

Chapter 23
STATE VIDEO FRANCHISES

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SEC. 23.1 FINDINGS

(a) The Digital Infrastructure and Video Competition Act of 2006 (“Act”), codified at Public Utilities Code sections 5800 et seq., established a state video franchising system to govern video franchises.

(b) Under the Act, only the State of California has the authority to grant franchises, regulate build-out and non-discrimination standards, impose user and application fees and establish franchise fees.

(c) Under the Act the City has the authority to manage the rights of way, regulate the payment of Public, Education and Government (“PEG”) fees, require the provision of PEG channels and enforce federal and state customer service standards.

SEC. 23.2 PURPOSES AND IMPLEMENTATION

The purpose of this chapter is to set forth regulations for the provision of video service by state franchise holders, in accordance with the Act. This chapter applies to video service providers operating within the City pursuant to a valid state franchise.

SEC. 23.3 DEFINITIONS

For the purposes of this chapter, the words set out in this section have the following meanings:

- (a) “Act” means the Digital Infrastructure and Video Competition Act of 2006, codified at Public Utilities Code sections 5800 et seq.
- (b) “City” means the City of Piedmont.
- (c) “Franchise fee” has the meaning set forth in Public Utilities Code section 5830 or its successor.
- (d) “Gross revenues” has the meaning set forth in Public Utilities Code section 5860 or its successor.

- (e) “Holder” has the meaning set forth in Public Utilities Code section 5830 or its successor.
- (f) “Material breach” has the meaning set forth in Public Utilities Code section 5900 or its successor.
- (g) “Network” has the meaning set forth in Public Utilities Code section 5830 or its successor.
- (h) “PEG channels” has the meaning set forth in Public Utilities Code section 5870 or its successor.
- (i) “State franchise” has the meaning set forth in Public Utilities Code section 5830 or its successor.
- (j) “Video service” has the meaning set forth in Public Utilities Code section 5830 or its successor.

SEC. 23.4 FRANCHISE FEE FOR STATE FRANCHISE HOLDERS

(a) The franchise fee established within the city for cable franchises is five percent of gross revenues. Every state franchise holder operating within the city shall pay a franchise fee to the city in the amount of five percent of that state franchise holder’s gross revenues.

(b) Each state franchise holder shall remit the franchise fee to the City quarterly, within 45 days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. If the state franchise holder does not pay the franchise fee when due, the state franchise 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 one percent. If the state franchise holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

SEC. 23.5 PEG CHANNELS

(a) State franchise holders shall provide three PEG channels.

(b) All state franchise holders shall comply with the provisions of the Act related to PEG channels. Without limiting the foregoing, the PEG channels shall all be carried on the basic service tier. To the extent feasible, the 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 and shall provide picture and sound quality and channel accessibility and location equal to, or substantially equal to, that provided by the incumbent cable providers. 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.

(c) A state franchise holder shall have three months from the date City requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible. Any state franchise holder who believes that the designation or provision of PEG channel capacity is technically infeasible, shall provide to City, in writing, its reasons therefore and its plan for correcting or solving the infeasibility. City may hold a hearing on the claim of infeasibility and, thereafter, take such action as City deems proper to require the designation and provision of the PEG channels on the state franchise holder's system.

SEC. 23.6 PEG CHANNEL FACILITIES FEE AND PAYMENTS

In accordance with Public Utilities Code section 5870(n), upon termination of all incumbent cable provider franchises, state franchise holders must pay one percent of gross revenues to the City to support PEG channel facilities. State franchise holders shall remit PEG fees in the same manner as franchise fees as set forth in Section 23.4 above. The PEG fee may be shown as a separate line item on the regular bill of each subscriber.

SEC. 23.7 CUSTOMER SERVICE AND PROTECTION

(a) A state franchise holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603 and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video 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 paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) City shall enforce, in the manner set forth in the Act, all customer service and protection standards contained in section 5900 of the Act, including without limitation those standards set forth in section 5900(c).

SEC. 23.8 PENALTIES

The following monetary penalties, as set forth in Public Utilities Code section 5900, are hereby adopted as the applicable schedule of penalties for any material breach of the Act, by a state franchisee, as follows:

(a) \$500 per day for each material breach, not to exceed \$1500 per occurrence of a material breach.

(b) If a material breach has occurred and notice has been provided and a fine or penalty has been assessed, for any subsequent breach of the same nature within twelve months,

shall be subject to a penalty of up to \$1,000 for each day of each material breach, not to exceed \$3,000 per occurrence of the material breach.

(c) If a third or further material breach of the same nature occurs within those same twelve months, and notice has provided and a fine or penalty has been assessed; the penalties shall be increased to a maximum of \$2,500 per day for each material breach, not to exceed \$7,500 per occurrence of the material breach.

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