. Each payment shall be accompanied by  
12 a summary explaining the basis for the calculation of the state  
13 franchise fee. If the holder does not pay the franchise fee when  
14 due, the holder shall pay a late payment charge at a rate per year  
15 equal to the highest prime lending rate during the period of  
16 delinquency, plus 1 percent. If the holder has overpaid the franchise  
17 fee, it may deduct the overpayment from its next quarterly payment.

18 (i) Not more than once annually, a local entity may examine  
19 the business records of a holder of a state franchise to the extent  
20 reasonably necessary to ensure compensation in accordance with  
21 ~~subdivision (a) this section~~. The holder shall keep all business  
22 records reflecting any gross revenues, even if there is a change in  
23 ownership, for at least four years after those revenues are  
24 recognized by the holder on its books and records. If the  
25 examination discloses that the holder has underpaid franchise fees  
26 by more than 5 percent during the examination period, the holder  
27 shall pay all of the reasonable and actual costs of the examination.  
28 If the examination discloses that the holder has not underpaid  
29 franchise fees, the local entity shall pay all of the reasonable and  
30 actual costs of the examination. In every other instance, each party  
31 shall bear its own costs of the examination. Any claims by a local  
32 entity that compensation is not in accordance with subdivision (a),  
33 and any claims for refunds or other corrections to the remittance  
34 of the holder of a state franchise, shall be made within three years  
35 and 45 days of the end of the quarter for which compensation is  
36 remitted, or three years from the date of the remittance, whichever  
37 is later. Either a local entity or the holder may, in the event of a  
38 dispute concerning compensation under this section, bring an action  
39 in a court of competent jurisdiction.

1 (j) The holder of a state franchise may identify and collect the  
2 amount of the state franchise fee as a separate line item on the  
3 regular bill of each subscriber.

4 SEC. 6. Section 5870 of the Public Utilities Code is amended  
5 to read:

6 5870. (a) The holder of a state franchise shall designate a  
7 sufficient amount of capacity on its network to allow the provision  
8 of the same number of public, educational, and governmental  
9 access (PEG) channels, as are activated and provided by the  
10 incumbent cable operator that has simultaneously activated and  
11 provided the greatest number of PEG channels within the local  
12 entity under the terms of any franchise in effect in the local entity  
13 as of January 1, 2007. For the purposes of this section, a PEG  
14 channel is deemed activated if it is being utilized for PEG  
15 programming within the ~~municipality~~ *local entity's jurisdiction*  
16 for at least eight hours per day. The holder shall have three months  
17 from the date the local entity requests the PEG channels to  
18 designate the capacity. However, the three-month period shall be  
19 tolled by any period during which the designation or provision of  
20 PEG channel capacity is technically infeasible, including any  
21 failure or delay of the incumbent cable operator to make adequate  
22 interconnection available, as required by this section.

23 (b) The PEG channels shall be for the exclusive use of the local  
24 entity or its designee to provide public, educational, and  
25 governmental channels. The PEG channels shall be used only for  
26 noncommercial purposes. However, advertising, underwriting, or  
27 sponsorship recognition may be carried on the channels for the  
28 purpose of funding PEG-related activities. The PEG channels shall  
29 all be carried on the basic service tier. To the extent feasible, the  
30 PEG channels shall not be separated numerically from other  
31 channels carried on the basic service tier and the channel numbers  
32 for the PEG channels shall be the same channel numbers used by  
33 the incumbent cable operator unless prohibited by federal law.  
34 After the initial designation of PEG channel numbers, the channel  
35 numbers shall not be changed without the agreement of the local  
36 entity unless the change is required by federal law. Each channel  
37 shall be capable of carrying a National Television System  
38 Committee (NTSC) television signal.

39 (c) (1) If less than three PEG channels are activated and  
40 provided within the local entity as of January 1, 2007, a local entity

1 whose jurisdiction lies within the authorized service area of the  
2 holder of a state franchise may initially request the holder to  
3 designate not more than a total of three PEG channels.

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

11 (d) (1) The holder shall provide an additional PEG channel  
12 when the nonduplicated locally produced video programming  
13 televised on a given channel exceeds 56 hours per week as  
14 measured on a quarterly basis. The additional channel shall not be  
15 used for any purpose other than to continue programming  
16 additional government, education, or public access television.

17 (2) For the purposes of this section, “locally produced video  
18 programming” means programming produced or provided by any  
19 local resident, the local entity, or any local public or private agency  
20 that provides services to residents of the franchise area; or any  
21 transmission of a meeting or proceeding of any local, state, or  
22 federal governmental entity.

23 (e) Any PEG channel provided pursuant to this section that is  
24 not utilized by the local entity for at least eight hours per day as  
25 measured on a quarterly basis may no longer be made available  
26 to the local entity, and may be programmed at the holder’s  
27 discretion. At the time that the local entity can certify to the holder  
28 a schedule for at least eight hours of daily programming, the holder  
29 of the state franchise shall restore the channel or channels for the  
30 use of the local entity.

31 (f) The content to be provided over the PEG channel capacity  
32 provided pursuant to this section shall be the responsibility of the  
33 local entity or its designee receiving the benefit of that capacity,  
34 and the holder of a state franchise bears only the responsibility for  
35 the transmission of that content, subject to technological restraints.

36 (g) (1) The local entity shall ensure that all transmissions,  
37 content, or programming to be transmitted by a holder of a state  
38 franchise are provided or submitted in a manner or form that is  
39 compatible with the holder’s network, if the local entity produces  
40 or maintains the PEG programming in that manner or form. If the

1 local entity does not produce or maintain PEG programming in  
2 that manner or form, then the local entity may submit or provide  
3 PEG programming in a manner or form that is standard in the  
4 industry. The holder shall be responsible for any changes in the  
5 form of the transmission necessary to make it compatible with the  
6 technology or protocol utilized by the holder to deliver services.  
7 If the holder is required to change the form of the transmission,  
8 the local entity shall permit the holder to do so in a manner that is  
9 most economical to the holder.

10 (2) The provision of those transmissions, content, or  
11 programming to the holder of a state franchise shall constitute  
12 authorization for the holder to carry those transmissions, content,  
13 or programming. The holder may carry the transmission, content,  
14 or programming outside of the local entity's jurisdiction if the  
15 holder agrees to pay the local entity or its designee any incremental  
16 licensing costs incurred by the local entity or its designee associated  
17 with that transmission. ~~Local entities shall be prohibited from~~  
18 ~~entering into licensing agreements that impose~~ *A local entity shall*  
19 *not enter into a licensing agreement that imposes* higher  
20 proportional costs for transmission to subscribers outside the local  
21 entity's jurisdiction.

22 (3) The PEG signal shall be receivable by all subscribers,  
23 whether they receive digital or analog service, or a combination  
24 thereof, without the need for any equipment other than the  
25 equipment necessary to receive the lowest cost tier of service. The  
26 PEG access capacity provided shall be of similar quality and  
27 functionality to that offered by commercial channels on the lowest  
28 cost tier of service unless the signal is provided to the holder at a  
29 lower quality or with less functionality.

30 (h) Where technically feasible, the holder of a state franchise  
31 and an incumbent cable operator shall negotiate in good faith to  
32 interconnect their networks for the purpose of providing PEG  
33 programming. Interconnection may be accomplished by direct  
34 cable, microwave link, satellite, or other reasonable method of  
35 connection. Holders of a state franchise and incumbent cable  
36 operators shall provide interconnection of the PEG channels on  
37 reasonable terms and conditions and may not withhold the  
38 interconnection. If a holder of a state franchise and an incumbent  
39 cable operator cannot reach a mutually acceptable interconnection  
40 agreement, the local entity may require the incumbent cable

1 operator to allow the holder to interconnect its network with the  
2 incumbent's network at a technically feasible point on the holder's  
3 network as identified by the holder. If no technically feasible point  
4 for interconnection is available, the holder of a state franchise shall  
5 make an interconnection available to the channel originator and  
6 shall provide the facilities necessary for the interconnection. The  
7 cost of any interconnection shall be borne by the holder requesting  
8 the interconnection unless otherwise agreed to by the parties.

9 (i) A holder of a state franchise shall not be required to  
10 interconnect for, or otherwise to transmit, PEG content that is  
11 branded with the logo, name, or other identifying marks of another  
12 cable operator or video service provider. For purposes of this  
13 section, PEG content is not branded if it includes only production  
14 credits or other similar information displayed at the conclusion of  
15 a program. The local entity may require a cable operator or video  
16 service provider to remove its logo, name, or other identifying  
17 marks from PEG content that is to be made available through  
18 interconnection to another provider of PEG capacity.

19 (j) In addition to any provision for the PEG channels required  
20 under subdivisions (a) to (i), inclusive, the holder shall reserve,  
21 designate, and, upon request, activate a channel for carriage of  
22 state public affairs programming administered by the state.

23 (k) All obligations to provide and support PEG channel facilities  
24 and institutional networks and to provide cable services to  
25 community buildings contained in a locally issued franchise  
26 existing on December 31, 2006, shall continue until the local  
27 franchise expires, until the term of the franchise would have expired  
28 if it had not been terminated pursuant to subdivision (o) of Section  
29 5840, or until January 1, 2009, whichever is later.

30 (l) After January 1, 2007, and until the expiration of the  
31 incumbent cable operator's franchise, if the incumbent cable  
32 operator has existing unsatisfied obligations under the franchise  
33 to remit to the local entity any cash payments for the ongoing costs  
34 of public, educational, and government access channel facilities  
35 or institutional networks, the local entity shall divide those cash  
36 payments among all cable or video providers as provided in this  
37 section. The fee shall be the holder's pro rata per subscriber share  
38 of the cash payment required to be paid by the incumbent cable  
39 operator to the local entity for the costs of PEG channel facilities.  
40 All video service providers and the incumbent cable operator shall

1 be subject to the same requirements for recurring payments for the  
2 support of PEG channel facilities and institutional networks,  
3 whether expressed as a percentage of gross revenue or as an amount  
4 per subscriber, per month, or otherwise.

5 (m) In determining the fee *described in subdivision (l)* on a pro  
6 rata per subscriber basis, all cable and video service providers shall  
7 report, for the period in question, to the local entity the total number  
8 of subscribers served within the local entity's jurisdiction, which  
9 shall be treated as confidential by the local entity and shall be used  
10 only to derive the per subscriber fee required by this section. The  
11 local entity shall then determine the payment due from each  
12 provider based on a per subscriber basis for the period by  
13 multiplying the unsatisfied cash payments for the ongoing capital  
14 costs of PEG channel facilities by a ratio of the reported subscribers  
15 of each provider to the total subscribers within the local entity as  
16 of the end of the period. The local entity shall notify the respective  
17 providers, in writing, of the resulting pro rata amount. After the  
18 notice, any fees required by this section shall be remitted to the  
19 applicable local entity quarterly, within 45 days after the end of  
20 the quarter for the preceding calendar quarter, and may only be  
21 used by the local entity as authorized under federal law.

22 (n) A local entity may, by ordinance, establish a fee to support  
23 PEG channel facilities consistent with federal law that would  
24 become effective subsequent to the expiration of any fee imposed  
25 pursuant to ~~paragraph (2) of subdivision (l)~~. If no such fee exists,  
26 the local entity may establish the fee at any time. The fee shall not  
27 exceed 1 percent of the holder's gross revenues, as defined in  
28 Section 5860. Notwithstanding this limitation, if, on December  
29 31, 2006, a local entity is imposing a separate fee to support PEG  
30 channel facilities that is in excess of 1 percent, that entity may, by  
31 ordinance, establish a fee no greater than that separate fee, and in  
32 no event greater than 3 percent, to support PEG activities. The  
33 ordinance shall expire, and may be reauthorized, upon the  
34 expiration of the state franchise.

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

39 (p) A court of competent jurisdiction shall have exclusive  
40 jurisdiction to enforce any requirement under this section or resolve

1 any dispute regarding the requirements set forth in this section,  
2 and no provider may ~~by~~ *be* barred from the provision of service  
3 or be required to terminate service as a result of that dispute or  
4 enforcement action.

5 SEC. 7. Section 5880 of the Public Utilities Code is amended  
6 to read:

7 5880. Holders of state franchises shall comply with the  
8 Emergency Alert System requirements of the Federal  
9 Communications Commission in order that emergency messages  
10 may be distributed over the holder’s network. Any provision in a  
11 locally issued franchise authorizing local entities to provide local  
12 emergency notifications shall remain in effect, and shall apply to  
13 all holders of a state-issued franchise in the same local area, for  
14 the duration of the locally issued franchise, until the term of the  
15 franchise would have expired were the franchise not terminated  
16 pursuant to subdivision ~~(m)~~ (o) of Section 5840, or until January  
17 1, 2009, whichever is later.

18 SEC. 8. Section 5890 of the Public Utilities Code is amended  
19 to read:

20 5890. (a) A cable operator or video service provider that has  
21 been granted a state franchise under this division may not  
22 discriminate against or deny access to service to any group of  
23 potential residential subscribers because of the income of the  
24 residents in the local area in which the group resides.

25 (b) Holders or their affiliates with more than 1,000,000  
26 telephone customers in California satisfy subdivision (a) if all of  
27 the following conditions are met:

28 (1) Within three years after it begins providing video service  
29 under this division, at least 25 percent of households with access  
30 to the holder’s video service are low-income households.

31 (2) Within five years after it begins providing video service  
32 under this division and continuing thereafter, at least 30 percent  
33 of the households with access to the holder’s video service are  
34 low-income households.

35 (3) Holders provide service to community centers in underserved  
36 areas, as determined by the holder, without charge, at a ratio of  
37 one community center for every 10,000 video ~~customers~~  
38 *subscribers*. The holder shall not be required to take its facilities  
39 beyond the appropriate demarcation point outside the community  
40 center building or perform any inside wiring. The community

1 center may not receive service from more than one state franchise  
2 holder at a time under this section. For purposes of this section,  
3 “community center” means any facility ~~that~~ *operated* by an  
4 organization that has qualified for the California Teleconnect Fund,  
5 as established in Section 280 and that will make the holder’s  
6 service available to the community.

7 (c) Holders or their affiliates with fewer than 1,000,000  
8 telephone customers in California satisfy this section if they offer  
9 video service to all customers within their telephone service area  
10 within a reasonable time, as determined by the commission.  
11 However, the commission shall not require the holder to offer  
12 video service ~~when~~ *if* the cost to provide video service is  
13 substantially above the average cost of providing video service in  
14 that telephone service area.

15 (d) When a holder provides video service outside of its telephone  
16 service area, is not a telephone corporation, or offers video service  
17 in an area where no other video service is being offered, other than  
18 direct-to-home satellite service, there is a rebuttable presumption  
19 that discrimination in providing service has not occurred within  
20 those areas. The commission may review the holder’s proposed  
21 video service area to ensure that the area is not drawn in a  
22 discriminatory manner.

23 (e) For holders or their affiliates with more than 1,000,000  
24 telephone customers in California, either of the following shall  
25 apply:

26 (1) If the holder is predominantly deploying fiber optic facilities  
27 to the customer’s premise, the holder shall provide access to its  
28 video service to a number of households at least equal to 25 percent  
29 of the customer households in the holder’s telephone service area  
30 within two years after it begins providing video service under this  
31 division, and to a number at least equal to 40 percent of those  
32 households within five years.

33 (2) If the holder is not predominantly deploying fiber optic  
34 facilities to the customer’s premises, the holder shall provide access  
35 to its video service to a number of households at least equal to 35  
36 percent of the households in the holder’s telephone service area  
37 within three years after it begins providing video service under  
38 this division, and to a number at least equal to 50 percent of these  
39 households within five years.

1 (3) A holder shall not be required to meet the 40-percent  
2 requirement in paragraph (1) or the 50-percent requirement in  
3 paragraph (2) until two years after at least 30 percent of the  
4 households with access to the holder’s video service subscribe to  
5 it for six consecutive months.

6 (4) If 30 percent of the households with access to the holder’s  
7 video service have not subscribed to the holder’s video service for  
8 six consecutive months within three years after it begins providing  
9 video service, the holder may submit validating documentation to  
10 the commission. If the commission finds that the documentation  
11 validates the holder’s claim, then the commission shall permit a  
12 delay in meeting the 40-percent requirement in paragraph (1) or  
13 the 50-percent requirement in paragraph (2) until the time that the  
14 holder does provide service to 30 percent of the households for  
15 six consecutive months.

16 (f) (1) After two years of providing service under this division,  
17 the holder may apply to the state franchising authority for an  
18 extension to meet the requirements of subdivision (b), (c), or (e).  
19 Notice of this application shall also be provided to the telephone  
20 customers of the holder, the Secretary of the Senate, and the Chief  
21 Clerk of the Assembly.

22 (2) Upon application, the franchising authority shall hold public  
23 hearings in the telephone service area of the applicant.

24 (3) In reviewing the failure to satisfy the obligations contained  
25 in subdivision (b), (c), or (e), the franchising authority shall  
26 consider factors that are beyond the control of the holder, including,  
27 but not limited to, the following:

28 (i)

29 (A) The ability of the holder to obtain access to rights-of-way  
30 under reasonable terms and conditions.

31 (ii)

32 (B) The degree to which developments or buildings are not  
33 subject to competition because of existing exclusive arrangements.

34 (iii)

35 (C) The degree to which developments or buildings are  
36 inaccessible using reasonable technical solutions under  
37 commercially reasonable terms and conditions.

38 (iv)

39 (D) Natural disasters.

1 (4) The franchising authority may grant the extension only if  
2 the holder has made substantial and continuous effort to meet the  
3 requirements of subdivision (b), (c), or (e). If an extension is  
4 granted the franchising authority shall establish a new compliance  
5 deadline.

6 (g) Local governments may bring complaints to the state  
7 franchising authority that a holder is not offering video service as  
8 required by this section, or the state franchising authority may  
9 open an investigation on its own motion. The state franchising  
10 authority shall hold public hearings before issuing a decision. The  
11 commission may suspend or revoke the franchise if the holder fails  
12 to comply with the provisions of this division.

13 (h) If the state franchising authority finds that the holder is in  
14 violation of this section, it may, in addition to any other remedies  
15 provided by law, impose a fine not to exceed 1 percent of the  
16 holder's total monthly gross revenue received from provision of  
17 video service in the state each month from the date of the decision  
18 until the date that compliance is achieved.

19 (i) If a court finds that the holder of the state franchise is in  
20 violation of this section, the court may immediately terminate the  
21 holder's state franchise, and the court shall, in addition to any other  
22 remedies provided by law, impose a fine not to exceed 1 percent  
23 of the holder's total gross revenue of its entire cable and service  
24 footprint in the state in the full calendar month immediately prior  
25 to the decision.

26 (j) As used in this section, the following definitions shall apply:

27 (1) ~~“Household” means consistent with the United States Census~~  
28 ~~Bureau, as a house, an apartment, a mobile home, a group of rooms,~~  
29 ~~or a single room that is intended for occupancy as separate living~~  
30 ~~quarters. Separate living quarters are those in which the occupants~~  
31 ~~live and eat separately from any other persons in the building and~~  
32 ~~which have direct access from the outside of the building or~~  
33 ~~through a common hall “Access” means that the holder is capable~~  
34 *of providing video service at the household address using any*  
35 *technology, other than direct-to-home satellite service, providing*  
36 *two-way broadband Internet capability and video programming,*  
37 *content, and functionality, regardless of whether any customer*  
38 *has ordered service or whether the owner or landlord or other*  
39 *responsible person has granted access to the household. If more*  
40 *than one technology is utilized, the technologies shall provide*

1 *similar two-way broadband Internet accessibility and similar video*  
2 *programming.*

3 (2) ~~“Low income household” means those residential households~~  
4 ~~located within the holder’s existing telephone service area where~~  
5 ~~the average annual household income is less than \$35,000 based~~  
6 ~~on the United States Census Bureau estimates adjusted annually~~  
7 ~~to reflect rates of change and distribution through January 1, 2007~~  
8 *“Customer’s household” means those residential households*  
9 *located within the holder’s existing telephone service area that*  
10 *are customers of the service by which that telephone service area*  
11 *is defined.*

12 (3) ~~“Customer’s household” means those residential households~~  
13 ~~located within the holder’s existing telephone service area that are~~  
14 ~~customers of the service by which that telephone service area is~~  
15 ~~defined.~~ *“Household” means, consistent with the United States*  
16 *Census Bureau, a house, an apartment, a mobilehome, a group of*  
17 *rooms, or a single room that is intended for occupancy as separate*  
18 *living quarters. Separate living quarters are those in which the*  
19 *occupants live and eat separately from any other persons in the*  
20 *building and which have direct access from the outside of the*  
21 *building or through a common hall.*

22 (4) ~~“Access” means that the holder is capable of providing video~~  
23 ~~service at the household address using any technology, other than~~  
24 ~~direct-to-home satellite service, providing two-way broadband~~  
25 ~~Internet capability and video programming, content, and~~  
26 ~~functionality, regardless of whether any customer has ordered~~  
27 ~~service or whether the owner or landlord or other responsible~~  
28 ~~person has granted access to the household. If more than one~~  
29 ~~technology is utilized, the technologies shall provide similar~~  
30 ~~two-way broadband Internet accessibility and similar video~~  
31 ~~programming.~~ *“Low-income household” means those residential*  
32 *households located within the holder’s existing telephone service*  
33 *area where the average annual household income is less than*  
34 *thirty-five thousand dollars (\$35,000) based on the United States*  
35 *Census Bureau estimates adjusted annually to reflect rates of*  
36 *change and distribution through January 1, 2007.*

37 (k) Nothing in this section shall be construed to require a holder  
38 to provide video service outside its wireline footprint or to match  
39 the existing ~~cable franchise territory of any cable provider service~~  
40 *area of any cable operator.*

1 SEC. 9. Section 5900 of the Public Utilities Code is amended  
2 to read:

3 5900. (a) The holder of a state franchise shall comply with  
4 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2  
5 of the Government Code, and any other customer service standards  
6 pertaining to the provision of video service established by federal  
7 law or regulation or adopted by subsequent enactment of the  
8 Legislature. All customer service and consumer protection  
9 standards under this section shall be interpreted and applied to  
10 accommodate newer or different technologies while meeting or  
11 exceeding the goals of the standards.

12 (b) The holder of a state franchise shall comply with provisions  
13 of Section 637.5 of the Penal Code and the privacy standards  
14 contained in ~~Section 631 of the federal Cable Act (47 U.S.C. Sec.~~  
15 ~~551 et. seq.)~~ *551 et seq. of Title 47 of the United States Code.*

16 (c) The local entity shall enforce all of the customer service and  
17 protection standards of this section with respect to complaints  
18 received from residents within the local entity's jurisdiction, but  
19 it may not adopt or seek to enforce any additional or different  
20 customer service or other performance standards under Section  
21 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the  
22 Government Code, or any other authority or provision of law.

23 (d) The local entity shall, by ordinance or resolution, provide a  
24 schedule of penalties for any material breach by a holder of a state  
25 franchise of this section. No monetary penalties shall be assessed  
26 for a material breach if it is out of the reasonable control of the  
27 holder. Further, no monetary penalties may be imposed prior to  
28 January 1, 2007. Any schedule of monetary penalties adopted  
29 pursuant to this section shall in no event exceed five hundred  
30 dollars (\$500) for each day of each material breach, not to exceed  
31 one thousand five hundred dollars (\$1,500) for each occurrence  
32 of a material breach. However, if a material breach of this section  
33 has occurred, and the local entity has provided notice and a fine  
34 or penalty has been assessed, and if a subsequent material breach  
35 of the same nature occurs within 12 months, the penalties may be  
36 increased by the local entity to a maximum of one thousand dollars  
37 (\$1,000) for each day of each material breach, not to exceed three  
38 thousand dollars (\$3,000) for each occurrence of the material  
39 breach. If a third or further material breach of the same nature  
40 occurs within those same 12 months, and the local entity has

1 provided notice and a fine or penalty has been assessed, the  
2 penalties may be increased to a maximum of two thousand five  
3 hundred dollars (\$2,500) for each day of each material breach, not  
4 to exceed seven thousand five hundred dollars (\$7,500) for each  
5 occurrence of the material breach. With respect to video providers  
6 subject to a franchise or license, any monetary penalties assessed  
7 under this section shall be reduced dollar-for-dollar to the extent  
8 any liquidated damage or penalty provision of a current cable  
9 television ordinance, franchise contract, or license agreement  
10 imposes a monetary obligation upon a video provider for the same  
11 customer service failures, and no other monetary damages may be  
12 assessed.

13 (e) The local entity shall give the video *service* provider written  
14 notice of any alleged material ~~breaches of the consumer~~ *breach of*  
15 *the customer* service standards of this division and allow the video  
16 provider at least 30 days from receipt of the notice to remedy the  
17 specified material breach.

18 (f) A material breach for the purposes of assessing penalties  
19 shall be deemed to have occurred for each day within the  
20 jurisdiction of each local entity, following the expiration of the  
21 period specified in subdivision (e), that any material breach has  
22 not been remedied by the video *service* provider, irrespective of  
23 the number of customers *or subscribers* affected.

24 (g) Any penalty ~~shall be provided to the local entity who~~  
25 *assessed pursuant to this section shall be remitted to the local*  
26 *entity, which* shall submit one-half of the penalty to the Digital  
27 Divide Account established in Section 280.5.

28 (h) Any interested person may seek judicial review of a decision  
29 of the local entity in a court of appropriate jurisdiction. For this  
30 purpose, a court of law shall conduct a de novo review of any  
31 issues presented.

32 (i) This section shall not preclude a party affected by this section  
33 from utilizing any judicial remedy available to that party without  
34 regard to this section. Actions taken by a local legislative body,  
35 including a local franchising ~~authority~~ *entity*, pursuant to this  
36 section shall not be binding upon a court of law. For this purpose,  
37 a court of law shall conduct de novo review of any issues presented.

38 (j) For purposes of this section, “material breach” means any  
39 substantial and repeated failure of a video service provider to

1 comply with service quality and other standards specified in  
2 subdivision (a).

3 (k) The Division of Ratepayer Advocates shall have authority  
4 to advocate on behalf of video-~~customers~~ *subscribers* regarding  
5 renewal of a state-issued franchise and enforcement of *this section*,  
6 *and* Sections 5890, ~~5900~~, and 5950. For this purpose, the division  
7 shall have access to any information in the possession of the  
8 commission subject to all restrictions on disclosure of that  
9 information that are applicable to the commission.

10 SEC. 10. Section 5910 of the Public Utilities Code is amended  
11 to read:

12 5910. (a) The holder of a state franchise shall perform  
13 background checks of applicants for employment, according to  
14 current business practices.

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

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

18 (2) Independent contractors and their employees.

19 (3) Vendors and their employees.

20 (c) Independent contractors and vendors shall certify that they  
21 have obtained the background checks required pursuant to  
22 subdivision ~~(f)~~ (b), and shall make the background checks available  
23 to the holder upon request.

24 (d) Except as otherwise provided by contract, the holder of a  
25 state franchise shall not be responsible for administering the  
26 background checks and shall not assume the costs of the  
27 background checks of individuals who are not applicants for  
28 employment of the holder.

29 (e) (1) Subdivision (a) only applies to applicants for  
30 employment for positions that would allow the applicant to have  
31 direct contact with or access to the holder's network, central office,  
32 or ~~customer~~ *subscriber* premises, and perform activities that  
33 involve the installation, service, or repair of the holder's network  
34 or equipment.

35 (2) Subdivision (b) only applies to persons that have direct  
36 contact with or access to the holder's network, central office, or  
37 ~~customer~~ *subscriber* premises, and perform activities that involve  
38 the installation, service, or repair of the holder's network or  
39 equipment.

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

5 SEC. 11. Section 5930 of the Public Utilities Code is amended  
6 to read:

7 5930. (a) Notwithstanding any other provision of this division,  
8 any video service provider that currently holds a franchise with a  
9 local franchising entity in a county that is a party, either alone or  
10 in conjunction with any other local franchising entity located in  
11 that county, to a stipulation and consent judgment executed by the  
12 parties thereto and approved by a federal district court shall neither  
13 be entitled to seek a state franchise in any area of that county,  
14 including any unincorporated area and any incorporated city of  
15 that county, nor abrogate any existing franchise before July 1,  
16 2014. Prior to July 1, 2014, the video service provider shall  
17 continue to be exclusively governed by any existing franchise with  
18 a local franchising entity for the term of that franchise and any and  
19 all issues relating to renewal, transfer, or otherwise in relation to  
20 that franchise shall be resolved pursuant to that existing franchise  
21 and otherwise applicable federal and local law. This subdivision  
22 shall not be deemed to extend any existing franchise beyond its  
23 term.

24 (b) When an incumbent cable operator is providing service  
25 under an expired franchise or a franchise that expires before  
26 January 2, 2008, the local entity may extend that franchise on the  
27 same terms and conditions through January 2, 2008. A state  
28 franchise issued to any incumbent cable operator shall not become  
29 operative prior to January 2, 2008.

30 (c) When a video service provider that holds a state franchise  
31 provides the notice required pursuant to subdivision ~~(m)~~ (n) of  
32 Section 5840 to a local entity, the local franchising entity may  
33 require all incumbent cable operators to seek a state franchise and  
34 shall terminate the franchise issued by the local franchising entity  
35 when the commission issues a state franchise for the video service  
36 provider that includes the entire service area served by the video  
37 service provider and the video service provider notifies the local  
38 entity that it will begin providing video service in that area under  
39 a state franchise.

1 SEC. 12. Section 5960 of the Public Utilities Code is amended  
2 to read:

3 5960. (a) For purposes of this section, “census tract” has the  
4 same meaning as used by the United States Census Bureau, and  
5 “household” has the same meaning as specified in Section 5890.

6 (b) Every holder, no later than April 1, 2008, and annually no  
7 later than April 1 thereafter, shall report to the commission on a  
8 census tract basis the following information:

9 (1) ~~Broadband Information~~ *information*:

10 (A) The number of households to which the holder makes  
11 broadband available in this state. If the holder does not maintain  
12 this information on a census tract basis in its normal course of  
13 business, the holder may reasonably approximate the number of  
14 households based on information it keeps in the normal course of  
15 business.

16 (B) The number of households that subscribe to broadband that  
17 the holder makes available in this state.

18 (C) Whether the broadband provided by the holder utilizes  
19 wireline-based facilities or another technology.

20 (2) ~~Video Information~~ *information*:

21 (A) If the holder is a telephone corporation:

22 (i) The number of households in the holder’s telephone service  
23 area.

24 (ii) The number of households in the holder’s telephone service  
25 area that are offered video service by the holder.

26 (B) If the holder is not a telephone corporation:

27 (i) The number of households in the holder’s video service area.

28 (ii) The number of households in the holder’s video service area  
29 that are offered video service by the holder.

30 (3) ~~Low-Income Household Information~~ *Low-income household*  
31 *information*:

32 (i) The number of low-income households in the holder’s video  
33 service area.

34 (ii) The number of low-income households in the holder’s video  
35 service area that are offered video service by the holder.

36 (c) The commission, no later than July 1, 2008, and annually  
37 no later than July 1 thereafter, shall submit to the Governor and  
38 the Legislature a report that includes based on year-end data, on  
39 an aggregated basis, the information submitted by holders pursuant  
40 to subdivision (b).

1 (d) All information submitted to the commission and reported  
2 by the commission pursuant to this section shall be disclosed to  
3 the public only as provided for pursuant to Section 583. No  
4 individually identifiable customer *or subscriber* information shall  
5 be subject to public disclosure.

6 SEC. 13. Section 107.7 of the Revenue and Taxation Code is  
7 amended to read:

8 107.7. (a) When valuing possessory interests in real property  
9 created by the right to place wires, conduits, and appurtenances  
10 along or across public streets, rights-of-way, or public easements  
11 contained in either a cable franchise or license granted pursuant  
12 to Section 53066 of the Government Code (a “cable possessory  
13 interest”) or a state franchise to provide video service pursuant to  
14 Section 5840 of the Public Utilities Code (a “video possessory  
15 interest”), the assessor shall value these possessory interests  
16 consistent with the requirements of Section 401. The methods of  
17 valuation shall include, but not be limited to, the comparable sales  
18 method, the income method (including, but not limited to,  
19 capitalizing rent), or the cost method.

20 (b) (1) The preferred method of valuation of a cable television  
21 possessory interest or video service possessory interest by the  
22 assessor is capitalizing the annual rent, using an appropriate  
23 capitalization rate.

24 (2) For purposes of this section, the annual rent shall be that  
25 portion of that franchise fee received that is determined to be  
26 payment for the cable ~~television~~ possessory interest or video service  
27 possessory interest for the actual remaining term or the reasonably  
28 anticipated term of the franchise or license or the appropriate  
29 economic rent. If the assessor does not use a portion of the  
30 franchise fee as the economic rent, the resulting assessments shall  
31 not benefit from any presumption of correctness.

32 (c) If the comparable sales method, which is not the preferred  
33 method, is used by the assessor to value a cable possessory interest  
34 or video service possessory interest when sold in combination with  
35 other property including, but not limited to, intangible assets or  
36 rights, the resulting assessments shall not benefit from any  
37 presumption of correctness.

38 (d) Intangible assets or rights of a cable system or the provider  
39 of video services are not subject to ad valorem property taxation.  
40 These intangible assets or rights, include, but are not limited to:

1 franchises or licenses to construct, operate, and maintain a cable  
2 system or video service system for a specified franchise term  
3 (excepting therefrom that portion of the franchise or license which  
4 grants the possessory interest), subscribers, marketing, and  
5 programming contracts, nonreal property lease agreements,  
6 management and operating systems, a work force in place, going  
7 concern value, deferred, startup, or prematurity costs, covenants  
8 not to compete, and goodwill. However, a cable possessory interest  
9 or video service possessory interest may be assessed and valued  
10 by assuming the presence of intangible assets or rights necessary  
11 to put the cable possessory interest or video service possessory  
12 interest to beneficial or productive use in an operating cable system  
13 or video service system.

14 (e) Whenever any change in ownership of a cable possessory  
15 interest or video service possessory interest occurs, the person or  
16 legal entity required to file a statement pursuant to Section 480,  
17 480.1, or 480.2, shall, at the request of the assessor, provide as a  
18 part of that statement the following, if applicable: confirmation of  
19 the sales price; allocation of the sales price among the counties;  
20 and gross revenue and franchise fee expenses of the cable system  
21 or video service system by county. Failure to provide this  
22 information shall result in a penalty as provided in Section 482,  
23 except that the maximum penalty shall be five thousand dollars  
24 (\$5,000).