

AMENDED IN SENATE AUGUST 23, 2006

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2987

Introduced by Assembly Members Nunez and Levine
(Principal coauthors: Assembly Members McCarthy and Plescia)
(Principal coauthor: Senator Escutia)

February 24, 2006

An act to ~~add~~ Division 2.5 (commencing with Section 5800) to the Public Utilities Code, and to amend Section 107.7 of the Revenue and Taxation Code, relating to cable and video service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez. Cable and video service.

(1) Existing law provides that any city, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law requires that cable and video service providers comply with specified customer service standards and performance standards.

Amendment 1
amend Section 401 of, to add Article 4 (commencing with Section 440) to Chapter 2.5 of Part 1 of Division 1 of, and to

Amendment 2 reads:
In line 1 of the title, after the second "to" insert a comma.
Don't understand.

This bill would enact the Digital Infrastructure and Video Competition Act of 2006 and would establish a procedure for the issuance of state franchises for the provision of video service, which would be defined to include cable service and open-video systems, that would be administered by the Public Utilities Commission. The commission would be the sole franchising authority for state franchises to provide video services. The bill would require any person or corporation that seeks to provide video service in this state to file an application with the commission for a state franchise with specified information, signed under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would provide that cities, counties, cities and counties, or joint powers authorities would receive state franchise fees *in exchange for the use of public rights-of-way for the delivery of video services* provided within their jurisdictions, based on gross revenues, pursuant to a specified formula. The bill would also authorize local entities to establish a fee to support the capital costs of public, educational, and governmental access (PEG) channel facilities, in the amount of ~~either~~ 1% of gross revenues, or a preexisting fee, ~~whichever is lower~~ *more in specified circumstances.*

The bill would also require these local agencies to permit the installation of networks by holders of state franchises and would preclude enforcement of standards by the local agencies. The bill would also prohibit a holder of a state franchise from discriminating against or denying access to service to any group of potential residential subscribers because of their income and would provide that this provision is satisfied if certain conditions are met by holders *or their affiliates* with ~~500,000~~ 1,000,000 or more *telephone customers* or ~~500,000~~ *if alternative conditions are met by a holder or its affiliates with 1,000,000 or less fewer telephone customers* in California.

The bill would require the holder of a state franchise to notify a local entity that it will provide video service in the entity's jurisdiction at least 10 days before offering service. After this notice is provided, the local franchising entity would be authorized to require all incumbent cable operators to seek a state franchise and terminate the local franchises issued to those incumbents, as specified. The bill would also require the local franchising entity to enforce customer service and protection standards and to enact an ordinance providing a schedule of penalties for any material breach of those standards by

a holder of a state franchise, thereby imposing a state-mandated local program.

The bill would prescribe the extent of the obligation of state franchise holders to provide PEG channels. The bill would prescribe certain customer service and protection standards and penalties for violations of those standards. The bill would require a holder, within 24 months after the issuing of a holder's first state franchise, to make a specified report of the extent to which video service is available to potential subscribers and to file the report with the Legislature, the department, the Governor, the Attorney General, and to post it on the holder's *Internet* Web site. The bill would also require any state franchise holder employing more than 750 employees in California to make an annual report of specified information to the department.

The bill would provide that a state franchise is valid for 10 years and would require a provider to apply to the commission for renewal of the franchise for any additional 10-year period.

The bill would prohibit the commission from permitting a telephone corporation that is providing video service pursuant to a state franchise to increase rates for residential basic service until January 1, 2009, unless that corporation is regulated under rate of return regulation, subject to specified exceptions.

(2) Existing property tax law specifies the manner in which local tax assessors determine the value of cable television possessory interests that are created in a cable television franchise or license that is granted by a local government.

This bill would specify that this valuation method also applies to possessory interests created in a cable television franchise or license *or a franchise to provide video services* that is granted by the state under the bill.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

On page 4, before line 1, insert:

SECTION 1. Section 401 of the Public Utilities Code is amended to read:

401. (a) The Legislature finds and declares that the public interest is best served by a commission that is appropriately funded and staffed, that can thoroughly examine the issues before it, and that can take timely and well-considered action on matters before it. The Legislature further finds and declares that funding the commission by means of a reasonable fee imposed upon each common carrier and business related thereto ~~and~~, each public utility that the commission regulates, and each applicant for, or holder of, a state franchise pursuant to Division 2.5 (commencing with Section 5800), helps to achieve those goals and is, therefore, in the public interest.

(b) The Legislature intends, in enacting this chapter, that the fees levied and collected pursuant thereto produce enough, and only enough, revenues to fund the commission with (1) its authorized expenditures for each fiscal year to regulate common carriers and businesses related thereto ~~and~~, public utilities, and applicants and holders of a state franchise to be a video service provider, less the amount to be paid from special accounts except those established by this article, reimbursements, federal funds, and the unencumbered balance from the preceding year; (2) an appropriate reserve; and (3) any adjustment appropriated by the Legislature.

(c) For purposes of this chapter, an "appropriate reserve" means a reserve in addition to the commission's total authorized annual budget to regulate common carriers and related businesses ~~and~~, public utilities, and applicants and holders of a state franchise to be a video service provider, to be determined by the commission based on its past and projected operating experience.

SEC. 2. Article 4 (commencing with Section 440) is added to Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 4. Video Service Franchises



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440. (a) For purposes of this article, "state franchise," "video service," and "video service provider" shall have the same meaning as those terms are defined in Section 5830.

(b) The Public Utilities Commission Video Franchising Account is hereby created in the Public Utilities Commission Utilities Reimbursement Account.

441. The commission shall annually determine a fee to be paid by an applicant or holder of a state franchise pursuant to Division 2.5 (commencing with Section 5800). The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to carry out the provisions of Division 2.5 (commencing with Section 5800), less the amount to be paid from reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

442. (a) The commission shall establish the fee pursuant to Section 441 with the approval of the Department of Finance. The commission shall specify the amount of its budget to be financed by the fee in its annual budget request.

(b) The fee shall be determined and imposed by the commission consistent with the requirements of Section 542 of Title 47 of the United States Code.

(c) All fees collected by the commission pursuant to this section shall be transmitted to the Treasurer at least quarterly for deposit in the Public Utilities Commission Video Franchising Account.

(d) The commission shall maintain those records as are necessary to account separately for all fees and charges, including the fees authorized by Section 441.

(e) The commission shall authorize refunds of the fees provided for in this article when the fees were collected in error.

443. (a) The commission may require a video service provider subject to this article to furnish information and reports to the commission, at the time or times it specifies, to enable it to determine the fee pursuant to Section 441.

(b) Any video service provider required to submit information and reports under this article may, in lieu thereof, submit information or reports made to any other governmental agency if all of the following are met:

(1) The alternate information or reports contain all of the information required by the commission.

(2) The requirements to which the alternate reports or information are responsive are clearly identified.

(3) The information or reports are certified by the video service provider to be true and correct.

444. (a) If a video service provider subject to this article is in default of the payment of any fee required by this article for a period of 30 days or more, the commission may suspend or revoke the state franchise of the video service provider or order the video service provider to cease and desist from conducting all operations subject to the franchising authority of the commission. The commission may estimate from all available information the appropriate fee and may add to the amount of that estimated fee, a penalty not to exceed 25 percent of the amount, on account of the failure, refusal, or neglect to prepare and submit the report or to pay the fee, and the

video service provider shall be estopped to complain of the amount of the commission's estimate.

(b) Upon payment of the fee so estimated and penalty, if applicable, the state franchise of the video service provider suspended in accordance with this section shall be reinstated or the order to cease and desist revoked. The commission may grant a reasonable extension of the 30-day period to any video service provider upon written application and a showing of the necessity of the extension.

(c) Upon revocation of any state franchise or issuance of an order to cease and desist pursuant to this section, all fees in default shall become due and payable immediately.

(d) The commission may bring an action, in its own name or in the name of the people of the state, in any court of competent jurisdiction, for the collection of delinquent fees estimated under this article, or for an amount due, owing, and unpaid to it, as shown by report filed by the commission, together with a penalty of 25 percent for the delinquency.

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→ **SEC. 3.** ~~SECTION 1.~~ Division 2.5 (commencing with Section 5800)

2 is added to the Public Utilities Code, to read:

3

4 DIVISION 2.5. THE DIGITAL INFRASTRUCTURE AND
5 VIDEO COMPETITION ACT OF 2006

6

7 5800. This act shall be known and may be cited as the Digital
8 Infrastructure and Video Competition Act of 2006.

9 ~~5800.1.~~

10 5810. (a) The Legislature finds and declares all of the
11 following: ←

12 **A** ~~(1)~~ Video and cable services provide numerous benefits to all
13 Californians including access to a variety of news, public
14 information, education, and entertainment programming.

15 **B** ~~(2)~~ Increased competition in the cable and video service sector
16 provides consumers with more choice, lowers prices, speeds the
17 deployment of new communication and broadband technologies,
18 creates jobs, and benefits the California economy.

19 **C** ~~(3)~~ To promote competition, the state should establish a
20 state-issued franchise authorization process that allows market
21 participants to use their networks and systems to provide video,
22 voice, and broadband services to all residents of the state.

23 **2** ~~(4)~~ Legislation to develop this new process should adhere to
24 the following principles:

25 **A** ~~(i)~~ Create a fair and level playing field for all market
26 competitors that does not disadvantage or advantage one service
27 provider or technology over another.

28 **B** ~~(ii)~~ Promote the widespread access to the most technologically
29 advanced cable and video services to all California communities

Amendment 5.

On page 4, between lines 11 and 12, insert:

(1) Increasing competition for video and broadband services is a matter of statewide concern for all of the following reasons:

On Page 4, between lines 22 and 23, insert:

(D) Competition for video service should increase opportunities for programming that appeals to California's diverse population and many cultural communities.

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1 in a nondiscriminatory manner regardless of socioeconomic
2 status.

3 **C** ~~(iii)~~ Protect local government revenues and ~~their~~ control of
4 public ~~rights of way.~~ **rights-of-way.**

5 **D** ~~(iv)~~ Require market participants to comply with all applicable
6 consumer protection laws.

7 **E** ~~(v)~~ Complement efforts to increase investment in broadband
8 infrastructure and close the digital divide.

9 **F** ~~(vi)~~ Continue access to and maintenance of the public,
10 education, and government (PEG) channels.

11 **G** ~~(vii)~~ Maintain all existing authority of the California Public
12 Utilities Commission as established in state and federal statutes.

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Amendment 20

On page 5, line 12, after the period, insert:

(3) The public interest is best served when sufficient funds are appropriated to the commission to provide adequate staff and resources to appropriately and timely process applications of video service providers and to ensure full compliance with the requirements of this division. It is the intent of the Legislature that, although video service providers are not public utilities or common carriers, the commission shall collect any fees authorized by this division in the same manner and under the same terms as it collects fees from common carriers, electrical corporations, gas corporations, telephone corporations, telegraph corporations, water corporations, and every other public utility providing service directly to customers or subscribers subject to its jurisdiction such that it does not discriminate against video service providers or their subscribers.

(4) Providing an incumbent cable operator the option to secure a state-issued franchise through the preemption of an existing cable franchise between a cable operator and any political subdivision of the state, including, but not limited to, a charter city, county, or city and county, is an essential element of the new regulatory framework established by this act as a matter of statewide concern to best ensure equal protection and parity among providers and technologies, as well as to achieve the goals stated by the Legislature in enacting this act.

(b) It is the intent of the Legislature that a video service provider shall pay as rent a franchise fee to the local entity in whose jurisdiction service is being provided for the continued use of streets, public facilities, and other rights-of-way of the local entity in order to provide service. The Legislature recognizes that local entities should be compensated for the use of the public rights-of-way and that the franchise fee is intended to compensate them in the form of rent or a toll, similar to that which the court found to be appropriate in *Santa Barbara County Taxpayers Association v. Board of Supervisors for the County of Santa Barbara* (1989) 257 Cal. App. 615.

(c) It is the intent of the Legislature that collective bargaining agreements be respected.

(d) It is the intent of the Legislature that the definition of gross revenues in this division shall result in local entities maintaining their existing level of revenue from franchise fees.

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1 ~~in a nondiscriminatory manner regardless of socioeconomic~~
2 ~~status.~~

3 ~~(iii) Protect local government revenues and their control of~~
4 ~~public rights of way.~~

5 ~~(iv) Require market participants to comply with all applicable~~
6 ~~consumer protection laws.~~

7 ~~(v) Complement efforts to increase investment in broadband~~
8 ~~infrastructure and close the digital divide.~~

9 ~~(vi) Continue access to and maintenance of the public,~~
10 ~~education, and government (PEG) channels.~~

11 ~~(vii) Maintain all existing authority of the California Public~~
12 ~~Utilities Commission as established in state and federal statutes.~~

13 (b) Nothing in this ~~act~~ shall be construed to eliminate or
14 reduce a telephone corporation's or **video provider's** obligations
15 under any applicable state or federal environmental protection
16 laws. The local entity shall serve as the lead agency for any
17 environmental review under this division that may be required
18 pursuant to the California Environmental Quality Act (Division
19 13 (commencing with Section 21000) of the Public Resources
20 Code).

21 ~~(e) Telephone corporations providing video service pursuant~~
22 ~~to this article shall not subsidize the cost of deploying network~~
23 ~~that is used to provide video service and other costs necessary to~~
24 ~~offer video service with revenue derived from the offering of~~
25 ~~basic telephone services.~~

26 ~~5800.2.~~

27 5830. For purposes of this ~~article~~ *division*, the following
28 words have the following meanings:

29 (a) *"Broadband" means any service defined as broadband in*
30 *the most recent Federal Communications Commission inquiry*
31 *pursuant to Section 706 of the Telecommunications Act of 1996*
32 *(P.L. 104-104).*

33 ~~(a)~~

34 (b) "Cable operator" means any person or group of persons
35 that either provides cable service over a cable system and
36 directly, or through one or more affiliates, owns a significant
37 interest in a cable system; or that otherwise controls or is
38 responsible for, through any arrangement, the management and
39 operation of a cable system, as set forth in Section 522(5) of Title
40 47 of the United States Code.

Amendment 21
On page 5, between lines 12 and 13, insert:

5820. (a) Nothing in this division shall be deemed as creating a vested right in a state-issued franchise by the franchise holder or its affiliates that would preclude the state from amending the provision that establish the terms and conditions of a franchise.

division

should read:
"video service provider"

after "division," insert:
and may impose conditions so to mitigate environmental impacts of the applicant's use of the public rights-of-way

Amendment 25
On page 5, between lines 26 and 27, insert:

(c) The holder of a state franchise shall not be deemed a public utility as a result of providing video service under this division. This division shall not be construed as granting authority to the commission to regulate the rates, terms, and conditions of video services, except as explicitly set forth in this division.

- 1 ~~(b)~~
- 2 (c) “Cable service” is defined as the one-way transmission to
- 3 subscribers of either video programming, or other programming
- 4 service, and subscriber interaction, if any, that is required for the
- 5 selection or use of video programming or other programming
- 6 service, as set forth in Section 522(6) of Title 47 of the United
- 7 States Code.
- 8 ~~(e)~~
- 9 (d) “Cable system” is defined as set forth in Section 522(7) of
- 10 Title 47 of the United States Code.
- 11 ~~(d)~~
- 12 (e) “Commission” means the Public Utilities Commission.
- 13 ~~(e)~~
- 14 (f) “Franchise” means an initial authorization, or renewal of an
- 15 authorization, issued by a franchising entity, regardless of
- 16 whether the authorization is designated as a franchise, permit,
- 17 license, resolution, contract, certificate, agreement, or otherwise,
- 18 that authorizes the construction and operation of ~~a cable system~~
- 19 ~~or open video system in public rights of way.~~
- 20 ~~(f)~~
- 21 (g) “Franchise fee” means the fee adopted pursuant to
- 22 ~~subdivision (e) of Section 5800.3.~~ Section 5840
- 23 ~~(g) “Franchising entity” means the city, county, or city and~~
- 24 ~~county~~
- 25 (h) “Local franchising entity” means the city, county, city and
- 26 county, or joint powers authority entitled to require franchises
- 27 and impose fees on cable operators, as set forth in Section 53066
- 28 of the Government Code.
- 29 ~~(h) “Incumbent cable operator” means the cable operator~~
- 30 ~~servicing the largest number of cable subscribers in a particular~~
- 31 j (i) “Incumbent cable operator” means a cable operator or
- 32 OVS serving subscribers under a franchise in a particular city,
- 33 county, or city and county franchise area on January 1, 2007.
- 34 ~~(i)~~
- 35 k (j) “Local entity” means any city, county, city and county, or
- 36 joint powers authority within the state within whose jurisdiction
- 37 a holder of a state franchise under this ~~article~~ *division* may
- 38 provide cable service or video service.
- 39 ~~(j)~~

insert:
 any network in the right-of-way capable of providing video service to subscribers.

(i) "Holder" means a person or group of persons that has been issued a state franchise from the commission pursuant to this division.

1 **l** ~~(k)~~ “Network” means a component of a facility that is wholly
 2 or partly physically located within a public right-of-way and that
 3 is used to provide video service, cable service, ~~or~~ voice or data
 4 services.

5 ~~(k)~~

6 **m** ~~(l)~~ “Open-video system” or “OVS” means those services set
 7 forth in Section 573 of Title 47 of the United States Code.

8 ~~(l)~~

9 **n** ~~(m)~~ “OVS operator” means any person or group of persons
 10 that either provides cable service over an open-video system
 11 directly, or through one or more affiliates, owns a significant
 12 interest in an open-video system, or that otherwise controls or is
 13 responsible for, through any arrangement, the management of an
 14 open-video system.

15 ~~(m)~~

16 **o** ~~(n)~~ “Public right-of-way” means the area along and upon any
 17 public road or highway, or along or across any of the waters or
 18 lands within the state.

19 ~~(o) “Socioeconomic status information” means information~~
 20 ~~attained from the measures of socioeconomic status (SES)~~
 21 ~~contained in the most recent United States Census or official~~
 22 ~~update, as listed in paragraph (1); additional information~~
 23 ~~contained in the most recent United States Census or official~~
 24 ~~update, as listed in paragraph (2); and information on~~
 25 ~~community type as defined by the Office of Statewide Health~~
 26 ~~Planning and Development, as listed in paragraph (3).~~

27 ~~(1) Census Bureau Index of SES relies on the following~~
 28 ~~information:~~

29 ~~(A) Number of households.~~

30 ~~(B) Number of persons.~~

31 ~~(C) Number of adults aged 25 years or over.~~

32 ~~(D) Number of persons living below the federal 100 percent~~
 33 ~~poverty line.~~

34 ~~(E) Number of households owning a home.~~

35 ~~(F) Number of households owning one or more cars.~~

36 ~~(G) Number of households with an annual family income of~~
 37 ~~fifty thousand dollars (\$50,000) or more.~~

38 ~~(H) Number of adults aged 25 years or over with less than a~~
 39 ~~high school diploma.~~



- 1 ~~(I) Number of adults aged 25 years or over who have~~
- 2 ~~completed four years of college.~~
- 3 ~~(2) “Socioeconomic status information” also includes the~~
- 4 ~~following measures:~~
- 5 ~~(A) Median household income.~~
- 6 ~~(B) Number of persons who are under 5 years, 18 years and~~
- 7 ~~older, and 65 years and older.~~
- 8 ~~(C) Median household population.~~
- 9 ~~(D) Number of persons who are American Indian or Alaska~~
- 10 ~~Native.~~
- 11 ~~(E) Number of persons who are Asian.~~
- 12 ~~(F) Number of persons who are Black or African American.~~
- 13 ~~(G) Number of persons who are Hispanic or Latino.~~
- 14 ~~(H) Number of persons who are Native Hawaiian and other~~
- 15 ~~Pacific Islander.~~
- 16 ~~(I) Number of persons who are White.~~
- 17 ~~(J) Number of persons who are an other race.~~
- 18 ~~(K) Number of persons who are two or more races.~~
- 19 ~~(L) Number of households where a language other than~~
- 20 ~~English is spoken in the home.~~
- 21 ~~(3) “Community type” lists whole census tracts as either rural~~
- 22 ~~or frontier, or urban, as defined by the Office of Statewide Health~~
- 23 ~~Planning and Development’s Medical Service Study Area~~
- 24 ~~definitions.~~
- 25 ~~(n)~~
- 26 (p) “State franchise” means a franchise that is issued pursuant
- 27 to this ~~article~~ division.
- 28 ~~(o)~~
- 29 (q) “Subscriber” means a person who lawfully receives ~~cable~~
- 30 ~~service or~~ video service from the holder of a state franchise for a
- 31 fee.
- 32 ~~(p)~~
- 33 (r) “Video programming” means programming provided by, or
- 34 generally considered comparable to programming provided by, a
- 35 television broadcast station, as set forth in Section 522(20) of
- 36 Title 47 of the United States Code.
- 37 ~~(q)~~
- 38 (s) “Video service” means video programming services, cable
- 39 service, or OVS service provided through facilities located at
- 40 least in part in public rights-of-way without regard to delivery

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1 technology, including Internet protocol or other technology. This
 2 definition does not include (1) any video programming provided
 3 by a commercial mobile service provider defined in Section
 4 322(d) of Title 47 of the United States Code, or (2) video
 5 programming provided via an Internet access service as that term
 6 is defined in Section 231(e)(4) of Title 47 of the United States
 7 Code, unless the video programming is made available by a
 8 video service provider solely to its video service subscribers.
 9 *programming provided as part of, and via, a service that enables*
 10 *users to access content, information, electronic mail, or other*
 11 *services offered over the public Internet.*

12 (f)
 13 (t) "Video service provider" means an entity providing video
 14 service. This term does not include an incumbent cable operator.
 15 *service.*

16 5800.3. (a) The Public Utilities Commission

17 5840. (a) *The commission* is the sole franchising authority
 18 for a state franchise to provide video service under this ~~article~~
 19 *division*. Neither the ~~department~~ *commission* nor any franchising
 20 entity or other local entity of the state may require the holder of a
 21 state franchise to obtain a separate franchise or otherwise impose
 22 any fee or requirement on any holder of a state franchise except
 23 as expressly provided in this ~~article~~ *division*. Sections 53066,
 24 53066.01, 53066.2, and 53066.3 of the Government Code shall
 25 not apply to holders of a state franchise.

local

26 (b) The application process described in ~~subdivisions (d) and~~
 27 ~~(e)~~ *this section* and the authority granted to the ~~department~~
 28 *commission* under this section shall not exceed the provisions set
 29 forth in this section.

30 ~~(c) The holder of a state franchise shall not be deemed a~~
 31 ~~public utility as a result of providing video service under this~~
 32 ~~division. This division shall not be construed as granting~~
 33 ~~authority to the commission to regulate the rates, terms, and~~
 34 ~~conditions of video services, except as explicitly set forth in this~~
 35 ~~division.~~

36 (e)
 37 **C** (d) Any person or corporation who seeks to provide ~~cable~~
 38 ~~service or~~ video service in this state after January 1, 2007, for
 39 which a franchise has not already been issued, after January 1,
 40 2008, shall file an application for a state franchise with the

1 department. The department *commission*. The *commission* may
2 impose a fee on the applicant that shall not exceed the actual and
3 reasonable costs of processing the application and shall not be
4 levied for general revenue purposes.

5 **d** ~~(e) No person or corporation shall be eligible for a
6 state-issued franchise if that person or corporation is in violation
7 of any final nonappealable order issued pursuant to this division.~~

8 ~~(d)~~

9 **e** ~~(f)~~ The application for a state franchise shall be made on a
10 form prescribed by the ~~department~~ *commission* and shall include
11 all of the following:

12 (1) A sworn affidavit, signed under penalty of perjury by an
13 officer or another person authorized to bind the applicant, that
14 affirms all of the following:

15 (A) That the applicant has filed or will timely file with the
16 Federal Communications Commission all forms required by the
17 Federal Communications Commission before offering cable
18 service or video service in this state. **or its affiliates**

19 (B) That the applicant agrees to comply with all federal and
20 state statutes, rules, and regulations, including, but not limited to,
21 the following:

22 (i) A statement that the applicant will not discriminate in the
23 provision of video or cable services as provided in Section
24 ~~5800.7~~ 5890.

25 (ii) A statement that the applicant will abide by all applicable
26 consumer protection laws and rules as provided in Section
27 ~~5800.8~~ 5900.

28 (iii) A statement that the applicant will remit the fee required
29 by subdivision (a) of Section ~~5800.5~~ 5860 to the local entity.

30 (iv) A statement that the applicant will provide PEG channels
31 and the required funding as required by Section ~~5800.5~~
32 ~~subdivision (r).~~ **5870**

33 (C) That the applicant agrees to comply with all lawful city,
34 county, or city and county regulations regarding the time, place,
35 and manner of using the public rights-of-way, including, but not
36 limited to, payment of applicable encroachment, permit, and
37 inspection fees.

38 (D) That the applicant will concurrently deliver a copy of the
39 application to any local entity where the applicant will provide
40 service.

On page 10, strike out lines 6 and 7, and insert:
state-issued franchise, including a franchise obtained from renewal or transfer of an existing franchise, if that person or corporation is in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (Article 3.5 (commencing with Section 53054) of Chapter 1 of Part I of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (Article 4.5 (commencing with Section 53088) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code).



1 (2) The applicant’s legal name and any name under which the
2 applicant does or will do business in this state.

3 (3) The address and telephone number of the applicant’s
4 principal place of business, along with contact information for
5 the person responsible for ongoing communications with the
6 department.

7 (4) The names and titles of the applicant’s principal officers.

8 (5) The legal name, address, and telephone number of the
9 applicant’s parent company, if any.

10 ~~(6) A description of the service area footprint to be served
11 including the socioeconomic information of all residents within
12 the service area footprint.~~

13 ~~(7) If the applicant is a telephone corporation, as defined in
14 Section 234 of the Public Utilities Code, a description of the
15 territory in which the company provides telephone service. The
16 description shall include socioeconomic information of all
17 residents within the telephone corporation’s service territory.~~

18 (6) *A description of the video service area footprint that is
19 proposed to be served, as identified by a collection of United
20 States Census Bureau Block numbers (13 digit) or a geographic
21 information system digital boundary meeting or exceeding
22 national map accuracy standards. This description shall include
23 the socioeconomic status information of all residents within the
24 service area footprint.*

25 (7) *If the applicant is a telephone corporation or an affiliate of
26 a telephone corporation, as defined in Section 234, a description
27 of the territory in which the company provides telephone service.
28 The description shall include socioeconomic status information
29 of all residents within the telephone corporation’s service
30 territory.*

31 (8) The expected date for the deployment of video service in
32 each of the areas identified in paragraph (6).

33 (9) Adequate assurance that the applicant possesses the
34 financial, legal, and technical qualifications necessary to
35 construct and operate the proposed system and promptly repair
36 any damage to the public right-of-way caused by the applicant.
37 To accomplish these requirements, the commission may require
38 a bond.

39 (e) ~~(1) The department~~

Amendment 47 On page 11, below line 39, insert:

(f) The commission may require that a corporation with wholly owned subsidiaries or affiliates is eligible only for a single state-issued franchise and prohibit the holding of multiple franchises through separate subsidiaries or affiliates. The commission may establish procedures for a holder of a state-issued franchise to amend its franchise to reflect changes in its service area.

(g) The commission shall commence accepting applications for a state franchise no later than April 1, 2007.

1 **h** ~~(g)~~ (1) The commission shall notify an applicant for a state
2 franchise and any affected local entities whether the applicant's
3 affidavit described by subdivision ~~(e)~~ application is complete or
4 incomplete before the 30th calendar day after the applicant
5 submits the affidavit. application

application

6 (2) If the ~~department~~ commission finds the affidavit is
7 complete, it shall issue a state franchise before the 14th calendar
8 day after that finding.

9 (3) If the ~~department~~ commission finds that the application is
10 incomplete, it shall specify with particularity the items in the
11 application that are incomplete and permit the applicant to amend
12 the application to cure any deficiency. The ~~department~~
13 commission shall have 30 calendar days from the date the
14 application is amended to determine its completeness.

15 (4) The failure of the ~~department~~ commission to notify the
16 applicant of the completeness or incompleteness of the
17 applicant's affidavit before the 44th calendar day after receipt of
18 an affidavit shall be deemed to constitute issuance of the
19 certificate applied for without further action on behalf of the
20 applicant.

application

21 ~~(f)~~

application

22 **i** ~~(h)~~ The state franchise issued by the ~~department~~ commission
23 shall contain all of the following:

24 (1) A grant of authority to provide video service, ~~in exchange~~
25 ~~for the franchise fee adopted under subdivision (o)~~; in the service
26 area footprint as requested in the application.

27 (2) A grant of authority to use the public rights-of-way, *in*
28 *exchange for the franchise fee adopted under Section 5860*, in the
29 delivery of video service, subject to the laws of this state.

subdivision (q)

30 (3) A statement that the grant of authority is subject to lawful
31 operation of the cable service or video service by the applicant or
32 its successor in interest.

33 ~~(g)~~

34 **j** ~~(i)~~ The state franchise issued by the ~~department~~ commission
35 may be terminated by the video service provider by submitting
36 ~~notice to the department commission.~~

at least 90 days prior written notice to customers,
local entities and the commission

37 **k** ~~(j)~~ It is unlawful to provide video service without a state or
38 locally issued franchise.

39 ~~(h)~~

1 **l** ~~(k)~~ Subject to the notice requirements of this ~~article~~ *division*, a
2 state franchise may be transferred to any successor in interest of
3 the holder to which the certificate is originally granted, provided
4 that the transferee first submits all of the information required of
5 the applicant by this section to the ~~department~~ *commission*.

6 ~~(i)~~

7 **m** ~~(l)~~ In connection with, or as a condition of, receiving a state
8 franchise, the ~~department~~ *commission* shall require a holder to
9 notify the ~~department~~ *commission* and any applicable local entity
10 within 14 business days of any of the following changes
11 involving the holder or the state franchise:

12 (1) Any transaction involving a change in the ownership,
13 operation, control, or corporate organization of the holder,
14 including a merger, an acquisition, or a reorganization.

15 (2) A change in the holder's legal name or the adoption of, or
16 change to, an assumed business name. The holder shall submit to
17 the ~~department~~ *commission* a certified copy of either of the
18 following:

19 (A) The ~~amended~~ *proposed amendment to the* state franchise.

20 (B) The certificate of assumed business name.

21 (3) A change in the holder's principal business address or in
22 the name of the person authorized to receive notice on behalf of
23 the holder.

24 (4) Any transfer of the state franchise to a successor in interest
25 of the holder. The holder shall identify the successor in interest to
26 which the transfer is made.

27 (5) The termination of any state franchise issued under this
28 ~~article~~ *division*. The holder shall identify both of the following:

29 (A) The number of customers in the service area covered by
30 the state franchise being terminated.

31 (B) The method by which the holder's customers were notified
32 of the termination.

33 (6) A change in one or more of the service areas of this ~~article~~
34 *division* that would increase or decrease the territory within the
35 service area. The holder shall describe the new boundaries of the
36 affected service areas after the proposed change is made.

37 ~~(j) As a condition of receiving a state franchise, the holder~~
38 ~~shall notify all applicable local entities that the local entity is~~
39 ~~included in the holder's service area under the state franchise~~
40 ~~being issued and that the holder intends to provide video service~~

1 in the local entity's jurisdiction. The holder shall give the notice
2 required under this subdivision not later than 10 days before the
3 holder begins providing video service in the local entity's
4 jurisdiction.

5 (k) (1) Within 24 months after issuance of the holder's first
6 state franchise, and annually thereafter for eight additional years,
7 the holder shall report the extent to which Internet access of
8 video service is available to potential subscribers within the
9 holder's service area, including all of the following:

10 (A) The demographics of the service area.

11 (B) The percentage of homes in the service area that have
12 access to service.

13 (C) The demographics of the portion of the service area that
14 has access to service.

15 (D) The technology used by the holder to provide access to
16 service.

17 (E) Whether the holder is, or expects to be, in compliance with
18 the provisions set forth in Section 5800.8. If the holder does not
19 expect to be in compliance, the holder shall describe its plan for
20 achieving compliance.

21 (F) A brief description of any issues related to providing
22 access to service within the holder's service territory, as provided
23 under this article.

24 (2) The report shall be filed with the Legislature, the
25 department, the Governor, and the Attorney General, and posted
26 on the holder's Web site. The holder shall not be required to
27 report competitively sensitive information.

28 (l) (1) A state issued franchise shall only be valid for 10 years
29 after the date of issuance and the video service provider shall
30 apply for a renewal of the state franchise if it wishes to continue
31 to provide video service in the area covered by the franchise after
32 the expiration of the franchise.

33 (2) The department shall ensure that the process for renewing
34 the franchise complies with this section. The department may not
35 renew the franchise unless the video service provider can show
36 that it is in compliance with all of the requirements of this article
37 and has no outstanding financial obligations to the state or any
38 local entity that are expressly allowed under this article.

39 **n** (m) *Prior to offering video service in a local entity's*
40 *jurisdiction, the holder of a state franchise shall notify the local*

1 entity that the video service provider will provide video service in
2 the local entity's jurisdiction. The notice shall be given at least
3 10 days, but no more than 60 days, before the video service
4 provider begins to offer service.

5 ~~(n) (1) Commencing three months after issuance of the~~
6 ~~holder's first state franchise, the holder shall report information~~
7 ~~as of June 30 and December 31 of each year regarding the extent~~
8 ~~to which it provides video service and broadband service within~~
9 ~~this state. The reports shall be filed with the commission no later~~
10 ~~than 30 days after the conclusion of each six-month reporting~~
11 ~~period, and the reports shall include the following information as~~
12 ~~designated by individual census tracts:~~

13 ~~(A) The socioeconomic status information of each census tract~~
14 ~~where the holder or its affiliates provides video service.~~

15 ~~(B) The socioeconomic status information of each census tract~~
16 ~~where the holder or its affiliates provide broadband service.~~

17 ~~(C) The number of households in each census tract that have~~
18 ~~access to the holder's or its affiliates' video service.~~

19 ~~(D) The number of households in each census tract that have~~
20 ~~access to the holder's or its affiliates' broadband service.~~

21 ~~(E) The number of households in each census tract that use~~
22 ~~broadband service provided by the holder or its affiliates.~~

23 ~~(F) The number of households in each census tract that use~~
24 ~~video service provided by the holder or its affiliates.~~

25 ~~(G) The socioeconomic status information of the portion of~~
26 ~~each census tract included in the holder's or its affiliates' video~~
27 ~~service area footprint.~~

28 ~~(H) The socioeconomic status information of the portion of~~
29 ~~each census tract included in the holder's or its affiliates' video~~
30 ~~service area footprint.~~

31 ~~(I) The technology used by the holder or its affiliates to~~
32 ~~provide access to video service it offers in each census tract.~~
33 ~~Specification, by census tract, types of technology and the~~
34 ~~number of households provided video access by each holder or~~
35 ~~its affiliates.~~

36 ~~(J) The technology used by the holder or its affiliates to~~
37 ~~provide access to broadband service it offers in each census~~
38 ~~tract. Specification, by census tract, types of technology and the~~
39 ~~number of households provided broadband access by each~~
40 ~~holder or its affiliates.~~

1 ~~(K) Whether the holder or its affiliates are in compliance with~~
2 ~~the provisions set forth in Section 5890.~~

3 ~~(L) A brief description of any issues related to providing~~
4 ~~access to broadband service and video service within California,~~
5 ~~as provided under this article.~~

6 ~~(2) These reports shall be filed with the Legislature, the~~
7 ~~commission, the Governor, and the Attorney General, and posted~~
8 ~~on the holder's Internet Web site, no later than 30 days after the~~
9 ~~conclusion of each six month reporting period.~~

10 (m)

11 (o) Any video service provider that currently holds a franchise
12 with a local franchising entity is entitled to seek a state franchise
13 in the area designated in that franchise upon meeting any of the
14 following conditions:

15 (1) The expiration, *prior to any renewal or extension*, of its
16 local franchise.

17 (2) A mutually agreed upon date set by both the local
18 franchising entity and video service provider to terminate the
19 franchise provided in writing by both parties to the ~~department~~
20 *commission*.

21 (3) ~~(A)~~ When a video service provider that holds a state
22 franchise provides the notice required pursuant to ~~subdivision (j)~~
23 ~~of Section 5800.3~~ *subdivision (m)* to a local jurisdiction that it
24 intends to initiate providing video service in ~~10 days~~ *all or part*
25 *of that jurisdiction*, a video service provider operating under a
26 franchise issued by a local franchising authority may elect to
27 obtain a state franchise to replace its locally issued franchise. *The*
28 *franchise issued by the local franchising entity shall terminate*
29 *and be replaced by a state franchise when the state franchising*
30 *authority issues a state franchise for the video service provider*
31 *that includes the entire service area served by the video service*
32 *provider and the video service provider notifies the local entity*
33 *that it will begin providing video service in that area under a*
34 *state franchise.*

35 ~~(B) The franchise issued by the local franchising entity will~~
36 ~~terminate when the state franchising authority issues a state~~
37 ~~franchise for the video service provider that includes the entire~~
38 ~~service area served by video service provider and the video~~
39 ~~service provider notifies the local entity that it will begin~~
40 ~~providing video service in that area under a state franchise.~~

DRAFT

1 (Ⓔ)

2 (p) Notwithstanding any rights to the contrary, a video service

3 ~~provider~~ *an incumbent cable operator* opting into a state

4 franchise under this subdivision shall continue to serve all areas

5 as required by its local franchise agreement existing on January

6 1, 2007, until that local franchise otherwise would have

7 ~~terminated~~. *expired. However, an incumbent cable operator that*

8 *is also a telephone corporation with less than 1,000,000*

9 *telephone customers in California and is providing video service*

10 *in competition with another incumbent cable operator shall not*

11 *be required to provide service beyond the area in which it is*

12 ~~providing~~ *service as of January 1, 2007.*

providing video

13 ~~(n) The department shall develop information guides and other~~

14 ~~tools to help educate local entities and other interested parties~~

15 ~~about the various provisions of this article.~~

16 (Ⓕ)

17 (q) (1) There is hereby adopted a state franchise fee payable

18 as rent or a toll for the use of the public right-of-way by holders

19 of the state franchise issued pursuant to this ~~article~~ *division*. The

20 amount of the state franchise fee shall be 5 percent of gross

21 revenues, as defined in subdivision (d) of Section ~~5800.4~~ *5860*,

22 or the percentage applied by the local entity to the gross revenue

23 of the incumbent cable operator, whichever is less. If there is no

24 incumbent cable operator or upon the expiration of the incumbent

25 cable operator's franchise, the amount of the state franchise fee

26 shall be 5 percent of gross revenues, as defined in subdivision (d)

27 of Section ~~5800.4~~ *5860*, unless the local entity adopts an

28 ordinance setting the amount of the franchise fee at less than 5

29 percent. ~~The~~

30 (2) (A) *The state franchise fee shall apply equally to all video*

31 *service providers in the local entity's jurisdiction.*

32 (B) *Notwithstanding subparagraph (A), if the video service*

33 *provider is leasing access to a network owned by a local entity,*

34 *the local entity may set a franchise fee for access to the network*

35 *different from the franchise fee charged to a video service*

36 *provider for access to the rights-of-way to install its own*

37 *network.*

38 5850. (a) *A state issued franchise shall only be valid for 10*

39 *years after the date of issuance, and the video service provider*

40 *shall apply for a renewal of the state franchise for an additional*

1 10-year period if it wishes to continue to provide video services
2 in the area covered by the franchise after the expiration of the
3 franchise.

4 (b) Except as provided in this section, the criteria and process
5 described in Section 5840 shall apply to a renewal registration,
6 and the commission shall not impose any additional or different
7 criteria.

8 (c) Renewal of a state franchise shall be consistent with
9 federal law and regulations.

10 (d) The commission shall not renew the franchise if the video
11 service provider is in violation of any final nonappealable court
12 order issued pursuant to this division.

13 ~~5800.4.~~

14 5860. (a) The holder of a state franchise that offers video
15 service within the jurisdiction of the local entity shall calculate
16 and remit to the local entity a state franchise fee, adopted
17 pursuant to subdivision ~~(e)~~ of Section 5800.3 (q) of Section 5840,
18 as provided in this section. The obligation to remit ~~state~~ the
19 franchise fee to a local entity begins immediately upon provision
20 of video service within that local entity's jurisdiction. However,
21 the remittance shall not be due until the time of the first quarterly
22 payment required under subdivision (g) that is at least 180 days
23 after the provision of service began. The fee remitted to a city or
24 city and county shall be based on gross revenues, as defined in
25 subdivision (d), derived from the provision of video service
26 within that jurisdiction. The fee remitted to a county shall be
27 based on gross revenues earned within the unincorporated area of
28 the county. No fee under this section shall become due unless the
29 local entity provides documentation to the holder of the state
30 franchise supporting the percentage paid by the incumbent cable
31 operator serving the area within the local entity's jurisdiction, as
32 provided below. The fee shall be calculated as a percentage of
33 the holder's gross revenues, as defined in subdivision (d). The
34 fee remitted to the local entity pursuant to this section may be
35 used by the local entity for any lawful purpose.

36 (b) The state franchise fee shall be a percentage of the holder's
37 gross revenues, as defined in subdivision (d).

38 (c) No local entity or any other political subdivision of this
39 state may demand any additional fees or charges or other
40 remuneration of any kind from the holder of a state franchise

1 based solely on its status as a provider of video or cable services
2 other than as set forth in this ~~section~~ *division* and may not
3 demand the use of any other calculation method or definition of
4 gross revenues. However, nothing in this section shall be
5 construed to limit a local entity's ability to impose utility user
6 taxes and other generally applicable taxes, fees, and charges
7 under other applicable provisions of state law that are applied in
8 a nondiscriminatory and competitively neutral manner.

9 (d) For purposes of this section, the term "gross revenues"
10 means all revenue actually received by the holder of a state
11 franchise, *as determined in accordance with generally accepted*
12 *accounting principles*, that is derived from the operation of the
13 holder's network to provide cable or video service within the
14 jurisdiction of the local entity, including all of the following:

15 (1) All charges billed to subscribers for any and all cable
16 service or video service provided by the holder of a state
17 franchise, including all revenue related to programming provided
18 to the subscriber, equipment rentals, late fees, and insufficient
19 fund fees.

20 (2) ~~Any~~ *Franchise* fees imposed on the holder of a state
21 franchise by this section that are passed through to, and paid by,
22 the subscribers.

23 (3) Compensation received by the holder of a state franchise
24 that is derived from the operation of the holder's network to
25 provide cable service or video service with respect to
26 commissions that are paid to the holder of a state franchise as
27 compensation for promotion or exhibition of any products or
28 services on the holder's network, such as a "home shopping" or
29 similar channel, subject to paragraph (4) of subdivision (e).

30 (4) A pro rata portion of all revenue derived by the holder of a
31 state franchise or its affiliates pursuant to compensation
32 arrangements for advertising derived from the operation of the
33 holder's network to provide video service within the jurisdiction
34 of the local entity, subject to paragraph (1) of subdivision (e).
35 The allocation shall be based on the number of subscribers in the
36 local entity divided by the total number of subscribers in relation
37 to the relevant regional or national compensation arrangement.

38 ~~(5) Any amounts received that are recorded as negative~~
39 ~~expenditure, or as a reduction to expenses.~~

1 (e) For purposes of this section, the term “gross revenue” set
2 forth in subdivision (d) does not include any of the following:

3 (1) Amounts not actually received, even if billed, such as bad
4 debt; refunds, rebates, or discounts to subscribers or other third
5 parties; or revenue imputed from the provision of cable services
6 or video services for free or at reduced rates to any person as
7 required or allowed by law, including, but not limited to, the
8 provision of these services to public institutions, public schools,
9 governmental agencies, or employees except that forgone
10 revenue chosen not to be received in exchange for trades, barter,
11 services, or other items of value shall be included in gross
12 revenue.

13 (2) Revenues received by any affiliate or any other person in
14 exchange for supplying goods or services used by the holder of a
15 state franchise to provide cable services or video services.
16 However, revenue received by an affiliate of the holder from the
17 affiliate’s provision of cable or video service shall be included in
18 gross revenue as follows:

19 (A) To the extent that treating the revenue as revenue of the
20 affiliate, instead of revenue of the holder, would have the effect
21 of evading the payment of fees that would otherwise be paid to
22 the local entity.

23 (B) The revenue is not otherwise subject to fees to be paid to
24 the local entity.

25 (3) Revenue derived from services classified as noncable
26 services or nonvideo services under federal law, including, but
27 not limited to, revenue derived from telecommunications services
28 and information services, other than cable services or video
29 services, and any other revenues attributed by the holder of a
30 state franchise to noncable services or nonvideo services in
31 accordance with Federal Communications Commission rules,
32 regulations, standards, or orders.

33 (4) Revenue paid by subscribers to “home shopping” or
34 similar networks directly from the sale of merchandise through
35 any home shopping channel offered as part of the cable services
36 or video services. However, commissions or other compensation
37 paid to the holder of a state franchise by “home shopping” or
38 similar networks for the promotion or exhibition products or
39 services shall be included in gross revenue.

1 (5) Revenue from the sale of cable services or video services
2 for resale in which the reseller is required to collect a fee similar
3 to the franchise fee from the reseller's customers.

4 (6) Amounts billed to, and collected from, subscribers to
5 recover any tax, fee, or surcharge imposed by any governmental
6 entity on the holder of a state franchise, including, but not limited
7 to, sales and use taxes, gross receipts taxes, excise taxes, utility
8 users taxes, public service taxes, communication taxes, and any
9 other fee not imposed by this section.

10 (7) Revenue from the sale of capital assets or surplus
11 equipment not used by the purchaser to receive cable services or
12 video services from the seller of those assets or surplus
13 equipment.

14 (8) Revenue from directory or Internet advertising revenue,
15 including, but not limited to, yellow pages, white pages, banner
16 advertisement, and electronic publishing.

17 (9) Revenue received as reimbursement by programmers of
18 *specific, identifiable* marketing costs incurred by the holder of a
19 state franchise for the introduction of new programming.

20 (10) Security deposits received from subscribers, excluding
21 security deposits applied to the outstanding balance of a
22 subscriber's account and thereby taken into revenue.

23 ~~(f) For purposes of this section, in the case of a video service
24 that may be bundled or integrated functionally with other
25 services, capabilities, or applications, the state franchise fee shall
26 be applied only to the gross revenue, as defined in subdivision
27 (d), attributable to cable service or video service, as reflected on
28 the books and records of the holder kept in the regular course of
29 business in accordance with Federal Communications
30 Commission or Public Utilities Commission rules, regulations,
31 standards, and orders, as applicable.~~

32 *(f) For the purposes of this section, in the case of a video
33 service that may be bundled or integrated functionally with other
34 services, capabilities, or applications, the state franchise fee
35 shall be applied only to the gross revenue, as defined in
36 subdivision (d), attributable to video service. Where the holder of
37 a state franchise or any affiliate bundles, integrates, ties, or
38 combines video services with nonvideo services creating a
39 bundled package, so that subscribers pay a single fee for more
40 than one class of service or receive a discount on video services,*

1 gross revenues shall be determined based on an equal allocation
 2 of the package discount, that is, the total price of the individual
 3 ~~components~~ at advertised rates compared to the package price,
 4 among all ~~services~~ comprising the package. The fact that the
 5 holder of a state franchise offers a bundled package shall not be
 6 deemed a promotional activity. If the holder of a state franchise
 7 does not offer any component of the bundled package separately,
 8 the holder of a state franchise shall declare a stated retail value
 9 for each component based on reasonable comparable prices for
 10 the product or service for the purpose of determining franchise
 11 fees based on the package discount described above.

classes of service

12 (g) For the purposes of determining gross revenue under this
 13 division, a video service provider shall use the same method of
 14 determining revenues under generally accepted accounting
 15 principals as that which the video service provider uses in
 16 determining revenues for the purpose of reporting to national
 17 and state regulatory agencies.

that

18 ~~(g)~~
 19 (h) The state franchise fee shall be remitted to the applicable
 20 local entity quarterly, within 45 days after the end of the quarter
 21 for ~~the preceding~~ calendar quarter. Each payment shall be
 22 accompanied by a summary explaining the basis for the
 23 calculation of the state franchise fee. If the holder does not pay
 24 the franchise fee when due, the holder shall pay a late payment
 25 charge at a rate per year equal to the highest prime lending rate
 26 during the period of delinquency, plus 1 percent. If the holder has
 27 overpaid the franchise fee, it may deduct the overpayment from
 28 its next quarterly payment.

29 ~~(h)~~
 30 (i) Not more than once annually, a local entity may examine
 31 the business records of a holder of a state franchise to the extent
 32 reasonably necessary to ensure compensation in accordance with
 33 subdivision (a). The holder shall keep all business records
 34 reflecting any gross revenues, even if there is a change in
 35 ownership, for at least four years after those revenues are
 36 recognized by the holder on its books and records. If the
 37 examination discloses that the holder has underpaid franchise
 38 fees by more than 5 percent during the examination period, the
 39 holder shall pay all of the reasonable and actual costs of the
 40 examination. If the examination discloses that the holder has not



1 underpaid franchise fees, the local entity shall pay all of the
 2 reasonable and actual costs of the examination. In every other
 3 instance, each party shall bear its own costs of the examination.
 4 Any claims by a local entity that compensation is not in
 5 accordance with subdivision (a), and any claims for refunds or
 6 other corrections to the remittance of the holder of a state
 7 franchise, shall be made within three years and 45 days of the
 8 end of the quarter for which compensation is remitted, or three
 9 years from the date of the remittance, whichever is later. Either a
 10 local entity or the holder may, in the event of a dispute
 11 concerning compensation under this section, bring an action in a
 12 court of competent jurisdiction.

13 (i)

14 (j) The holder of a state franchise may identify and collect the
 15 amount of the state franchise fee as a separate line item on the
 16 regular bill of each subscriber.

17 ~~(j) The holder of a state franchise under this article who also
 18 provides stand-alone, residential, primary line, basic telephone
 19 service shall not increase this rate to finance the cost of
 20 deploying a network to provide video service.~~

21 ~~(k) The holder of a state franchise shall not increase the rate
 22 for residential, primary line, basic telephone service above the
 23 rate as of July 1, 2006, until January 1, 2009. The commission
 24 may permit increases in 2007 and 2008 to reflect increases in
 25 inflation as shown in the Consumer Price Index for urban
 26 consumers in the western United States as published by the
 27 Bureau of Labor Statistics, if approved by the commission. This
 28 subdivision does not effect the authority of the holder to increase
 29 rates for basic telephone service that is bundled with other
 30 services and priced as a bundle.~~

31 5800.5.

32 5870. (a) The holder of a state franchise shall designate a
 33 sufficient amount of capacity on its network to allow the
 34 provision of the same number of public, educational, and
 35 governmental access (PEG) channels, ~~that the incumbent cable
 36 operator has activated and provided as are activated and
 37 provided by the incumbent cable operator that has
 38 simultaneously activated and provided the greatest number of
 39 PEG channels~~ within the local entity under the terms of any
 40 franchise in effect in the local entity as of January 1, 2007. For

1 the purposes of this section, a PEG channel is deemed activated
 2 if it is being utilized for PEG programming within the
 3 municipality for at least eight hours per day. The holder shall
 4 have ~~six~~ *three* months from the date the local entity requests the
 5 PEG channels to designate the capacity. However, the ~~six-month~~
 6 *three-month* period shall be tolled by any period during which
 7 the designation or provision of PEG channel capacity is
 8 technically infeasible, including any failure or delay of the
 9 incumbent cable operator to make adequate interconnection
 10 available, as required by this ~~subdivision.~~ section.

11 (b) The PEG channels shall be for the exclusive use of the
 12 local entity or its designee to provide public, educational, and
 13 governmental channels. The PEG channels shall be used only for
 14 noncommercial purposes. However, advertising, *underwriting*, or
 15 sponsorship recognition may be carried on the channels for the
 16 purpose of funding the ~~operation of the channels.~~ PEG-related activities. ←
 17 The PEG channels shall all be carried on the basic service tier. To the
 18 extent feasible, the PEG channels shall not be separated
 19 numerically from other channels carried on the basic service tier
 20 and the channel numbers for the PEG channels shall be the same
 21 channel numbers used by the incumbent cable operator unless
 22 prohibited by federal law. After the initial designation of PEG
 23 channel numbers, the channel numbers shall not be changed
 24 without the agreement of the local entity unless the change is
 25 required by federal law. Each channel shall be capable of
 26 carrying a National Television System Committee (NTSC)
 27 television signal.

28 (c) (1) If ~~no~~ *less than three* PEG channels are activated and
 29 provided within the local entity as of January 1, 2007, a local
 30 entity whose jurisdiction lies within the authorized service area
 31 of the holder of a state franchise may *initially* request the holder
 32 to designate not more than a total of three PEG channels.

33 (2) The holder shall have ~~six~~ *three* months from the date of the
 34 request to designate the capacity. However, the ~~six-month~~
 35 *three-month* period shall be tolled by any period during which
 36 the designation or provision of PEG channel capacity is
 37 technically infeasible, including any failure or delay of the
 38 incumbent cable operator to make adequate interconnection
 39 available, as required by this ~~subdivision.~~ section.

(1)

Amendment 71
 On page 25, between lines 6 and 7, insert:

(2) For the purposes of this section, "locally produced video programming" means programming produced or provided by any local resident, the local entity, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

local entity or its designee

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(2) The provision of

1 (d) The holder shall provide an additional PEG channel when
 2 the ~~locally produced, nonduplicated~~ video programming televised
 3 on a given channel exceeds 56 hours per week as measured on a
 4 quarterly basis. The additional channel shall not be used for any
 5 purpose other than to continue programming additional
 6 government, education, or public access television.

7 (e) Any PEG channel provided pursuant to this section that is
 8 not utilized by the local entity for at least eight hours per day *as*
 9 *measured on a quarterly basis* may no longer be made available
 10 to the local entity, and may be programmed at the holder's
 11 discretion. At the time that the local entity can certify to the
 12 holder a schedule for at least eight hours of daily programming,
 13 the holder of the state franchise shall restore the channel or
 14 channels for the use of the local entity.

15 (f) The content to be provided over the PEG channel capacity
 16 provided pursuant to this section shall be the responsibility of the
 17 ~~local entity~~ receiving the benefit of that capacity, and the holder
 18 of a state franchise bears only the responsibility for the
 19 transmission of that content, subject to technological restraints.

20 (g) The local entity shall ensure that all transmissions, content,
 21 or programming to be transmitted by a holder of a state franchise
 22 are provided or submitted in a manner or form that is *compatible*
 23 *with the holder's network, if the local entity produces or*
 24 *maintains the PEG programming in that manner or form. If the*
 25 *local entity does not produce or maintain PEG programming in*
 26 *that manner or form, then the local entity may submit or provide*
 27 *PEG programming in a manner or form that is standard in the*
 28 *industry. The holder shall be responsible for any changes in the*
 29 *form of the transmission necessary to make it compatible with*
 30 *the technology or protocol utilized by the holder to deliver*
 31 *services. If the holder is required to change the form of the*
 32 *transmission, the local entity shall permit the holder to do so in a*
 33 *manner that is most economical to the holder. The provision of*
 34 *those transmissions, content, or programming to the holder of a*
 35 *state franchise shall constitute authorization for the holder to*
 36 *carry those transmissions, content, or programming, including, at*
 37 *the holder's option, beyond the jurisdictional boundaries of that*
 38 *local entity, or programming. The holder may carry the*
 39 *transmission, content, or programming outside of the local*
 40 *entity's jurisdiction if the holder agrees to pay the local entity or*

proportional

1 *its designee any incremental licensing costs incurred by the local*
2 *entity or its designee associated with that transmission. Local*
3 *entities shall be prohibited from entering into licensing*
4 *agreements that impose higher costs for transmission to*
5 *subscribers outside the local entity's jurisdiction.*

6 (h) Where technically feasible, the holder of a state franchise
7 and an incumbent cable operator shall negotiate in good faith to
8 interconnect their networks for the purpose of providing PEG
9 programming. Interconnection may be accomplished by direct
10 cable, microwave link, satellite, or other reasonable method of
11 connection. Holders of a state franchise and incumbent cable
12 operators shall provide interconnection of the PEG channels on
13 reasonable terms and conditions and may not withhold the
14 interconnection. If a holder of a state franchise and an incumbent
15 cable operator cannot reach a mutually acceptable
16 interconnection agreement, the local entity may require the
17 incumbent cable operator to allow the holder to interconnect its
18 network with the incumbent's network at a technically feasible
19 point on the holder's network as identified by the holder. If no
20 technically feasible point for interconnection is available, the
21 holder of a state franchise shall make an interconnection
22 available to the channel originator and shall provide the facilities
23 necessary for the interconnection. *The cost of any*
24 *interconnection shall be borne by the holder requesting the*
25 *interconnection unless otherwise agreed to by the parties.*

26 (i) A holder of a state franchise shall not be required to
27 interconnect for, or otherwise to transmit, PEG content that is
28 branded with the logo, name, or other identifying marks of
29 another cable operator or video service provider. For purposes of
30 this section, PEG content is not branded if it includes only
31 production credits or other similar information displayed at the
32 conclusion of a program. The local entity may require a cable
33 operator or video service provider to remove its logo, name, or
34 other identifying marks from PEG content that is to be made
35 available through interconnection to another provider of PEG
36 capacity.

37 (j) In addition to any provision for the PEG channels required
38 under subdivisions (a) to ~~(k)~~ (i), inclusive, the holder shall
39 reserve, designate, and activate a channel for carriage of public
40 affairs programming that includes live and recorded coverage of

Amendment 76
On page 26, between lines 5 and 6, insert:
(3) The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided 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 holder at a lower quality or with less functionality.

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1 state government and state legislative activities originated by the
2 California Channel and designate and activate a channel for
3 carriage of public affairs programming originated by C-Span.
4 designate, and, upon request, activate a channel for carriage of
5 state public affairs programming administered by the state.

6 (k) All obligations to provide and support PEG channel
7 facilities and institutional networks and to provide cable services
8 to community buildings contained in a locally issued franchise
9 existing on December 31, 2006, shall continue until the local
10 franchise expires, until the term of the franchise would have
11 expired if it had not been terminated pursuant to subdivision (o)
12 of Section 5840, or until January 1, 2009, whichever is later.

13 ~~(k)~~

14 (l) After January 1, 2007, and until the expiration of the
15 incumbent cable operator's franchise, if the incumbent cable
16 operator has existing unsatisfied obligations under the franchise
17 to remit to the local entity any cash payments for the ongoing
18 ~~capital costs of public educational and governmental access costs~~
19 of public, educational, and government access channel facilities
20 or institutional networks, the local entity shall divide those cash
21 payments among all cable or video providers as provided in this
22 section. The fee shall be the holder's pro rata per subscriber share
23 of the cash payment required to be paid by the incumbent cable
24 operator to the local entity for the ~~capital~~ costs of PEG channel
25 facilities.

26 ~~(l)~~

27 (m) In determining the fee on a pro rata per subscriber basis,
28 all cable and video service providers shall report, for the period
29 in question, to the local entity the total number of subscribers
30 served within the local entity's jurisdiction, which shall be
31 treated as confidential by the local entity and shall be used only
32 to derive the per subscriber fee required by this section. The local
33 entity shall then determine the payment due from each provider
34 based on a per subscriber basis for the period by multiplying the
35 unsatisfied cash payments for the ongoing capital costs of PEG
36 channel facilities by a ratio of the reported subscribers of each
37 provider to the total subscribers within the local entity as of the
38 end of the period. The local entity shall notify the respective
39 providers, in writing, of the resulting pro rata amount. After the
40 notice, any fees required by this section shall be remitted to the

On page 27, line 25, after the period insert:

All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities and institutional networks, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

1 applicable local entity quarterly, within 45 days after the end of
 2 the quarter for the preceding calendar quarter, and may only be
 3 used by the local entity as authorized under federal law.

4 ~~(m) If there is no incumbent cable operator, or upon the~~
 5 ~~expiration of the incumbent cable operator’s franchise, a local~~
 6 ~~entity may, by ordinance, establish a fee to support the capital~~
 7 ~~costs of PEG channel facilities and to support institutional~~
 8 ~~network facilities. The fee shall not exceed the per subscriber fee~~
 9 ~~paid under subdivision (k), if such a fee was paid, or 1 percent of~~
 10 ~~the holder’s gross revenues, as defined in Section 5800.4, earned~~
 11 ~~in the local entity, whichever is lower. For purposes of~~
 12 ~~administration, the fee shall be deposited in a special fund~~
 13 ~~established by the local entity to be used for purposes allowed~~
 14 ~~under federal law.~~

15 ~~(n) The following services shall continue to be provided by the~~
 16 ~~incumbent cable operator that was furnishing services pursuant to~~
 17 ~~a franchise until January 1, 2008, or until the term of the~~
 18 ~~franchise expires, whichever is later:~~

- 19 ~~(1) PEG production or studio facilities.~~
- 20 ~~(2) Institutional network capacity, however defined or referred~~
 21 ~~to in the incumbent cable operator’s franchise, but generally~~
 22 ~~referring to a private line data network capacity for use by the~~
 23 ~~local entity for noncommercial purposes.~~
- 24 ~~(3) Cable services to community public buildings, such as~~
 25 ~~municipal buildings and public schools.~~

26 *(n) A local entity may, by ordinance, establish a fee to support*
 27 *PEG channel facilities consistent with federal law that would*
 28 *become effective subsequent to the expiration of any fee imposed*
 29 *pursuant to paragraph (2) of subdivision (l). If no such fee exists,*
 30 *the local entity may establish the fee at any time. the fee shall not*
 31 *exceed 1 percent of the holder’s gross revenues, as defined in*
 32 *Section 5860. Notwithstanding this limitation, if, on December*
 33 *31, 2006, a local entity ~~imposes~~ a separate fee to support PEG*
 34 *channel facilities that is in excess of 1 percent, that entity may,*
 35 *by ordinance, establish a fee no greater than that separate fee,*
 36 *and in no event greater than 3 percent, to support PEG activities.*
 37 *The ordinance shall expire, and may be reauthorized, upon the*
 38 *expiration of the state franchise.*

is imposing

39 (o) The holder of a state franchise may recover the amount of
 40 any fee remitted to a local entity under this section by billing a

1 recovery fee as a separate line item on the regular bill of each
2 subscriber.

3 (p) A court of competent jurisdiction shall have exclusive
4 jurisdiction to enforce any requirement under this section or
5 resolve any dispute regarding the requirements set forth in this
6 section, and no provider may be barred from the provision of
7 service or be required to terminate service as a result of that
8 dispute or enforcement action.

9 5800.6.

10 5880. Holders of state franchises shall comply with the
11 Emergency Alert System requirements of the Federal
12 Communications Commission in order that emergency messages
13 may be distributed over the holder's network. *Any provision in a
14 locally issued franchise authorizing local entities to provide local
15 emergency notifications shall remain in effect, and shall apply to
16 all holders of a state-issued franchise in the same local area, for
17 the duration of the locally issued franchise, until the term of the
18 franchise would have expired were the franchise not terminated
19 pursuant to subdivision (m) of Section 5840, or until January 1,
20 2009, whichever is later.*

21 5800.7.

22 5885. (a) The local entity shall allow the holder of a state
23 franchise under this division to install, construct, and maintain a
24 network within public rights-of-way under the same time, place,
25 and manner as the provisions governing telephone corporations
26 under applicable state and federal law, including, but not limited
27 to, the provisions of Section 7901.1.

division

28 (b) *Nothing in this article shall be construed to change
29 existing law regarding the permitting process or compliance with
30 the California Environmental Quality Act (Division 13
31 (commencing with Section 21000) of the Public Resources Code)
32 for construction projects by a holder of a state franchise.*

33 (b)

34 d (e) A local entity may not enforce against the holder of a state
35 franchise any rule, regulation, or ordinance that purports to allow
36 the local entity to purchase or force the sale of a network.

37 5800.8.

38 5890. (a) A cable operator or video service provider that has
39 been granted a state franchise under this ~~article~~ *division* may not
40 discriminate against or deny access to service to any group of

Amendment 82

On page 29, between lines 33 and 34,
insert:

(c) (1) For purposes of this section, an "encroachment permit" means any permit issued by a local entity relating to construction or operation of facilities pursuant to this division.

(2) A local entity shall either approve or deny an application from a holder of a state franchise for an encroachment permit within 60 days of receiving a completed application. An application for an encroachment permit is complete when the applicant has complied with all statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) If the local entity denies an application for an encroachment permit, it shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

(4) The local entity shall adopt regulations prescribing procedures for an applicant to appeal the denial of an encroachment permit application issued by a department of the local entity to the governing body of the local entity.

(5) Nothing in this section precludes an applicant and a local entity from mutually agreeing to an extension of any time limit provided by this section.



1 potential residential subscribers because of the income of the
 2 residents in the local area in which the group resides.

3 ~~(b) Holders with more than 500,000 or their affiliates with~~
 4 ~~more than 1,000,000 telephone customers in California satisfy~~
 5 ~~this section subdivision (a) if all of the following conditions are~~
 6 ~~met:~~

7 (1) Within three years after it begins providing video service
 8 under this ~~article~~ *division*, at least 25 percent of households with
 9 access to the holder’s video service are low-income households.

10 (2) Within five years after it begins providing video service
 11 under this ~~article~~ *division and continuing thereafter*, at least 30
 12 percent of the households with access to the holder’s video
 13 service are low-income households.

14 ~~(c) Holders with less than 500,000 telephone customers in~~
 15 ~~California satisfy this section if any of the following conditions is~~
 16 ~~met:~~

17 ~~(1) When the holder is a telephone service provider of last~~
 18 ~~resort, as determined by the California Public Utilities~~
 19 ~~Commission, and is offering service within its telephone service~~
 20 ~~area, the holder shall offer video service to all customers within~~
 21 ~~their telephone service area within a reasonable time, as~~
 22 ~~determined by the state franchising authority. However, the state~~
 23 ~~franchising authority shall not require the holder to offer services~~
 24 ~~when the cost to provide service is substantially above the~~
 25 ~~average cost of providing service in that community. If the holder~~
 26 ~~is offering service outside its telephone service area, then no~~
 27 ~~additional requirement applies.~~

28 ~~(2) When the holder is not a telephone service provider of last~~
 29 ~~resort, the holder offers video service to an entire municipality in~~
 30 ~~a manner and sequence negotiated with that municipality that is~~
 31 ~~predicated on the success of the holder in attracting customers.~~

32 ~~(3) When the holder is offering video service and there is no~~
 33 ~~other video service being offered, other than direct-to-home~~
 34 ~~satellite service, no additional requirement applies.~~

35 (3) *Holders provide service to community centers in*
 36 *underserved areas, as determined by the holder, without charge,*
 37 *at a ratio of one community center for every 10,000 video*
 38 *customers. The holder shall not be required to take its facilities*
 39 *beyond the appropriate demarcation point outside the community*
 40 *center building or perform any inside wiring. The community*

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1 center may not receive service from more than one state
2 franchise holder at a time under this section. For purposes of this
3 section, “community center” means any facility ran by an
4 organization that has qualified for the California Teleconnect
5 Fund, as established in Section 280 and that will make the
6 holder’s service available to the community.

7 (c) Holders or their affiliates with fewer than 1,000,000
8 telephone customers in California satisfy this section if they offer
9 video service to all customers within their telephone service area
10 within a reasonable time, as determined by the commission.
11 However, the commission shall not require the holder to offer
12 video service when the cost to provide video service is
13 substantially above the average cost of providing video service in
14 that telephone service area.

area, is not a telephone corporation, or

15 (d) When a holder provides video service outside of its
16 telephone service ~~area or when a holder~~ offers video service in
17 an area where no other video service is being offered, other than
18 direct-to-home satellite service, there is a rebuttable presumption
19 that discrimination in providing service has not occurred within
20 those areas. ←

The commission may review the holder’s proposed video service area to ensure that the area is not drawn in a discriminatory manner.

21 ~~(d) For holders with more than 500,000~~

22 (e) For holders or their affiliates with more than 1,000,000
23 telephone customers in California, either of the following shall
24 apply:

25 (1) If the holder is predominantly deploying fiber optic
26 facilities to the customer’s premise, the holder shall provide
27 access to its video service to a number of households at least
28 equal to 25 percent of the customer households in the holder’s
29 telephone service area within two years after it begins providing
30 video service under this ~~article~~ division, and to a number at least
31 equal to 40 percent of those households within five years.

32 (2) If the holder is not predominantly deploying fiber optic
33 facilities to the customer’s ~~premise~~ premises, the holder shall
34 provide access to its video service to a number of households at
35 least equal to 35 percent of the households in the holder’s
36 telephone service area within three years after it begins providing
37 video service under this ~~article~~ division, and to a number at least
38 equal to 50 percent of these households within five years.

39 (3) A holder shall not be required to meet the 40 percent
40 requirement in paragraph (1) or the 50 percent requirement in

1 *paragraph (2) until two years after at least 30 percent of the*
2 *households with access to the holder's video service subscribe to*
3 *it for six consecutive months.*

4 ~~¶~~

5 (4) *If 30 percent of the households with access to the holder's*
6 *video service have not subscribed to the holder's video service*
7 *for six consecutive months within three years after it begins*
8 *providing video service, the holder shall may submit validating*
9 *documentation to the commission. If the commission is satisfied*
10 *finds that the documentation validates the holder's claim, then*
11 *the commission shall permit a delay in meeting the 40-percent*
12 *requirement in paragraph (1) or the 50-percent requirement in*
13 *paragraph (2) until the time that the holder does provide service*
14 *to 30 percent of the households for six consecutive months.*

15 ~~(e) (1) After two years~~

16 (f) (1) *After two years of providing service under this*
17 *division, the holder may apply to the state franchising authority*
18 *for a waiver of an extension to meet the requirements of*
19 *subdivision (b), (c), or (d) (e). Notice of this application shall*
20 *also be provided to the telephone customers of the holder, the*
21 *Secretary of the Senate, and the Chief Clerk of the Assembly.*

22 (2) *Upon application, the franchising authority shall hold*
23 *public hearings in the telephone service area of the applicant.*

24 (3) *In reviewing the failure to satisfy the obligations contained*
25 *in subdivision (b), (c), or (d) (e), the franchising authority shall*
26 *consider factors that are beyond the control of the holder,*
27 *including, but not limited to, the following:*

28 (i) *The ability of the holder to obtain access to rights-of-way*
29 *under reasonable terms and conditions.*

30 (ii) *The degree to which developments or buildings are not*
31 *subject to competition because of existing exclusive*
32 *arrangements.*

33 (iii) *The degree to which developments or buildings are*
34 *inaccessible using reasonable technical solutions under*
35 *commercially reasonable terms and conditions.*

36 (iv) *Natural disasters.*

37 (4) *The franchising authority may grant the waiver extension*
38 *only if the holder has made substantial and continuous effort to*
39 *meet the requirements of subdivision (b), (c), or (d) (e). If a*



1 ~~waiver an extension~~ is granted the franchising authority shall
2 establish ~~new requirements~~ *a new compliance deadline.*

section

3 (f)

4 (g) Local governments may bring complaints to the state
5 franchising authority that a holder is not offering video service as
6 required by this ~~article~~ *division*, or the state franchising authority
7 may open an investigation on its own motion. The state
8 franchising authority shall hold public hearings before issuing a
9 decision. *The commission may suspend or revoke the franchise if*
10 *the holder fails to comply with the provisions of this division.*

11 (g)

12 (h) If the state franchising authority finds that the holder is in
13 violation of this ~~article~~ *section*, it may, in addition to any other
14 remedies provided by law, impose a fine not to exceed 1 percent
15 of the holder’s total monthly gross revenue received from
16 provision of video service in the state each month from the date
17 of the decision until the date that compliance is achieved.

18 (h)

19 (i) If a court finds that the holder of the state franchise is in
20 violation of this section, ~~the holder’s state franchise shall~~
21 ~~immediately terminate~~ *the court may immediately terminate the*
22 *holder’s state franchise*, and the court shall, in addition to any
23 other remedies provided by law, impose a fine not to exceed 1
24 percent of the holder’s total gross revenue of its entire cable and
25 service footprint in the state in the full calendar month
26 immediately prior to the decision.

27 (i)

28 (j) As used in this section, the following definitions shall
29 apply:

30 (1) “Household” means consistent with the United States
31 Census Bureau, as a house, an apartment, a mobile home, a group
32 of rooms, or a single room that is intended for occupancy as
33 separate living quarters. Separate living quarters are those in
34 which the occupants live and eat separately from any other
35 persons in the building and which have direct access from the
36 outside of the building or through a common hall.

37 (2) “Low income household” means ~~as~~ those residential
38 households located within the holder’s existing telephone service
39 area where the average annual household income is less than
40 \$35,000 based on the United States Census Bureau estimates

1 adjusted annually to reflect rates of change and distribution
2 through January 1, 2007.

3 (3) “Customer’s household” means—as those residential
4 households located within the holder’s existing telephone service
5 area that are customers of the service by which that telephone
6 service area is defined.

7 (4) “Access” means that the holder is capable of providing
8 video service at the household address using any technology,
9 other than direct-to-home satellite service, providing two-way
10 broadband Internet capability and video programming, content,
11 and functionality, regardless of whether any customer has
12 ordered service or whether the owner or landlord or other
13 responsible person has granted access to the household. If more
14 than one technology is utilized, the technologies shall provide
15 ~~equivalent two-way broadband Internet capability and equivalent~~
16 ~~video programming.~~ *similar two-way broad band Internet*
17 *accessibility and similar video programming.*

18 (j)

19 (k) Nothing in this section shall be construed to require a
20 holder to provide video service outside its wireline footprint or to
21 match the existing cable franchise territory of any cable provider.

22 ~~5800.9. (a) (1)~~

23 5900. (a) The holder of a state franchise shall comply with
24 the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2
25 of the Government Code, and any other customer service
26 standards pertaining to the provision of video service established
27 by federal law or regulation, ~~adopted by the department pursuant~~
28 ~~to subdivision (q) of Section 53088.2 of the Government Code,~~
29 ~~or adopted by regulation or adopted by~~ subsequent enactment of
30 the Legislature. *All customer service and consumer protection*
31 *standards under this section shall be interpreted and applied to*
32 *accommodate newer or different technologies while meeting or*
33 *exceeding the goals of the standards.*

34 (2)

35 (b) The holder of a state franchise shall comply with
36 provisions of Section 637.5 of the Penal Code and the privacy
37 standards contained in Section 631 of the federal Cable Act (47
38 U.S.C. Sec. 551 et. seq.).

39 (b)

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1 (c) The local entity shall enforce all of the customer service
2 and protection standards of this section with respect to
3 complaints received from residents within the local entity's
4 jurisdiction, but it may not adopt or seek to enforce any
5 additional or different customer service or other performance
6 standards under Section 53055.3 or subdivision (q), (r), or (s) of
7 Section 53088.2 of the Government Code, or any other authority
8 or provision of law.

, by ordinance or resolution

9 ~~(e) The local entity may, by ordinance,~~

10 (d) *The local entity shall provide a schedule of penalties for*
11 *any ~~violation material breach~~ by a holder of a state franchise of*
12 *this section. No monetary penalties shall be assessed for a*
13 *~~violation material breach~~ if it is out of the reasonable control of*
14 *the holder. Further, no monetary penalties may be imposed prior*
15 *to January 1, 2007. Any schedule of monetary penalties adopted*
16 *pursuant to this section shall in no event exceed five hundred*
17 *dollars (\$500) for each day of each ~~violation material breach~~, not*
18 *to exceed one thousand five hundred dollars (\$1,500) for each*
19 *occurrence of a ~~violation material breach~~. However, if a*
20 *~~violation material breach~~ of this section has occurred, and the*
21 *city, county, or city and county local entity has provided notice*
22 *and a fine or penalty has been assessed, and if a subsequent*
23 *~~violation material breach~~ of the same nature occurs within 12*
24 *months, the penalties may be increased by the ~~city, county, or~~*
25 *city and county local entity to a maximum of one thousand*
26 *dollars (\$1,000) for each day of each ~~violation material breach~~,*
27 *not to exceed three thousand dollars (\$3,000) for each occurrence*
28 *of the ~~violation~~. If a third or further ~~violation material breach~~. If*
29 *a third or further material breach of the same nature occurs*
30 *within those same 12 months, and the ~~city, county, or city and~~*
31 *county local entity has provided notice and a fine or penalty has*
32 *been assessed, the penalties may be increased to a maximum of*
33 *two thousand five hundred dollars (\$2,500) for each day of each*
34 *~~violation material breach~~, not to exceed seven thousand five*
35 *hundred dollars (\$7,500) for each occurrence of the ~~violation~~*
36 *material breach. With respect to video providers subject to a*
37 *franchise or license, any monetary penalties assessed under this*
38 *section shall be reduced dollar-for-dollar to the extent any*
39 *liquidated damage or penalty provision of a current cable*
40 *television ordinance, franchise contract, or license agreement*

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1 imposes a monetary obligation upon a video provider for the
2 same customer service failures, and no other monetary damages
3 may be assessed.

4 ~~(d) If the local entity adopts a schedule of monetary penalties,~~
5 ~~the following procedures shall be followed:~~

6 ~~(1)~~

7 (e) The local entity shall give the video provider written notice
8 of any alleged ~~violations~~ *material breaches* of the consumer
9 service standards of this division and allow the video provider at
10 least 30 days from receipt of the notice to remedy the specified
11 ~~violation~~ *material breach*.

12 ~~(2) A violation~~

13 (f) A *material breach* for the purposes of assessing penalties
14 shall be deemed to have occurred for each day within the
15 jurisdiction of each local entity, following the expiration of the
16 period specified in ~~paragraph (1)~~ *subdivision (e)*, that any
17 ~~violation~~ *material breach* has not been remedied by the video
18 provider, irrespective of the number of customers affected.

19 (g) Any penalty shall be provided to the local entity who shall
20 submit one-half of the penalty to the Digital Divide Account
21 established in Section 280.5.

22 (h) Any interested person may seek judicial review of a
23 decision of the local entity in a court of appropriate jurisdiction.
24 For this purpose, a court of law shall conduct a *de novo* review
25 of any issues presented.

26 ~~(e)~~

27 (i) This section shall not preclude a party affected by this
28 section from utilizing any judicial remedy available to that party
29 without regard to this section. Actions taken by a local legislative
30 body, including a *local* franchising authority, pursuant to this
31 section shall not be binding upon a court of law. For this purpose,
32 a court of law ~~may~~ shall conduct *de novo* review of any issues
33 presented.

34 (j) For purposes of this section, “*material breach*” ~~has the~~
35 ~~same meaning as in Section 53088.1 of the Government Code.~~

36 ~~5800.10.~~

37 5910. (a) The holder of a state franchise shall perform
38 background checks of applicants for employment, according to
39 current business practices.

means any substantial and repeated failure of a video service provider to comply with service quality and other standards specified in subdivision (a).

Amendment 89
On page 36, between lines 36 and 37, insert:

(k) The Division of Ratepayer Advocates shall have authority to advocate on behalf of video customers regarding renewal of a state-issued franchise and enforcement of Sections 5890, 5900, and 5950. For this purpose, the division shall have access to any information in the possession of the commission subject to all restrictions on disclosure of that information that are applicable to the commission.



1 (b) A background check equivalent to that performed by the
2 holder shall also be conducted on all of the following:

3 (1) Persons hired by a holder under a personal service
4 contract.

5 (2) Independent contractors and their employees.

6 (3) Vendors and their employees.

7 (c) Independent contractors and vendors shall certify that they
8 have obtained the background checks required pursuant to
9 subdivision (f), and shall make the background checks available
10 to the holder upon request.

11 (d) Except as otherwise provided by contract, the holder of a
12 state franchise shall not be responsible for administering the
13 background checks and shall not assume the costs of the
14 background checks of individuals who are not applicants for
15 employment of the holder.

16 (e) (1) Subdivision (a) only applies to applicants for
17 employment for positions that would allow the applicant to have
18 direct contact with or access to the holder’s network, central
19 office, or customer premises, and perform activities that involve
20 the installation, service, or repair of the holder’s network or
21 equipment.

22 (2) Subdivision (b) only applies to persons that have direct
23 contact with or access to the holder’s network, central office, or
24 customer premises, and perform activities that involve the
25 installation, service, or repair of the holder’s network or
26 equipment.

27 (f) This section does not apply to temporary workers
28 performing emergency functions to restore the network of a
29 holder to its normal state in the event of a natural disaster or an
30 emergency that threatens or results in the loss of service.

31 ~~5800.11.~~ commission

32 5920. (a) A holder of a state franchise employing more than
33 750 total employees in California shall annually report to the
34 ~~department~~ all of the following:

35 (1) The number of California residents employed by the
36 holder, calculated on a full-time or full-time equivalent basis.

37 (2) The percentage of the holder’s total domestic workforce,
38 calculated on a full-time or full-time equivalent basis.

39 (3) The types and numbers of jobs by occupational
40 classification held by residents of California employed by

1 holders of state franchises and the average pay and benefits of
 2 those jobs and, separately, the number of out-of-state residents
 3 employed by independent contractors, companies, and
 4 consultants hired by the holder, calculated on a full-time or
 5 full-time equivalent basis, when the holder is not contractually
 6 prohibited from disclosing the information to the public. This
 7 paragraph applies only to those employees of an independent
 8 contractor, company, or consultant that are personally providing
 9 services to the holder, and does not apply to employees of an
 10 independent contractor, company, or consultant not personally
 11 performing services for the holder.

12 (4) The number of net new positions proposed to be created
 13 directly by the holder of a state franchise during the upcoming
 14 year by occupational classifications and by category of full-time,
 15 part-time, temporary, and contract employees.

16 (b) The ~~department~~ ^{commission} shall annually report the information
 17 required to be reported by holders of state franchises pursuant to
 18 subdivision (a), to the Assembly Committee on Utilities and
 19 Commerce and the Senate Committee on Energy, Utilities and
 20 Communications, or their successor committees, and within a
 21 reasonable time thereafter, shall make the information available
 22 to the public on its Internet Web site.

23 ~~5800.12. (a) The provisions of this article are intended to be~~
 24 ~~consistent with the federal Cable Act (47 U.S.C. Sec. 521 et~~
 25 ~~seq.).~~

26 ~~(b) Nothing in this section shall be interpreted to prevent a~~
 27 ~~voice provider, cable operator or video service provider, or local~~
 28 ~~entity from seeking clarification of its rights and obligations~~
 29 ~~under federal law or from exercising any right or authority under~~
 30 ~~federal or state law.~~

31 *5930. (a) Notwithstanding any other provision of this*
 32 *division, any video service provider that currently holds a*
 33 *franchise with a local franchising entity in a county that is a*
 34 *party, either alone or in conjunction with any other local*
 35 *franchising entity located in that county, to a stipulation and*
 36 *consent judgment executed by the parties thereto and approved*
 37 *by a federal district court shall neither be entitled to seek a state*
 38 *franchise in any area of that county, including any*
 39 *unincorporated area and any incorporated city of that county,*
 40 *nor abrogate any existing franchise before July 1, 2014. Prior to*

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1 July 1, 2014, the video service provider shall continue to be
2 exclusively governed by any existing franchise with a local
3 franchising entity for the term of that franchise and any and all
4 issues relating to renewal, transfer, or otherwise in relation to
5 that franchise shall be resolved pursuant to that existing
6 franchise and otherwise applicable federal, ~~state~~, and local law.
7 This subdivision shall not be deemed to extend any existing
8 franchise beyond its term.

9 (b) When an incumbent cable operator is providing service
10 under an expired franchise or a franchise that expires before
11 January 2, 2008, ~~any state-issued franchise~~ shall not become
12 operative prior to January 2, 2008.

the local entity may extend that franchise on the same terms and conditions through January 2, 2008. A state franchise issued to any incumbent cable operator

13 (c) When a video service provider that holds a state franchise
14 provides the notice required pursuant to subdivision (m) of
15 Section 5840 to a local entity, the local franchising entity may
16 require all incumbent cable operators to seek a state franchise
17 and shall terminate the franchise issued by the local franchising
18 entity when the commission issues a state franchise for the video
19 service provider that includes the entire service area served by
20 the video service provider and the video service provider notifies
21 the local entity that it will begin providing video service in that
22 area under a state franchise.

23 5940. The holder of a state franchise under this division who
24 also provides stand-alone, residential, primary line, basic
25 telephone service shall not increase this rate to finance the cost
26 of deploying a network to provide video service.

27 5950. The commission shall not permit a telephone
28 corporation that is providing video service directly or through its
29 affiliates pursuant to a state-issued franchise as an incumbent
30 local exchange carrier to increase rates for residential, primary
31 line, basic telephone service above the rate as of July 1, 2006,
32 until January 1, 2009, unless that telephone corporation is
33 regulated under rate of return regulation. However, the
34 commission may allow rate increases to reflect increases in
35 inflation as shown in the Consumer Price Index published by the
36 Bureau of Labor Statistics. This section does not affect the
37 authority of the commission to ~~increase~~ rates for basic telephone
38 service that is bundled with other services and priced as a
39 bundle. Nothing in this section is intended to prohibit

authorize an increase in

1 *implementation of commission decision D. 06-04-071 to the*
2 *extent it has not been implemented prior to July 1, 2006.*

3 ~~SEC. 2. Section 107.7 of the Revenue and Taxation Code is~~
4 ~~amended to read:~~

5 ~~107.7. (a) When valuing possessory interests in real property~~
6 ~~created by the right to place wires, conduits, and appurtenances~~
7 ~~along or across public streets, rights-of-way, or public easements~~
8 ~~contained in a cable television franchise or license granted~~
9 ~~pursuant to Section 53058.3 or Section 53066 of the Government~~
10 ~~Code (a “cable television possessory interest”), the assessor shall~~
11 ~~value these possessory interests consistent with the requirements~~
12 ~~of Section 401. The methods of valuation shall include, but not~~
13 ~~be limited to, the comparable sales method, the income method~~
14 ~~(including, but not limited to, capitalizing rent), or the cost~~
15 ~~method.~~

16 ~~(b) (1) The preferred method of valuation of a cable television~~
17 ~~possessory interest is capitalizing the annual rent, using an~~
18 ~~appropriate capitalization rate.~~

19 ~~(2) For purposes of this section, the annual rent shall be that~~
20 ~~portion of that franchise fee that is determined to be payment for~~
21 ~~the cable television possessory interest for the actual remaining~~
22 ~~term or the reasonably anticipated term of the franchise or license~~
23 ~~or the appropriate economic rent. If the assessor does not use a~~
24 ~~portion of the franchise fee as the economic rent, the resulting~~
25 ~~assessments shall not benefit from any presumption of~~
26 ~~correctness.~~

27 ~~(c) If the comparable sales method, which is not the preferred~~
28 ~~method, is used by the assessor to value a cable television~~
29 ~~possessory interest when sold in combination with other property~~
30 ~~including, but not limited to, intangible assets or rights, the~~
31 ~~resulting assessments shall not benefit from any presumption of~~
32 ~~correctness.~~

33 ~~(d) Intangible assets or rights of a cable television system are~~
34 ~~not subject to ad valorem property taxation. These intangible~~
35 ~~assets or rights, include, but are not limited to: franchises or~~
36 ~~licenses to construct, operate, and maintain a cable television~~
37 ~~system for a specified franchise term (excepting therefrom that~~
38 ~~portion of the franchise or license which grants the possessory~~
39 ~~interest), subscribers, marketing, and programming contracts,~~
40 ~~nonreal property lease agreements, management and operating~~

Amendment 95

On page 40, between lines 2 and 3, insert:

5960. (a) For purposes of this section, "census tract" has the same meaning as used by the United States Census Bureau, and "household" has the same meaning as specified in Section 5890.

(b) Every holder, no later than April 1, 2008, and annually no later than April 1 thereafter, shall report to the commission on a census tract basis the following information:

(1) Broadband Information:

(A) The number of households to which the holder makes broadband available in this state. If the holder does not maintain this information on a census tract basis in its normal course of business, the holder may reasonably approximate the number of households based on information it keeps in the normal course of business.

(B) The number of households that subscribe to broadband that the holder makes available in this state.

(C) Whether the broadband provided by the holder utilizes wireline-based facilities or another technology.

(2) Video Information:

(A) If the holder is a telephone corporation:

(i) The number of households in the holder's telephone service area.

(ii) The number of households in the holder's telephone service area that are offered video service by the holder.

(B) If the holder is not a telephone corporation:

(i) The number of households in the holder's video service area.

(ii) The number of households in the holder's video service area that are offered video service by the holder.

(3) Low-Income Household Information:

(i) The number of low-income households in the holder's video service area.

(ii) The number of low-income households in the holder's video service area that are offered video service by the holder.

(c) The commission, no later than July 1, 2008, and annually no later than July 1 thereafter, shall submit to the Governor and the Legislature a report that includes based on year-end data, on an aggregated basis, the information submitted by holders pursuant to subdivision (b).

(d) All information submitted to the commission and reported by the commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Section 583. No individually identifiable customer information shall be subject to public disclosure.

5970. Subject to the requirements of this division, a state franchise may be transferred to any successor in interest of the holder to which the certificate originally is granted, whether this transfer is by merger, sale, assignment, bankruptcy, restructuring, or any other type of transaction, provided that the following conditions are met:

(a) The transferee submits to the commission all of the information required by this division of an applicant.

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Substantive

(b) The transferee agrees that any collective bargaining agreement entered into by a video service provider shall continue to be honored, paid, or performed to the same extent as would be required if the video service provider continued to operate under its franchise for the duration of that franchise unless the duration of that franchise is limited by its terms or by federal or state law.

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1 systems, a workforce in place, going concern value, deferred,
2 startup, or prematurity costs, covenants not to compete, and
3 goodwill. However, a cable television possessory interest may be
4 assessed and valued by assuming the presence of intangible
5 assets or rights necessary to put the cable television possessory
6 interest to beneficial or productive use in an operating cable
7 television system.

8 (e) ~~Whenever any change in ownership of a cable television~~
9 ~~possessory interest occurs, the person or legal entity required to~~
10 ~~file a statement pursuant to Section 480, 480.1, or 480.2, shall, at~~
11 ~~the request of the assessor, provide as a part of that statement the~~
12 ~~following, if applicable: confirmation of the sales price;~~
13 ~~allocation of the sales price among the counties; and gross~~
14 ~~revenue and franchise fee expenses of the cable television system~~
15 ~~by county. Failure to provide this information shall result in a~~
16 ~~penalty as provided in Section 482, except that the maximum~~
17 ~~penalty shall be five thousand dollars (\$5,000).~~

18 SEC. 24 Section 107.7 of the Revenue and Taxation Code is
19 amended to read:

20 107.7. (a) When valuing possessory interests in real property
21 created by the right to place wires, conduits, and appurtenances
22 along or across public streets, rights-of-way, or public easements
23 contained in either a cable ~~television~~ franchise or license granted
24 pursuant to Section 53066 of the Government Code (a "cable
25 ~~television~~ possessory interest") or a state franchise to provide
26 video service pursuant to Section 5840 of the Public Utilities
27 Code, the assessor shall value these possessory interests
28 consistent with the requirements of Section 401. The methods of
29 valuation shall include, but not be limited to, the comparable
30 sales method, the income method (including, but not limited to,
31 capitalizing rent), or the cost method.

Code (a "video possessory interest"),

32 (b) (1) The preferred method of valuation of a cable television
33 possessory interest or video service possessory interest by the
34 assessor is capitalizing the annual rent, using an appropriate
35 capitalization rate.

36 (2) For purposes of this section, the annual rent shall be that
37 portion of that franchise fee received by the franchising authority
38 that is determined to be payment for the cable television
39 possessory interest or video service possessory interest for the
40 actual remaining term or the reasonably anticipated term of the

1 franchise or license or the appropriate economic rent. If the
 2 assessor does not use a portion of the franchise fee as the
 3 economic rent, the resulting assessments shall not benefit from
 4 any presumption of correctness.

5 (c) If the comparable sales method, which is not the preferred
 6 method, is used by the assessor to value a cable ~~television~~
 7 possessory interest *or video service possessory interest* when
 8 sold in combination with other property including, but not
 9 limited to, intangible assets or rights, the resulting assessments
 10 shall not benefit from any presumption of correctness.

11 (d) Intangible assets or rights of a cable ~~television~~ system *or*
 12 *the provider of video services* are not subject to ad valorem
 13 property taxation. These intangible assets or rights, include, but
 14 are not limited to: franchises or licenses to construct, operate, and
 15 maintain a cable ~~television~~ system *or video service system* for a
 16 specified franchise term (excepting therefrom that portion of the
 17 franchise or license which grants the possessory interest),
 18 subscribers, marketing, and programming contracts, nonreal
 19 property lease agreements, management and operating systems, a
 20 work force in place, going concern value, deferred, startup, or
 21 prematurity costs, covenants not to compete, and goodwill.
 22 However, a cable ~~television~~ possessory interest *or video service*
 23 *possessory interest* may be assessed and valued by assuming the
 24 presence of intangible assets or rights necessary to put the cable
 25 ~~television~~ possessory interest *or video service possessory interest*
 26 to beneficial or productive use in an operating cable ~~television~~
 27 system *or video service system*.

28 (e) Whenever any change in ownership of a cable ~~television~~
 29 possessory interest *or video service possessory interest* occurs,
 30 the person or legal entity required to file a statement pursuant to
 31 Section 480, 480.1, or 480.2, shall, at the request of the assessor,
 32 provide as a part of that statement the following, if applicable:
 33 confirmation of the sales price; allocation of the sales price
 34 among the counties; and gross revenue and franchise fee
 35 expenses of the cable ~~television~~ system *or video service system*
 36 by county. Failure to provide this information shall result in a
 37 penalty as provided in Section 482, except that the maximum
 38 penalty shall be five thousand dollars (\$5,000).

39 SEC. 3⁵ (a) *It is the intent of the Legislature that video*
 40 *service providers shall pay as rent a franchise fee to the local*



1 *entity in which service is being provided for the continued use of*
2 *streets, public facilities, and other rights-of-way of the local*
3 *entity in order to provide service.*

4 *(b) It is the intent of the Legislature that securing a state*
5 *franchise by a cable television operator or video service provider*
6 *pursuant to this act shall not affect the existing requirements*
7 *governing the valuation of possessory interests as set forth in*
8 *Section 107.7 of the Revenue and Taxation Code. Furthermore,*
9 *nothing in this act shall be construed to change the existing*
10 *jurisdiction of the State Board of Equalization and county*
11 *assessors with respect to the assessment of these properties for*
12 *property tax purposes.*

13 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
14 ~~Section 6 of Article XIII B of the California Constitution because~~
15 ~~the only costs that may be incurred by a local agency or school~~
16 ~~district will be incurred because this act creates a new crime or~~
17 ~~infraction, eliminates a crime or infraction, or changes the~~
18 ~~penalty for a crime or infraction, within the meaning of Section~~
19 ~~17556 of the Government Code, or changes the definition of a~~
20 ~~crime within the meaning of Section 6 of Article XIII B of the~~
21 ~~California Constitution.~~

22 SEC. 4⁶ *No reimbursement is required by this act pursuant to*
23 *Section 6 of Article XIII B of the California Constitution for*
24 *certain costs that may be incurred by a local agency or school*
25 *district because, in that regard, this act creates a new crime or*
26 *infraction, eliminates a crime or infraction, or changes the*
27 *penalty for a crime or infraction, within the meaning of Section*
28 *17556 of the Government Code, or changes the definition of a*
29 *crime within the meaning of Section 6 of Article XIII B of the*
30 *California Constitution.*

31 *However, if the Commission on State Mandates determines that*
32 *this act contains other costs mandated by the state,*
33 *reimbursement to local agencies and school districts for those*
34 *costs shall be made pursuant to Part 7 (commencing with Section*
35 *17500) of Division 4 of Title 2 of the Government Code.*