

ORDINANCE NO. 2009 - 02

(Video Services)

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the enacted or amended provisions of the County Ordinance Code):

I. PURPOSE. The Digital Infrastructure and Video Competition Act of 2006 (“Act”) (Public Utilities Code Division 2.5 (§ 5800 et seq.) became effective on January 1, 2007. Under the Act, the State of California has sole franchising authority for new video service providers within the County. The County, although not the franchising authority, will have certain rights and responsibilities with respect to holders of State franchises. The Act authorizes the County to adopt an ordinance to establish certain rights, and to enable the County to enforce specified requirements. The purpose of this ordinance is to implement the requirements of the Act for the benefit and protection of the video service customers in the County.

II. Division 59, Video Services, is added to the Ordinance Code, to read:

DIVISION 59

VIDEO SERVICES

Chapter 59-2

General

59-2.002 Authority. This division is adopted pursuant to the authority granted in the Digital Infrastructure and Video Competition Act of 2006 (hereafter, “Act”), Public Utilities Code Division 2.5 (§ 5800 et seq.), added by Stats. 2006, ch. 700.
(Ord. 2009-02, § 2.)

59-2.004 Definitions. The terms in this Division shall have the meanings ascribed to them in the Act, and regulations adopted pursuant to the Act, as they may be amended from time to time, except as the context otherwise requires.

(Ord. 2009- 02, § 2.)

59-2.006 Administration. The County Administrator, or his or her designee, is authorized to implement and administer the requirements of this Division and the Act.

(Ord. 2009- 02, § 2.)

59-2.008 Previously established fees. On December 31, 2006, a fee of three (3) percent of gross revenue was established to support public, educational and government access (PEG) channel facilities in specified unincorporated areas served by Astound Broadband, LLC, pursuant to a cable franchise issued by the County. On December 31, 2006, a fee of \$.71 (\$ 71/100) per subscriber was established to support PEG channel facilities upon Comcast of California/Colorado/Washington I, Inc., Comcast of California I, Inc., Comcast of California/Massachusetts/Michigan/Utah, Inc., Comcast of California IV, Inc., Comcast of California VIII, Inc., and Comcast of California IX, Inc. pursuant to cable franchises issued by the County.

Chapter 59-4 Requirements, Penalties

59-4.002 Fee established on holders. There is hereby established and imposed, a fee to support PEG channel facilities, upon and payable by any holder of a State franchise to provide video services. The fee shall be one (1) percent of the holder's gross revenues, as determined pursuant to the Act, if there is no incumbent cable operator. If there is one or more incumbent cable operator, the fee shall be the greater of one (1) percent of the holder's gross revenues, as determined pursuant to the Act, or the higher of the per subscriber PEG channel facility fee imposed upon the incumbent cable operators, not to exceed three (3) percent of gross revenues, as determined pursuant to the Act.

(Ord. 2009-02, § 2; Pub. Utilities Code, § 5870.)

59-4.004 Penalties. (a) Subject to subsection (b) of this section, the penalty for any material breach by a holder of a State franchise, of any of the provisions of Public Utilities Code section 5900, as amended, shall be as follows:

(1) The penalty shall be five hundred dollars (\$500) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of a material breach.

(2) If a subsequent material breach of the same nature occurs within 12 months, and the holder has been provided notice and a fine or penalty has been assessed, the penalty shall be one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.

(3) If a third or further material breach of the same nature occurs within those same 12 months, and the holder has been provided notice and a fine or penalty has been assessed, the penalty shall be two thousand five hundred dollars (\$2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach.

(b) With respect to video providers subject to franchise or license, monetary penalties will be reduced dollar for dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures.

(c) The County Administrator, or his or her designee, shall give the video service provider written notice of any alleged material breaches of the consumer service standards, privacy protection, and similar requirements of Public Utilities Code section of 5900, as amended, and allow the video service provider at least 30 days from receipt of the notice to remedy the specified material breach. A material breach for the purposes of assessing penalties under this section shall be deemed to have occurred for each day within the County, following the expiration of the 30 days notice period, that any material breach has not been remedied by the video service provider, irrespective of the number of customers affected.

(d) No monetary penalties shall be assessed for a material breach if it is out of the reasonable control of the holder.

Ord. 2009-02, § 2; Pub. Utilities Code, § 5900.)

SECTION III. SEVERABILITY. This ordinance shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable and are intended to have independent validity.

SECTION IV. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of the Supervisors voting for and against it in the CONTRA COSTA TIMES, a newspaper published in this County.

PASSED on April 28 2009, by the following vote.

AYES: Gioia, Wilkema, Piepho, Bonilla, Glover

NOES: None

ABSENT: None

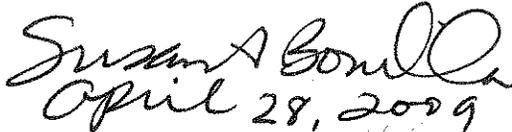
ABSTAIN: None

ATTEST: David Twa, Clerk
of the Board of Supervisors and
County Administrator

By: 

Deputy

Board Chair


April 28, 2009



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