

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Sharon Quirk-Silva, Chair

AB 2748 (Holden) – As Introduced February 18, 2022

SUBJECT: Telecommunications: Digital Equity in Video Franchising Act of 2022

SUMMARY: This bill makes comprehensive changes to state law pertaining to cable operators and state video franchising including revising the renewal process for a state-issued video franchise, updating anti-discrimination requirements, requiring holders of a video franchise (“holders”) to provide equal access to service, and revising requirements for remittance of franchise fees to local governments. Specifically, **this bill:**

- 1) Renames existing law, The Digital Infrastructure and Video Competition Act of 2006, to the Digital Equity in Video Franchising Act (DEVFA) of 2022.
- 2) Makes various findings and declarations regarding the purpose of DIVCA, evidence why it has fallen short, and the need for further legislation to accomplish state goals.
- 3) Strikes existing law prohibiting the California Public Utilities Commission (CPUC) from regulating the terms and conditions of video service.
- 4) Strikes existing law that prohibits the CPUC and any local franchising authority from imposing any requirement on any holder beyond what is explicitly authorized in DIVCA.
- 5) Authorizes the CPUC to exercise all authority, jurisdiction, and powers granted to it by the federal Cable Communications Policy Act of 1984.
- 6) Authorizes CPUC to require supplementary information on applications for a state franchise.
- 7) Strikes existing law requiring the CPUC to issue a state franchise within 14 days when the holder submits a complete application.
- 8) Strikes existing law deeming applications for a state franchise approved if the CPUC does not respond within 44 days of receipt of the application.
- 9) Authorizes the CPUC to impose supplemental requirements on applicants for renewals.
- 10) Strikes existing law providing that holders do not owe the mandated franchise fee unless a local entity first provides documentation supporting their request for the mandated fees.
- 11) Establishes the policy of the state that subscribers and potential subscribers of a state video franchise holder should benefit from equal access to service within the service area.
- 12) Defines “equal access” to mean the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality-of-service metrics in a given area for comparable terms and conditions.
- 13) Revises existing law related to prohibitions on income discrimination by holders.

- 14) Strikes existing law limiting fines to 1 percent of the holder's monthly gross revenue.
- 15) Strikes existing law requiring any penalty assessed to be remitted to the local entity, which shall remit half to the Digital Divide Account.

EXISTING LAW:

- 1) Defines "franchise" as an authorization, issued by a franchising authority, which permits the construction or operation of a cable system. [47 United States Code (US Code) § 522(9)]
- 2) Provides that a state-issued franchise is valid for a period of 10 years, and requires a holder to apply for a renewal every 10 years if they wish to continue providing service.
- 3) Defines "franchising authorities" as any governmental entity empowered by Federal, State, or local law to grant a franchise. Existing state provides that the CPUC is the sole franchising authority in California. [47 USC § 522(10); Pub. Util. Code § 5840(a)]
- 4) Provides that franchise terms may require cable operators to build their systems to cover certain localities in a franchise area and that those costs are borne by the operator or subscribers. [47 US Code §541(a)(2)-(3)]
- 5) Requires that a local franchising authority must allow a cable operator a reasonable period of time to build out cable service to all households in the franchise areas. [47 US Code §541(a)(4)(A)]
- 6) Prohibits discrimination against potential residential cable subscribers because of the income of the residents in that local area. [47 USC § 541(a)(3); Pub. Util. Code § 5890(a)]
- 7) Establishes criteria for determining whether a video service provider has discriminated against residential subscribers. Existing law establishes different criteria for demonstrating compliance with non-discrimination prohibitions for franchise holders providing telephone service to more than one million Californians and those franchise holders providing telephone service to less than one million Californians. [Pub. Util. Code § 5890 (a-f)]
- 8) Prohibits any cable system or cable operator from being subject to regulation as a common carrier or utility as a result of providing video service. [47 USC § 541(c); Pub. Util. Code § 5810(a)(3); PUC § 5820(c)]
- 9) Clarifies that federal law does not prohibit a local franchising authority from prohibiting discrimination among subscribers and potential subscribers to cable service. [47 USC § 543(e)]
- 10) Expressly preempts any provision of state law that is inconsistent with the terms of federal law concerning cable service. [47 USC § 556(c)].
- 11) Requires every cable franchise holder to submit specified data to the CPUC by April 1st each year. Existing law requires franchisees to submit specified broadband, video, telephone, and low-income service metrics to the CPUC on a census tract basis. Existing law permits a franchise holder to "reasonably estimate" the number of households to which it provides broadband service in the state if the provider does not maintain broadband service

information on a census tract basis. Existing law prohibits the CPUC from publicly disclosing any of the data reported by franchise holders unless the CPUC orders the disclosure of the data through a proceeding. Any current or former CPUC employee or officer who discloses data outside of an order is guilty of a misdemeanor under existing law. (Pub. Util. Code §5960 & Pub. Util. Code § 583)

- 12) Prohibits the CPUC from exercising authority over cable operators beyond what is explicitly provided for in state law, and establishes the particular requirements for video service providers applying for a state franchise, and specifies the information franchise holders must provide to the CPUC to obtain and retain a state franchise. [Pub. Util. Code § 5840 et. seq.]
- 13) Allows local governments to bring complaints to the CPUC regarding cable franchises that are not offering video service required by this section. Existing law authorizes the CPUC to initiate an investigation on its own, regardless of whether it has received a complaint from a local government. The CPUC may suspend or revoke the license of a video service provider that fails to comply with the requirements for its franchise. Existing law also specifies fines that the CPUC or court may assess on violating franchisees. [Pub. Util. Code § 5890 (g-i)]
- 14) Requires the CPUC to adopt customer service requirements for a holder of a state and adjudicate any customer complaints. (Pub. Util. Code § 5895)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) *DIVCA Background and Broadband.* Prior to DIVCA, cable television providers were franchised at the local level by cities and counties (“Local Entities”). DIVCA shifted this responsibility away from Local Entities, making the CPUC the sole franchising authority for the provision of cable television service in California. Although existing local franchises were allowed to remain in effect until their expiration, companies with locally-issued franchises were allowed to opt out of them and procure a state-issued franchise if another state-issued franchisee began to compete with them, or if the Local Entity agreed.

DIVCA was enacted at a time when the incumbent local telephone companies (primarily AT&T and Verizon) wanted to begin to offer video services and compete with traditional cable companies, which had begun to provide competitive local telephone service. DIVCA was intended to provide for rapid entry into the video business by the incumbent telephone companies through a single, state-issued franchise rather than their needing to negotiate and secure hundreds of franchises from Local Entities.

DIVCA required video service connections to also provide the ability to receive internet access service. Thus, DIVCA was intended both to foster competition in the provision of video services and to promote the deployment of new broadband technology.

In addition to its provisions requiring state video franchises, DIVCA required franchise holders to submit certain data to the CPUC each year, on a census tract basis. That information included the number of households offered video and broadband services; the number subscribing to broadband services; as well as the number of low-income households in the video service area and the number of low-income households that were offered video service. DIVCA required this information to be aggregated and reported by the CPUC to the

Governor and Legislature on an annual basis. DIVCA also contained certain deployment obligations, including a provision that holders may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides. However, the deployment obligations created a low bar for holders to meet, and thusly reduced their incentive to expand service.

- 2) *DIVCA separated the franchising task from consideration of performance issues.* A key construct of DIVCA video franchising was the separation of the franchising task from the consideration of performance issues. Under local franchising, performance was regulated by Local Entities, and acceptable levels of past performance were required for franchise renewals. DIVCA transferred franchising authority to the CPUC, while Local Entities remained in the role of adopting and enforcing customer service-related performance by state video franchise holders. DIVCA required the CPUC to grant a franchise upon determination that an application for a video franchise was “complete”. Further, DIVCA required the CPUC to renew a franchise upon receipt of a completed renewal application unless the applicant had been found by a final court decision to have violated consumer protection rules (in suits brought by Local Entities) and had failed to cure its violation. To date, no enforcement action has been brought against any franchise holders

The lack of sufficient oversight by Local Entities is likely explained by the transition of local franchising to state franchising. Prior to DIVCA, many Local Entities had dedicated staff to carry out cable franchising, enforce customer service standards contained in local franchises, and adjudicate customer complains. After DIVCA shifted franchising responsibilities to the CPUC, Local Entities generally disbanded their staff dedicated to cable television matters, and enforcement activities generally ceased. Nonetheless, holders continued to pay Local Entities a franchise fee require by state law which could have continued to pay those staff salaries.

- 3) *Federal law protects holders from unfair denials of their applications and this bill limits the CPUC's authority consistent with federal law.* In 1984 Congress passed the Cable Communication Act which aimed to delineate the jurisdictional boundaries between federal, state, and local governments regarding the regulation of cable operators. Another key tenet of the Act, as expressly stated in federal law, was to protect cable operators against unfair denials of renewal. To that end, the Act established the local franchising process for states or local governments to administer, but also gave the Federal Communications Commission (FCC) ultimate authority over the regulation of cable and video service. Congress updated the Act in 1992, by passing the Cable Television Consumer Protection and Competition Act of 1992. Under the 1992 law, while local authorities retained the power to grant cable franchises, the law provided that “a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise.”

The federal Cable Act reflects the free-market political philosophy of Republican administrations. Not coincidentally, it was originally signed into law by President Ronald Regan and updated in 1992 under President George H. W. Bush. The logic underpinning most of its provisions validate the belief that that a light-touch regulatory approach would improve service for consumers through increased competition in the marketplace.

In the case of California law, DIVCA was also signed by a Republican Governor and it goes a step further than federal law by placing additional restrictions on the CPUC beyond what is

required by the Cable Act. For example, under DIVCA the CPUC is required to review and approve renewal applications very quickly, primarily to advantage the interests of the applicant. The CPUC is also prohibited from requiring cable operators to expand their service footprint to unserved areas, which the Cable Act does not prohibit. As a result, the regulatory scheme set-up by DIVCA leaves little opportunity for the CPUC - the sole franchising in the state - to exercise full oversight.

Has the light-touch regulatory approach inherent in DIVCA helped the state reach any of its goals regarding access? The evidence suggests it has not. For example, in most service territories of existing franchise holders there is little to no competition for video service and the companies operate essentially as a monopoly on video service. There are more options for broadband service in some areas, but according to a recent report based on state data about 87 percent of California households only have access to two or fewer choices of internet service providers, which indicates a concentrated and noncompetitive market.

- 4) *This bill strengthens existing anti-discrimination provisions.* Both federal and state law prohibit cable operators from discriminating against any group of potential residential subscribers because of the income. In the Cable Act, the prohibition on income discrimination is stated quite plainly. However, under DIVCA the anti-discrimination statute includes several qualifiers and sets a floor for holders to meet to show they are not discriminating. For example, holders with more than 1,000,000 telephone customers are required to meet a lower threshold of service accessibility to low-income households than companies with less 1,000,000 telephone customers. The standards based on telephone customers is reflective of DIVCA's intention at the time it was passed, which was make it easier for incumbent telephone companies to enter the market and compete with incumbent cable providers. Regardless of which standard is used though, both are easily attainable metrics for current franchise holders and thus do not encourage providers to expand their service to low-income households.

To address the issue described above, this bill would strengthen the existing anti-discrimination statute by removing the various qualifications that exist in current law. Further, the bill would also require that subscribers and potential subscribers of a state video franchise holder should benefit from equal access to service within the service area. The concept of equal access to service would be a novel addition to state law, but would serve to help address inequities within a holder's existing service territories such "donut holes" of service. A "donut hole" is a colloquial term used to describe an area with no service which is completely surrounded by areas that do have access to service. An example of a "donut hole" would be a trailer park or public housing development in an urban area that lacks access to service, despite service being made available the surrounding and likely higher-income communities. Based on CPUC data of broadband availability, there are potentially thousands of households in donut holes within the existing service territories of state franchise holders.

Requiring equal access to service is aligned with ongoing federal efforts to address digital discrimination. For example, pursuant to the federal Infrastructure Investment and Jobs Act (IIJA) the Federal Communications Commission (FCC) is considering rules to eliminate digital discrimination and ensure that all Americans have equal access to broadband internet access service. It is worth noting that broadband service is a distinct category from video service, with different regulatory considerations. Nonetheless, holders of a state video franchise are among the largest internet service providers in the state. To the extent that

franchise holders, under changes made by this bill, would be required to provide equal access to service within their service territories then some households would also benefit from expanded access to broadband since the two services are provided over the same infrastructure.

- 5) *State franchising vs. local franchising is a tradeoff.* As stated previously, prior to DIVCA cable television providers were franchised at the local level by local entities. That regulatory scheme required cable operators to enter into various franchise agreements across the state with potentially different terms and conditions for each local jurisdiction. By making the CPUC the sole franchising authority in the state, DIVCA provided cable operators a streamlined and efficient process for obtaining authorization to provide service in the state. In turn, the state expected to see greater competition in the market and more long-term investments to expand service across the state. Although the evidence suggests that the DIVCA franchising scheme has fallen short of its potential, it is difficult to know whether maintaining local franchising would have yielded better results over time. A recent white paper published by the Electronic Frontier Foundation, based on analysis from New York City, concludes that large cities that do not have local franchise authority are losing out because they lack the negotiating leverage needed to push private fiber to all city residents, particularly low-income residents. Nonetheless, there is no knowing whether the same would be true in California unless franchising authority was returned to local entities.

Opponents of the bill, the California Cable and Telecommunications Association, claim that the bill would authorize duplicative local AND state franchising. However, the bill explicitly retains the CPUC as the sole franchising authority in the state. Nonetheless, the question of local government involvement in the franchising process is a worthy point of policy consideration. Ultimately, there is tradeoff between efficiency and thoroughness, and each has different advantages for the companies and consumers. Moving forward, the author may wish to consider how to best balance the needs of regulatory certainty for companies, local government involvement, and an efficient franchising process.

- 6) *Franchise fees to local government.* Under existing law, as authorized by the federal Cable Act, franchise holders are required to pay franchising fees. Under DIVCA, franchise fees are five percent of a franchise holder's gross revenues and are paid directly to local governments. However, the franchise holder is only required to pay the fee after a local government has substantiated, through documentation provided to the franchise holder, the amount they are owed. Existing law permits local entities to audit the books of a franchise holder to ensure accurate collections, however it also places cost burdens and liabilities on local entities that choose to exercise that right. This bill would strike several provisions governing the process for remittance of franchise to local entities by franchise holders. However, it remains unclear the extent to which improper accounting might be an issue. Certainly a streamlined payment process would make it easier for local governments to collect the franchise fees they are owed, however making it easier to audit the books of a franchise holder to ensure proper accounting can create a burden for the holder as well.

- 7) *Related/similar legislation.*

- a. SB 28 (Caballero. Chapter 673, Statutes of 2021) expands the authority of the CPUC to collect data to enforce requirements for cable franchises and authorizes the CPUC to set customer service requirements for cable providers.

- b. AB 2635 (Levine, 2022) places additional requirements on holders of a state video franchise regarding the transmission of public, education, and governmental access (PEG) channels.
- 8) *Arguments in opposition.* Opponents of the bill, which include the California Cable and Telecommunications Association (CCTA) and regional business advocacy organizations, are concerned the bill has the potential to create excessive regulatory burdens that would discourage investment and expansion of service in the state. Further, opponents argue that the bill unfairly targets state franchise holders for the state's broadband issues and would unfairly burden cable ISPs.
 - 9) *Arguments in support.* The bill is supported by a coalition of consumer advocates, local governments, and education-focused organizations. Supporters argue that the Digital Equity and Video Franchising Act (DEVFA) will address modern issues with broadband connectivity, subscriber discrimination by telecommunications providers, and other digital equity barriers that effect Californian's ability to access high-quality video and broadband services.
 - 10) *Committee amendments.* The following amendments are substantive in nature and would revise various sections of the bill. The amendments reflect the committee's engagement with various stakeholders, better align the bill with the author's intent, and address various issues raised in this analysis.
 - a. In Section 3 of the bill, add citations to findings and declarations.
 - b. In Section 5 of the bill, clarify that no local franchising entity or local entity may require or impose additional conditions on a holder of a state franchise.
 - c. In Section 5 of the bill, require that a holder of a state franchise shall submit an application to the CPUC requesting renewal of a state franchise.
 - d. In Section 9 of the bill, strike provisions of the bill that revise current law pertaining to the remittance of franchise fees to local entities and the procedures for examining the books of franchise holders.
 - e. In Section 10 of the bill, strike various provisions to avoid conflicts with other pending legislation.
 - f. In Section 12 of the bill, return provisions of existing law requiring the CPUC to consider specified criteria when reviewing potential violations of anti-discrimination and equal access provisions.
 - g. In Section 13 of the bill, return provisions of existing law authorizing local entities to enforce all of the existing customer service and protection standards.
 - h. In Section 13 of the bill, return provisions of existing law requiring that fines shall be remitted to a local entity.
 - i. In Section 13, return provisions of existing law regarding the authorities of the Public Advocate's Office of the Public Utilities Commission.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Humboldt
Active San Gabriel Valley
Alliance for A Better Community

California Community Foundation
California State Association of Counties (CSAC)
Common Sense
Common Sense Media
Communities in Schools of Los Angeles (CISLA)
Community Media Access Collaborative
Community Television of Santa Cruz County
Creatv
Electronic Frontier Foundation
Great Public Schools Now
L.A. Coalition for Excellent Public Schools
La-tech
Media Alliance
Nextgen California
Pacoima Beautiful
Para Los Ninos
Parent Institute for Quality Education
Rural County Representatives of California (RCRC)
San Francisco Foundation
Silicon Valley Community Foundation
The People's Resource Center
Unite-la
Urban Counties of California

Opposition

California Cable & Telecommunications Association
Directv Group, INC.
Downtown San Diego Partnership
Orange County Business Council
San Diego Regional Chamber of Commerce

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