

ORDINANCE NO. 946
AN ORDINANCE OF THE COUNTY OF RIVERSIDE
REGULATING HOLDERS OF STATE VIDEO FRANCHISES GRANTED BY THE PUBLIC
UTILITIES COMMISSION PURSUANT TO THE DIGITAL INFRASTRUCTURE AND VIDEO
COMPETITION ACT OF 2006

The Board of Supervisors of the County of Riverside ordains as follows:

Section 1. FINDINGS. The Board of Supervisors finds as follows:

- a. In 2006, the Digital Infrastructure and Video Competition Act was signed into law and codified at California Public Utilities Code section 5800, et seq., (“DIVCA”).
- b. The State legislature stated the purpose of DIVCA was to increase competition in the provision of video, voice, and broadband services for all Californians through the institution of a state video franchising system.
- c. AT&T, Spectrum, Zito Media, and Suddenlink Communications are currently serving the unincorporated areas of the County of Riverside (“County”) under state franchises issued by the California Public Utilities Commission pursuant to DIVCA.
- d. Frontier Communications, formerly known as Verizon California, is servicing the unincorporated areas of the County under a local franchise agreement, which shall continue, unless terminated early in accordance with the franchise and/or DIVCA, until it expires on its own terms on November 30, 2021.
- e. DIVCA also recognizes the continuing need to protect local revenues and control of public rights-of-way by requiring state franchise holders to pay a franchise fee to a county as rent or a toll for the use of that county’s rights-of-way and authorizing a county to impose reasonable time, place, and manner restrictions on a state franchisee regarding the conditions under which the franchisee may construct or operate the facilities necessary to provide video, voice, and broadband services.
- f. DIVCA further authorizes a county, by ordinance, to establish a fee to support public, educational, or governmental access channel facilities and to enforce certain state and federal customer service and privacy standards and to charge certain monetary penalties for violations of such standards. The PEG fee, as established by Section 6 of this ordinance, is not a levy, charge, or exaction imposed by a local government so as to constitute a local tax within the meaning of the California Constitution, and therefore, does not require voter approval.
- g. The development of cable, video, and telecommunications services and systems may provide significant benefits for, and have substantial impacts upon, the residents of the County, and because of the complex and rapidly changing technology associated with cable, video, and telecommunications services and systems, the public convenience, safety, and general welfare is best served by the County’s exercise of its regulatory powers.

Section 2. PURPOSE. The purpose of this ordinance is to implement within the unincorporated areas of the County the provisions of DIVCA and the rules and regulations promulgated thereunder that are applicable to the County under DIVCA. This ordinance is applicable to all video service providers who are eligible for, and have been awarded, a state video franchise under the California Public Utilities Code section 5800, et seq. (the Digital Infrastructure and Video Competition Act of 2006), to provide cable or video services in any unincorporated area of the County.

Section 3. AUTHORITY. This ordinance is adopted pursuant to the California Public Utilities Code section 5800, et seq. (the Digital Infrastructure and Video Competition Act of 2006), which authorizes counties to adopt ordinances regulating holders of state franchises.

Section 4. RIGHTS RESERVED. The rights reserved to the County under this ordinance are in addition to all other rights of the County whether reserved by this ordinance, or authorized by other applicable law, including any other County ordinance, and no action, proceeding, or exercise of a right shall affect any other rights which may be held by the County.

Section 5. COMPLIANCE WITH ORDINANCE. Nothing contained in this ordinance exempts a state franchise holder from compliance with all ordinances, rules, or regulations of the County now in effect or which may be hereafter adopted which are not inconsistent with this ordinance or California Public Utilities Code section 5800, et seq., or obligations under any franchise previously issued by the County, insofar as those may be enforced under California Public Utilities Code section 5800, et seq.

Section 6. DEFINITIONS. As used in this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. Unless otherwise expressly stated, words not defined in this ordinance, including but not limited to “gross revenue”, “cable service”, “video service provider” and “video service” shall be given the meaning as set forth in the Digital Infrastructure and Video Competition Act of 2006, California Public Utilities Code section 5800 and following, as amended from time to time.

- a. Applicant. Any person submitting any application required under the California Public Utilities Code section 5800 and following.
- b. Applicable law. All lawfully enacted and applicable federal, state and County laws, ordinances, codes, rules, regulations, and orders as the same may be amended or adopted from time to time.
- c. Board of Supervisors. The Board of Supervisors for the County of Riverside.
- d. Clerk of the Board. The Clerk of the Board for the County of Riverside’s Board of Supervisors, and/or his or her duly appointed designees.
- e. Construction. The named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components,

relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming.

- f. Director of Transportation. The Director of Transportation of the County of Riverside, California, and/or his or her duly appointed designees.
- g. DIVCA. The Digital Infrastructure and Video Competition Act of 2006, California Public Utilities Code section 5800, et seq., as may be amended from time to time.
- h. PEG. Public, educational, or governmental access.
- i. RCIT. Riverside County Information Technology Department.
- j. State franchise. A franchise issued by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in DIVCA, within the unincorporated areas of the County.
- k. State franchise holder. A person who holds a state franchise.

Section 7. STATE FRANCHISE FEES. Any state franchise holder operating within the unincorporated areas of the County shall pay to the County a state franchise fee equal to five percent (5%) of that state franchise holder's gross revenues that may be subject to a franchise fee under California Public Utilities Code section 5860.

Section 8. PEG FEES. Every state franchise holder operating within the unincorporated areas of the County shall pay a PEG fee in the amount of one percent (1%) of that state franchise holder's gross revenues.

Section 9. PAYMENT OF FEES. The state franchise fee required pursuant to Section 7, and the PEG fee required pursuant to Section 8, shall each be paid to the County quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the County, by check or other means specified by the County, a payment for the state 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 summary explaining the basis for the fees, containing such information as RCIT may require consistent with DIVCA.

Section 10. AUDITS. The County may audit the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).

Section 11. LATE PAYMENTS. In the event a state franchise holder fails to make payments required by this ordinance on or before the due dates specified in Section 9 of this ordinance, the County 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%), or the maximum rate specified by law.

Section 12. CUSTOMER SERVICE AND CONSUMER PROTECTION STANDARDS. Each state franchise holder shall comply with all applicable customer service and consumer protection standards to the extent consistent with California Public Utilities Code section 5900, including, but not limited to, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation pertaining to the provision of video service.

Section 13. PENALTIES FOR VIOLATIONS OF CUSTOMER SERVICE AND CONSUMER PROTECTION STANDARDS.

- a. The County shall enforce the provisions of Section 13.
- b. The County shall give the state franchise holder written notice of any alleged material breach of the customer service consumer protection standards and allow the state franchise holder at least 30 days from receipt of the notice to remedy the specified material breach.
- c. For material breaches, as defined in California Public Utilities Code section 5900, that are not remedied by a state franchise holder within the 30-day time period set forth in Section 13(b), the County may impose the following penalties:
 1. For the first occurrence of a material breach, a fine of \$500.00 may be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.
 2. For a second material breach of the same nature within 12 months, a fine of \$1,000.00 may be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.
 3. For a third material breach of the same nature within 12 months, a fine of \$2,500.00 may be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.
- d. The penalties herein are in addition to any other remedies provided by law and the payment of any penalty herein shall not relieve a person of the obligation to correct the violation.
- e. Any penalties imposed by the County shall be imposed in a manner consistent with California Public Utilities Code section 5900.
- f. RCIT is authorized to provide any notices required under California Public Utilities Code section 5900. RCIT may coordinate with the Public Advocate's Office of the Public Utilities Commission to protect consumers in the County.
- g. A state franchise holder may appeal a penalty assessed by RCIT to the Board of Supervisors within sixty (60) days of the date of the initial penalty notice by filing a written notice of appeal in duplicate with the Clerk of the Board. The notice shall

state clearly the reasons why the penalty should be overturned. The Board of Supervisors shall hear all evidence and relevant testimony and may uphold, modify, or vacate the penalty. The Board of Supervisors' decision on the imposition of the penalty shall be final and subject to judicial review.

Section 14. CONSTRUCTION IN COUNTY RIGHTS-OF-WAY. Except as expressly provided in this ordinance, a state franchise holder performing work in any County rights-of-way shall comply with Riverside County Ordinance No. 499 and any other applicable County ordinances and administrative rules and regulations, as now existing or as hereafter amended.

Section 15. PERMITS.

- a. Prior to commencing any work for which a permit is required by Riverside County Ordinance No. 499 or any other applicable County ordinance or administrative rule or regulation, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of said ordinance(s) or administrative rule(s) or regulation(s), including the payment of all applicable encroachment, permit, and inspection fees. A permit application is complete when the state franchise holder has complied with all applicable laws and regulations, including but not limited to Riverside County Ordinance No. 499 or any other applicable County ordinance or administrative rule or regulation, and all applicable requirements of Division 13 of the California Public Resources Code, section 21000, and following, (the California Environmental Quality Act) and preparation of plans and specifications as required by the Director of Transportation.
- b. The Director of Transportation shall, in the exercise of reasonable discretion as permitted by state law, either approve or deny a state franchise holder's application for any permit required under County ordinance or administrative rule or regulation within sixty (60) days of receiving a complete permit application from the state franchise holder.
- c. In the event the Director of Transportation denies a complete permit application from a state franchise holder that is required under Section 15(a) of this ordinance, the following shall apply:
 1. If the Director of Transportation denies a state franchise holder's application for a permit, the Director of Transportation shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
 2. A state franchise holder that has been denied a permit by final decision of the Director of Transportation may appeal to the Board of Supervisors by filing a written notice of appeal in duplicate with the Clerk of the Board within 10 working days of the mailing or posting of the final decision. The notice shall state clearly the reasons why the denial decision should be overturned. The Board of Supervisors shall only hear the appeal if the notice is filed and all required fees are paid within the 10-day appeal period.

Once a notice of appeal has been filed, it may be withdrawn by the state franchise holder prior to the distribution of public hearing notices, but not thereafter.

3. The Clerk of the Board shall set the hearing of the appeal and shall give notice of such hearing to the applicant, County Executive Officer, and Board of Supervisors, and by posting in the manner required for appeals. In addition, the Board of Supervisors may give notice of the hearing in such other manner as it wishes. The Board may continue from time to time any hearing held by it.
 4. The Director of Transportation shall transmit the entire record concerning the permit application to the Board of Supervisors.
 5. In rendering its decision on the appeal, the Board of Supervisors shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the Director of Transportation, unless the Board of Supervisors is conducting a public hearing on the matter.
- d. The issuance of a permit by the County is not a franchise, and does not grant any vested rights in any location in the County rights-of-way, or in any particular manner of placement within the County rights-of-way. A permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, upon reasonable notice to the permittee and in accordance with applicable law.

Section 16. PARTICIPATION WITH OTHER UTILITIES. Each state franchise holder shall cooperate in the planning, locating, and construction of its network in utility joint trenches or common duct banks with other communications providers.

Section 17. UNDERGROUND SERVICES ALERT. Each state franchise holder shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole cost and expense, the locations of its underground network facilities upon notification in accordance with the requirements of Section 4216.1 of the California Government Code, and any other applicable law.

Section 18. EMERGENCY ALERT SYSTEMS. 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.

Section 19. INTERCONNECTION FOR PEG PROGRAMMING. Each state franchise holder, and each incumbent cable operator, shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the

County may require the incumbent cable operator to allow the state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point for interconnection is available, each state franchise holder will make an interconnection available to each channel originator providing PEG programming to an incumbent cable operator, and will provide the facilities necessary for the interconnection. The cost of any interconnection will be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the state franchise holder and the incumbent cable operator.

Section 20. ADMINISTRATIVE RESPONSIBILITY. RCIT shall be responsible for the administration of this ordinance.

Section 21. NOTICES. Each state franchise holder or applicant for a state franchise shall file with the County a copy of all applications or notices that the state franchise holder or applicant is required to provide to the County under DIVCA. Unless otherwise specified in this ordinance, all notices or other documentation that a state franchise holder is required to provide to the County under this ordinance or the California Public Utilities Code shall be provided to both the County Executive Officer and the County staff person in charge of cable and telecommunications, or their successor or designees.

Section 22. SEVERABILITY. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are hereby declared to be severable.

Section 23. EFFECTIVE DATE. This ordinance shall take effect thirty (30) days after its adoption.

Adopted: 946 Item 19.1 of 05/05/2020 (Eff: 06/04/2020)