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BILL TEXT

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INTRODUCED BY Assembly Members Nunez and Levine
(Principal coauthors: Assembly Members McCarthy and Plescia)

FEBRUARY 24, 2006

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would 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 Department of Consumer Affairs. The department would be the sole franchising authority for state franchises to provide video services. The bill would require any person who seeks to provide video service in this state to file an application with the department for a state franchise. Cities, counties, or cities and counties would receive state franchise fees for video services provided within their jurisdictions, based on gross revenues, pursuant to specified procedures. *The bill would also authorize local entities to establish a fee to support the capital costs of public, educational, and governmental access channel facilities, in the amount of either 1% of gross revenues or a preexisting fee, whichever is lower.* The bill would 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 prescribe the extent of the obligation of state franchise holders to provide public, educational, and government channels. The bill would prescribe certain customer service and protection standards and penalties for material breaches of those standards. The bill would require any state franchise holder employing more than 750 employees to make an annual report of specified information to the department.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Cable service" is defined as the one-way transmission to subscribers of either video programming, or other programming

service, and subscriber interaction, if any, that is required for the selection or use of video programming or other programming service, as set forth in Section 522(6) of Title 47 of the United States Code.

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

(d) "Department" means the Department of Consumer Affairs.

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

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

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

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

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

(j) "Open-video system" or "OVS" means those services set forth in Section 573 of Title 47 of the United States Code.

(k) "OVS operator" means any person or group of persons that either provides cable service over an open-video system directly, or through one or more affiliates, owns a significant interest in an open-video system, or that otherwise controls or is responsible for, through any arrangement, the management of an open-video system.

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

(m) "State franchise" means a franchise that is issued pursuant to this article.

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

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

(p) "Video service" means video programming services, cable service, or OVS service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code or video programming provided via an Internet access service as that term is defined in Section 231(e)(4) of Title 47 of the United States Code.

(q) "Video service provider" means an entity providing video

service. This term does not include an incumbent cable operator.

53058.3. (a) The Department of Consumer Affairs is the sole franchising authority for a state franchise to provide video service under this article. Neither the department nor any franchising entity or other local entity of the state may require the holder of a state franchise to obtain a separate franchise or otherwise impose any fee or requirement on any holder of a state franchise except as expressly provided in this article. Sections 53066, 53066.01, 53066.2, and 53066.3 shall not apply to holders of a state franchise.

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

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

(d) The application for a state franchise shall be made on a form prescribed by the department and shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Adequate assurance that the applicant possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the applicant.

(e) (1) The department shall notify an applicant for a state franchise and any affected local entities whether the applicant's affidavit described by subdivision (d) is complete or incomplete before the 30th calendar day after the applicant submits the affidavit.

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

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

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

(f) The state franchise issued by the department shall contain all of the following:

(1) A grant of authority to provide video service, in exchange for the franchise fee required in Section 53058.4, in the service area footprint as requested in the application.

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

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

(g) The state franchise issued by the department may be terminated by the video service provider by submitting notice to the department.

(h) Subject to the notice requirements of this article, a state franchise may be transferred to any successor in interest of the holder to which the certificate is originally granted, provided that the transferee first submits all of the information required of the applicant by this section to the department.

(i) In connection with, or as a condition of, receiving a state franchise, the department shall require a holder to notify the department and any applicable local entity within 14 business days of any of the following changes involving the holder or the state franchise:

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the holder,

including a merger, an acquisition, or a reorganization.

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

(A) The amended state franchise.

(B) The certificate of assumed business name.

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

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

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

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

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

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

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

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

53058.4. (a) The holder of a state franchise that offers video service within the jurisdiction of the local entity shall calculate and remit to the local entity a state franchise fee, as provided in this section. The obligation to remit the state franchise fee to a local entity begins immediately upon provision of video service within that local entity's jurisdiction. However, the remittance shall not be due until the time of the first quarterly payment required under subdivision (g) that is at least 180 days after the provision of service began. The fee remitted to a city or city and county shall be based on gross revenues earned within that jurisdiction. The fee remitted to a county shall be based on gross revenues earned within the unincorporated area of the county. No fee under this section shall become due unless the local entity provides documentation to the holder of the state franchise supporting the percentage paid by the incumbent cable operator serving the area within the local entity's jurisdiction, as provided below. The fee shall be calculated as a percentage of the holder's gross revenues, as defined in subdivision (d).

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

(1) If there is an incumbent cable operator, the fee shall not be more than 5 percent of the holder's gross revenues or the percentage applied by the local entity to the gross revenue of the incumbent cable operator, whichever is lesser.

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

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

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

(1) All charges billed to subscribers for any and all cable service or video service provided by the holder of a state franchise, including all revenue related to programming provided to the subscriber, equipment rentals, late fees, and not sufficient fund fees.

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

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

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

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

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

(2) Revenues received by any affiliate or any other person in

exchange for supplying goods or services used by the holder of a state franchise to provide cable services or video services. However, revenue received by an affiliate of the holder from the affiliate's provision of cable or video service shall be included in gross revenue as follows:

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

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

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

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

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

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

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

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

(9) Revenue received as reimbursement by programmers of marketing costs incurred by the holder of a state franchise for the introduction of new programming.

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

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

(g) The state franchise fee shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter

for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the state franchise fee. If the holder does not pay the franchise fee when due, the holder shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus 1 percent. If the holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

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

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

53058.5. (a) The holder of a state franchise shall designate a sufficient amount of capacity on its network to allow the provision of the same number of PEG channels, that the incumbent cable operator has activated and provided within the local entity under the terms of any franchise in effect in the local entity as of the effective date of this article. For the purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality for at least eight hours per day. The holder shall have six months from the date the local entity requests the PEG channels to designate the capacity. However, the six-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this subdivision.

(b) The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. PEG channels shall be used only for noncommercial purposes. However, advertising or sponsorship recognition may be carried on the channels for the purpose of funding the operation of the channels. The PEG channels shall all be carried on the basic service tier. To the extent feasible, PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable

operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(c) If no PEG channels are activated and provided within the local entity as of the effective date of this article, a local entity whose jurisdiction lies within the authorized service area of the holder of a state franchise may request the holder to designate not more than a total of three PEG channels.

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

(d) The holder shall provide an additional PEG channel when the locally produced, nonduplicated programming televised on a given channel exceeds ____ hours per week, not including televised public meetings or classes in an accredited learning institution, as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television.

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

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

(g) The local entity shall ensure that all transmissions, content, or programming to be transmitted by a holder of a state franchise are provided or submitted in a manner or form that is standard in the industry. The holder shall be responsible for any changes in the form of the transmission necessary to make it compatible with the technology or protocol utilized by the holder to deliver services. The provision of those transmissions, content, or programming to the holder of a state franchise shall constitute authorization for the holder to carry those transmissions, content, or programming, including, at the holder's option, beyond the jurisdictional boundaries of that local entity.

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

require the incumbent cable operator to allow the holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network.

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

(j) In addition to any provision for PEG channels required under subdivisions (a) to (k), inclusive, the holder shall reserve, designate, and activate a channel for carriage of public affairs programming that includes live and recorded coverage of state government and state legislative activities originated by the California Channel and designate and activate a channel for carriage of public affairs programming originated by C-Span.

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

(l) In determining the fee on a pro rata per subscriber basis, all cable and video service providers shall report, for the period in question, to the local entity the total number of subscribers served with the local entity's jurisdiction, which shall be treated as confidential by the local entity and shall be used only to derive the per subscriber fee required by this section. The local entity shall then determine the payment due from each provider based on a per subscriber basis for the period by multiplying the unsatisfied cash payments for the ongoing capital costs of public, educational, and governmental access channel facilities by a ratio of the reported subscribers of each provider to the total subscribers within the local entity as of the end of the period. The local entity shall notify the respective providers, in writing, of the resulting pro rata amount. After the notice, any fees required by this section shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for the preceding calendar quarter, and may only be used by the local entity as authorized under federal law.

(m) If there is no incumbent cable operator, or upon the expiration of the incumbent cable operator's franchise, a local entity may, by ordinance, establish a fee to support the capital costs of public, educational, and governmental access channel facilities and to support institutional network facilities. The fee shall not exceed the per subscriber fee paid under subdivision (k), if such a fee was paid, or 1 percent of the holder's gross revenues, as defined in Section

53058.4, earned in the local entity, whichever is lower. ~~The~~

For purposes of administration, the
fee shall be deposited in a special fund established by the local
entity to be used ~~solely for the purposes provided for in~~
~~this section.~~ *for purposes allowed under federal law.*

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

(1) PEG production or studio facilities.

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

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

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

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

53058.6. Holders of state franchises shall comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network.

53058.7. (a) The local entity shall allow the holder of a state franchise under this article to install, construct, and maintain a network within public rights-of-way under the same terms and conditions as applicable to telephone corporations, as defined under Section 234 of the Public Utilities Code, under applicable state and federal law.

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

53058.8. (a) A cable operator or video service provider that has been granted a state franchise under this article may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides, as required by Section 541(a)(3) of Title 47 of the United States Code.

(b) It is the intent of the Legislature that the principles for competition in the provision of video service will require a level playing field to assure that competition is fair, will require widespread build-out of state-of-the-art services so that competition can benefit the greatest number of customers, and will prohibit discrimination, redlining, and service abandonment so that a lack of competition will not be detrimental to customers.

53058.9. (a) The holder of a state franchise shall comply with the provisions of Sections 53055, 53055.1, 53055.2 and 53088.2, and any other customer service standards pertaining to the provision of video service required to be enforced by federal law, adopted by the

department pursuant to subdivision (q) of Section 53088.2, or adopted by subsequent enactment of the Legislature.

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

(c) The local entity may, by ordinance, provide a schedule of penalties for the material breach by a holder of a state franchise of this section. No monetary penalties shall be assessed for a material breach if the breach is out of the reasonable control of the holder. Further, no monetary penalties may be imposed prior to the effective date of this section. Any schedule of monetary penalties adopted pursuant to this section shall in no event exceed two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach. However, if a material breach of this section has occurred and the city, county, or city and county has provided notice and a fine or penalty has been assessed, in a subsequent material breach of the same nature occurring within 12 months, the penalties may be increased by the city, county, or city and county to a maximum of four hundred dollars (\$400) for each day of each material breach, not to exceed one thousand two hundred dollars (\$1,200) for each occurrence of the material breach. If a third or further material breach of the same nature occurs within those same 12 months, and the city, county, or city and county has provided notice and a fine or penalty has been assessed, the penalties may be increased to a maximum of one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach. With respect to video providers subject to a franchise or license, any monetary penalties assessed under this section shall be reduced dollar for dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures, and no other monetary damages may be assessed.

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

(1) The local entity shall give the video provider written notice of any alleged material breaches of the consumer service standards of this division and allow the video provider at least 30 days from receipt of the notice to remedy the specified breach.

(2) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day, following the expiration of the period specified in paragraph (1), that any material breach has not been remedied by the video provider, irrespective of the number of customers affected.

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

53058.10. (a) The holder of a state franchise shall perform

background checks of applicants for employment, according to current business practices.

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

- (1) Persons hired by a holder under a personal service contract.
- (2) Independent contractors and their employees.
- (3) Vendors and their employees.

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

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

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

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

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

53058.11. (a) A holder of a state franchise employing more than 750 total employees shall annually report to the department all of the following:

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

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

(3) The types and numbers of jobs by occupational classification held by residents of California employed by holders of state franchises and the average pay and benefits of those jobs and, separately, the number of corporations headquartered outside of California.

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

(5) The holder of net new positions proposed to be created directly by the holder of a state franchise during the upcoming year by occupational classifications and by category of full-time,

part-time, temporary, and contract employees.

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

53058.12. (a) The provisions of this article are intended to be consistent with the Federal Cable Act (47 U.S.C. Sec. 521 et seq.).

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