

**ORDINANCE NO. 2008-043**

Adopted by the Sacramento City Council

September 2, 2008

**AN ORDINANCE AMENDING SECTION 5.28.300 OF THE  
SACRAMENTO CITY CODE AND ADDING ARTICLE XIX TO  
CHAPTER 5.28 OF TITLE 5 OF THE SACRAMENTO CITY CODE  
RELATING TO IMPLEMENTATION OF THE DIGITAL  
INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 BY  
THE SACRAMENTO METROPOLITAN CABLE TELEVISION  
COMMISSION**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**BACKGROUND**

**SECTION 1.**

Section 5.28.300 of the Sacramento City Code is amended to read as follows:

**5.28.300 Purposes.**

The purposes of the cable television commission shall be as follows:

- A. To administer pursuant to the terms and conditions of the franchise documents, the initial CATV franchise and any franchise subsequently issued pursuant to the provisions of this chapter;
- B. To exercise any and all other powers conferred by the franchise documents.
- C. To administer and enforce the Digital Infrastructure and Video Competition Act of 2006.

**SECTION 2.**

Article XIX is added to Chapter 5.28 of Title 5 of the Sacramento City Code to read as follows:

## Article XIX

### Local Administration and Enforcement of Provisions of the Digital Infrastructure and Video Competition Act of 2006

#### 5.28.2660 Delegation of Powers.

Except as otherwise expressly provided in any action of the Sacramento City Council pursuant to its reserved powers under section 5.28.170 of Chapter 5.28, all powers, rights, duties and obligations of the City pursuant to the provisions of the Digital Infrastructure and Video Competition Act of 2006 (Public Utilities Code section 5800 et seq.) as it exists now or should hereafter be amended (the "Act"), are hereby delegated to and conferred upon the Board of Directors of the Sacramento Metropolitan Cable Television Commission (herein referred to as the "cable television commission" or "commission") as to any video provider included within the scope of the Act, including, without limitation, the Act's provisions for customer service regulation and enforcement, establishment of the percent of the franchise fees, provision of PEG channels, carriage and channel facilities fees and enforcement of the Act.

#### 5.28.2670 Implementation of Actions

Consistent with the delegation of powers provided in section 5.28.2660 of this code and without limiting the delegation of powers, the following implementation actions provided for under the Act are hereby confirmed, ratified and delegated to the cable television commission:

- A. Franchise Fee. As provided in the current cable franchise and license ordinances and established by the commission, the franchise or license fee established within the area covered by the commission, including the City, for cable franchises and/or licenses is five percent (5%) of gross revenues. Said franchise or license fee amount shall also apply to holders of state franchises under the Act who provide services within the City.
- B. PEG Channels.
  - 1. The current cable franchise designates seven (7) channels for Public, Educational and Government (PEG) programming. Local franchisees and holders of state franchises under the Act shall provide seven (7) PEG channels.
  - 2. All state franchisees shall comply with the provisions of the Act related to PEG channels. Without limiting the foregoing, the PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed

without the agreement of the local entity unless the change is required by federal law. 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.

3. A state franchise holder shall have three (3) months from the date the commission requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by the Act. Any state franchise holder who believes that the designation or provision of PEG channel capacity is technically infeasible shall provide to the commission, in writing, its reasons therefor and its plan for correcting or solving the infeasibility. The commission may hold a hearing on the claim of infeasibility and, thereafter, take such action as the commission deems proper to require the designation and provision of the PEG channels on the state franchise holder's system.

C. PEG Channel Facilities Fee.

1. In December 2006, pursuant to its delegated authority, the commission imposed a PEG Channel Facilities Fee ("PEG Fee") in the amount of three percent (3%) of gross revenues of the franchisee or licensee per subscriber but delayed collection of that fee. Pursuant to its delegation of authority, the commission is hereby authorized to commence collection of a PEG Fee, a separate fee to support PEG channel facilities and equipment, of up to three percent (3%) of gross revenues applicable to state and local franchisees and licensees, in the manner and at the time the commission determines. This fee shall apply to all video franchisees, whether local or state granted, within the City. Use of the PEG Fees shall be consistent with applicable state and federal law. Any PEG Fee required to be collected may be shown as a separate line item on the regular bill of each subscriber.
2. Any franchisee or licensee that believes it is exempt from said PEG Fee or subject to a different or lower fee may file a written request for a determination of the applicability of the PEG Fee with the commission. Said request shall be filed within thirty (30) days of the effective of this ordinance or within thirty (30) days of commencement of video services within the City, whichever occurs last. Said request shall be heard by the commission.
  - a. Exemptions claims may be based on state or federal law, or on the provisions of existing franchise agreements.
  - b. Additional exemptions for claims for and action on claims for reduction in the PEG Fee to be paid to the commission may be

based on monetary or in kind PEG financial support provided by the claimant based, for example, on agreements between the commission and the franchisee or licensee for support of PEG facilities and equipment and/or institutional network facilities and support provided by the franchisee or licensee.

5.28.2680 Customer Service and Protection; Monetary Penalties.

- A. Local franchisees and licensees and holders of state franchises under the Act shall comply with the provisions of section 637.5 of the Penal Code and the privacy standards contained in section 631 of the federal Cable Act (47 U.S.C. section 551 et seq.) Local franchisees and licensees and holders of state franchises shall comply with the provisions of sections 53055, 53055.1, 53055.2, and 53088.2 of the Government Code, and any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the Act. Local franchisees and licensees shall comply with any customer services standards included in the franchise and license agreements. The commission and/or the City shall enforce, in the manner set forth in the Act, all customer service and protection standards contained in section 5900 of the Act, including without limitation those standards set forth in section 5900(c). The commission has been and is hereby authorized to impose penalties for any material breach of the Act, as set forth herein.
- B. The maximum monetary penalties set forth in Public Utilities Code section 5900 are hereby adopted and enacted as the applicable schedule of penalties for the material breach of the Act, including but not limited to section 5900 of the Act, by a holder of a state franchise, as follows:
1. Five hundred dollars (\$500) per day for each material breach, not to exceed one thousand five hundred dollars (\$1,500) for the occurrence of a material breach.
  2. If a material breach has occurred and notice has been provided and a fine or penalty has been assessed, any subsequent breach of the same nature within twelve (12) months shall be subject to a penalty of up to one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.
  3. If a third or further material breach of the same nature occurs within those same twelve (12) months, and notice has been provided and fine or penalty has been assessed, the penalties shall increased to a maximum of two thousand five hundred dollars (\$2,500) for each occurrence of the material breach, not to exceed seven thousand five hundred (\$7,500) for each occurrence of the material breach.

As used herein, "material breach" is defined as set forth in the Act, Public Utilities Code section 5900.

SECTION 3.

If any part or provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable and are intended to have independent viability.

Adopted by the City of Sacramento City Council on September 2, 2008 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

  
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Mayor Heather Fargo

Attest:

  
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Shirley Corcolino, City Clerk

Passed for Publication: August 26, 2008

Published: August 29, 2008

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