



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

H-1

For the meeting of: November 10, 2015

Date: October 23, 2015
To: Board of Supervisors
From: Phillip Smith-Hanes, County Administrative Officer PH
Subject: State Video Service Franchises Code Amendment

RECOMMENDATION(S):

That the Board of Supervisors:

- 1. Introduces by title, Ordinance No. (Attachment 1), amending Section 855-7 to the Humboldt County Code, and waives the first reading of the Ordinance;
2. Sets the Ordinance for adoption at least one week away;
3. Directs the Clerk of the Board to publish the pre-adoption summary of the Ordinance (Attachment 2), and to post a certified copy of the full text of the proposed Ordinance in the office of the Clerk of the Board, both publication and posting to be done at least five (5) days prior to the Board meeting at which the Ordinance will be adopted. [Government Code Section 25124 (b)(1)]; and
4. Directs the Clerk of the Board, within 15 days after adoption of the Ordinance, to publish a post-adoption summary of the ordinance (Attachment 3) with the names of the Supervisors voting for and against the Ordinance, and to post in the office of the Clerk of the Board a certified copy of the

Prepared by Karen Clower CAO Approval [Signature]
REVIEW: Auditor County Counsel [Signature] Human Resources Other

TYPE OF ITEM:
Consent
[X] Departmental
Public Hearing
Other

PREVIOUS ACTION/REFERRAL:
Board Order No. G-2 C-8, D-2, C-5,
Meeting of: 1/18/2011, 1/25/2011, 5/7/2013
5/14/2013

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor Sundberg Seconded by Supervisor Bohn
Ayes Sundberg, Lovelace, Fennell, Bohn
Nays
Abstain
Absent Bass

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: Nov. 10, 2015
By: [Signature]
Kathy Hayes, Clerk of the Board

full text of the adopted Ordinance and amendments along with the names of those Supervisors voting for and against the Ordinance [Government Code Section 25124 (b)(1)].

SOURCE OF FUNDING:

General Fund (Cable Franchise Fees)

DISCUSSION:

On April 20, 2004, your Board adopted an Enabling Ordinance for local cable television franchises. This ordinance was the result of recommendations made by The Buske Group consultancy pursuant to a 2002 engagement in which the county cooperated with the cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna and Rio Dell as part of the franchise renewal process for the incumbent cable providers.

On September 29, 2006, the state legislature passed, and Governor Schwarzenegger signed into law, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA largely replaces the local issuance of cable television franchises with a system in which video franchises are issued by the California Public Utilities Commission. However, DIVCA did not abolish existing cable television franchises entered into prior to its adoption and certain public protections and benefits are “grandfathered” under the new law.

On January 25, 2011, your Board adopted an ordinance to protect the interests of the county and local cities when local cable franchises expire and are replaced by state video service franchises. The Buske Group prepared language for the new, DIVCA compliant ordinance. This ordinance supplemented, not replaced, the existing county ordinance adopted in 2004, with provisions that addressed: franchise fees; customer service; permits and construction; emergency alert system; and public, educational and government access channel capacity, support, interconnection, and signal carriage.

On May 14, 2013, your Board adopted an ordinance that allowed for an exception for “isolated rural” systems.

On November 3, 2015, your Board authorized the Chair of the Board to enter into a settlement agreement with Suddenlink modifying the level of PEG funding required of all cable/video service providers operating in the county, pursuant to cable/video franchises issued by the California Public Utilities Commission under DIVCA. The local DIVCA ordinance requires payment of PEG access fees that equal 3% of the gross cable revenues. The county agreed with this settlement to modify section 855-7 of county code dealing with PEG fees provided by holders of state video franchises from 3% to 1.401%.

FINANCIAL IMPACT:

There is no financial impact to the county with the recommended action. The PEG fees received pursuant to section 855-7 are passed through to Access Humboldt. PEG access supports your Board’s strategic framework by inviting civic engagement and awareness of available services.

OTHER AGENCY INVOLVEMENT:

Access Humboldt
Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna and Rio Dell

ALTERNATIVES TO STAFF RECOMMENDATIONS:

This action is required by the settlement agreement.

ATTACHMENTS:

1. Draft Ordinance
2. Pre-Adoption Summary
3. Post-Adoption Summary

ORDINANCE NO _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT AMENDING SECTION 855-7 OF TITLE VIII RELATING TO STATE VIDEO SERVICE FRANCHISES TO TITLE VII OF THE HUMBOLDT COUNTY CODE

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. Section 855-7 of Chapter 5 of Division 5 of Title VIII of the Humboldt County Code is amended as shown on the attached pages.

SECTION 2. This ordinance shall take effect and be in force thirty (30) days from the date of its passage. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2015.

AYES: Supervisors:
NOES: Supervisors:
ABSENT: Supervisors:

Chair of the Board of Supervisors of the
County of Humboldt, State of California

(SEAL)

ATTEST:
KATHY HAYES, Clerk of the Board of Supervisors
County of Humboldt

855-6. EMERGENCY ALERT SYSTEM.

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network. As such capability was required under local franchises in effect in the County on January 1 to December 30, 2006 and as consistent with Public Utilities Code Section 5880, each state franchise holder shall install and maintain equipment to allow the Humboldt County Sheriff's Office, Office of Emergency Services to air audio and video messages on the video system to alert Subscribers to emergency situations. This capability shall be remotely activated without the assistance of the state franchise holder and shall allow a representative of the County to override the audio and video on all channels, except those where Grantee has, consistent with Federal Communications Commission regulations, agreed with the broadcaster, not to override the channel for Emergency Alert System messages. (Ord. 2443, § 1, 01/25/2011)

855-7. PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNEL CAPACITY, SUPPORT, INTERCONNECTION, AND SIGNAL CARRIAGE.

(a) The following elements shall be required of all state franchise holders serving more than 1000 subscribers. The County may exempt a state franchise holder who provides service in an area that is defined as "isolated rural". For purposes of this section, isolated rural area shall mean an area with 1000 cable subscribers or less in which there is only one state video franchise holder or one local cable franchise holder and which area is located 30 miles or more from the headend of the nearest other state video franchise holder or local cable franchise holder. (Ord. 2500, § 1, 05/14/2013)

(b) PEG Channel Capacity. Ord. 2500, § 1, 05/14/2013)

(1) A state franchise holder shall designate a sufficient amount of capacity on its network to allow the provision of four (4) PEG channels to satisfy the requirement of Section 5870 of the California Public Utilities Code, within the time limits specified therein. (Ord. 2443, § 1, 01/25/2011)

(2) A state franchise holder shall provide an additional PEG channel when the County satisfies the standards set forth in Section 5870(d) of the California Public Utilities Code or any entity designated by the County to manage one or more of the PEG channels. (Ord. 2443, § 1, 01/25/2011)

(c) PEG Support. (Ord. 2500, § 1, 05/14/2013)

(1) Amount of PEG Support Fee. Any state franchise holder shall pay to the County -- or if directed by the County, to the County's designated PEG provider -- a PEG fee equal to ~~three (3%) percent~~ one and four hundred one thousandths (1.401%) percent of gross revenues, ~~an amount equivalent to the level of PEG funding remitted by the incumbent cable operator to the County's designated PEG provider during the period of January 1, 2006 to December 30, 2006.~~ (Ord. 2500, § 1, 05/14/2013; Ord. ___, § __, 2015)

(2) The PEG support fee shall be used for PEG activities, in a manner that is consistent with the terms of the incumbent cable operator's franchise during the period of January 1, 2006 to December 30, 2006 and settlements. (Ord. 2443, § 1, 01/25/2011)

(3) A state franchise holder shall remit the PEG support fee quarterly, within forty-five (45) after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated. (Ord. 2443, § 1, 01/25/2011)

(4) In the event that a state franchise holder fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchise holder shall pay interest at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law. (Ord. 2443, § 1, 01/25/2011)

(d) PEG Carriage and Interconnection. (Ord. 2500, § 1, 05/14/2013)

(1) As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchise holders shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchise holder shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchise holder at a lower quality or with less functionality), shall be capable of carrying a National Television System Committee (NTSC) television signal, and shall be carried on the state franchise holder's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the County unless federal law requires the change. (Ord. 2443, § 1, 01/25/2011)

(2) Where technically feasible, each state franchise holder and each incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code Section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the County may require the incumbent cable operator to allow each state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point of interconnection is available, each state franchise holder shall make interconnection available to each PEG channel originator programming a channel in the County and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each state franchise holder requesting the interconnection unless otherwise agreed to by the parties. (Ord. 2443, § 1, 01/25/2011)

SUMMARY FOR PUBLICATION PRIOR TO ADOPTION OF ORDINANCE

(The summary shall be published and a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted.)

SUMMARY

On _____, 2015, at its regularly scheduled Board meeting, the Humboldt County Board of Supervisors will consider for adoption a proposed ordinance amending Section 855-7 relating State Video Services Franchises of Title VIII of the Humboldt County Code.

The text of the proposed ordinance is available from the Clerk of the Board, Room 112, 825 Fifth Street, Eureka, CA.

SUMMARY FOR PUBLICATION AFTER ADOPTION OF ORDINANCE

(The summary shall be published within fifteen (15) days after the adoption of the ordinance.)

SUMMARY

On _____, 2015, the Humboldt County Board of Supervisors adopted Ordinance No. _____, amending Section 855-7 relating to State Video Service Franchises of Title VIII of the Humboldt County Code.

A copy of the ordinance is posted in the office of the Clerk of the Board of Supervisors.

The votes were:

AYES:

NOES:

ABSENT: