

# **Cable Television – Digital Infrastructure and Video Competition Act of 2006**

## ***Background***

Under prior law, any city or county could authorize by franchise the construction and operation of a cable television system. In exchange for the franchise, the cable television operators paid the local governmental entities a franchise fee not to exceed 5 percent of the operator's gross revenues from cable services.

These same local governmental entities could authorize additional franchises, provided the new franchises served the entire geographic area as the original franchise. Providers granted such "non-original" franchises also had to meet other requirements aimed at preventing discrimination against potential consumers and ensuring no unfair competitive advantage over the original franchisee.

In recent years, advances in technology have resulted in a convergence of services offered by cable operators, internet service providers, and telephone companies. Thus, cable operators have begun offering broadband and voice (for example, telephone) service over their networks, and many telephone companies either are now or will soon be ready to provide data and video services over their networks. Both types of providers need rights to use locally controlled public rights-of-way in order to deploy their networks to deliver cable television service and other video services.

Supporters of the Digital Infrastructure and Video Competition Act (DIVCA) contended that the existing video service franchising rules had unreasonably stifled competition in light of new technologies for delivering such service. Thus, the Legislature's express intent in enacting the DIVCA was to promote competition by establishing a state-issued franchise authorization process that will allow market participants to use their networks to provide video, voice, and broadband services to all residents of the state.

### **Summary of changes:**

- Makes the Public Utilities Commission (PUC) the sole franchising authority for cable and video service operators.
- Requires the PUC to begin accepting applications for state-issued franchises no later than April 1, 2007.
- Allows holders of existing local franchises to operate under their local franchises until the local franchises expire.
- Requires any entity that does not have a local license in place by January 1, 2008 to obtain a state-issued franchise in order to provide service.

- Provides that a state-issued franchise shall be valid for ten years, at which point the holder must renew the franchise if it chooses to continue to offer video service.
- Allows a holder of an existing local franchise to seek a state franchise prior to the termination of the local franchise if a different company holding a state franchise begins to offer video service in the same geographical area.
- For the use of locally controlled public rights-of-way, requires the holder of a state franchise to pay as rent to each local governmental entity where it provides video service a franchise fee based on gross revenues.
- For all holders of state franchises, establishes requirements with respect to the amount of public, educational, and government programming (i.e., "PEG"), the funding for the support of "I-net" service,<sup>1</sup> and preventing discrimination against consumers based on income.

### ***Current and Emerging Issues***

- January 1, 2008 all new applications must be made to the PUC
- Term of possession
- Determination of income – rent

### ***Discussion Questions***

- Is the issuance of a state franchise a change in ownership?
- How to discover new franchises?
- What is the term of possession?
- How is the rent to be calculated?

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<sup>1</sup>A data, video, and/or voice network used by the United States Government, schools, and non-profit institutions; hence called an Institutional Network or I-Net.