

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

SUBJECT: City Manager - Adopt Ordinance for Regulation of State Video Franchises and City Video Franchises

RECOMMENDATION

Recommendation of the City Manager that City Council adopt the attached Ordinance implementing Regulation of State Video Franchises and City Video Franchises in the City of Torrance.

Funding

None required.

BACKGROUND

On September 29, 2006, Governor Schwarzenegger signed AB 2987 to become effective January 1, 2007. The statute, the "Digital Infrastructure and Video Competition Act of 2006" ("DIVCA"), established a new framework for the regulation of cable television.

The fundamental change is that beginning January 2, 2008 cities (likely including charter cities) will not have the power to issue franchises to video providers; instead, the power to issue new franchises will be held solely by the California Public Utilities Commission ("PUC").

On March 1, 2007 the CPUC began accepting applications for a state franchise from entities which wish to provide video service in California. A city must receive notice between 10 and 60 days prior to commencing video service in the city. We have received notification from AT&T, Time Warner Cable, and Verizon that they have been issued a franchise to provide video services in the City of Torrance.

ANALYSIS

Key Points of DIVCA

- Franchise Fee remains at 5% of "gross revenues"
- Cities have the Power to Audit State Franchise Holders' Records
- Public, Educational and Governmental (PEG) channels are required (3), and generally, the State Franchisee Must Match the Number of PEG Channels Provide by the Incumbent Cable Operator

- Incoming state franchisee and the incumbent provider must negotiate in good faith how and where to interconnect the two systems for transmission of PEG programming
- Recurring PEG63 and I-Net payment obligations in existing local franchises will continue to apply to local franchisees until the local franchise expires
- In general, cities will not be able to impose state franchisees to provide, for example, "institutional networks" (I-Nets), cable service to community buildings, provision of audio and video equipment for PEG channel facilities, and studios for PEG facilities (collectively, "Non-Cash Benefits")
- DIVCA requires state franchise holders to comply with existing state and federally mandated customer service standards.

The Ordinance will allow the city to continue to collect fees and enforce customer service standards with respect to existing and future multi-channel video providers. The California Public Utilities Commission's website has a complete listing of all related activities and resources at <http://www.cpuc.ca.gov/PUC/hottopics/2telco/videofranchising.htm>. The full text of AB 2987 (DIVCA - enrolled) can be reviewed at http://www.scannatoa.org/info_docs.html.

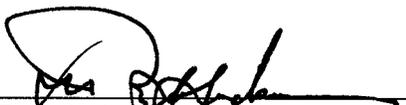
Respectfully submitted,

LeRoy J. Jackson
City Manager

By: 

Michael D. Smith
Cable & Community Relations Manager

CONCUR:



LeRoy J. Jackson
City Manager

ATTACHMENT

- A. Ordinance for Regulation of State Video Franchises and City Video Franchises
- B. Ordinance Summary
- C. FCC Customer Service Standards

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE IMPOSING VIDEO FRANCHISE FEES AND REGULATING CUSTOMER SERVICE IN ACCORDANCE WITH THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT

The City Council of the City of Torrance does ordain as follows:

Article I. Video Franchise Fees, Customer Service and Other Video-Related Matters.

Section 1.00 Regulation of State Video Franchises and City Video Franchises.

Under State law effective January 1, 2007, the California Public Utilities Commission (“PUC”) will have the authority to grant state video franchises (“State Franchises”). The City of Torrance (the “City”) will acquire certain rights and responsibilities with respect to state video franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government (“PEG”) purposes, both based on a percentage of the gross revenues of state franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules.

Section 1.01 State Video Franchise Fees.

- (a) Any state video franchise holder (“State Franchisee”) operating within the boundaries of the City of Torrance shall pay a fee to the City equal to five percent (5%) of the Gross Revenue of that State Franchisee.
- (b) Any State Franchisee operating within the boundaries of the City of Torrance shall pay an additional fee to the City equal to one percent (1%) of the Gross Revenue of that State Franchisee, which fee shall be used by the City for PEG purposes consistent with state and federal law.
- (c) Gross Revenue, for the purposes of (a) and (b) above, shall have the definition set forth in California Public Utilities Code § 5860.

Section 1.02 Audit Authority.

Not more than once annually, the City may examine and perform an audit of the business records of a State Franchisee to ensure compliance with Section 1.01.

Section 1.03 Customer Service Penalties Under State Franchises.

- (a) The 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 Manager, or his/her designee, shall monitor the compliance of State Franchisee(s) with respect to state and federal customer service and protection standards. The City Manager, or his/her designee, shall provide the State Franchisee(s) written notice of any material breaches of applicable customer service standards, and shall allow the State Franchisee(s) thirty (30) days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period shall be subject to the following penalties by the City Manager, or his/her designee.
- (i) For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1500.00 for each violation.
- (ii) For a second violation of the same nature within 12 months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.
- (c) A State Franchisee may appeal a penalty assessed to the City Council within sixty (60) days. After relevant speakers are heard, and any necessary staff reports are submitted, the City Council will vote to either uphold or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

Section 1.04 City Response to State Franchise Applications.

- (a) Applicants for State Franchises within the boundaries of the City of Torrance must concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the City Manager.

- (b) The City Manager shall provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State Franchise.

This ordinance will take effect thirty days after the date of its adoption. Within fifteen days following adoption, this ordinance or a summary of this ordinance, if authorized by the City Council, will be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

INTRODUCED AND APPROVED the ___ day of ____, 2008.

ADOPTED AND PASSED this ___ day of ____, 2008.

Frank Scotto, Mayor

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
Ronald T. Pohl, Assistant City Attorney

ORDINANCE NO. ____

SUMMARY

On _____, 2008, the City Council of the City of Torrance adopted Ordinance No. ____, which imposes video franchise fees and regulates customer service in accordance with the Digital Infrastructure and Video Competition Act.

*****City Clerk to add a paragraph stating that copies of the ordinance are available at the City Clerk's office and stating the names of the City Council members that voted in favor and those that voted against.*****

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**CODE OF FEDERAL REGULATIONS
TITLE 47 -- TELECOMMUNICATION
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER C -- BROADCAST RADIO SERVICES
PART 76--CABLE TELEVISION SERVICE**

§76.309 Customer Service Obligations

- (a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.
- (b) Nothing in this rule should be construed to prevent or prohibit:
 - (1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;
 - (2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;
 - (3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
 - (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.
- (c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:
 - (1) Cable system office hours and telephone availability.
 - (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
 - (A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

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§76.309 Customer Service Obligations (continued)

- (B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
 - (ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
 - (iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - (iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
 - (v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
- (2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
- (i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
 - (ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
 - (iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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§76.309 Customer Service Obligations (continued)

- (iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - (v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (3) Communications between cable operators and cable subscribers.
- (i) Refunds. Refund checks will be issued promptly, but no later than either-
 - (A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (B) The return of the equipment supplied by the cable operator if service is terminated.
 - (ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.
- (4) Definitions.
- (i) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.
 - (ii) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
 - (iii) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.

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§76.1601 Deletion or Repositioning of Broadcast Signals

Effective April 2, 1993, a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.

Note 1 to §76.1601: No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. For this purpose, such periods are the four national four-week ratings periods-generally including February, May, July and November-commonly known as audience sweeps.

§76.1602 Customer Service - General Information

- (a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.
- (b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - (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.
- (c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

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§76.1603 Customer Service-Rate and Service Changes

- (a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.
- (b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by §76.1602.
- (c) In addition to the requirements of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.
- (d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.
- (e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.
- (f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

Note 1 to §76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

Note 2 to §76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

Note 3 to §76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

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§76.1604 Charges for Customer Service Changes

If a cable operator establishes a higher charge for changes effected solely by coded entry on a computer terminal or by other similarly simple methods, as provided in §76.980(d), the cable system must notify all subscribers in writing that they may be subject to such a charge for changing service tiers more than the specified number of times in any 12 month period.

§76.1618 Basic Tier Availability

A cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information:

- (a) That basic tier service is available;
- (b) The cost per month for basic tier service;
- (c) A list of all services included in the basic service tier.

§76.1619 Information on Subscriber Bills

- (a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.
- (c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

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§76.1620 Availability of Signals

If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers. Such notification must be provided by June 2, 1993, and annually thereafter and to each new subscriber upon initial installation. The notice, which may be included in routine billing statements, shall identify the signals that are unavailable without an additional connection, the manner for obtaining such additional connection and instructions for installation.

§76.1621 Equipment Compatibility Offer

Cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in §15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or tuners and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

- (a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.
- (b) Such special equipment shall, at a minimum, have the capability:
 - (1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and
 - (2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).
- (c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

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- (d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in §76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

§76.1622 Consumer Education Program on Compatibility

Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

- (a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.
- (b) The consumer information program shall include the following information:
 - (1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.
 - (2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture, " channel review and other functions that necessitate channel selection by the consumer device.

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- (3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.