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AMENDED IN ASSEMBLY APRIL 6, 2006  
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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2987**

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**Introduced by Assembly Members Nunez and Levine**  
**(Principal coauthors: Assembly Members McCarthy and Plescia)**  
*(Principal coauthor: Senator Escutia)*

February 24, 2006

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An act to add Division 2.5 (commencing with Section 5800) to 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 2987, as amended, Nunez. Cable and video service.

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

This bill would enact the Digital Infrastructure and Video Competition Act of 2006 and would establish a procedure for the issuance of state franchises for the provision of video service, which would be defined to include cable service and open-video systems, that would be administered by the Public Utilities Commission. The commission would be the sole franchising authority for state franchises to provide video services. The bill would require any person or corporation that seeks to provide video service in this state to file an application with the commission for a state franchise with specified information, signed under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would provide that cities, counties, cities and counties, or joint powers authorities would receive state franchise fees *in exchange for the use of public rights-of-way for the delivery of video services* provided within their jurisdictions, based on gross revenues, pursuant to a specified formula. The bill would also authorize local entities to establish a fee to support the capital costs of public, educational, and governmental access (PEG) channel facilities, in the amount of ~~either~~ 1% of gross revenues, or a preexisting fee, ~~whichever is lower~~ *more in specified circumstances.*

The bill would also require these local agencies to permit the installation of networks by holders of state franchises and would preclude enforcement of standards by the local agencies. The bill would also prohibit a holder of a state franchise from discriminating against or denying access to service to any group of potential residential subscribers because of their income and would provide that this provision is satisfied if certain conditions are met by holders *or their affiliates* with ~~500,000~~ 1,000,000 or more *telephone customers* or ~~500,000~~ *if alternative conditions are met by a holder or its affiliates with 1,000,000 or less fewer telephone customers* in California.

*The bill would require the holder of a state franchise to notify a local entity that it will provide video service in the entity's jurisdiction at least 10 days before offering service. After this notice is provided, the local franchising entity would be authorized to require all incumbent cable operators to seek a state franchise and terminate the local franchises issued to those incumbents, as specified. The bill would also require the local franchising entity to enforce customer service and protection standards and to enact an ordinance providing a schedule of penalties for any material breach of those standards by*

*a holder of a state franchise, thereby imposing a state-mandated local program.*

The bill would prescribe the extent of the obligation of state franchise holders to provide PEG channels. The bill would prescribe certain customer service and protection standards and penalties for violations of those standards. The bill would require a holder, within 24 months after the issuing of a holder's first state franchise, to make a specified report of the extent to which video service is available to potential subscribers and to file the report with the Legislature, the department, the Governor, the Attorney General, and to post it on the holder's *Internet* Web site. The bill would also require any state franchise holder employing more than 750 employees in California to make an annual report of specified information to the department.

*The bill would provide that a state franchise is valid for 10 years and would require a provider to apply to the commission for renewal of the franchise for any additional 10-year period.*

*The bill would prohibit the commission from permitting a telephone corporation that is providing video service pursuant to a state franchise to increase rates for residential basic service until January 1, 2009, unless that corporation is regulated under rate of return regulation, subject to specified exceptions.*

(2) 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.

This bill would specify that this valuation method also applies to possessory interests created in a cable television franchise or license *or a franchise to provide video services* that is granted by the state under the bill.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

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

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

1 SECTION 1. Division 2.5 (commencing with Section 5800)  
2 is added to the Public Utilities Code, to read:

3  
4 DIVISION 2.5. THE DIGITAL INFRASTRUCTURE AND  
5 VIDEO COMPETITION ACT OF 2006  
6

7 5800. This act shall be known and may be cited as the Digital  
8 Infrastructure and Video Competition Act of 2006.

9 ~~5800.1.~~

10 5810. (a) The Legislature finds and declares all of the  
11 following:

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

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

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

23 (4) Legislation to develop this new process should adhere to  
24 the following principles:

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

28 (ii) Promote the widespread access to the most technologically  
29 advanced cable and video services to all California communities

1 in a nondiscriminatory manner regardless of socioeconomic  
2 status.

3 (iii) Protect local government revenues and their control of  
4 public rights of way.

5 (iv) Require market participants to comply with all applicable  
6 consumer protection laws.

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

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

11 (vii) Maintain all existing authority of the California Public  
12 Utilities Commission as established in state and federal statutes.

13 (b) Nothing in this act shall be construed to eliminate or  
14 reduce a telephone corporation's or video provider's obligations  
15 under any applicable state or federal environmental protection  
16 laws. The local entity shall serve as the lead agency for any  
17 environmental review under this division that may be required  
18 pursuant to the California Environmental Quality Act (Division  
19 13 (commencing with Section 21000) of the Public Resources  
20 Code).

21 ~~(e) Telephone corporations providing video service pursuant~~  
22 ~~to this article shall not subsidize the cost of deploying network~~  
23 ~~that is used to provide video service and other costs necessary to~~  
24 ~~offer video service with revenue derived from the offering of~~  
25 ~~basic telephone services.~~

26 ~~5800.2.~~

27 5830. For purposes of this ~~article~~ *division*, the following  
28 words have the following meanings:

29 (a) *“Broadband” means any service defined as broadband in*  
30 *the most recent Federal Communications Commission inquiry*  
31 *pursuant to Section 706 of the Telecommunications Act of 1996*  
32 *(P.L. 104-104).*

33 ~~(a)~~

34 (b) *“Cable operator” means any person or group of persons*  
35 *that either provides cable service over a cable system and*  
36 *directly, or through one or more affiliates, owns a significant*  
37 *interest in a cable system; or that otherwise controls or is*  
38 *responsible for, through any arrangement, the management and*  
39 *operation of a cable system, as set forth in Section 522(5) of Title*  
40 *47 of the United States Code.*

- 1     ~~(b)~~
- 2     (c) “Cable service” is defined as the one-way transmission to
- 3 subscribers of either video programming, or other programming
- 4 service, and subscriber interaction, if any, that is required for the
- 5 selection or use of video programming or other programming
- 6 service, as set forth in Section 522(6) of Title 47 of the United
- 7 States Code.
- 8     ~~(e)~~
- 9     (d) “Cable system” is defined as set forth in Section 522(7) of
- 10 Title 47 of the United States Code.
- 11     ~~(d)~~
- 12     (e) “Commission” means the Public Utilities Commission.
- 13     ~~(e)~~
- 14     (f) “Franchise” means an initial authorization, or renewal of an
- 15 authorization, issued by a franchising entity, regardless of
- 16 whether the authorization is designated as a franchise, permit,
- 17 license, resolution, contract, certificate, agreement, or otherwise,
- 18 that authorizes the construction and operation of a cable system
- 19 *or open-video system* in public rights-of-way.
- 20     ~~(f)~~
- 21     (g) “Franchise fee” means the fee adopted pursuant to
- 22 subdivision (o) of Section 5800.3.
- 23     ~~(g) “Franchising entity” means the city, county, or city and~~
- 24 ~~county~~
- 25     (h) “*Local franchising entity*” means the city, county, city and
- 26 county, or joint powers authority entitled to require franchises
- 27 and impose fees on cable operators, as set forth in Section 53066
- 28 *of the Government Code*.
- 29     ~~(h) “Incumbent cable operator” means the cable operator~~
- 30 ~~servicing the largest number of cable subscribers in a particular~~
- 31     (i) “*Incumbent cable operator*” means a cable operator or
- 32 *OVS* serving subscribers under a franchise in a particular city,
- 33 county, or city and county franchise area on January 1, 2007.
- 34     ~~(i)~~
- 35     (j) “Local entity” means any city, county, city and county, or
- 36 joint powers authority within the state within whose jurisdiction
- 37 a holder of a state franchise under this ~~article~~ *division* may
- 38 provide cable service or video service.
- 39     ~~(j)~~

1 (k) “Network” means a component of a facility that is wholly  
2 or partly physically located within a public right-of-way and that  
3 is used to provide video service, cable service, or voice or data  
4 services.

5 ~~(k)~~

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

8 ~~(l)~~

9 (m) “OVS operator” means any person or group of persons  
10 that either provides cable service over an open-video system  
11 directly, or through one or more affiliates, owns a significant  
12 interest in an open-video system, or that otherwise controls or is  
13 responsible for, through any arrangement, the management of an  
14 open-video system.

15 ~~(m)~~

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

19 (o) “Socioeconomic status information” means information  
20 attained from the measures of socioeconomic status (SES)  
21 contained in the most recent United States Census or official  
22 update, as listed in paragraph (1); additional information  
23 contained in the most recent United States Census or official  
24 update, as listed in paragraph (2); and information on  
25 community type as defined by the Office of Statewide Health  
26 Planning and Development, as listed in paragraph (3).

27 (1) Census Bureau Index of SES relies on the following  
28 information:

29 (A) Number of households.

30 (B) Number of persons.

31 (C) Number of adults aged 25 years or over.

32 (D) Number of persons living below the federal 100 percent  
33 poverty line.

34 (E) Number of households owning a home.

35 (F) Number of households owning one or more cars.

36 (G) Number of households with an annual family income of  
37 fifty thousand dollars (\$50,000) or more.

38 (H) Number of adults aged 25 years or over with less than a  
39 high school diploma.

- 1 (I) Number of adults aged 25 years or over who have
- 2 completed four years of college.
- 3 (2) “Socioeconomic status information” also includes the
- 4 following measures:
- 5 (A) Median household income.
- 6 (B) Number of persons who are under 5 years, 18 years and
- 7 older, and 65 years and older.
- 8 (C) Median household population.
- 9 (D) Number of persons who are American Indian or Alaska
- 10 Native.
- 11 (E) Number of persons who are Asian.
- 12 (F) Number of persons who are Black or African-American.
- 13 (G) Number of persons who are Hispanic or Latino.
- 14 (H) Number of persons who are Native Hawaiian and other
- 15 Pacific Islander.
- 16 (I) Number of persons who are White.
- 17 (J) Number of persons who are an other race.
- 18 (K) Number of persons who are two or more races.
- 19 (L) Number of households where a language other than
- 20 English is spoken in the home.
- 21 (3) “Community type” lists whole census tracts as either rural
- 22 or frontier, or urban, as defined by the Office of Statewide Health
- 23 Planning and Development’s Medical Service Study Area
- 24 definitions.
- 25 ~~(m)~~
- 26 (p) “State franchise” means a franchise that is issued pursuant
- 27 to this ~~article~~ division.
- 28 ~~(o)~~
- 29 (q) “Subscriber” means a person who lawfully receives cable
- 30 service or video service from the holder of a state franchise for a
- 31 fee.
- 32 ~~(p)~~
- 33 (r) “Video programming” means programming provided by, or
- 34 generally considered comparable to programming provided by, a
- 35 television broadcast station, as set forth in Section 522(20) of
- 36 Title 47 of the United States Code.
- 37 ~~(q)~~
- 38 (s) “Video service” means video programming services, cable
- 39 service, or OVS service provided through facilities located at
- 40 least in part in public rights-of-way without regard to delivery



1 technology, including Internet protocol or other technology. This  
 2 definition does not include (1) any video programming provided  
 3 by a commercial mobile service provider defined in Section  
 4 322(d) of Title 47 of the United States Code, or (2) video  
 5 programming provided via an Internet access service as that term  
 6 is defined in Section 231(e)(4) of Title 47 of the United States  
 7 Code, unless the video programming is made available by a  
 8 video service provider solely to its video service subscribers.  
 9 *programming provided as part of, and via, a service that enables*  
 10 *users to access content, information, electronic mail, or other*  
 11 *services offered over the public Internet.*

12 ~~(f)~~

13 (t) "Video service provider" means an entity providing video  
 14 service. ~~This term does not include an incumbent cable operator.~~  
 15 *service.*

16 ~~5800.3. (a) The Public Utilities Commission~~

17 5840. (a) *The commission* is the sole franchising authority  
 18 for a state franchise to provide video service under this ~~article~~  
 19 *division*. Neither the ~~department~~ *commission* nor any franchising  
 20 entity or other local entity of the state may require the holder of a  
 21 state franchise to obtain a separate franchise or otherwise impose  
 22 any ~~fee or~~ requirement on any holder of a state franchise except  
 23 as expressly provided in this ~~article~~ *division*. Sections 53066,  
 24 53066.01, 53066.2, and 53066.3 of the Government Code shall  
 25 not apply to holders of a state franchise.

26 (b) The application process described in ~~subdivisions (d) and~~  
 27 ~~(e)~~ *this section* and the authority granted to the ~~department~~  
 28 *commission* under this section shall not exceed the provisions set  
 29 forth in this section.

30 (c) *The holder of a state franchise shall not be deemed a*  
 31 *public utility as a result of providing video service under this*  
 32 *division. This division shall not be construed as granting*  
 33 *authority to the commission to regulate the rates, terms, and*  
 34 *conditions of video services, except as explicitly set forth in this*  
 35 *division.*

36 ~~(e)~~

37 (d) Any person or corporation who seeks to provide cable  
 38 service or video service in this state ~~after January 1, 2007, for~~  
 39 *which a franchise has not already been issued, after January 1,*  
 40 *2008,* shall file an application for a state franchise with the

1 ~~department. The department~~ *commission. The commission* may  
2 impose a fee on the applicant that shall not exceed the actual and  
3 reasonable costs of processing the application and shall not be  
4 levied for general revenue purposes.

5 *(e) No person or corporation shall be eligible for a*  
6 *state-issued franchise if that person or corporation is in violation*  
7 *of any final nonappealable order issued pursuant to this division.*

8 ~~(d)~~

9 *(f) The application for a state franchise shall be made on a*  
10 *form prescribed by the*~~department~~ *commission* and shall include  
11 all of the following:

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

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

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

22 (i) A statement that the applicant will not discriminate in the  
23 provision of video or cable services as provided in Section  
24 ~~5800.7~~ 5890.

25 (ii) A statement that the applicant will abide by all applicable  
26 consumer protection laws and rules as provided in Section  
27 ~~5800.8~~ 5900.

28 (iii) A statement that the applicant will remit the fee required  
29 by subdivision (a) of Section ~~5800.5~~ 5860 to the local entity.

30 (iv) A statement that the applicant will provide PEG channels  
31 *and the required funding* as required by Section ~~5800.5~~  
32 *subdivision (r).*

33 (C) That the applicant agrees to comply with all lawful city,  
34 county, or city and county regulations regarding the time, place,  
35 and manner of using the public rights-of-way, including, but not  
36 limited to, payment of applicable encroachment, permit, and  
37 inspection fees.

38 (D) That the applicant will concurrently deliver a copy of the  
39 application to any local entity where the applicant will provide  
40 service.

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

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

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

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

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

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

18 *(6) A description of the video service area footprint that is*  
19 *proposed to be served, as identified by a collection of United*  
20 *States Census Bureau Block numbers (13 digit) or a geographic*  
21 *information system digital boundary meeting or exceeding*  
22 *national map accuracy standards. This description shall include*  
23 *the socioeconomic status information of all residents within the*  
24 *service area footprint.*

25 *(7) If the applicant is a telephone corporation or an affiliate of*  
26 *a telephone corporation, as defined in Section 234, a description*  
27 *of the territory in which the company provides telephone service.*  
28 *The description shall include socioeconomic status information*  
29 *of all residents within the telephone corporation's service*  
30 *territory.*

31 (8) The expected date for the deployment of video service in  
32 each of the areas identified in paragraph (6).

33 (9) Adequate assurance that the applicant possesses the  
34 financial, legal, and technical qualifications necessary to  
35 construct and operate the proposed system and promptly repair  
36 any damage to the public right-of-way caused by the applicant.  
37 To accomplish these requirements, the commission may require  
38 a bond.

39 ~~(e) (1) The department~~

1 (g) (1) *The commission shall notify an applicant for a state*  
2 *franchise and any affected local entities whether the applicant’s*  
3 ~~*affidavit described by subdivision (e) application is complete or*~~  
4 *incomplete before the 30th calendar day after the applicant*  
5 *submits the affidavit.*

6 (2) ~~*If the department commission finds the affidavit is*~~  
7 *complete, it shall issue a state franchise before the 14th calendar*  
8 *day after that finding.*

9 (3) ~~*If the department commission finds that the application is*~~  
10 *incomplete, it shall specify with particularity the items in the*  
11 *application that are incomplete and permit the applicant to amend*  
12 *the application to cure any deficiency. The department*  
13 *commission shall have 30 calendar days from the date the*  
14 *application is amended to determine its completeness.*

15 (4) ~~*The failure of the department commission to notify the*~~  
16 *applicant of the completeness or incompleteness of the*  
17 *applicant’s affidavit before the 44th calendar day after receipt of*  
18 *an affidavit shall be deemed to constitute issuance of the*  
19 *certificate applied for without further action on behalf of the*  
20 *applicant.*

21 ~~(f)~~

22 (h) ~~*The state franchise issued by the department commission*~~  
23 *shall contain all of the following:*

24 (1) ~~*A grant of authority to provide video service, in exchange*~~  
25 ~~*for the franchise fee adopted under subdivision (o);*~~ *in the service*  
26 *area footprint as requested in the application.*

27 (2) ~~*A grant of authority to use the public rights-of-way, in*~~  
28 ~~*exchange for the franchise fee adopted under Section 5860,*~~ *in the*  
29 *delivery of video service, subject to the laws of this state.*

30 (3) ~~*A statement that the grant of authority is subject to lawful*~~  
31 *operation of the cable service or video service by the applicant or*  
32 *its successor in interest.*

33 ~~(g)~~

34 (i) ~~*The state franchise issued by the department commission*~~  
35 *may be terminated by the video service provider by submitting*  
36 *notice to the department commission.*

37 (j) ~~*It is unlawful to provide video service without a state or*~~  
38 *locally issued franchise.*

39 ~~(h)~~

1 (k) Subject to the notice requirements of this ~~article~~ *division*, a  
2 state franchise may be transferred to any successor in interest of  
3 the holder to which the certificate is originally granted, provided  
4 that the transferee first submits all of the information required of  
5 the applicant by this section to the ~~department~~ *commission*.

6 (i)

7 (l) In connection with, or as a condition of, receiving a state  
8 franchise, the ~~department~~ *commission* shall require a holder to  
9 notify the ~~department~~ *commission* and any applicable local entity  
10 within 14 business days of any of the following changes  
11 involving the holder or the state franchise:

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

15 (2) A change in the holder's legal name or the adoption of, or  
16 change to, an assumed business name. The holder shall submit to  
17 the ~~department~~ *commission* a certified copy of either of the  
18 following:

19 (A) The ~~amended~~ *proposed amendment to the* state franchise.

20 (B) The certificate of assumed business name.

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

24 (4) Any transfer of the state franchise to a successor in interest  
25 of the holder. The holder shall identify the successor in interest to  
26 which the transfer is made.

27 (5) The termination of any state franchise issued under this  
28 ~~article~~ *division*. The holder shall identify both of the following:

29 (A) The number of customers in the service area covered by  
30 the state franchise being terminated.

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

33 (6) A change in one or more of the service areas of this ~~article~~  
34 *division* that would increase or decrease the territory within the  
35 service area. The holder shall describe the new boundaries of the  
36 affected service areas after the proposed change is made.

37 (j) ~~As a condition of receiving a state franchise, the holder~~  
38 ~~shall notify all applicable local entities that the local entity is~~  
39 ~~included in the holder's service area under the state franchise~~  
40 ~~being issued and that the holder intends to provide video service~~

1 in the local entity's jurisdiction. The holder shall give the notice  
2 required under this subdivision not later than 10 days before the  
3 holder begins providing video service in the local entity's  
4 jurisdiction.

5 (k) (1) Within 24 months after issuance of the holder's first  
6 state franchise, and annually thereafter for eight additional years,  
7 the holder shall report the extent to which Internet access of  
8 video service is available to potential subscribers within the  
9 holder's service area, including all of the following:

10 (A) The demographics of the service area.

11 (B) The percentage of homes in the service area that have  
12 access to service.

13 (C) The demographics of the portion of the service area that  
14 has access to service.

15 (D) The technology used by the holder to provide access to  
16 service.

17 (E) Whether the holder is, or expects to be, in compliance with  
18 the provisions set forth in Section 5800.8. If the holder does not  
19 expect to be in compliance, the holder shall describe its plan for  
20 achieving compliance.

21 (F) A brief description of any issues related to providing  
22 access to service within the holder's service territory, as provided  
23 under this article.

24 (2) The report shall be filed with the Legislature, the  
25 department, the Governor, and the Attorney General, and posted  
26 on the holder's Web site. The holder shall not be required to  
27 report competitively sensitive information.

28 (l) (1) A state issued franchise shall only be valid for 10 years  
29 after the date of issuance and the video service provider shall  
30 apply for a renewal of the state franchise if it wishes to continue  
31 to provide video service in the area covered by the franchise after  
32 the expiration of the franchise.

33 (2) The department shall ensure that the process for renewing  
34 the franchise complies with this section. The department may not  
35 renew the franchise unless the video service provider can show  
36 that it is in compliance with all of the requirements of this article  
37 and has no outstanding financial obligations to the state or any  
38 local entity that are expressly allowed under this article.

39 (m) *Prior to offering video service in a local entity's*  
40 *jurisdiction, the holder of a state franchise shall notify the local*

1 *entity that the video service provider will provide video service in*  
2 *the local entity's jurisdiction. The notice shall be given at least*  
3 *10 days, but no more than 60 days, before the video service*  
4 *provider begins to offer service.*

5 *(n) (1) Commencing three months after issuance of the*  
6 *holder's first state franchise, the holder shall report information*  
7 *as of June 30 and December 31 of each year regarding the extent*  
8 *to which it provides video service and broadband service within*  
9 *this state. The reports shall be filed with the commission no later*  
10 *than 30 days after the conclusion of each six-month reporting*  
11 *period, and the reports shall include the following information as*  
12 *designated by individual census tracts:*

13 *(A) The socioeconomic status information of each census tract*  
14 *where the holder or its affiliates provides video service.*

15 *(B) The socioeconomic status information of each census tract*  
16 *where the holder or its affiliates provide broadband service.*

17 *(C) The number of households in each census tract that have*  
18 *access to the holder's or its affiliates' video service.*

19 *(D) The number of households in each census tract that have*  
20 *access to the holder's or its affiliates' broadband service.*

21 *(E) The number of households in each census tract that use*  
22 *broadband service provided by the holder or its affiliates.*

23 *(F) The number of households in each census tract that use*  
24 *video service provided by the holder or its affiliates.*

25 *(G) The socioeconomic status information of the portion of*  
26 *each census tract included in the holder's or its affiliates' video*  
27 *service area footprint.*

28 *(H) The socioeconomic status information of the portion of*  
29 *each census tract included in the holder's or its affiliates' video*  
30 *service area footprint.*

31 *(I) The technology used by the holder or its affiliates to*  
32 *provide access to video service it offers in each census tract.*  
33 *Specification, by census tract, types of technology and the*  
34 *number of households provided video access by each holder or*  
35 *its affiliates.*

36 *(J) The technology used by the holder or its affiliates to*  
37 *provide access to broadband service it offers in each census*  
38 *tract. Specification, by census tract, types of technology and the*  
39 *number of households provided broadband access by each*  
40 *holder or its affiliates.*

1 (K) Whether the holder or its affiliates are in compliance with  
 2 the provisions set forth in Section 5890.

3 (L) A brief description of any issues related to providing  
 4 access to broadband service and video service within California,  
 5 as provided under this article.

6 (2) These reports shall be filed with the Legislature, the  
 7 commission, the Governor, and the Attorney General, and posted  
 8 on the holder’s Internet Web site, no later than 30 days after the  
 9 conclusion of each six-month reporting period.

10 ~~(m)~~

11 (o) Any video service provider that currently holds a franchise  
 12 with a local franchising entity is entitled to seek a state franchise  
 13 in the area designated in that franchise upon meeting any of the  
 14 following conditions:

15 (1) The expiration, *prior to any renewal or extension*, of its  
 16 local franchise.

17 (2) A mutually agreed upon date set by both the local  
 18 franchising entity and video service provider to terminate the  
 19 franchise provided in writing by both parties to the ~~department~~  
 20 *commission*.

21 (3) ~~(A)~~ When a video service provider that holds a state  
 22 franchise provides the notice required pursuant to ~~subdivision (j)~~  
 23 ~~of Section 5800.3~~ *subdivision (m)* to a local jurisdiction that it  
 24 intends to initiate providing video service in ~~10 days~~ *all or part*  
 25 *of that jurisdiction*, a video service provider operating under a  
 26 franchise issued by a local franchising authority may elect to  
 27 obtain a state franchise to replace its locally issued franchise. *The*  
 28 *franchise issued by the local franchising entity shall terminate*  
 29 *and be replaced by a state franchise when the state franchising*  
 30 *authority issues a state franchise for the video service provider*  
 31 *that includes the entire service area served by the video service*  
 32 *provider and the video service provider notifies the local entity*  
 33 *that it will begin providing video service in that area under a*  
 34 *state franchise*.

35 ~~(B)~~ The franchise issued by the local franchising entity will  
 36 terminate when the state franchising authority issues a state  
 37 franchise for the video service provider that includes the entire  
 38 service area served by video service provider and the video  
 39 service provider notifies the local entity that it will begin  
 40 providing video service in that area under a state franchise.



1 (E)

2 (p) Notwithstanding any rights to the contrary, a video service  
3 provider an incumbent cable operator opting into a state  
4 franchise under this subdivision shall continue to serve all areas  
5 as required by its local franchise agreement existing on January  
6 1, 2007, until that local franchise otherwise would have  
7 terminated. expired. However, an incumbent cable operator that  
8 is also a telephone corporation with less than 1,000,000  
9 telephone customers in California and is providing video service  
10 in competition with another incumbent cable operator shall not  
11 be required to provide service beyond the area in which it is  
12 providing service as of January 1, 2007.

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

16 (O)

17 (q) (1) There is hereby adopted a state franchise fee payable  
18 as rent or a toll for the use of the public right-of-way by holders  
19 of the state franchise issued pursuant to this ~~article~~ *division*. The  
20 amount of the state franchise fee shall be 5 percent of gross  
21 revenues, as defined in subdivision (d) of Section ~~5800.4~~ 5860,  
22 or the percentage applied by the local entity to the gross revenue  
23 of the incumbent cable operator, whichever is less. If there is no  
24 incumbent cable operator or upon the expiration of the incumbent  
25 cable operator's franchise, the amount of the state franchise fee  
26 shall be 5 percent of gross revenues, as defined in subdivision (d)  
27 of Section ~~5800.4~~ 5860, unless the local entity adopts an  
28 ordinance setting the amount of the franchise fee at less than 5  
29 percent. ~~The~~

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

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

38 5850. (a) *A state issued franchise shall only be valid for 10*  
39 *years after the date of issuance, and the video service provider*  
40 *shall apply for a renewal of the state franchise for an additional*

1 10-year period if it wishes to continue to provide video services  
 2 in the area covered by the franchise after the expiration of the  
 3 franchise.

4 (b) Except as provided in this section, the criteria and process  
 5 described in Section 5840 shall apply to a renewal registration,  
 6 and the commission shall not impose any additional or different  
 7 criteria.

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

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

13 ~~5800.4.~~

14 5860. (a) The holder of a state franchise that offers video  
 15 service within the jurisdiction of the local entity shall calculate  
 16 and remit to the local entity a state franchise fee, adopted  
 17 pursuant to subdivision ~~(e)~~ of Section ~~5800.3~~ (q) of Section 5840,  
 18 as provided in this section. The obligation to remit ~~state~~ the  
 19 franchise fee to a local entity begins immediately upon provision  
 20 of video service within that local entity’s jurisdiction. However,  
 21 the remittance shall not be due until the time of the first quarterly  
 22 payment required under subdivision (g) that is at least 180 days  
 23 after the provision of service began. The fee remitted to a city or  
 24 city and county shall be based on gross revenues, as defined in  
 25 subdivision (d), derived from the provision of video service  
 26 within that jurisdiction. The fee remitted to a county shall be  
 27 based on gross revenues earned within the unincorporated area of  
 28 the county. No fee under this section shall become due unless the  
 29 local entity provides documentation to the holder of the state  
 30 franchise supporting the percentage paid by the incumbent cable  
 31 operator serving the area within the local entity’s jurisdiction, as  
 32 provided below. The fee shall be calculated as a percentage of  
 33 the holder’s gross revenues, as defined in subdivision (d). The  
 34 fee remitted to the local entity pursuant to this section may be  
 35 used by the local entity for any lawful purpose.

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

38 (c) No local entity or any other political subdivision of this  
 39 state may demand any additional fees or charges or other  
 40 remuneration of any kind from the holder of a state franchise

1 based solely on its status as a provider of video or cable services  
2 other than as set forth in this ~~section~~ *division* and may not  
3 demand the use of any other calculation method or definition of  
4 gross revenues. However, nothing in this section shall be  
5 construed to limit a local entity's ability to impose utility user  
6 taxes and other generally applicable taxes, fees, and charges  
7 under other applicable provisions of state law that are applied in  
8 a nondiscriminatory and competitively neutral manner.

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

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

20 (2) ~~Any~~ *Franchise* fees imposed on the holder of a state  
21 franchise by this section that are passed through to, and paid by,  
22 the subscribers.

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

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

38 ~~(5) Any amounts received that are recorded as negative~~  
39 ~~expenditure, or as a reduction to expenses.~~

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  
10 revenue chosen not to be received in exchange for trades, barter,  
11 services, or other items of value shall be included in gross  
12 revenue.

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

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

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

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

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

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

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

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

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

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

23 ~~(f) For purposes of this section, in the case of a video service  
24 that may be bundled or integrated functionally with other  
25 services, capabilities, or applications, the state franchise fee shall  
26 be applied only to the gross revenue, as defined in subdivision  
27 (d), attributable to cable service or video service, as reflected on  
28 the books and records of the holder kept in the regular course of  
29 business in accordance with Federal Communications  
30 Commission or Public Utilities Commission rules, regulations,  
31 standards, and orders, as applicable.~~

32 *(f) For the purposes of this section, in the case of a video  
33 service that may be bundled or integrated functionally with other  
34 services, capabilities, or applications, the state franchise fee  
35 shall be applied only to the gross revenue, as defined in  
36 subdivision (d), attributable to video service. Where the holder of  
37 a state franchise or any affiliate bundles, integrates, ties, or  
38 combines video services with nonvideo services creating a  
39 bundled package, so that subscribers pay a single fee for more  
40 than one class of service or receive a discount on video services,*

1 gross revenues shall be determined based on an equal allocation  
 2 of the package discount, that is, the total price of the individual  
 3 components at advertised rates compared to the package price,  
 4 among all services comprising the package. The fact that the  
 5 holder of a state franchise offers a bundled package shall not be  
 6 deemed a promotional activity. If the holder of a state franchise  
 7 does not offer any component of the bundled package separately,  
 8 the holder of a state franchise shall declare a stated retail value  
 9 for each component based on reasonable comparable prices for  
 10 the product or service for the purpose of determining franchise  
 11 fees based on the package discount described above.

12 (g) For the purposes of determining gross revenue under this  
 13 division, a video service provider shall use the same method of  
 14 determining revenues under generally accepted accounting  
 15 principals as that which the video service provider uses in  
 16 determining revenues for the purpose of reporting to national  
 17 and state regulatory agencies.

18 ~~(g)~~

19 (h) The state franchise fee shall be remitted to the applicable  
 20 local entity quarterly, within 45 days after the end of the quarter  
 21 for the preceding calendar quarter. Each payment shall be  
 22 accompanied by a summary explaining the basis for the  
 23 calculation of the state franchise fee. If the holder does not pay  
 24 the franchise fee when due, the holder shall pay a late payment  
 25 charge at a rate per year equal to the highest prime lending rate  
 26 during the period of delinquency, plus 1 percent. If the holder has  
 27 overpaid the franchise fee, it may deduct the overpayment from  
 28 its next quarterly payment.

29 ~~(h)~~

30 (i) Not more than once annually, a local entity may examine  
 31 the business records of a holder of a state franchise to the extent  
 32 reasonably necessary to ensure compensation in accordance with  
 33 subdivision (a). The holder shall keep all business records  
 34 reflecting any gross revenues, even if there is a change in  
 35 ownership, for at least four years after those revenues are  
 36 recognized by the holder on its books and records. If the  
 37 examination discloses that the holder has underpaid franchise  
 38 fees by more than 5 percent during the examination period, the  
 39 holder shall pay all of the reasonable and actual costs of the  
 40 examination. If the examination discloses that the holder has not

1 underpaid franchise fees, the local entity shall pay all of the  
2 reasonable and actual costs of the examination. In every other  
3 instance, each party shall bear its own costs of the examination.  
4 Any claims by a local entity that compensation is not in  
5 accordance with subdivision (a), and any claims for refunds or  
6 other corrections to the remittance of the holder of a state  
7 franchise, shall be made within three years and 45 days of the  
8 end of the quarter for which compensation is remitted, or three  
9 years from the date of the remittance, whichever is later. Either a  
10 local entity or the holder may, in the event of a dispute  
11 concerning compensation under this section, bring an action in a  
12 court of competent jurisdiction.

13 (i)

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

17 ~~(j) The holder of a state franchise under this article who also  
18 provides stand-alone, residential, primary line, basic telephone  
19 service shall not increase this rate to finance the cost of  
20 deploying a network to provide video service.~~

21 ~~(k) The holder of a state franchise shall not increase the rate  
22 for residential, primary line, basic telephone service above the  
23 rate as of July 1, 2006, until January 1, 2009. The commission  
24 may permit increases in 2007 and 2008 to reflect increases in  
25 inflation as shown in the Consumer Price Index for urban  
26 consumers in the western United States as published by the  
27 Bureau of Labor Statistics, if approved by the commission. This  
28 subdivision does not effect the authority of the holder to increase  
29 rates for basic telephone service that is bundled with other  
30 services and priced as a bundle.~~

31 5800.5.

32 5870. (a) The holder of a state franchise shall designate a  
33 sufficient amount of capacity on its network to allow the  
34 provision of the same number of public, educational, and  
35 governmental access (PEG) channels, ~~that the incumbent cable  
36 operator has activated and provided as are activated and  
37 provided by the incumbent cable operator that has  
38 simultaneously activated and provided the greatest number of  
39 PEG channels~~ within the local entity under the terms of any  
40 franchise in effect in the local entity as of January 1, 2007. For

1 the purposes of this section, a PEG channel is deemed activated  
2 if it is being utilized for PEG programming within the  
3 municipality for at least eight hours per day. The holder shall  
4 have ~~six~~ *three* months from the date the local entity requests the  
5 PEG channels to designate the capacity. However, the ~~six-month~~  
6 *three-month* period shall be tolled by any period during which  
7 the designation or provision of PEG channel capacity is  
8 technically infeasible, including any failure or delay of the  
9 incumbent cable operator to make adequate interconnection  
10 available, as required by this subdivision.

11 (b) The PEG channels shall be for the exclusive use of the  
12 local entity or its designee to provide public, educational, and  
13 governmental channels. The PEG channels shall be used only for  
14 noncommercial purposes. However, advertising, *underwriting*, or  
15 sponsorship recognition may be carried on the channels for the  
16 purpose of funding the operation of the channels. The PEG  
17 channels shall all be carried on the basic service tier. To the  
18 extent feasible, the PEG channels shall not be separated  
19 numerically from other channels carried on the basic service tier  
20 and the channel numbers for the PEG channels shall be the same  
21 channel numbers used by the incumbent cable operator unless  
22 prohibited by federal law. After the initial designation of PEG  
23 channel numbers, the channel numbers shall not be changed  
24 without the agreement of the local entity unless the change is  
25 required by federal law. Each channel shall be capable of  
26 carrying a National Television System Committee (NTSC)  
27 television signal.

28 (c) (1) If ~~no~~ *less than three* PEG channels are activated and  
29 provided within the local entity as of January 1, 2007, a local  
30 entity whose jurisdiction lies within the authorized service area  
31 of the holder of a state franchise may *initially* request the holder  
32 to designate not more than a total of three PEG channels.

33 (2) The holder shall have ~~six~~ *three* months from the date of the  
34 request to designate the capacity. However, the ~~six-month~~  
35 *three-month* period shall be tolled by any period during which  
36 the designation or provision of PEG channel capacity is  
37 technically infeasible, including any failure or delay of the  
38 incumbent cable operator to make adequate interconnection  
39 available, as required by this subdivision.



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

7 (e) Any PEG channel provided pursuant to this section that is  
8 not utilized by the local entity for at least eight hours per day *as*  
9 *measured on a quarterly basis* may no longer be made available  
10 to the local entity, and may be programmed at the holder's  
11 discretion. At the time that the local entity can certify to the  
12 holder a schedule for at least eight hours of daily programming,  
13 the holder of the state franchise shall restore the channel or  
14 channels for the use of the local entity.

15 (f) The content to be provided over the PEG channel capacity  
16 provided pursuant to this section shall be the responsibility of the  
17 local entity receiving the benefit of that capacity, and the holder  
18 of a state franchise bears only the responsibility for the  
19 transmission of that content, subject to technological restraints.

20 (g) The local entity shall ensure that all transmissions, content,  
21 or programming to be transmitted by a holder of a state franchise  
22 are provided or submitted in a manner or form that is *compatible*  
23 *with the holder's network, if the local entity produces or*  
24 *maintains the PEG programming in that manner or form. If the*  
25 *local entity does not produce or maintain PEG programming in*  
26 *that manner or form, then the local entity may submit or provide*  
27 *PEG programming in a manner or form that is standard in the*  
28 industry. The holder shall be responsible for any changes in the  
29 form of the transmission necessary to make it compatible with  
30 the technology or protocol utilized by the holder to deliver  
31 services. *If the holder is required to change the form of the*  
32 *transmission, the local entity shall permit the holder to do so in a*  
33 *manner that is most economical to the holder.* The provision of  
34 those transmissions, content, or programming to the holder of a  
35 state franchise shall constitute authorization for the holder to  
36 carry those transmissions, content, ~~or programming, including, at~~  
37 ~~the holder's option, beyond the jurisdictional boundaries of that~~  
38 ~~local entity.~~ *or programming. The holder may carry the*  
39 *transmission, content, or programming outside of the local*  
40 *entity's jurisdiction if the holder agrees to pay the local entity or*

1 *its designee any incremental licensing costs incurred by the local*  
2 *entity or its designee associated with that transmission. Local*  
3 *entities shall be prohibited from entering into licensing*  
4 *agreements that impose higher costs for transmission to*  
5 *subscribers outside the local entity's jurisdiction.*

6 (h) Where technically feasible, the holder of a state franchise  
7 and an incumbent cable operator shall negotiate in good faith to  
8 interconnect their networks for the purpose of providing PEG  
9 programming. Interconnection may be accomplished by direct  
10 cable, microwave link, satellite, or other reasonable method of  
11 connection. Holders of a state franchise and incumbent cable  
12 operators shall provide interconnection of the PEG channels on  
13 reasonable terms and conditions and may not withhold the  
14 interconnection. If a holder of a state franchise and an incumbent  
15 cable operator cannot reach a mutually acceptable  
16 interconnection agreement, the local entity may require the  
17 incumbent cable operator to allow the holder to interconnect its  
18 network with the incumbent's network at a technically feasible  
19 point on the holder's network as identified by the holder. If no  
20 technically feasible point for interconnection is available, the  
21 holder of a state franchise shall make an interconnection  
22 available to the channel originator and shall provide the facilities  
23 necessary for the interconnection. *The cost of any*  
24 *interconnection shall be borne by the holder requesting the*  
25 *interconnection unless otherwise agreed to by the parties.*

26 (i) A holder of a state franchise shall not be required to  
27 interconnect for, or otherwise to transmit, PEG content that is  
28 branded with the logo, name, or other identifying marks of  
29 another cable operator or video service provider. For purposes of  
30 this section, PEG content is not branded if it includes only  
31 production credits or other similar information displayed at the  
32 conclusion of a program. The local entity may require a cable  
33 operator or video service provider to remove its logo, name, or  
34 other identifying marks from PEG content that is to be made  
35 available through interconnection to another provider of PEG  
36 capacity.

37 (j) In addition to any provision for the PEG channels required  
38 under subdivisions (a) to ~~(k)~~ (i), inclusive, the holder shall  
39 reserve, designate, and activate a channel for carriage of public  
40 affairs programming that includes live and recorded coverage of

1 ~~state government and state legislative activities originated by the~~  
2 ~~California Channel and designate and activate a channel for~~  
3 ~~carriage of public affairs programming originated by C-Span.~~  
4 *designate, and, upon request, activate a channel for carriage of*  
5 *state public affairs programming administered by the state.*

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

13 ~~(k)~~

14 *(l) After January 1, 2007, and until the expiration of the*  
15 *incumbent cable operator's franchise, if the incumbent cable*  
16 *operator has existing unsatisfied obligations under the franchise*  
17 *to remit to the local entity any cash payments for the ongoing*  
18 ~~*capital costs of public educational and governmental access costs*~~  
19 *of public, educational, and government access channel facilities*  
20 *or institutional networks, the local entity shall divide those cash*  
21 *payments among all cable or video providers as provided in this*  
22 *section. The fee shall be the holder's pro rata per subscriber share*  
23 *of the cash payment required to be paid by the incumbent cable*  
24 *operator to the local entity for the capital costs of PEG channel*  
25 *facilities.*

26 ~~(l)~~

27 *(m) In determining the fee on a pro rata per subscriber basis,*  
28 *all cable and video service providers shall report, for the period*  
29 *in question, to the local entity the total number of subscribers*  
30 *served within the local entity's jurisdiction, which shall be*  
31 *treated as confidential by the local entity and shall be used only*  
32 *to derive the per subscriber fee required by this section. The local*  
33 *entity shall then determine the payment due from each provider*  
34 *based on a per subscriber basis for the period by multiplying the*  
35 *unsatisfied cash payments for the ongoing capital costs of PEG*  
36 *channel facilities by a ratio of the reported subscribers of each*  
37 *provider to the total subscribers within the local entity as of the*  
38 *end of the period. The local entity shall notify the respective*  
39 *providers, in writing, of the resulting pro rata amount. After the*  
40 *notice, any fees required by this section shall be remitted to the*

1 applicable local entity quarterly, within 45 days after the end of  
2 the quarter for the preceding calendar quarter, and may only be  
3 used by the local entity as authorized under federal law.

4 ~~(m) If there is no incumbent cable operator, or upon the~~  
5 ~~expiration of the incumbent cable operator's franchise, a local~~  
6 ~~entity may, by ordinance, establish a fee to support the capital~~  
7 ~~costs of PEG channel facilities and to support institutional~~  
8 ~~network facilities. The fee shall not exceed the per subscriber fee~~  
9 ~~paid under subdivision (k), if such a fee was paid, or 1 percent of~~  
10 ~~the holder's gross revenues, as defined in Section 5800.4, earned~~  
11 ~~in the local entity, whichever is lower. For purposes of~~  
12 ~~administration, the fee shall be deposited in a special fund~~  
13 ~~established by the local entity to be used for purposes allowed~~  
14 ~~under federal law.~~

15 ~~(n) The following services shall continue to be provided by the~~  
16 ~~incumbent cable operator that was furnishing services pursuant to~~  
17 ~~a franchise until January 1, 2008, or until the term of the~~  
18 ~~franchise expires, whichever is later:~~

19 ~~(1) PEG production or studio facilities.~~

20 ~~(2) Institutional network capacity, however defined or referred~~  
21 ~~to in the incumbent cable operator's franchise, but generally~~  
22 ~~referring to a private line data network capacity for use by the~~  
23 ~~local entity for noncommercial purposes.~~

24 ~~(3) Cable services to community public buildings, such as~~  
25 ~~municipal buildings and public schools.~~

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

39 (o) The holder of a state franchise may recover the amount of  
40 any fee remitted to a local entity under this section by billing a

1 recovery fee as a separate line item on the regular bill of each  
2 subscriber.

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

9 ~~5800.6.~~

10 5880. Holders of state franchises shall comply with the  
11 Emergency Alert System requirements of the Federal  
12 Communications Commission in order that emergency messages  
13 may be distributed over the holder's network. *Any provision in a*  
14 *locally issued franchise authorizing local entities to provide local*  
15 *emergency notifications shall remain in effect, and shall apply to*  
16 *all holders of a state-issued franchise in the same local area, for*  
17 *the duration of the locally issued franchise, until the term of the*  
18 *franchise would have expired were the franchise not terminated*  
19 *pursuant to subdivision (m) of Section 5840, or until January 1,*  
20 *2009, whichever is later.*

21 ~~5800.7.~~

22 5885. (a) The local entity shall allow the holder of a state  
23 franchise under this division to install, construct, and maintain a  
24 network within public rights-of-way under the same time, place,  
25 and manner as the provisions governing telephone corporations  
26 under applicable state and federal law, including, but not limited  
27 to, the provisions of Section 7901.1.

28 (b) *Nothing in this article shall be construed to change*  
29 *existing law regarding the permitting process or compliance with*  
30 *the California Environmental Quality Act (Division 13*  
31 *(commencing with Section 21000) of the Public Resources Code)*  
32 *for construction projects by a holder of a state franchise.*

33 ~~(b)~~

34 (c) A local entity may not enforce against the holder of a state  
35 franchise any rule, regulation, or ordinance that purports to allow  
36 the local entity to purchase or force the sale of a network.

37 ~~5800.8.~~

38 5890. (a) A cable operator or video service provider that has  
39 been granted a state franchise under this ~~article~~ *division* may not  
40 discriminate against or deny access to service to any group of

1 potential residential subscribers because of the income of the  
2 residents in the local area in which the group resides.

3 ~~(b) Holders with more than 500,000 or their affiliates with~~  
4 ~~more than 1,000,000 telephone customers in California satisfy~~  
5 ~~this section subdivision (a) if all of the following conditions are~~  
6 ~~met:~~

7 (1) Within three years after it begins providing video service  
8 under this ~~article~~ *division*, at least 25 percent of households with  
9 access to the holder's video service are low-income households.

10 (2) Within five years after it begins providing video service  
11 under this ~~article~~ *division and continuing thereafter*, at least 30  
12 percent of the households with access to the holder's video  
13 service are low-income households.

14 ~~(c) Holders with less than 500,000 telephone customers in~~  
15 ~~California satisfy this section if any of the following conditions is~~  
16 ~~met:~~

17 ~~(1) When the holder is a telephone service provider of last~~  
18 ~~resort, as determined by the California Public Utilities~~  
19 ~~Commission, and is offering service within its telephone service~~  
20 ~~area, the holder shall offer video service to all customers within~~  
21 ~~their telephone service area within a reasonable time, as~~  
22 ~~determined by the state franchising authority. However, the state~~  
23 ~~franchising authority shall not require the holder to offer services~~  
24 ~~when the cost to provide service is substantially above the~~  
25 ~~average cost of providing service in that community. If the holder~~  
26 ~~is offering service outside its telephone service area, then no~~  
27 ~~additional requirement applies.~~

28 ~~(2) When the holder is not a telephone service provider of last~~  
29 ~~resort, the holder offers video service to an entire municipality in~~  
30 ~~a manner and sequence negotiated with that municipality that is~~  
31 ~~predicated on the success of the holder in attracting customers.~~

32 ~~(3) When the holder is offering video service and there is no~~  
33 ~~other video service being offered, other than direct-to-home~~  
34 ~~satellite service, no additional requirement applies.~~

35 *(3) Holders provide service to community centers in*  
36 *underserved areas, as determined by the holder, without charge,*  
37 *at a ratio of one community center for every 10,000 video*  
38 *customers. 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  
2 franchise holder at a time under this section. For purposes of this  
3 section, “community center” means any facility ran by an  
4 organization that has qualified for the California Teleconnect  
5 Fund, as established in Section 280 and that will make the  
6 holder’s 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 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  
16 telephone service area or when a holder offers video service in  
17 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.

21 ~~(d) For holders with more than 500,000~~

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

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

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

39 (3) A holder shall not be required to meet the 40 percent  
40 requirement in paragraph (1) or the 50 percent requirement in

1 *paragraph (2) until two years after at least 30 percent of the*  
 2 *households with access to the holder's video service subscribe to*  
 3 *it for six consecutive months.*

4 ~~¶~~

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

15 ~~(e) (1) After two years~~

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

22 (2) *Upon application, the franchising authority shall hold*  
 23 *public 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 (d) (e), the franchising authority shall*  
 26 *consider factors that are beyond the control of the holder,*  
 27 *including, but not limited to, the following:*

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

30 (ii) *The degree to which developments or buildings are not*  
 31 *subject to competition because of existing exclusive*  
 32 *arrangements.*

33 (iii) *The degree to which developments or buildings are*  
 34 *inaccessible using reasonable technical solutions under*  
 35 *commercially reasonable terms and conditions.*

36 (iv) *Natural disasters.*

37 (4) *The franchising authority may grant the waiver extension*  
 38 *only if the holder has made substantial and continuous effort to*  
 39 *meet the requirements of subdivision (b), (c), or (d) (e). If a*



1 ~~waiver an extension~~ is granted the franchising authority shall  
2 establish ~~new requirements~~ *a new compliance deadline.*

3 (f)

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

11 (g)

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

18 (h)

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

27 (i)

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

30 (1) "Household" means consistent with the United States  
31 Census Bureau, as a house, an apartment, a mobile home, a group  
32 of rooms, or a single room that is intended for occupancy as  
33 separate living quarters. Separate living quarters are those in  
34 which the occupants live and eat separately from any other  
35 persons in the building and which have direct access from the  
36 outside of the building or through a common hall.

37 (2) "Low income household" means ~~as~~ those residential  
38 households located within the holder's existing telephone service  
39 area where the average annual household income is less than  
40 \$35,000 based on the United States Census Bureau estimates

1 adjusted annually to reflect rates of change and distribution  
2 through January 1, 2007.

3 (3) “Customer’s household” means—as those residential  
4 households located within the holder’s existing telephone service  
5 area that are customers of the service by which that telephone  
6 service area is defined.

7 (4) “Access” means that the holder is capable of providing  
8 video service at the household address using any technology,  
9 other than direct-to-home satellite service, providing two-way  
10 broadband Internet capability and video programming, content,  
11 and functionality, regardless of whether any customer has  
12 ordered service or whether the owner or landlord or other  
13 responsible person has granted access to the household. If more  
14 than one technology is utilized, the technologies shall provide  
15 ~~equivalent two-way broadband Internet capability and equivalent~~  
16 ~~video programming.~~ *similar two-way broad band Internet*  
17 *accessibility and similar video programming.*

18 (j)

19 (k) Nothing in this section shall be construed to require a  
20 holder to provide video service outside its wireline footprint or to  
21 match the existing cable franchise territory of any cable provider.

22 ~~5800.9. (a) (1)~~

23 5900. (a) The holder of a state franchise shall comply with  
24 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2  
25 of the Government Code, and any other customer service  
26 standards pertaining to the provision of video service established  
27 by federal law or regulation, ~~adopted by the department pursuant~~  
28 ~~to subdivision (q) of Section 53088.2 of the Government Code,~~  
29 ~~or adopted by regulation or adopted by~~ subsequent enactment of  
30 the Legislature. *All customer service and consumer protection*  
31 *standards under this section shall be interpreted and applied to*  
32 *accommodate newer or different technologies while meeting or*  
33 *exceeding the goals of the standards.*

34 (2)

35 (b) The holder of a state franchise shall comply with  
36 provisions of Section 637.5 of the Penal Code and the privacy  
37 standards contained in Section 631 of the federal Cable Act (47  
38 U.S.C. Sec. 551 et. seq.).

39 (b)

1 (c) The local entity shall enforce all of the customer service  
2 and protection standards of this section with respect to  
3 complaints received from residents within the local entity's  
4 jurisdiction, but it may not adopt or seek to enforce any  
5 additional or different customer service or other performance  
6 standards under Section 53055.3 or subdivision (q), (r), or (s) of  
7 Section 53088.2 of the Government Code, or any other authority  
8 or provision of law.

9 ~~(e) The local entity may, by ordinance,~~

10 (d) *The local entity shall provide a schedule of penalties for*  
11 *any violation material breach* by a holder of a state franchise of  
12 this section. No monetary penalties shall be assessed for a  
13 ~~violation material breach~~ if it is out of the reasonable control of  
14 the holder. Further, no monetary penalties may be imposed prior  
15 to January 1, 2007. Any schedule of monetary penalties adopted  
16 pursuant to this section shall in no event exceed five hundred  
17 dollars (\$500) for each day of each ~~violation material breach~~, not  
18 to exceed one thousand five hundred dollars (\$1,500) for each  
19 occurrence of a ~~violation material breach~~. However, if a  
20 ~~violation material breach~~ of this section has occurred, and the  
21 ~~city, county, or city and county~~ local entity has provided notice  
22 and a fine or penalty has been assessed, and if a subsequent  
23 ~~violation material breach~~ of the same nature occurs within 12  
24 months, the penalties may be increased by the ~~city, county, or~~  
25 ~~city and county~~ local entity to a maximum of one thousand  
26 dollars (\$1,000) for each day of each ~~violation material breach~~,  
27 not to exceed three thousand dollars (\$3,000) for each occurrence  
28 of the ~~violation~~. ~~If a third or further violation material breach.~~ *If*  
29 *a third or further material breach* of the same nature occurs  
30 within those same 12 months, and the ~~city, county, or city and~~  
31 ~~county~~ local entity has provided notice and a fine or penalty has  
32 been assessed, the penalties may be increased to a maximum of  
33 two thousand five hundred dollars (\$2,500) for each day of each  
34 ~~violation material breach~~, not to exceed seven thousand five  
35 hundred dollars (\$7,500) for each occurrence of the ~~violation~~  
36 ~~material breach~~. With respect to video providers subject to a  
37 franchise or license, any monetary penalties assessed under this  
38 section shall be reduced dollar-for-dollar to the extent any  
39 liquidated damage or penalty provision of a current cable  
40 television ordinance, franchise contract, or license agreement

1 imposes a monetary obligation upon a video provider for the  
2 same customer service failures, and no other monetary damages  
3 may be assessed.

4 ~~(d) If the local entity adopts a schedule of monetary penalties,~~  
5 ~~the following procedures shall be followed:~~

6 ~~(1)~~

7 (e) The local entity shall give the video provider written notice  
8 of any alleged ~~violations~~ *material breaches* of the consumer  
9 service standards of this division and allow the video provider at  
10 least 30 days from receipt of the notice to remedy the specified  
11 ~~violation~~ *material breach*.

12 ~~(2) A violation~~

13 (f) A *material breach* for the purposes of assessing penalties  
14 shall be deemed to have occurred for each day within the  
15 jurisdiction of each local entity, following the expiration of the  
16 period specified in ~~paragraph (1)~~ *subdivision (e)*, that any  
17 ~~violation~~ *material breach* has not been remedied by the video  
18 provider, irrespective of the number of customers affected.

19 (g) *Any penalty shall be provided to the local entity who shall*  
20 *submit one-half of the penalty to the Digital Divide Account*  
21 *established in Section 280.5.*

22 (h) *Any interested person may seek judicial review of a*  
23 *decision of the local entity in a court of appropriate jurisdiction.*  
24 *For this purpose, a court of law shall conduct a de novo review*  
25 *of any issues presented.*

26 ~~(e)~~

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

34 (j) *For purposes of this section, “material breach” has the*  
35 *same meaning as in Section 53088.1 of the Government Code.*

36 ~~5800.10.~~

37 5910. (a) The holder of a state franchise shall perform  
38 background checks of applicants for employment, according to  
39 current business practices.

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

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

5 (2) Independent contractors and their employees.

6 (3) Vendors and their employees.

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

11 (d) Except as otherwise provided by contract, the holder of a  
12 state franchise shall not be responsible for administering the  
13 background checks and shall not assume the costs of the  
14 background checks of individuals who are not applicants for  
15 employment of the holder.

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

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

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

31 ~~5800.11.~~

32 5920. (a) A holder of a state franchise employing more than  
33 750 total employees in California shall annually report to the  
34 department all of the following:

35 (1) The number of California residents employed by the  
36 holder, calculated on a full-time or full-time equivalent basis.

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

39 (3) The types and numbers of jobs by occupational  
40 classification held by residents of California employed by

1 holders of state franchises and the average pay and benefits of  
2 those jobs and, separately, the number of out-of-state residents  
3 employed by independent contractors, companies, and  
4 consultants hired by the holder, calculated on a full-time or  
5 full-time equivalent basis, when the holder is not contractually  
6 prohibited from disclosing the information to the public. This  
7 paragraph applies only to those employees of an independent  
8 contractor, company, or consultant that are personally providing  
9 services to the holder, and does not apply to employees of an  
10 independent contractor, company, or consultant not personally  
11 performing services for the holder.

12 (4) The number of net new positions proposed to be created  
13 directly by the holder of a state franchise during the upcoming  
14 year by occupational classifications and by category of full-time,  
15 part-time, temporary, and contract employees.

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

23 ~~5800.12. (a) The provisions of this article are intended to be~~  
24 ~~consistent with the federal Cable Act (47 U.S.C. Sec. 521 et~~  
25 ~~seq.).~~

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

31 *5930. (a) Notwithstanding any other provision of this*  
32 *division, any video service provider that currently holds a*  
33 *franchise with a local franchising entity in a county that is a*  
34 *party, either alone or in conjunction with any other local*  
35 *franchising entity located in that county, to a stipulation and*  
36 *consent judgment executed by the parties thereto and approved*  
37 *by a federal district court shall neither be entitled to seek a state*  
38 *franchise in any area of that county, including any*  
39 *unincorporated area and any incorporated city of that county,*  
40 *nor abrogate any existing franchise before July 1, 2014. Prior to*

1 July 1, 2014, the video service provider shall continue to be  
2 exclusively governed by any existing franchise with a local  
3 franchising entity for the term of that franchise and any and all  
4 issues relating to renewal, transfer, or otherwise in relation to  
5 that franchise shall be resolved pursuant to that existing  
6 franchise and otherwise applicable federal, state, and local law.  
7 This subdivision shall not be deemed to extend any existing  
8 franchise beyond its term.

9 (b) When an incumbent cable operator is providing service  
10 under an expired franchise or a franchise that expires before  
11 January 2, 2008, any state-issued franchise shall not become  
12 operative prior to January 2, 2008.

13 (c) When a video service provider that holds a state franchise  
14 provides the notice required pursuant to subdivision (m) of  
15 Section 5840 to a local entity, the local franchising entity may  
16 require all incumbent cable operators to seek a state franchise  
17 and shall terminate the franchise issued by the local franchising  
18 entity when the commission issues a state franchise for the video  
19 service provider that includes the entire service area served by  
20 the video service provider and the video service provider notifies  
21 the local entity that it will begin providing video service in that  
22 area under a state franchise.

23 5940. The holder of a state franchise under this division who  
24 also provides stand-alone, residential, primary line, basic  
25 telephone service shall not increase this rate to finance the cost  
26 of deploying a network to provide video service.

27 5950. The commission shall not permit a telephone  
28 corporation that is providing video service directly or through its  
29 affiliates pursuant to a state-issued franchise as an incumbent  
30 local exchange carrier to increase rates for residential, primary  
31 line, basic telephone service above the rate as of July 1, 2006,  
32 until January 1, 2009, unless that telephone corporation is  
33 regulated under rate of return regulation. However, the  
34 commission may allow rate increases to reflect increases in  
35 inflation as shown in the Consumer Price Index published by the  
36 Bureau of Labor Statistics. This section does not affect the  
37 authority of the commission to increase rates for basic telephone  
38 service that is bundled with other services and priced as a  
39 bundle. Nothing in this section is intended to prohibit

1 *implementation of commission decision D. 06-04-071 to the*  
2 *extent it has not been implemented prior to July 1, 2006.*

3 ~~SEC. 2. Section 107.7 of the Revenue and Taxation Code is~~  
4 ~~amended to read:~~

5 ~~107.7. (a) When valuing possessory interests in real property~~  
6 ~~created by the right to place wires, conduits, and appurtenances~~  
7 ~~along or across public streets, rights-of-way, or public easements~~  
8 ~~contained in a cable television franchise or license granted~~  
9 ~~pursuant to Section 53058.3 or Section 53066 of the Government~~  
10 ~~Code (a “cable television possessory interest”), the assessor shall~~  
11 ~~value these possessory interests consistent with the requirements~~  
12 ~~of Section 401. The methods of valuation shall include, but not~~  
13 ~~be limited to, the comparable sales method, the income method~~  
14 ~~(including, but not limited to, capitalizing rent), or the cost~~  
15 ~~method.~~

16 ~~(b) (1) The preferred method of valuation of a cable television~~  
17 ~~possessory interest is capitalizing the annual rent, using an~~  
18 ~~appropriate capitalization rate.~~

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

27 ~~(c) If the comparable sales method, which is not the preferred~~  
28 ~~method, is used by the assessor to value a cable television~~  
29 ~~possessory interest when sold in combination with other property~~  
30 ~~including, but not limited to, intangible assets or rights, the~~  
31 ~~resulting assessments shall not benefit from any presumption of~~  
32 ~~correctness.~~

33 ~~(d) Intangible assets or rights of a cable television system are~~  
34 ~~not subject to ad valorem property taxation. These intangible~~  
35 ~~assets or rights, include, but are not limited to: franchises or~~  
36 ~~licenses to construct, operate, and maintain a cable television~~  
37 ~~system for a specified franchise term (excepting therefrom that~~  
38 ~~portion of the franchise or license which grants the possessory~~  
39 ~~interest), subscribers, marketing, and programming contracts,~~  
40 ~~nonreal property lease agreements, management and operating~~



1 systems, a workforce in place, going concern value, deferred,  
2 startup, or prematurity costs, covenants not to compete, and  
3 goodwill. However, a cable television possessory interest may be  
4 assessed and valued by assuming the presence of intangible  
5 assets or rights necessary to put the cable television possessory  
6 interest to beneficial or productive use in an operating cable  
7 television system.

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

18 *SEC. 2. Section 107.7 of the Revenue and Taxation Code is*  
19 *amended to read:*

20 107.7. (a) When valuing possessory interests in real property  
21 created by the right to place wires, conduits, and appurtenances  
22 along or across public streets, rights-of-way, or public easements  
23 contained in *either* a cable television franchise or license granted  
24 pursuant to Section 53066 of the Government Code (a “cable  
25 television possessory interest”) *or a state franchise to provide*  
26 *video service pursuant to Section 5840 of the Public Utilities*  
27 *Code*, the assessor shall value these possessory interests  
28 consistent with the requirements of Section 401. The methods of  
29 valuation shall include, but not be limited to, the comparable  
30 sales method, the income method (including, but not limited to,  
31 capitalizing rent), or the cost method.

32 (b) (1) The preferred method of valuation of a cable television  
33 possessory interest *or video service possessory interest by the*  
34 *assessor* is capitalizing the annual rent, using an appropriate  
35 capitalization rate.

36 (2) For purposes of this section, the annual rent shall be that  
37 portion of that franchise fee received ~~by the franchising authority~~  
38 that is determined to be payment for the cable television  
39 possessory interest *or video service possessory interest* for the  
40 actual remaining term or the reasonably anticipated term of the

1 franchise or license or the appropriate economic rent. If the  
2 assessor does not use a portion of the franchise fee as the  
3 economic rent, the resulting assessments shall not benefit from  
4 any presumption of correctness.

5 (c) If the comparable sales method, which is not the preferred  
6 method, is used by the assessor to value a cable television  
7 possessory interest *or video service possessory interest* when  
8 sold in combination with other property including, but not  
9 limited to, intangible assets or rights, the resulting assessments  
10 shall not benefit from any presumption of correctness.

11 (d) Intangible assets or rights of a cable television system *or*  
12 *the provider of video services* are not subject to ad valorem  
13 property taxation. These intangible assets or rights, include, but  
14 are not limited to: franchises or licenses to construct, operate, and  
15 maintain a cable television system *or video service system* for a  
16 specified franchise term (excepting therefrom that portion of the  
17 franchise or license which grants the possessory interest),  
18 subscribers, marketing, and programming contracts, nonreal  
19 property lease agreements, management and operating systems, a  
20 work force in place, going concern value, deferred, startup, or  
21 prematurity costs, covenants not to compete, and goodwill.  
22 However, a cable television possessory interest *or video service*  
23 *possessory interest* may be assessed and valued by assuming the  
24 presence of intangible assets or rights necessary to put the cable  
25 television possessory interest *or video service possessory interest*  
26 to beneficial or productive use in an operating cable television  
27 system *or video service system*.

28 (e) Whenever any change in ownership of a cable television  
29 possessory interest *or video service possessory interest* occurs,  
30 the person or legal entity required to file a statement pursuant to  
31 Section 480, 480.1, or 480.2, shall, at the request of the assessor,  
32 provide as a part of that statement the following, if applicable:  
33 confirmation of the sales price; allocation of the sales price  
34 among the counties; and gross revenue and franchise fee  
35 expenses of the cable television system *or video service system*  
36 by county. Failure to provide this information shall result in a  
37 penalty as provided in Section 482, except that the maximum  
38 penalty shall be five thousand dollars (\$5,000).

39 *SEC. 3. (a) It is the intent of the Legislature that video*  
40 *service providers shall pay as rent a franchise fee to the local*

1 *entity in which service is being provided for the continued use of*  
2 *streets, public facilities, and other rights-of-way of the local*  
3 *entity in order to provide service.*

4 *(b) It is the intent of the Legislature that securing a state*  
5 *franchise by a cable television operator or video service provider*  
6 *pursuant to this act shall not affect the existing requirements*  
7 *governing the valuation of possessory interests as set forth in*  
8 *Section 107.7 of the Revenue and Taxation Code. Furthermore,*  
9 *nothing in this act shall be construed to change the existing*  
10 *jurisdiction of the State Board of Equalization and county*  
11 *assessors with respect to the assessment of these properties for*  
12 *property tax purposes.*

13 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
14 ~~Section 6 of Article XIII B of the California Constitution because~~  
15 ~~the only costs that may be incurred by a local agency or school~~  
16 ~~district will be incurred because this act creates a new crime or~~  
17 ~~infraction, eliminates a crime or infraction, or changes the~~  
18 ~~penalty for a crime or infraction, within the meaning of Section~~  
19 ~~17556 of the Government Code, or changes the definition of a~~  
20 ~~crime within the meaning of Section 6 of Article XIII B of the~~  
21 ~~California Constitution.~~

22 *SEC. 4. No reimbursement is required by this act pursuant to*  
23 *Section 6 of Article XIII B of the California Constitution for*  
24 *certain costs that may be incurred by a local agency or school*  
25 *district because, in that regard, this act creates a new crime or*  
26 *infraction, eliminates a crime or infraction, or changes the*  
27 *penalty for a crime or infraction, within the meaning of Section*  
28 *17556 of the Government Code, or changes the definition of a*  
29 *crime within the meaning of Section 6 of Article XIII B of the*  
30 *California Constitution.*

31 *However, if the Commission on State Mandates determines that*  
32 *this act contains other costs mandated by the state,*  
33 *reimbursement to local agencies and school districts for those*  
34 *costs shall be made pursuant to Part 7 (commencing with Section*  
35 *17500) of Division 4 of Title 2 of the Government Code.*