

ORDINANCE NO. 559-AC

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEEDLES, CALIFORNIA, RESCINDING CHAPTER 5A OF THE CODE OF THE CITY OF NEEDLES IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 5A ENTITLED "STATE VIDEO FRANCHISES"

- RECITALS -

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 City of Needles ("City"), are responsible for administration and implementation of certain provisions of DIVCA; and

WHEREAS, DIVCA allows for City to establish, by ordinance, provisions for video 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, under the authority of DIVCA, any State video franchise holder operating within City must pay to City (1) a video franchise fee equal to 5% of its gross revenues, and (2) a PEG access fee equal to 1% of its gross revenues (as defined at California Public Utilities Code section 5860(d)). The purpose of the PEG fee is to support PEG access channels by acquiring, creating and distributing programming not under the editorial control of the video franchise provider (California Public Utilities Code section 5870).

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

SECTION 1. Chapter 5A of the Code of the City of Needles, entitled Cable Communications Systems, is hereby rescinded in its entirety.

SECTION 2. A new Chapter 5A of the Code of the City of Needles is hereby added to read as follows: Chapter 5A: "State Video Franchises", to implement the provisions of the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code sections 5800, *et seq.*) to read as follows:

Chapter 5A

STATE VIDEO FRANCHISES

Sections:

5A-1. Purpose.

5A-2. Rights Reserved.

- 5A-3. Compliance with Chapter.
- 5A-4. Definitions.
- 5A-5. State Franchise Fees.
- 5A-6. PEG Fees.
- 5A-7. Payment of Fees.
- 5A-8. Examining Books and Records Related to Payments.
- 5A-9. Late Payments.
- 5A-10. Lease of City-Owned Network.
- 5A-11. Customer Service and Consumer Protection.
- 5A-12. Penalties for Violations of Standards.
- 5A-13. Customer Service Reports.
- 5A-14. Construction in the Public Rights-of-Way.
- 5A-15. Permits.
- 5A-16. Emergency Alert Systems.
- 5A-17. Interconnection for PEG Programming.
- 5A-18. Notices.

5A-1. Purpose.

This chapter is applicable to all Video Service providers who are eligible for, and have been awarded, a State video franchise under the California Public Utilities Code Section 5800 et seq. (the Digital Infrastructure and Video Competition Act of 2006), to provide cable or Video Services in any portion of the City.

5A-2. Rights Reserved.

The rights reserved to the City under this chapter are in addition to all other rights of the City whether reserved by this chapter or authorized by other Applicable Law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

5A-3. Compliance with Chapter.

Nothing contained in this chapter 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 California Public Utilities Code Section 5800 et seq., or obligations under any franchise previously issued by the City, insofar as those may be enforced under California Public Utilities Code Section 5800.

5A-4. Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this chapter shall be given the meaning set forth in the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code, Section 5800 et seq. (“DIVCA”). When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number

include the plural number, and “including” and “include” are not limiting. The word “shall” is always mandatory.

(1) “Access Channel” means any channel on a cable system or video system set aside by a State Franchise Holder for public, educational or governmental use.

(2) “Applicant” means any person submitting any application required under Division 2.5 of the California Public Utilities Code.

(3) “Applicable Law” means all lawfully enacted and applicable Federal, State and City laws, ordinances, codes, rules, regulations and orders as the same may be amended or adopted from time to time.

(4) “Cable Service” means (a) the one-way transmission to Subscribers of video programming or other programming services; and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(5) “City” means the City of Needles. Any act that may be taken by the City may be taken by the City Council or any agency, department, agent or other entity now or hereafter authorized to act on the City’s behalf.

(6) “Code” means the Code of the City of Needles.

(7) “Construction,” “Operation,” or “Repair” and similar formulations of those terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming.

(8) “Operation” does not encompass or regulate the provision of services, but refers to activities affecting rights-of-way and other property subject to the jurisdiction of the City.

(9) “DIVCA” means the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code, Section 5800 et seq., as may be amended from time to time.

(10) “Gross Revenues” means all revenues (whether in the form of cash or other consideration) of a State Franchise Holder or its affiliates in any way derived from its Operations within the City.

(11) “Incumbent Cable Operator” shall have the same meaning as in DIVCA.

(12) “Network” shall have the same meaning as in DIVCA.

(13) “PEG” means public, educational or governmental.

(14) “Public rights-of-way” shall have the same meaning as in DIVCA.

(15) "State Franchise" means a franchise issued by the California Public Utilities Commission to provide Cable Service or Video Service, as those terms are defined in DIVCA, within any portion of the City.

(16) "State Franchise Holder" means a person who holds a State Franchise.

(17) "Subscriber" means the City or any person in the City who legally receives any Cable Service or Video Service for a fee from a State Franchise Holder providing service to the City pursuant to its State Franchise.

(18) "User" means a person or the City utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

(19) "Video Service" shall have the same meaning as in DIVCA.

5A-5. State Franchise Fees.

(a) Any State Franchise Holder operating within the City shall pay to the City a State Franchise fee equal to five percent (5%) of the Gross Revenues of it or any affiliate that is subject to a franchise fee under California Public Utilities Code Section 5860.

(b) The City Manager shall promptly send any State Franchise Holder that notifies the City that it intends to provide Video Service in the City (1) the franchise fee section of the franchises held by Incumbent Cable Operators in the City; (2) a sworn statement that the fee required is being paid to the City, subject to the right of the City to examine the books and records of the incumbent in accordance with Applicable Law and franchises; and (3) a notice designating the person to whom the State Franchise fee payments should be made.

5A-6. PEG Fees.

Any State Franchise Holder operating within the City shall pay to the City a PEG fee equal to one percent (1.00%) of the State Franchise Holder's or affiliate's Gross Revenues subject to the PEG use fee under California Public Utilities Code Sections 5860 and 5870(n).

5A-7. Payment of fees.

The State Franchise fee required pursuant to Section 5A-5, and the PEG fee required pursuant to Section 5A-6, shall each be paid to the City quarterly, in a manner consistent with California Public Utilities Code Section 5860. The State Franchise Holder shall deliver to the City, by check or other means specified by the City, a payment for the State Franchise fee and a separate payment for the PEG fee not later than thirty (30) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, containing such information as the City Manager may require consistent with DIVCA. Unless the City Manager provides otherwise, the summary statement shall identify:

(a) Revenues received from Subscribers, by category, with service revenues broken out by service levels;

(b) Any charges to Subscribers for which revenues were received, but on which a franchise fee was not paid;

(c) Where the fee is paid on an allocated portion of revenues received, the total revenues received; the allocation factor; and how the allocation factor was calculated.

5A-8. Examining Books and Records Related to Payments.

The City may examine the business records of the holder of a State Franchise in a manner consistent with California Public Utilities Code Section 5860(i).

5A-9. Late Payments.

In the event a State Franchise Holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent.

5A-10. Lease of City-Owned Network.

In the event a State Franchise Holder leases access to a Network owned by the City, the City may set a franchise fee for access to the City-owned Network separate and apart from the franchise fee charged to State Franchise Holders pursuant to Section 5A-5, which fee shall otherwise be payable in accordance with the procedures established by this chapter.

5A-11. Customer Service and Consumer Protection.

Each State Franchise Holder shall comply with all applicable customer service and consumer protection standards to the extent consistent with California Public Utilities Code Section 5900, including, but not limited to, all existing and subsequently enacted customer service and consumer protection standards established by State and Federal law and regulation.

5A-12. Penalties for Violations of Standards.

(a) The City shall enforce the provisions of Section 5A-11.

(b) For material breaches, as defined in California Public Utilities Code Section 5900, by a State Franchise Holder of applicable customer service and consumer protection standards, the City may impose the following penalties:

(1) For the first occurrence of a material breach, a fine of five hundred dollars (\$500.00) may be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars (\$1,500.00) for each violation.

(2) For a second material breach of the same nature within twelve (12) months, a fine of one thousand dollars (\$1,000.00) may be imposed for each day the violation remains in effect, not to exceed three thousand dollars (\$3,000.00) for each violation.

(3) For a third material breach of the same nature within twelve (12) months, a fine of two thousand five hundred dollars (\$2,500.00) may be imposed for each day the violation remains in effect, not to exceed seven thousand five hundred dollars (\$7,500.00) for each violation.

(c) Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code Section 5900.

(d) The City Manager is authorized to provide any notices required under California Public Utilities Code Section 5900. The City Manager shall coordinate with the Division of Ratepayer Advocates to protect consumers in the City.

5A-13. Customer Service Reports.

(a) The City Manager shall establish a system for receiving complaints from users regarding complaints about customer service and consumer protection as set forth herein.

(b) The City Council may, by resolution, establish fees to cover the cost of monitoring the compliance by a State Franchise Holder of the customer service and consumer protection responsibilities established by this chapter.

5A-14. Construction in the Public Rights-of-Way.

Except as expressly provided in this chapter, all City administrative provisions, rules and regulations, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a State Franchise Holder in any public rights-of-way.

5A-15. Permits.

(a) Prior to commencing any work for which a permit is required, a State Franchise Holder shall apply for and obtain a permit in accordance with the provisions of the Code. A permit application is complete when the State Franchise Holder has complied with all Applicable Laws and regulations, including but not limited to all City administrative rules and regulations, and all applicable requirements of Division 13 of the California Public Resources Code, Section 21000, et seq. (the California Environmental Quality Act) and preparation of plans and specifications as required by the Director of Public Works related to review of the application in accordance with Applicable Law.

(b) The Director of Public Works shall, in the exercise of reasonable discretion as permitted by State law, either approve or deny a State Franchise Holder's application for any

permit required under subsection (a) of this section within sixty (60) days of receiving a complete permit application from the State Franchise Holder.

(c) If the Director of Public Works denies a State Franchise Holder's application for a permit, the Director of Public Works shall, at the time of notifying the Applicant of denial, furnish to the Applicant a detailed explanation of the reason or reasons for the denial.

(d) A State Franchise Holder that has been denied a permit by final decision of the Director of Public Works may, within fifteen (15) calendar days, appeal the denial to the City Council. The appeal shall be taken by the filing of a notice in writing to that effect with the City Clerk and by the payment of an appeal fee as set forth by resolution of the City Council. At its regular meeting held at least three days after the filing of a notice of appeal, the City Council shall set a date for the hearing of the appeal, and notice shall be given to the Applicant, City Manager and also to the Director of Public Works, and by posting as provided herein. The Director of Public Works shall transmit through the City Manager to the City Council all maps, diagrams, records, papers, and files that constitute the record in the action from which the appeal was taken.

(e) The City Council shall render its decision within forty-five (45) days after the conclusion of said hearing of the appeal. The City Council in its decision may reverse, affirm, or modify the action of the Director of Public Works, or it may remand such matter to the City Manager and Director of Public Works for further study or action. Failure of the City Council to render its decision within said period shall be deemed to be an affirmation of the action of the Director of Public Works.

(f) Notice of any public hearing required under the terms of this title shall be given by posting a public notice in at least three conspicuous places within three hundred (300) feet of the affected property, not less than ten days prior to said hearing. Each such notice shall be headed by the word "Notice," in letters not less than one inch in height. In addition thereto, each notice shall contain the proposed establishment or change of district; or in the case of a use permit, variance or appeal, the use permit, variance or appeal applied for, a brief general description of the property involved, and the time and place at which the public hearing will be held. The City Clerk shall cause notices to be posted for hearings to be held before the City Council. The person posting said notices shall file a certificate of such posting together with a copy of said notice with the City Clerk.

(g) Any defect or error appearing in any such notice shall not divest the City Council of jurisdiction nor invalidate any proceedings.

(h) In addition to the posting requirements pursuant to subsection (a) of this section, the City Clerk, at least five days prior to the hearing to be held before the City Council, shall cause to be mailed, postage prepaid, a notice of the time and place of such hearing to all persons whose names and addresses appear on the latest adopted tax roll of the County of San Bernardino, or as known to the City Clerk as owning property within a distance of not less than three hundred (300) feet from the exterior boundaries of the area actually occupied or to be occupied by the use which is the subject of the hearing. Unless the context of an applicable State law provides to the contrary, the failure to mail such notice to all of said persons shall not operate to divest the City

Council of jurisdiction to conduct any hearing required to be held. The City Council hereby declares that the purpose of providing that said notice be mailed is to give said property owners within said three hundred (300) feet information as to any proposed change or modification of the use of said property, and the City Council hereby declares that jurisdiction to conduct said hearing shall be obtained upon the posting of notices required by this section.

(i) The issuance of a permit under the Code is not a franchise, and does not grant any vested rights in any location in the public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, upon reasonable notice to the permittee.

5A-16. Emergency Alert Systems.

(a) 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.

(b) To the extent consistent with Public Utilities Code Section 5880, each State Franchise Holder shall incorporate into its Network the capability to permit the City in times of emergency to override the audio portion of all channels simultaneously, as such capability was required under local franchises in effect in the City on the effective date of the ordinance codified in this chapter.

5A-17. Interconnection for PEG Programming.

Where technically feasible, each State Franchise Holder, and each Incumbent Cable Operator operating under a City franchise issued prior to the effective date of DIVCA, 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 Access 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, the City may require the Incumbent Cable Operator to allow the 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 for interconnection is available, each State Franchise Holder will make an interconnection available to each channel originator providing PEG programming to an Incumbent Cable Operator, and will provide the facilities necessary for the interconnection. The cost of any interconnection will be borne by the State Franchise Holder requesting the interconnection unless otherwise agreed to by the State Franchise Holder and the Incumbent Cable Operator.

5A-18. Notices.

(a) Each State Franchise Holder or Applicant for a State Franchise shall file with the City a copy of all applications or notices that the State Franchise Holder or Applicant is required to file with the Public Utilities Commission.

(b) Unless otherwise specified in this chapter, all notices or other documentation that a State Franchise Holder is required to provide to the City under this section or the California Public Utilities Code shall be provided to the City Manager.

SECTION 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds the adoption and implementation of this ordinance will not have significant effects upon the environment and are ministerial actions by and through which City is implementing the requirements of DIVCA.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. Effective Date. This ordinance shall take effect on the 31st day following its adoption.

INTRODUCED AND READ for the first time and the City Clerk is hereby directed to prepare a summary as per Government Code Section 36933(c)(1) at a regular meeting of the City Council of the City of Needles, California, held on the 8th day of July, 2014, by the following roll call vote:

AYES: COUNCILMEMBERS LOPEZ, KIDD, CAMPBELL, DARCY AND GUDMUNDSON

NOES: NONE

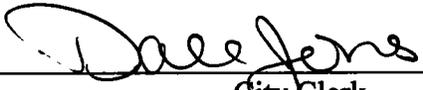
ABSENT: COUNCILMEMBER FRAZIER

ABSTAIN: NONE



Mayor

(SEAL)

ATTEST: 

City Clerk

PASSED, APPROVED AND ADOPTED and the City Clerk is hereby directed to prepare a summary as per Government Code Section 36933(c)(1) at a regular meeting of the City Council of the City of Needles, California, held on the 12th day of August, 2014, by the following roll call vote:

13th

AYES: COUNCIL MEMBERS KIDD, FRAZIER, CAMPBELL, DARCY AND GUDMUNDSON

NOES: NONE

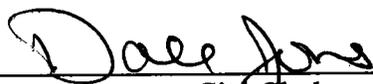
ABSENT: COUNCIL MEMBER LOPEZ

ABSTAIN: NONE



Mayor

(SEAL)

ATTEST: 

City Clerk

APPROVED AS TO FORM:



City Attorney