

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
AMENDING CHAPTER 13.12, CABLE SYSTEM FRANCHISE REGULATION, OF
THE CITY OF CALISTOGA MUNICIPAL CODE

WHEREAS, the Legislature of the State of California has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which became effective on January 1, 2007; and,

WHEREAS, DIVCA establishes a regulatory structure for the State to be the exclusive authority to issue franchises to video service providers; and,

WHEREAS, DIVCA establishes that local entities, such as the City of Calistoga (the “City”), are responsible for administration and implementation of certain provisions of DIVCA; and,

WHEREAS, DIVCA allows for the City to establish, by ordinance, provisions for franchise fees; for Public, Educational and Governmental (PEG) channel fees; enforcement of customer service standards; and other regulations that are not in conflict with DIVCA or other state law; and,

WHEREAS, DIVCA allows for local franchises that were in place prior to the adoption of the statute to remain in place until such time as the franchisee obtains a franchise from the State; and

WHEREAS, prior to the adoption of DIVCA, the City issued a franchise to Comcast for video service within the City, which franchise expired on September 1, 2015: and

WHEREAS, effective September 2, 2015, Comcast received a franchise from the State to provide video service within Calistoga; and,

WHEREAS, the City Council desires to amend the provisions of the City’s Code pertaining to cable franchising to be consistent with DIVCA.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES ORDAIN AS FOLLOWS:

SECTION ONE: Amendment to Municipal Code

Chapter 13.12 of the City of Calistoga Municipal code is hereby amended to read as set forth in Exhibit A to this Ordinance.

SECTION TWO: Severability

Should a court of competent jurisdiction find any provision of this Ordinance or its application to any person or property to be invalid or unenforceable, the remaining provisions hereof shall be enforceable according to their terms and to that end the provisions of this ordinance are severable.

50 **SECTION THREE: Effective Date**

51 This ordinance shall take effect 30 days after its final passage.
52

53 **SECTION FOUR: Posting**

54 Within 15 days from the date of passage of this ordinance, the City Clerk shall post a
55 copy of the ordinance in accordance with California Government Code in at least three public
56 places in the City.
57

58 **THIS ORDINANCE** was introduced with the first reading waived at the City of
59 Calistoga City of Council meeting of the __ **day of** _____, **2015**, and was passed and adopted
60 at a regular meeting of the Calistoga City Council on the __ **day of** _____, **2015**, by the
61 following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CHRIS CANNING, Mayor

Kathy Flamson, City Clerk

EXHIBIT A

Chapter 13.12 VIDEO SERVICE PROVIDERS

Sections:

- 13.12.010 Application and Construction of Chapter
- 13.12.020 State Video Franchise Fees and PEG Access Fees
- 13.12.030 Audit Authority
- 13.12.040 Late Payments
- 13.12.050 PEG Access Channel Capacity, Interconnection, and Signal Carriage.
- 13.12.060 Customer Service Penalties
- 13.12.070 Emergency Alert.
- 13.12.080 Notices
- 13.12.090 Permits and Construction

13.12.010 Application and Construction of Chapter

A. This Chapter applies to video service providers holding state franchises to provide video service within the City of Calistoga under the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), codified in California Public Utilities Code section 5800 *et seq.* Unless the context clearly indicates otherwise, the definitions contained in DIVCA apply to this Chapter. This Chapter is intended to supplement, not to duplicate or contradict, DIVCA and this Chapter shall be construed in light of that intent.

B. Pursuant to DIVCA, the California Public Utilities Commission (“CPUC”) has the exclusive authority to grant and administer state franchises for video service. However, DIVCA confers certain rights and responsibilities on the City with respect to state video franchise holders operating within the City, including but not limited to, receipt of fees for rent of right of ways in the form of a franchise fee and additional fees for support of public, educational, and governmental (“PEG”) access channels. DIVCA also requires the City to establish and enforce penalties, consistent with state law, against all state video franchise holders operating within the City for violations of customer service standards established by state law.

C. Nothing contained in this Chapter 13.12 exempts a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or DIVCA.

D. The rights reserved to the City under this Chapter 13.12 are in addition to all other rights of the City, whether reserved by this Chapter 13.12 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City. The City reserves its rights to the lawful exercise of police and other powers the City now has or may later obtain. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

1. Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, non-video services;

- 111 2. Any permit or authorization, other than a state franchise, required in connection with
112 operations on or in public rights-of-way or public property, including, but not limited to,
113 encroachment permits, street work permits, pole attachment permits and street cut
114 permits; and
115 3. Any permit, agreement or authorization for occupying any other property of the City
116 or any private person to which access is not specifically granted by the state
117 franchise.
118

119 **13.12.020 State Video Franchise Fees and PEG Access Fees**
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121 A. Any state franchise holder operating within the boundaries of the City shall pay a
122 franchise fee to the City equal to five percent (5%) of the gross revenues, as defined in
123 Public Utilities Code section 5860(d), of that state franchise holder.
124

125 B. Any state franchise holder operating within the boundaries of the City shall pay a fee to
126 the City as such time as directed by the City, or if directed by the City, to the City's
127 designated PEG provider, a PEG fee equal to one percent (1%) of the gross revenues of
128 that state franchise holder to support PEG access channel facilities.
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130 C. The franchise fee required pursuant to Section 13.12.020(A) and the PEG fee required
131 pursuant to Section 13.12.020(B) shall each be paid to the City quarterly, in a manner
132 consistent with California Public Utilities Code section 5860. The state franchise holder
133 shall deliver to the City, by check or other means specified by the City, a payment for the
134 franchise fee and a separate payment for the PEG fee not later than forty-five (45) days
135 after the end of each calendar quarter. Each payment made shall be accompanied by a
136 report, detailing how the payment was calculated, containing such information as the City
137 Manager or his or her designee may require, consistent with DIVCA. ~~Unless the City~~
138 ~~Manager or his or her designee provides otherwise, the summary statement shall identify:~~
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140 ~~1. Revenues received from subscribers, by category, with service revenues broken out by~~
141 ~~service levels;~~
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143 ~~2. Any charges to subscribers for which revenues were received, but on which a franchise~~
144 ~~fee was not paid; and~~
145

146 ~~3. Where the fee is paid on an allocated portion of revenues received, the total revenues~~
147 ~~received; the allocation factor; and how the allocation factor was calculated.~~
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149 ~~D. Gross revenue, for the purposes of subsections A and B of this section, shall have the~~
150 ~~definition set forth in California Public Utilities Code Section 5860.~~
151

152 D. The City shall provide written notification to State franchise holder(s) at such time that the
153 City wishes to implement the PEG support fee. State franchise holders so notified shall
154 commence payment of the fee to the City 60 days after City notification of PEG fee
155 implementation.
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159 **13.12.030 Audit Authority**

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161 Not more than once annually, the City Manager or his or her designee may examine and perform
162 an audit of the business records of a holder of a state franchise to ensure compliance with Section
163 13.12.020 in a manner consistent with California Public Utilities Code section 5860(i).

164

165 **13.12.040 Late Payments**

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167 In the event a state franchise holder fails to make payments required by this chapter on or before
168 the due dates specified in this chapter, the City shall impose a late charge at the rate per year
169 equal to the highest prime lending rate during the period of delinquency, plus one percent (1 %).

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171 **13.12.050 PEG Access Channel Capacity, Interconnection, and Signal Carriage**

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173 A. PEG Channel Capacity.

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- 175 1. A state franchisee that has been authorized by the California Public
176 Utilities Commission to provide video service in the City shall designate
177 and activate three PEG channels within three months from the date that the
178 City requests that the state franchisee designate and activate these PEG
179 channels. However, this three-month period shall be tolled for such a
180 period, and only for such a period, during which the state franchisee's
181 ability to designate or provide such PEG capacity is technically infeasible,
182 as provided in Section 5870(a) of the California Public Utilities Code.

183

- 184 2. A state franchisee shall provide an additional PEG channel when the
185 standards set forth in Section 5870(d) of the California Public Utilities
186 Code are satisfied by the City or any entity designated by the City to
187 manage one or more of the PEG channels.

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189 B. PEG Carriage and Interconnection.

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- 191 1. State franchisees shall ensure that all PEG channels are receivable by all
192 subscribers, whether they receive digital or analog service, or a
193 combination thereof, without the need for any equipment other than that
194 needed to receive the lowest cost tier of service. PEG access capacity
195 provided by a state franchisee shall be of similar quality and functionality
196 to that offered by commercial channels (unless the PEG signal is provided
197 to the state franchisee at a lower quality or with less functionality), shall
198 be capable of carrying a National Television System Committee (NTSC)
199 quality television signal, and shall be carried on the state franchisee's
200 lowest cost tier of service. To the extent feasible, the PEG channels shall
201 not be separated numerically from other channels carried on the lowest
202 cost tier of service and the channel numbers for the PEG channels shall be
203 the same channel numbers used by any incumbent cable operator, unless
204 prohibited by federal law. After the initial designation of the PEG channel
205 numbers, the channel numbers shall not be changed without the agreement
206 of the City unless federal law requires the change.

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2. The holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to the PEG channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

13.12.060 Customer Service Penalties

- A. Any holder of a state franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.
- B. The City will provide any holder of a state franchise written notice of any material breach of applicable customer service and protection standards, and will allow the franchise holder at least thirty (30) calendar days from the receipt of the notice to remedy the specified material breach. A material breach that is not remedied by the state franchise holder within the remedy period shall subject the state franchise holder to the following penalties to be imposed by the City:
 1. For the first occurrence of a material breach, a penalty of not more than five hundred dollars (\$500) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of a material breach.
 2. For the second violation of the same nature within twelve (12) months, a penalty of 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. For a third or further violation of the same nature within twelve (12) months, a penalty of two thousand five hundred dollars (\$2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach.
- C. Any notice and any penalty may be issued or imposed by the City Manager, or the City Manager's designee. Any notice shall be in writing. Notices shall be transmitted by United States Postal Service certified or registered mail, return receipt requested and postage prepaid, or by private commercial delivery or courier service for same day or next business day delivery with delivery and receipt signature required.

- 255 D. The state franchise holder may appeal any finding of material breach or imposition of
256 penalties to the City Council. Any appeal must be made within thirty (30) calendar days
257 of receipt by the state franchise holder of the finding of material breach or the imposition
258 of penalties, and must be submitted in writing to the City Clerk and the City Manager in
259 order to be placed on a City Council agenda for consideration. Any appeal must contain a
260 detailed explanation of why the appellant believes that the finding of material breach or
261 the imposition of penalties is inconsistent with statutory requirements.
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- 263 E. The City and any state franchise holder may mutually agree to extend the time periods
264 specified herein. Any such agreement shall be in writing and executed by the City
265 Manager, or the City Manager's designee, and an authorized representative of the state
266 franchise holder.
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- 268 F. Any penalty imposed on the state franchise holder shall be paid to the City. As provided
269 for in Section 5900(g) of the California Public Utilities Code, the City shall submit one-
270 half of all penalties received from a state franchise holder to the Digital Divide Account
271 established in Section 280.5 of the California Public Utilities Code.
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273 **13.12.070 Emergency Alert**
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- 275 A. Each state franchise holder shall comply with the emergency alert system requirements of
276 the Federal Communications Commission in order that emergency messages may be
277 distributed over the state franchise holder's network.
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- 279 B. To the extent consistent with California Public Utilities Code section 5880, each state
280 franchise holder shall incorporate into its network the capability to permit the City to
281 override the audio portion of all channels simultaneously in times of emergency. In
282 addition, each state franchise holder may be required to designate a channel, which may
283 be a PEG channel, to be used for audio and video emergency broadcasts. The state
284 franchise holder shall cooperate with the City in the use and operation of said emergency
285 alert override system.
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287 **13.12.080 Notices.**
288

- 289 A. Each state franchise holder or applicant for a state franchise shall file with the City a copy
290 of all applications or notices that the state franchise holder or applicant is required to file
291 with the California Public Utilities Commission.
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- 293 B. Unless otherwise specified in this section, all notices or other documentation that a state
294 franchise holder is required to provide to the City under this Section or the California
295 Public Utilities Code shall be provided to both the City Manager and the City staff person
296 in charge of cable and telecommunications.
297

298 **13.12.090 Permits and Construction**
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- 300 A. Prior to commencing any work in the public rights-of-way for which a permit is required
301 by any provision of the Calistoga Municipal Code, a state franchise holder shall apply for
302 and obtain a permit in accordance with the provisions of Chapter 12.08 of this Code and

303 shall comply with all other applicable laws and regulations, including but not limited to
304 all applicable requirements of Division 13 of the California Public Resources Code,
305 section 21000, et seq. (the California Environmental Quality Act).

306
307 ~~B. The Public Works Director shall either approve or deny a state franchise holder's~~
308 ~~application for any permit required under Chapter 12.08 within sixty (60) days of~~
309 ~~receiving a completed permit application from the state franchise holder.~~

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311 ~~C. If the Public Works Director denies a state franchise holder's application for a permit~~
312 ~~under Chapter 12.08, the Public Works Director shall, at the time of notifying the~~
313 ~~applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons~~
314 ~~for the denial.~~

315
316 ~~D. A state franchise holder that has been denied a permit by final decision of the Public~~
317 ~~Works Director may appeal the denial pursuant to the procedure contained in Section~~
318 ~~12.08.170 of this Code.~~

319
320 ~~E. Prior to any construction, rebuild, or upgrade of a cable or video system, a state franchise~~
321 ~~holder shall establish procedures to notify City residents in the impacted area of~~
322 ~~construction schedules and activities. Such notices must be provided in English and the~~
323 ~~predominant languages spoken by those persons who work and/or reside in the impacted~~
324 ~~area. The notices shall be provided to the Public Works Director for review and approval~~
325 ~~no later than twenty (20) days before commencement of construction, rebuild, or upgrade~~
326 ~~activities. At a minimum, the notice required in this subsection E shall be provided by~~
327 ~~the state franchise holder to impacted residents and occupants in the construction area not~~
328 ~~less than forty eight (48) hours prior to the planned construction. The notice may be in~~
329 ~~the form of door hangers and shall indicate, at a minimum, the dates and times of~~
330 ~~construction and the name and telephone number of a state franchise holder contact.~~

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332 ~~F. The state franchise holder shall provide notice to the residents of private property at least~~
333 ~~twenty (20) days prior to entering such private property, or public ways or easements~~
334 ~~adjacent to or on such private property, and provide a second notice three (3) days prior~~
335 ~~to entering such property. The notice may be in the form of a door hanger and shall~~
336 ~~indicate, at a minimum, the dates and times of construction and the name and telephone~~
337 ~~number of a state franchise holder contact.~~

338
339 ~~1. Should there be above ground or underground installations (excluding~~
340 ~~aerial cable lines utilizing existing poles and cable paths) which will affect~~
341 ~~the private property, such notice shall be in writing and shall contain~~
342 ~~specific information regarding any above ground or underground~~
343 ~~installations (excluding aerial cable lines utilizing existing poles and~~
344 ~~existing cable paths) which shall affect the private property.~~

345
346 ~~2. To the extent practicable, aboveground or underground equipment placed~~
347 ~~on private property shall be placed at the location requested by the~~
348 ~~property owner. A state franchise holder shall provide the private property~~
349 ~~owner with at least twenty (20) days advance written notice of its plans to~~
350 ~~install such equipment, and shall obtain express written consent, in the~~

351 ~~form of a recorded easement agreement, from the private property owner~~
352 ~~before installing its appurtenances. The state franchise holder shall notify~~
353 ~~the property owner, in writing, that the property owner is not obligated to~~
354 ~~agree to the placement on their property or to enter into an easement~~
355 ~~agreement with the state franchise holder. Should property owner notify~~
356 ~~the state franchise holder of objection to placement of any such above-~~
357 ~~ground or underground installations (excluding aerial cable lines utilizing~~
358 ~~existing poles and existing cable paths), the state franchise holder shall~~
359 ~~confer with the City public works department regarding appropriate~~
360 ~~location and placement of such appurtenances.~~

361
362 ~~In addition to any other notice of proposed entry required under this~~
363 ~~subsection, a state franchise holder's personnel shall make a reasonable~~
364 ~~attempt to give personal notice to residents immediately preceding entry~~
365 ~~on private property or public ways or easements adjacent to or on such~~
366 ~~private property.~~

367
368 ~~G. A state franchise holder, its employees, agents, contractors, and subcontractors shall be~~
369 ~~properly identified as agents of the state franchise holder prior to and during entry on~~
370 ~~private and public property. Identification shall include the name and telephone number~~
371 ~~of the state franchise holder on all trucks and vehicles used by installation personnel.~~

372
373 ~~H. After performance of work, the state franchise holder shall restore such private and public~~
374 ~~property to a condition equal to or better than its condition prior to construction. Any~~
375 ~~disturbance of landscaping, fencing, or other improvements upon private or public~~
376 ~~property shall, at the sole expense of the state franchise holder, be promptly repaired or~~
377 ~~restored (including replacement of such valuables as shrubbery and fencing) to the~~
378 ~~reasonable satisfaction of the property owner, in addition to the furnishing of camouflage~~
379 ~~plants on public property.~~

380
381 ~~I. Each state franchise holder, within 60 days after the expiration of each calendar year,~~
382 ~~shall file a report with the Public Works Director, which shall contain a street and~~
383 ~~highway map or maps of any convenient scale on which shall be plotted the location of~~
384 ~~the entire transmission and distribution system or systems covered by the report as of the~~
385 ~~last day of the calendar year, with the system or systems located in City highways~~
386 ~~indicated by distinctive coloration or symbols.~~

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