

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO REPEALING
AND REPLACING EXISTING COUNTY CODE CHAPTER 6.48
WITH NEW CHAPTER 6.48 TO CONFORM WITH
STATE VIDEO FRANCHISING LAWS**

WHEREAS, the Legislature of the State of California (the State) has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), as California Public Utilities Code (Cal.PUC) sections 5800 et seq; and

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

WHEREAS, DIVCA establishes that local entities, such as the County of San Luis Obispo (County), are responsible for administration and implementation of certain provisions of DIVCA; and

WHEREAS, DIVCA allows for the County to establish, by ordinance, financial support provisions for Public, Educational and Governmental Access (PEG) channel facilities; and

WHEREAS, It is in the public interest to continue a fee to support PEG channel facilities pursuant to Cal.PUC § 5870(n); and

WHEREAS, by applying for and accepting a State Franchise, a State Franchisee has agreed to calculate and remit, without consideration or reservation, a PEG Fee established pursuant to Cal.PUC § 5870(n); and

WHEREAS, DIVCA requires that the County adopt, by ordinance or resolution, a schedule of penalties for any material breach by a State video franchise holder for violation of customer service and protection standards that the County is permitted to enforce.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN LUIS OBISPO DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 6, Chapter 6.48 “COMMUNITY ANTENNA TELEVISION FRANCHISE” of the San Luis Obispo County Municipal Code is repealed and replaced with new Chapter 6.48 to read as follows:

Chapter 6.48

PROVISIONS APPLICABLE TO HOLDERS OF STATE VIDEO FRANCHISES

6.48.000 Definitions

“DIVCA” shall refer to the Digital Infrastructure and Video Competition Act of 2006, as currently codified as Division 2.5 of the California Public Utilities Code as sections 5800 et seq., and as may subsequently be amended.

“DIVCA Franchisee” shall refer to any holder of a state franchise under DIVCA that offers any services under that franchise in an unincorporated area of the County, or within the jurisdiction of the County.

6.48.010 Franchise Fee.

Each DIVCA Franchisee shall pay to the County a franchise fee that is equal to five percent (5%) of the Franchisee’s gross revenues. The term “gross revenues” shall be defined as set forth in the Public Utilities Code section 5860. This fee shall be remitted quarterly to the County and must be received no later than forty five (45) days after the end of the preceding calendar quarter. The fee payment shall be accompanied by a summary that explains the basis for the calculation of the franchise fee. Unless construed otherwise by applicable law, the phrase “summary that explains the basis for the calculations” means the identification of the sources of revenue upon which the fee is based.

6.48.020 Authority to Examine Records.

Not more than once annually, the County Auditor-Controller, or his/her designee, may examine the business records of a DIVCA Franchisee to ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees.

6.48.030 Customer Service Penalties Under State Video Franchise

A) Each DIVCA Franchisee shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service. B) The County Administrative Officer, or his/her designee, shall monitor a DIVCA Franchisee’s compliance with state and federal customer service and protection standards. The County will provide to the DIVCA Franchisee written notice of any material breaches of applicable customer service and protection standards, and will allow the DIVCA Franchisee thirty (30) days from receipt of the notice to remedy the specified material breach. Material breaches not remedied within the thirty (30) day time period will be subject to the following monetary penalties to be imposed by the County in accordance with state law:

1. For the first occurrence of a violation, a monetary penalty of \$500 shall be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
2. For a second violation of the same nature within twelve (12) months, a monetary penalty of \$1,000 shall be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
3. For a third or further violation of the same nature within twelve (12) months, a monetary penalty of \$2,500 shall be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

C) A DIVCA Franchisee may appeal a monetary penalty assessed by the County. Such appeal must be filed no later than sixty (60) days after the date of mailing of notification of the penalty or the right to appeal shall be deemed waived. After relevant evidence and testimony is received, and staff reports are submitted, the County Board of Supervisors will vote to either uphold or vacate the monetary penalty. The County Board of Supervisor's decision on the imposition of a monetary penalty shall be final.

6.48.040 County Response to State Video Franchise Applications

A) Applicants for state franchises under DIVCA that include service areas within the unincorporated areas of the County must concurrently provide to the County complete copies of any application or amendments to applications filed with the California Public Utilities Commission. One (1) complete copy must be provided to the County Administrative Officer.

B) The County will provide any appropriate comments to the California Public Utilities Commission regarding an application or amendment to an application for a state video franchise.

6.48.050 Public, Educational or Government (PEG) Channel Capacity

(A) Each DIVCA Franchisee shall designate sufficient capacity on its network to enable the carriage of at least four (4) channels for public, educational and/or governmental (PEG) programming. Unless otherwise requested by the Director of Public Works or his/her designee, the four (4) channels shall be two (2) educational channels and two (2) governmental channels.

(B) PEG access channels shall be for the exclusive use of the County or its designee to provide public, educational and/or governmental programming.

(C) Advertising, underwriting, or sponsorship recognition may be carried on the PEG access channels for the purpose of funding PEG related activities.

(D) The PEG access channels shall be carried on the basic service tier and shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the video service provider at a lower quality or with less functionality, as provided in subsection (g) (3) of section 5870 of the California Public Utilities Code.

(E) To the extent feasible, the PEG access channels shall not be separated numerically from other channels carried on the basic service tier, and the channel numbers for the PEG access channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law.

(F) After the initial designation of PEG access channel numbers, the channel numbers shall not be changed without prior written consent of the Director of Public Works, or his/her designee, unless the change is required by federal law.

(G) Each PEG access channel shall be capable of carrying a National Television System Committee television signal, as provided in Public Utilities Code section 5870(b).

6.48.060 Fee for Support of PEG Channels

To the fullest extent allowed under DIVCA, each DIVCA Franchisee shall pay a fee to the County for the support of PEG channels. Unless a higher percentage is authorized by applicable state or federal law, this fee shall be one percent (1%) of a DIVCA Franchisee's gross revenues, as defined in California Public Utilities Code Section 5860. This fee shall be remitted quarterly to the County and must be received not later than forty five (45) days after the end of the preceding quarter. The fee payment shall be accompanied by a summary that explains the basis for the calculation of the support fee for local cable usage.

6.48.070 Interconnection

Where technically feasible, a DIVCA Franchisee and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. DIVCA Franchisees and incumbent cable operators shall provide interconnection of the PEG access channels on reasonable terms and conditions and may not withhold the interconnection. If a DIVCA Franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the County may require the incumbent cable operator to allow the DIVCA Franchisee to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically feasible point for interconnection is available, the DIVCA Franchisee shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the DIVCA Franchisee requesting the interconnection unless otherwise agreed to by the parties.

6.48.080 Emergency Alert System and Emergency Overrides

A DIVCA Franchisee must comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network.

6.48.090 Interpretation and Construction

This Chapter shall be construed in a manner so that it is consistent with DIVCA and any other applicable laws. In the event there are any irreconcilable conflicts between this Chapter and DIVCA (or other applicable law), the applicable provisions of DIVCA (or other applicable law) shall be inserted in place of the conflicting language in this Chapter.

SECTION 2. This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage hereof. Before the expiration of fifteen (15) days after the adoption of this Ordinance, the Ordinance, or a summary of it, shall be published once, with the names of the members of the Board of Supervisors voting for and against the Ordinance in a newspaper of general circulation, published in the County of San Luis Obispo, State of California and the Clerk shall post in the office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for or against the Ordinance.

INTRODUCED at a regular meeting of the Board of Supervisors held on the _____ day of _____, 20____ and PASSED and ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the ____ day of _____, 20____ the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By:



Deputy County Counsel

Dated: December 30, 2014