

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner Horvath, Chair

AB 41 (Holden) – As Amended April 7, 2023

**SUBJECT:** Telecommunications: The Digital Equity in Video Franchising Act of 2023

**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 increasing the limit on penalties. 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 2023.
- 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 from imposing any requirement on any holder of a state franchise beyond what is explicitly authorized in DIVCA.
- 5) Authorizes the CPUC to exercise the 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) Revises and recasts the timelines by which the CPUC must review and dispense of applications for a state franchise.
- 8) Adds a requirement that a public hearing must be held for renewals of a state franchise.
- 9) Authorizes the CPUC to impose additional terms on a franchise holder as a condition of holding the state franchise, including requiring upgrades to the cable system.
- 10) Establishes standards for the residences within a service area where a video service provider must make service available.
- 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) Revises existing law related to prohibitions on income discrimination by holders.
- 13) Increases the limits on various penalties for violations.
- 14) Strikes existing law requiring any penalty assessed to be remitted to the local entity, which shall remit half to the Digital Divide Account.

- 15) Authorizes the CPUC to enforce customer service requirements for holders of a state franchise.

**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.* The Digital Infrastructure and Video Competition Act (DIVCA) established the process and procedures by which cable television providers were granted authorization, via a state video franchise, to operate. 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, and established a ministerial review process with CPUC as the sole franchising authority. 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. By establishing ministerial process with low-barriers to entry into the market, DIVCA was intended to provide for rapid entry into the video business by the incumbent telephone companies through a single, state-issued franchise. The DIVCA process replaced the need to negotiate and secure hundreds of franchises from Local Entities. DIVCA also required video service connections to 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 broadband capable infrastructure.

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 in low-income areas.

- 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 network 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. More recently, SB 28 (Caballero. Chapter 673, Statutes of 2021) authorized the CPUC to set customer service requirements for cable providers. The CPUC recently opened a proceeding to implement SB 28. While SB 28 only provided explicit authorization for the CPUC to adopt customer service requirement, this bill would specify that the CPUC has the authority to enforce those customer service requirements.

- 3) *Federal law protects holders from unfair denials of their applications.* 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. 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's authority beyond what is required by the Cable Act. For example, under DIVCA the CPUC is required to review and approve renewal applications within 44 days, which primarily advantages the interests of the applicant. The CPUC is also prohibited from requiring cable operators to expand their infrastructure footprint to unserved households, 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 oversight this industry.

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% 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 infrastructure to low-income households.

To address the issue described above, this bill would strengthen the existing anti-discrimination statute by increasing the percent of low-income households that must have access to the holder's service. Under current law the upper threshold is 30% of low-income households, and under this bill the upper threshold would be 100% of low-income households.

- 5) *This bill would require equal access to service.* Existing law requires that franchise holders may not deny access to any group of potential subscribers because of income. This bill would expand that requirement, and establish that subscribers and potential subscribers of a state video franchise holder should benefit from equal access to service within the service area. The requirement to provide equal access to service would 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. Additionally, a requirement to

provide equal access to service would likely serve to encourage franchise holders to upgrade existing infrastructure in low-income areas.

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.

- 6) *This bill establishes a build-out mandate on holders of a state franchise.* Under existing law, the CPUC (the sole franchising authority) has no authority to require upgrades to the cable system, such as build-out to unserved households, under any circumstance. The strict limitations in DIVCA are not aligned with federal law, which envisions a negotiation between the franchising authority and the applicant to find a balance between the public's interest and the economic interest of the franchise holder. This bill would cut right into any potential negotiation by mandating build-out to households within the franchise holder's service territory, but not outside of it. Notably, franchise holders designate their own service territory and in that regard decide what areas they wish to serve. This bill would mandate that holders eventually build out to all households within their self-designated service territories within five years, with some exceptions.

The build-out mandate in this bill would likely be very expensive for the franchise holders to comply with, as there are thousands of households within franchise holder's service territories that do not have access to service. The bill does include a threshold that specifies build-out is only required where there is a minimum density of 25 residences per linear mile of cable, except the exception is only applicable for three years. It might be reasonable to consider a density requirement for all areas for the duration of the franchise term. Without a density threshold, some franchise holders may decide that it is more cost-effective to pull out of rural areas because of the cost of the mandate to serve that area. In turn, the mandate may have an unintended consequence of providers pulling out of existing areas.

- 7) *This bill increases the limits fines and penalties on franchise holders for violations.* Current law establishes limitations on civil penalties for violations of existing anti-discrimination requirements and other breaches of a state franchise. Depending on the violation, the civil penalties are capped at either 1% of the holder's monthly gross revenue or a certain dollar amount per day. This bill would increase the penalties to up to 5% of the holder's annual revenue, which is a very significant increase. For civil penalties that can be assessed by a local entity, the dollar amount increases vary but are also significant. Historically, there have not been widespread allegations of violations; however, recent changes under recent legislation and this bill would raise the standards of operation.
- 8) *Arguments in support.* The bill is supported by a coalition of digital equity advocates, including the California Alliance for Digital Equity. The supporters write that "AB 41

addresses critical issues with equitable access to services offered by holders of state franchises, creates a transparent and fair process for once-a-decade franchise renewals, and establishes a mechanism for California customers to make the commission aware of service quality issues.”

9) *Arguments in opposition.* The bill is opposed by various industry-aligned organizations, including the California Broadband & Video Association (CalBroadband). CalBroadband writes that the bill “would impose arbitrary and complex new requirements on video service providers and remove video service providers’ incentives to expand their service areas.” CalBroadband also asserts that the bill contains technically and financially infeasible requirements for franchise holders.

10) *Related/similar legislation.*

- a. SB 28 (Caballero. Chapter 673, Statutes of 2021) expanded 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.

11) *Committee amendments.* The author may wish to consider the following amendments:

- a. In Section 5840, clarify that the CPUC’s expanded authority under this bill may not exceed what is necessary to enforce this Act.
- b. In Section 5840, revise and recast the timelines for the CPUC to determine whether an application is complete or incomplete and revise the timeline such that the CPUC must issue the franchise within 60 days if no determination is made.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

#oaklandundivided Coalition  
Access Humboldt  
Active San Gabriel Valley  
Alliance for A Better Community  
Alliance for Community Media - Western Region  
Altadena Library District  
Altamed Health Services  
Arts for La  
California Black Health Network  
California Community Foundation  
California Native Vote Project  
California Workforce Association  
Center for Powerful Public Schools  
Common Sense Media  
Communities in Schools of Los Angeles (CISLA)  
Community Clinic Association of Los Angeles County (CCALAC)  
Community Coalition of The Antelope Valley  
Destination Crenshaw  
Dtla Chamber of Commerce

Electronic Frontier Foundation  
Everyoneon  
Gpsn  
Healing and Justice Center  
Inner City Struggle  
Innovate Public Schools  
Institute for Local Self-reliance  
Kid City Hope Place  
L.a. Coalition for Excellent Public Schools  
Latino Equality Alliance  
League of California Cities  
Lynwood Unified School District  
Media Alliance  
Mediajustice  
Michelson Center for Public Policy  
New Livable California DbA Livable California  
Nextgen California  
Nextgen Policy  
Our Voice: Communities for Quality Education  
Pacoima Beautiful  
Para Los Niños  
San Diego; County of  
Small Business Majority  
Southeast Community Development Corporation  
The Children's Partnership  
Unite-la  
United Parents and Students  
YMCA of Metropolitan Los Angeles

**Opposition**

Calchamber  
California Broadband & Video Association  
Orange County Business Council  
San Gabriel Valley Economic Partnership  
United States Telecom Association DbA Ustelecom - the Broadband Association

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