

ORDINANCE NO. 715

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, AMENDING CHAPTER 13.12, CABLE SYSTEM FRANCHISE REGULATION, OF THE CITY OF CALISTOGA MUNICIPAL CODE

WHEREAS, the Legislature of the State of California has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which became effective on January 1, 2007; and,

WHEREAS, DIVCA establishes a regulatory structure for the State to be the exclusive authority to issue franchises to video service providers; and,

WHEREAS, DIVCA establishes that local entities, such as the City of Calistoga (the "City"), are responsible for administration and implementation of certain provisions of DIVCA; and,

WHEREAS, DIVCA allows for the City to establish, by ordinance, provisions for franchise fees; for Public, Educational and Governmental (PEG) channel fees; enforcement of customer service standards; and other regulations that are not in conflict with DIVCA or other state law; and,

WHEREAS, DIVCA allows for local franchises that were in place prior to the adoption of the statute to remain in place until such time as the franchisee obtains a franchise from the State; and

WHEREAS, prior to the adoption of DIVCA, the City issued a franchise to Comcast for video service within the City; and

WHEREAS, effective September 2, 2015, Comcast received a franchise from the State to provide video service within Calistoga that supersedes the City's franchise; and,

WHEREAS, the City Council desires to amend the provisions of the City's Code pertaining to cable franchising to be consistent with DIVCA.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES ORDAIN AS FOLLOWS:

SECTION ONE: Amendment to Municipal Code

Chapter 13.12 of the City of Calistoga Municipal code is hereby amended to read as set forth in Exhibit A to this Ordinance.

SECTION TWO: Severability

Should a court of competent jurisdiction find any provision of this Ordinance or its application to any person or property to be invalid or unenforceable, the remaining provisions hereof shall be enforceable according to their terms and to that end the provisions of this ordinance are severable.

SECTION THREE: Effective Date

This ordinance shall take effect 30 days after its final passage.

SECTION FOUR: Posting

Within 15 days from the date of passage of this ordinance, the City Clerk shall post a copy of the ordinance in accordance with California Government Code in at least three public places in the City.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the **20th day of October, 2015**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **3rd day of November, 2015**, by the following vote:

**AYES: Councilmember Kraus, Councilmember Lopez-Ortega,
Councilmember Barnes and Mayor Canning**
NOES: None
ABSENT: Vice Mayor Dunsford
ABSTAIN: None

ATTEST:



CHRIS CANNING, Mayor



MELISSA VELASQUEZ, Deputy City Clerk

EXHIBIT A

Chapter 13.12 CABLE SYSTEM FRANCHISE REGULATION

Sections:

- 13.12.010 Application and Construction of Chapter
- 13.12.020 State Video Franchise Fees and PEG Access Fees
- 13.12.030 Audit Authority
- 13.12.040 Late Payments
- 13.12.050 PEG Access Channel Capacity, Interconnection, and Signal Carriage.
- 13.12.060 Customer Service Penalties
- 13.12.070 Emergency Alert.
- 13.12.080 Notices
- 13.12.090 Permits and Construction

13.12.010 Application and Construction of Chapter

- A. This Chapter applies to video service providers holding state franchises to provide video service within the City of Calistoga under the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), codified in California Public Utilities Code section 5800 *et seq.* Unless the context clearly indicates otherwise, the definitions contained in DIVCA apply to this Chapter. This Chapter is intended to supplement, not to duplicate or contradict, DIVCA and this Chapter shall be construed in light of that intent.
- B. Pursuant to DIVCA, the California Public Utilities Commission (“CPUC”) has the exclusive authority to grant and administer state franchises for video service. However, DIVCA confers certain rights and responsibilities on the City with respect to state video franchise holders operating within the City, including but not limited to, receipt of fees for rent of right of ways in the form of a franchise fee and additional fees for support of public, educational, and governmental (“PEG”) access channels. DIVCA also requires the City to establish and enforce penalties, consistent with state law, against all state video franchise holders operating within the City for violations of customer service standards established by state law.
- C. Nothing contained in this Chapter 13.12 exempts a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or DIVCA, or obligations under any franchise previously issued by the City, insofar as those may be enforced under DIVCA.
- D. The rights reserved to the City under this Chapter 13.12 are in addition to all other rights of the City, whether reserved by this Chapter 13.12 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City. The City reserves its rights to the lawful exercise of police and other powers the City now has or may later obtain. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

1. Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, non-video services;
2. Any permit or authorization, other than a state franchise, required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and
3. Any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.

13.12.020 State Video Franchise Fees and PEG Access Fees

- A. Any state franchise holder operating within the boundaries of the City shall pay a franchise fee to the City equal to five percent (5%) of the gross revenues of that state franchise holder
- B. Any state franchise holder operating within the boundaries of the City shall pay a franchise fee to the City equal to five percent (5%) of the gross revenues, as defined in Public Utilities Code section 5860(d), of that state franchise holder.
- C. Any state franchise holder operating within the boundaries of the City shall pay a fee to the City as such time as directed by the City, or if directed by the City, to the City's designated PEG provider, a PEG fee equal to one percent (1%) of the gross revenues of that state franchise holder to support PEG access channel facilities.
- D. The franchise fee required pursuant to Section 13.12.020(A) and the PEG fee required pursuant to Section 13.12.020(B) shall each be paid to the City quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the City, by check or other means specified by the City, a payment for the franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, containing such information as the City Manager or his or her designee may require, consistent with DIVCA.
- D, The City shall provide written notification to State franchise holder(s) at such time that the City wishes to implement the PEG support fee. State franchise holders so notified shall commence payment of the fee to the City 60 days after City notification of PEG fee implementation.

13.12.030 Audit Authority

Not more than once annually, the City Manager or his or her designee may examine and perform an audit of the business records of a holder of a state franchise to ensure compliance with Section 13.12.020 in a manner consistent with California Public Utilities Code section 5860(i).

13.12.040 Late Payments

In the event a state franchise holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1 %).

13.12.050 PEG Access Channel Capacity, Interconnection, and Signal Carriage

A. PEG Channel Capacity.

1. A state franchisee that has been authorized by the California Public Utilities Commission to provide video service in the City shall designate and activate three PEG channels within three months from the date that the City requests that the state franchisee designate and activate these PEG channels. However, this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee's ability to designate or provide such PEG capacity is technically infeasible, as provided in Section 5870(a) of the California Public Utilities Code.
2. A state franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

B. PEG Carriage and Interconnection.

1. State franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchisee at a lower quality or with less functionality), shall be capable of carrying a National Television System Committee (NTSC) quality television signal, and shall be carried on the state franchisee's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel

numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

2. 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. If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to the PEG channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

13.12.060 Customer Service Penalties

- A. Any holder of a state franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.
- B. The City will provide any holder of a state franchise written notice of any material breach of applicable customer service and protection standards, and will allow the franchise holder at least thirty (30) calendar days from the receipt of the notice to remedy the specified material breach. A material breach that is not remedied by the state franchise holder within the remedy period shall subject the state franchise holder to the following penalties to be imposed by the City:
 1. For the first occurrence of a material breach, a penalty of not more than five hundred dollars (\$500) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of a material breach.
 2. For the second violation of the same nature within twelve (12) months, a penalty 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.
 3. For a third or further violation of the same nature within twelve (12) months, a penalty of two thousand five hundred dollars (\$2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach.
- C. Any notice and any penalty may be issued or imposed by the City Manager, or the City Manager's designee. Any notice shall be in writing. Notices shall be transmitted by United States Postal Service certified or registered mail, return receipt requested and postage prepaid, or by private commercial delivery or courier service for same day or next business day delivery with delivery and receipt signature required.

- D. The state franchise holder may appeal any finding of material breach or imposition of penalties to the City Council. Any appeal must be made within thirty (30) calendar days of receipt by the state franchise holder of the finding of material breach or the imposition of penalties, and must be submitted in writing to the City Clerk and the City Manager in order to be placed on a City Council agenda for consideration. Any appeal must contain a detailed explanation of why the appellant believes that the finding of material breach or the imposition of penalties is inconsistent with statutory requirements.
- E. The City and any state franchise holder may mutually agree to extend the time periods specified herein. Any such agreement shall be in writing and executed by the City Manager, or the City Manager's designee, and an authorized representative of the state franchise holder.
- F. Any penalty imposed on the state franchise holder shall be paid to the City. As provided for in Section 5900(g) of the California Public Utilities Code, the City shall submit one-half of all penalties received from a state franchise holder to the Digital Divide Account established in Section 280.5 of the California Public Utilities Code.

13.12.070 Emergency Alert

- A. Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.
- B. To the extent consistent with California Public Utilities Code section 5880, each state franchise holder shall incorporate into its network the capability to permit the City to override the audio portion of all channels simultaneously in times of emergency. In addition, each state franchise holder may be required to designate a channel, which may be a PEG channel, to be used for audio and video emergency broadcasts. The state franchise holder shall cooperate with the City in the use and operation of said emergency alert override system.

13.12.080 Notices.

- A. Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant is required to file with the California Public Utilities Commission.
- B. Unless otherwise specified in this section, all notices or other documentation that a state franchise holder is required to provide to the City under this Section or the California Public Utilities Code shall be provided to both the City Manager and the City staff person in charge of cable and telecommunications.

13.12.090 Permits and Construction

- A. Prior to commencing any work in the public rights-of-way for which a permit is required by any provision of the Calistoga Municipal Code, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Chapter 12.08 of this Code and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, et seq. (the California Environmental Quality Act).