



MEMORANDUM
COUNTY EXECUTIVE OFFICE
ADMINISTRATION
County of Placer

TO: Honorable Board of Supervisors **DATE:** August 10, 2021
FROM: Todd Leopold, County Executive Officer
BY: Doug Jastrow, Revenue Services Manager
SUBJECT: Amendment of County Code to Add Article 13.45: Cable Television and Video Services

ACTION REQUESTED

Introduce and waive oral reading of an ordinance amending Placer County Code Chapter 13 to add Article 13.45, Cable Television and Video Services.

BACKGROUND

On January 1, 2007, the State of California became the sole authority with power to grant State video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA authorizes a "local entity" such as Placer County to enforce the customer service standards, consumer protection and privacy requirements through the rules of PUC Sections 5830(h) and 5830(k) of the California Public Utilities Commission (CPUC) on providers who have been granted a State franchise (State Franchisee). These standards, protections and requirements include but are not limited to the following:

- Installation, disconnection, service and repair obligations, employee identification and service call response time standards;
- Customer service center and bill payment locations to be open at least during normal business hours and conveniently located;
- A local, toll-free or collect call customer telephone access line which will be available to customers 24 hours a day, seven days a week;
- Standards for response to telephone inquiries, installation time frames and appointments;
- Procedures for termination of service and return of equipment;
- Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates;
- Complaint and bill dispute resolution procedures, and procedures for billing, charges, refunds, and credits.

The County desires to enforce these standards and protections by enacting an article that includes the authority provided under DIVCA to impose monetary penalties on State Franchisees who fail to comply with customer service standards and consumer protection laws. The County also desires to implement the audit provisions that DIVCA authorizes the County to perform on State Franchisees operating within the unincorporated areas of the County. In enacting these measures, the County establishes a formal enforcement mechanism to address service/infrastructure concerns.

Honorable Board of Supervisors

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FISCAL IMPACT

The cost to administer this program shall be reimbursed to the Department by the state franchise fees, pursuant to the California Public Utilities Code Section 5860.

ATTACHMENTS

Attachment A: Ordinance Article 13.45, Cable Television and Video Services

Before the Board of Supervisors County of Placer, State of California

In the matter of:

An Ordinance amending Placer County Code Chapter 13
to add Article 13.45 entitled "Cable Television and
Video Services"

Ordinance No.: _____

Introduced: _____

The following Ordinance was duly passed by the Board of Supervisors of the County of Placer
at a regular meeting held _____, 2021, by the following vote:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:

Clerk of said Board

WHEREAS, the California Legislature enacted the Digital Infrastructure and Video Competition Act (DIVCA) in 2006, and it was effective January 1, 2007; and

WHEREAS, DIVCA is codified at Sections 440-444 and 5800-5970 of the Public Utilities Code (PUC) and at Section 107.7 of the Revenue and Taxation Code; and

WHEREAS, DIVCA established the California Public Utilities Commission (CPUC) the sole franchising authority for a state franchise to provide video services and stripped local entities of their ability to grant cable franchises; and

WHEREAS, under DIVCA, however, local entities have exclusive regulatory authority to enforce franchise fee provisions (PUC Section 5860), the public, educational and governmental (PEG)

access channel requirements (PUC Section 5870), Emergency Alert System requirements imposed by the Federal Communications Commission (PUC Section 5880), and state and federal customer service and protection standards (PUC Section 5900). In addition, local entities are designated by DIVCA as the lead agencies for any environmental review with respect to network construction, installation, and maintenance in public rights-of-way (PUC Sections 5820 and 5885); and

WHEREAS, the Board of Supervisors finds that implementing local enforcement provisions to ensure compliance with State and Federal standards for customer service and protection is in the interest of the health, safety and welfare of the citizens of the unincorporated area of the County.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER ORDAINS AS FOLLOWS:

SECTION 1. Placer County Code Chapter 13 is hereby amended to add Article 13.45, entitled “Cable Television and Video Services”, as follows:

13.45.010 Purpose and implementation.

The California Digital Infrastructure and Video Competition Act of 2006 (codified at Sections 440-444 and 5800-5970 of the Public Utilities Code (PUC) and at Section 107.7 of the Revenue and Taxation Code, hereafter “DIVCA”) authorizes a “local entity” such as Placer County to enforce the customer service standards, consumer protection and privacy requirements imposed on and the rules promulgated thereunder by the California Public Utilities Commission (CPUC) as promulgated in PUC Sections 5830(h) and 5830(k) respectively. The county desires to implement and enforce said standards and protections by enacting this article including the authority provided under DIVCA to impose monetary penalties on state franchisees who fail to comply with said customer service and consumer protection laws. The county also desires to implement the audit provisions that DIVCA authorizes the county to perform on state franchisees operating within the unincorporated areas of the county. Consistent with these purposes, the provisions of this article are to be construed in a manner consistent with DIVCA and the applicable rules of the CPUC promulgated thereunder.

13.45.020 Definitions.

For the purposes of this article, the following words, terms, phrases, and abbreviations and their similar formulations shall have the meanings given them in this article. Words not defined in this article shall have the same meanings as established in (1) DIVCA, and if not defined therein, (2) CPUC rules promulgated thereunder, and if not defined therein, (3) their common and ordinary meaning.

A. “Cable coordinator” means the county executive office revenue services manager who is designated by the county executive office to administer oversight of county franchisees or state franchisees in unincorporated Placer County.

B. “Commission” means the California Public Utilities Commission.

C. “DIVCA” means the Digital Infrastructure and Video Competition Act of 2006, Assembly Bill 2987 (Ch 700, Stats 2006), codified at Sections 440-444 and 5800-5970 of the Public Utilities Code and at Section 107.7 of the Revenue and Taxation Code (the “Act”), and as that Act may hereafter be amended.

D. “EAS” means Emergency Alert System.

E. "Material breach" is defined in Public Utilities Code section 5900 and means any substantial and repeated failure of a state franchisee to comply with customer service and consumer protection standards identified in section 13.45.040.

F. "Person" includes any natural person, association, company, corporation, limited liability company, limited liability partnership, limited partnership, joint stock company, partnership, trust, or any other legal entity, but not the county.

G. "Public rights-of-way" means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the unincorporated areas of the county which may be properly used for the purpose of installing, constructing, operating, maintaining, and repairing a cable system or a video service provider's network; and any other property that a county franchisee or state franchisee is entitled by California or Federal law to use by virtue of the grant of a county franchise or a state franchise.

H. "Public property" means any property that is owned or under the control of the county that is not located in the public rights-of-way, including, for purposes of this article, but not limited to, buildings, parks, and pole structures, such as utility poles and light poles, or similar facilities or property owned by or leased to the county.

I. "State franchisee" means any cable operator or video service provider that, pursuant to DIVCA, has been granted a state franchise to provide cable or video service by the Commission and whose video service area includes all or any part of the unincorporated limits of the county.

J. "Video service provider" has the meaning set forth in DIVCA and, in addition, refers collectively to any cable operator, video service provider or Open Video Service (OVS) operator as defined in DIVCA.

13.45.030 Audits and records.

A. Not more than once annually, the cable coordinator or their designee may examine and perform an audit of the business records of a state franchisee to ensure compliance with the franchise fee payment obligations.

B. A state franchisee shall keep all business records reflecting any gross revenues, even if there is a change in ownership of the state franchisee, for at least four years after such gross revenues are recognized by the state franchisee on its books and records.

C. To the extent consistent with DIVCA and other applicable law, the county may request, and a state franchisee shall provide, information and books and records to the extent necessary to monitor a State Franchisee's compliance with this article.

13.45.040 Customer service and consumer protection standards.

A. A state franchisee shall comply with the customer service and notice standards and consumer protection provisions set forth in California Government Code Sections 53055, 53055.1, 53055.2 and 53088.2 and the Federal Communications Commission (FCC) customer service and notice standards set forth in Title 47 of the Code of Federal Regulations (CFR) sections 76.309, 76.1602, 76.1603 and 76.1619 and as set forth in this article and those provisions of California Penal Code Section 637.5, including any amendments thereto and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video and/or cable service, including any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this section shall be interpreted and applied to

accommodate newer or different technologies while meeting or exceeding the goals of the standards.

B. Each state franchisee shall prepare and maintain written customer service and consumer protection standards that incorporate the provisions identified in California Government Code Sections 53055 and Title 47 of the CFR sections 76.309 and 76.1602 and any other applicable state and federal laws and regulations including but are not limited to the following:

1. Installation, disconnection, service and repair obligations, employee identification and service call response time standards;
2. Customer service center and bill payment locations to be open at least during normal business hours and conveniently located;
3. A local, toll-free or collect call customer telephone access line which will be available to customers 24 hours a day, seven days a week;
4. Standards for response to telephone inquiries, installation time frames and appointments;
5. Procedures for termination of service and return of equipment;
6. Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates;
7. Complaint procedures and procedures for bill dispute resolution; and
8. Procedures for billing, charges, refunds and credits.

C. Each state franchisee shall comply with California Government Code section 53055.1 by annually distributing to its employees, to each of its customers, and to the county a notice describing the customer service standards. New customers shall also be provided with this notice when service is initiated. The notice given to new customers pursuant to this section shall include in addition to all the information described in subdivisions (a) to (e) inclusive of PUC Section 53055 the following:

1. A listing of the services offered by the cable television operator or video provider which clearly describes all levels of service and including the rates for each level of services provided that if the information concerning levels of service and rates is otherwise distributed to new customers upon installation by the cable television operator or video provided, the information need not be included in the notice to new customers required by this section.
2. The telephone number or numbers through which customers may subscribe to change or terminate service, request customer service or seek general or billing information.
3. A description of the rights and remedies which the cable television operator or video provider may make available to its customers if the cable television operator or video does not materially meet its customer service standards.
4. A copy of Placer County Code Article 13.45, as such article may be amended from time to time.

D. A state franchisee must further comply with and provide written information on each of the following provisions at the time of installation of service and at least annually to all subscribers and at any time upon request pursuant to Title 47 of the CFR section 76.1602:

1. Products and services offered;
2. Prices and options for programming services and conditions of subscription to programming and other services;
3. Installation and service maintenance policies;
4. Instructions on how to use the cable service;
5. Channel positions of programming carried on the system; and
6. Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

E. If the state franchisee includes equipment in the price of a bundled offer of one or more services, the state franchisee shall disclose the fees reasonably allocable to:

1. The rental of single and additional CableCARDS; and
2. The rental of operator-supplied navigation devices.

F. Failure of a state franchisee to comply and maintain customer service and consumer protection standards pursuant to this section shall constitute a material breach.

13.45.050 Requirement to transmit customer service and consumer protection standards.

A. Within sixty (60) days of the effective date of this section the county shall notify each state franchisee of the enactment of the same and require the franchise holder to provide within ninety (90) days of the date of said notification, a complete copy of all current written customer service and consumer protection standards that comply with the provisions of section 13.45.040. Failure to do so shall result in the issuance of a Notice of Material Breach to the state franchisee with a thirty (30) day notice to cure the same. Failure of the state franchisee to do so shall authorize enforcement action pursuant to Section 13.45.060.

B. Each state franchisee shall transmit a current version of its customer service and consumer protection standards to the county no later than July 1 of each year. Failure of the state franchisee to do so shall constitute a material breach and authorize enforcement action pursuant to Section 13.45.060.

Section 13.45.060 Enforcement of customer service and consumer protection standards.

A. Except for section 13.45.050, enforcement of customer service and consumer protection standards is complaint driven and based on receipt of and verification that a complaint is from an existing cable customer whose service is in the county and that it alleges a verifiable material breach of a customer service and/or consumer protection standard ("Verified Complaint"). The cable coordinator has no mandatory duty to follow up on a complaint that cannot be verified or assist the cable customer to cure deficiencies in the same. The authority to commence enforcement of a Verified Complaint is in the sole discretion of the cable coordinator.

B. The cable coordinator shall respond to a Verified Complaint from a cable customer through the following process:

1. The cable coordinator will provide a state franchisee with written notice of receipt of a Verified Complaint with a copy thereof and inform the state franchisee of the nature of the material breach. The state franchisee shall have thirty (30) days from the receipt of the notice to remedy the specified material breach.
2. A state franchisee who does not remedy a material breach within the (30) thirty-day time period will be subject to the following penalties, as set forth in California Public Utilities Code section 5900 and as follows:
 - i. For the first occurrence of a material breach, a penalty of not more than five hundred dollars (\$500.00) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500.00) for each occurrence of a material breach.
 - ii. For the second violation of the same nature within twelve (12) months, a penalty of one thousand dollars (\$1,000.00) for each day of each material breach, not to exceed three thousand dollars (\$3,000.00) for each occurrence of the material breach.
 - iii. For a third or further violation of the same nature within twelve (12) months, a penalty of two thousand five hundred dollars (\$2,500.00) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500.00) for each occurrence of the material breach.
3. The cable coordinator shall transmit a notice of imposition of penalty to the state franchisee and payment of the penalty shall be paid within thirty (30) days of the date of the notice.

Section 13.45.070 Appeal of penalties.

A. The state franchisee may appeal any imposition of penalties to the county executive officer. Any appeal must be made within thirty (30) calendar days after the county's delivery of the notice regarding the imposition of penalties. All appeals must be timely submitted in writing to the Clerk of the Placer County Board of Supervisors. Any appeal must contain a detailed explanation of why the appellant believes that the finding of material breach or the imposition of penalties was inconsistent with statutory requirements or authority. Any appeal must contain a notice address for the appellant.

B. The county executive officer shall hold an appeal hearing within sixty (60) days of the county's receipt of an appeal. The county executive officer shall provide the appellant at least fifteen (15) days written notice of the time, date, and location of the appeal hearing. At the appeal hearing, the county executive officer shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The county executive officer's decision shall be in writing and provided to appellant within fifteen (15) days of the date of the appeal hearing. The county executive officer's decision on the imposition of a penalty shall be final.

C. The county and any state franchisee may mutually agree to extend the time periods specified herein. Any such agreement shall be in writing and executed by the county executive officer, or her/his designee, and an authorized representative of the franchise holder.

D. Any penalty imposed on the state franchisee pursuant to this section shall be paid to the county. As provided for in PUC section 5900(g), the county shall submit one-half of all penalties received from a state franchisee holder to the Digital Divide Account established in PUC section 280.5.

13.45.080 Transmission of verified complaints.

The county may transmit Verified Complaints to the commission and any resulting enforcement actions as evidence that a state franchisee is not complying with state and federal customer service and consumer protection requirements as required by state law and federal code and this article.

13.45.090 Emergency alert system.

A state franchisee shall comply with the EAS requirements of the FCC in order that emergency messages may be distributed over the state franchisee’s network.

13.45.100 Notices.

All notices and copies of documents that DIVCA requires to be provided to the county as a local entity or otherwise provided for in this article shall be addressed to the county executive office, Attention: Cable Coordinator, 175 Fulweiler Ave., Auburn, CA 95603. Any appeal submitted pursuant to section 13.45.070 herein shall be addressed to the Clerk of the Board of Supervisors, County of Placer, 175 Fulweiler Ave., Auburn, CA 95603.

13.45.110 Response to state franchise applications.

A. Applicants for state franchises within the boundaries of the county must concurrently provide complete copies to the county of any application or amendments to applications filed with the commission. One complete copy must be provided to the cable coordinator.

B. Within thirty (30) days of receipt, the cable coordinator will provide any appropriate comments to the commission regarding an application or an amendment to an application for a state franchise.

13.45.120 California environmental quality act.

The county is designated by DIVCA as the lead agency for any environmental review with respect to network construction, installation, and maintenance in public rights-of-way and may require the same of a state franchisee for any of these cited activities within the unincorporated area of the county.

13.45.130 Severability.

If any section of this article, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this article and shall in no way affect the validity of the remaining sections hereof.

SECTION 2. This ordinance shall take effect and be in full force thirty (30) days after the date of its passage. The Clerk is directed to publish this ordinance, or a summary thereof, within fifteen (15) days in accordance with Government Code section 25124.

