

**DIGITAL INFRASTRUCTURE AND
VIDEO COMPETITION ACT OF 2006
(DIVCA):**

Demystifying the “New Rules”

“Trigger” Questions

- **When does the franchise with your incumbent cable operator expire?**
- **Has AT&T or Verizon started to construct or offer video service in your community?**
- **Does the current franchise with the incumbent cable operator have PEG provisions?**
 - **PEG Channels**
 - **PEG Funding**
 - **Other community services such as Institutional Network**

Traditional Relationship between Cable Companies & Local Government

- Local nonexclusive franchise (contract) agreement
- Franchises were typically 10-15 years long
- Primary law guiding the relationship and authority of the City was federal law
- Since cable companies use the public rights-of-way, City has the right to negotiate for and receive certain community benefits, such as:
 - 5% Franchise Fee (on video services only)
 - Local community channels (PEG access) and financial support for those channels

New Rules: DIVCA (AB 2987)

- Passed by CA state legislature in August 2006 (effective date: January 2007)
- Empowers California Public Utilities Commission as the franchising authority for state franchises
 - New entrants must get a state franchise
 - Incumbents have option to get a state or a local franchise
- Does not empower PUC to enforce all aspects of DIVCA (PUC's role is ministerial with regard to many of the DIVCA obligations)

State Franchise Application Process

- PUC began accepting applications on April 1, 2007 from entities that did not have a local franchise
- Minimal information required in application
 - Description of “video service area and footprint”
 - “Adequate assurance” of financial, legal and technical qualifications
- PUC must notify applicant as to completeness within 30 days
- PUC must issue state franchise within 14 calendar days of complete application

State Franchise Application Process

- State requires a bond from state franchise holders (\$100,000 for every 20,000 subscribers, with a cap of \$500,000)
 - Local government can also require bonds or LOC, depending upon local PROW permitting processes
- State franchises for certain areas of the state have been issued to AT&T, Verizon, Cox, Wave Broadband

State Franchise Basics

- 10 year term
- State franchise renewal is ministerial
- State franchise holder can terminate its franchise at its discretion; transfers are almost automatic as compared to local government transfer process
- State franchise holder must pay franchise fees to local government
- PEG obligations are either parallel to what is in incumbent franchise or spelled out and easily “triggered” (*more later*)

State Franchise Holder Build-Out Requirements

- No discrimination based upon income
- Low income construction milestones
 - 3 years: 25% with access must be “low income”
 - 5 years: 30% with access must be “low income”
- FTTP construction: 25% in 2 years, 40% in 5 years
- Not FTTP: 35% in 3 years, 50% in 5 years
- 5 year requirement “tolled” until 30% penetration for 6 consecutive months (almost automatic extensions)
- Enforced by PUC

Construction by State Franchise Holder

- Must comply with time, place & manner regulations
- Must pay applicable encroachment, permit and inspection fees
- Local government must approve or deny permits within 60 days of “completed application”
- Failure to approve or deny within 60 days will not result in automatic approval
- “Completed application” means it complies with all statutory requirements, including CEQA

State Franchise Holders Customer Service Requirements

- Shall comply with Gov. Code Sections 53055, 53055.1, 53055.2 and 53088.2
- Shall comply with video service standards “established by federal law”
- City shall “enforce” but may not adopt or enforce any “additional or different” customer service or performance standards
- Penalties may be enforced
- Progressive penalties starting at \$500 per day (1/2 of penalties go to State Digital Divide Account)

Franchise Fees for Holders of State Franchises

- 5% of gross revenues from video services (or less if City charges incumbent cable operator less than 5%)
- Pro rata allocation of “bundled discounts”
- City may conduct annual audits
 - State franchise holder pays costs of audit if underpayment exceeds 5% of amount due
- Statute of limitations: 3 years + 45 days

Franchise “Abrogation”

- Cable operator may terminate existing local franchise and obtain a state franchise:
 - Upon local franchise expiration
 - On a date mutually agreed to with the City
 - Upon “notification” of intent of state franchisee to initiate service in all or part of the jurisdiction
- State franchise for an incumbent cable operator cannot take effect until January 2, 2008
- City may extend a local franchise through January 2, 2008 if it has expired or will expire before that date

Impacts of Abrogation

- Cable operator CANNOT abrogate its community service obligations for PEG, I-Net, Emergency Alert Service, and drops/service to public buildings. These obligations will continue until “natural” franchise expiration date or January 1, 2009 (whichever is later)
- Cable operator CANNOT abrogate its obligation to pay a franchise fee to the City

PEG Channels

- **Communities that currently have three or more PEG channels may keep all of them, as long as they are programmed 56 hours per week**
- **Holder of a state franchise shall designate enough capacity on its network to provide the same number of PEG channels as are activated by the incumbent**
- **An additional channel(s) may be activated, if specified usage levels are met**

PEG Channels

- All PEG channels must be placed on the lowest cost tier of service, located on the same channel numbers on all systems, and grouped together
- PEG channels cannot be moved without City approval, unless required by federal law
- PEG channel content is the responsibility of the City or its designated access management entity

PEG Channels Specifications

- PEG programming must be transmitted in a manner that is standard in the industry
- State franchise holder is responsible for any changes (and associated costs) necessary to make PEG transmissions compatible with the technology or protocol utilized by the holder
- PEG access capacity provided shall be of equal quality and functionality to that offered by commercial channels on the lowest cost tier of service (unless signal provided to holder is of lower quality)

PEG Channels Specifications

- Each PEG channel on a state franchise holder's system shall be capable of transmitting an NTSC signal
- PEG signals must be receivable by all subscribers without the need for any equipment other than that needed to receive lowest cost tier of service
- A state franchise holder may carry PEG transmission outside of local community, if holder agrees to pay the local entity or its designee any of their incremental licensing costs associated with the transmission

PEG Funding & In-Kind Support

- Current franchise obligations regarding PEG funding (*in addition to franchise fees*) continue for the duration of the current franchise (no abrogation of PEG funding support)
 - This shall be shared between all cable and video providers on a pro-rata basis
 - Problems regarding the conversion of the variety of current funding formulas throughout the state to an equivalent percentage of gross revenues
- All PEG in-kind support and Institutional Network obligations remain until franchise ends (no abrogation)

PEG Funding & In-Kind Support

- City may enact an ordinance to continue the currently required PEG support funding amount to be paid by all cable and video providers -- as long as that amount does not exceed 3% of the cable provider's gross revenues
 - Concerns regarding the loss of in-kind support and I-Net obligations

PEG Funding & In-Kind Support

- Communities with no PEG funding support may enact an ordinance to establish such a fee to be paid by all local video service providers, as long as the fee does not exceed 1% of their gross revenues
 - Problems in situations where there is some funding, but less than 1% of gross revenues
- PEG funds required of state franchise holders must be used in a manner that is “consistent with federal law”
 - Concerns about this language

Interconnection

- **Interconnection between incumbent cable operator and state franchise holder for PEG programming is required where “technically feasible”**
- **If incumbent and state franchise holder cannot agree on interconnection, City can require incumbent to allow interconnection and specify how interconnection shall occur**
- **State franchise holder must pay costs of interconnection**