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**SENATE COMMITTEE ON ENERGY, UTILITIES AND  
COMMUNICATIONS**

**Senator Steven Bradford, Chair  
2023 - 2024 Regular**

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<b>Bill No:</b>	AB 1826	<b>Hearing Date:</b>	6/24/2024
<b>Author:</b>	Holden		
<b>Version:</b>	6/11/2024 Amended		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Sarah Smith		

**SUBJECT:** Digital Equity in Video Franchising Act of 2024

**DIGEST:** This bill makes various modifications to cable franchise requirements to expand the authority of the California Public Utilities Commission (CPUC) to regulate cable video services. This bill also modifies cable franchise application and renewal process to require public hearings before the issuance or renewal of a cable franchise and raises local fines for violations of certain customer service requirements.

**ANALYSIS:**

Existing law:

- 1) Establishes a 10-year state license for cable video service providers and gives the CPUC sole authority for approving cable video franchises in the state. (Public Utilities Code §5800 et. seq.)
- 2) Prohibits the state from designating a franchisee as a public utility because it obtains a state video service license. Existing law prohibits the CPUC from using its state franchise authority as an authority to regulate the rates, terms, and conditions of video services beyond statutory requirements for issuing franchises. (Public Utilities Code §5820)
- 3) Establishes requirements for video service providers applying for a state franchise and specifies the information franchise holders must provide to the CPUC to obtain and retain a state franchise. (Public Utilities Code §5840 et. seq.)
- 4) Prohibits franchised video providers from discriminating against or denying access to their services on the basis of a potential subscriber's income. Existing law establishes criteria for determining whether a video service provider has discriminated against residential subscribers. Existing law establishes different criteria for demonstrating compliance with non-discrimination prohibitions for

franchise holders providing telephone service to more than one million Californians and those franchise holders providing telephone service to less than one million Californians. (Public Utilities Code §5890 (a-f))

- 5) Requires the CPUC to consider the following criteria when determining if a franchise holder has violated prohibitions against discrimination for providing video service:
  - a) The franchisee's ability to obtain access to rights-of-way under reasonable terms and conditions.
  - b) The extent to which developments or buildings are not subject to competition because of exclusive arrangements.
  - c) The degree to which developments or buildings are inaccessible using reasonable technical solutions under commercially reasonable terms.
  - d) Natural disasters. (Public Utilities Code §5890 (f))
- 6) Allows local governments to bring complaints to the CPUC regarding cable franchises that are not offering video service required by this section. Existing law authorizes the CPUC to initiate an investigation on its own, regardless of whether it has received a complaint from a local government. The CPUC may suspend or revoke the license of a video service provider that fails to comply with the requirements for its franchise. Existing law also specifies fines that the CPUC or a court may assess on violating franchisees. (Public Utilities Code §5890 (g-i))
- 7) Requires the CPUC to collect granular data on actual locations served by a cable franchise in the state. The CPUC must adopt customer service requirements for cable franchises and adjudicate customer complaints. Existing law prohibits the CPUC from disclosing personally identifiable information and prohibits the CPUC from publicly disclosing any of the data reported by franchise holders unless the CPUC orders the disclosure of the data through a proceeding. Any current or former CPUC employee or officer who discloses data outside of an order is guilty of a misdemeanor under existing law. (Public Utilities Code §5895 and §583)

This bill:

- 1) Defines an "unserved household" as a household in the video service footprint of a cable franchise that lacks access to video service or cable service from a video service provider.

- 2) Expands the CPUC's authority to regulate cable video services by doing the following:
  - a) Deleting provisions of existing law the limit the CPUC's authority to regulate the terms and conditions of cable.
  - b) Expressly authorizing the CPUC to exercise any power granted to cable franchise issuers under federal law.
- 3) Expands the application and renewal process for cable franchises by doing the following:
  - a) Expanding information that must be included in the application for a new or renewed franchise. This bill specifically requires applicants to submit information about a point of contact for the applicant and a description of households that are known to be unserved within the franchise territory that the applicants proposes to serve.
  - b) Authorizing the CPUC to require additional information during the application process.
  - c) Extends deadlines for processing applications for the issuance or renewal of cable franchises.
- 4) Establishes a public hearing process for cable franchise renewal applications, which must be conducted within 90 days of receiving a completed application. This bill specifies that the CPUC must hold four hearings for cable providers with at least 1 million subscribers, and cable companies with 250,000 to one million subscribers must hold two hearings. At least one hearing must be held virtually or via telephone. This bill requires the CPUC to consider the accessibility of a location selected for a hearing and take public comment at these hearings.
- 5) Expands items that must be included in a state franchise issued by the CPUC to include terms imposed on the company as a condition of holding the franchise, including, but not limited to, a statement of proposed upgrades to the cable system and a plan to serve unserved households in the provider's video service footprint.
- 6) Makes various changes to methods for calculating a cable franchise's gross revenues for the purposes of establishing state and local franchise fees.
- 7) Expands the authority of the CPUC and local governments to enforce customer service requirements. This bill also increases fines that may be assessed by

local governments for these violations and allows local governments to retain all the revenues from these fines.

## Background

*Cable vs. Broadband: a rose by any other name?* This bill makes various modifications to cable franchise requirements that appear aimed to expand access to cable services; however, cable video service subscriptions have declined as more consumers have opted to “cut the cord” and rely on streaming services for video viewing. While federal and state law distinguishes cable service from broadband service, cable franchises under Digital Infrastructure and Video Competition Act (DIVCA) of 2006 also frequently provide broadband service through the same infrastructure they use for cable service, and technological advances in streaming video may limit the degree to which consumers distinguish between their cable and broadband services. Data from the CPUC’s 2021 annual DIVCA report shows that approximately 95 percent of California households with access to broadband meeting 100 megabits per second speeds have that access from an internet service provider that is also a DIVCA franchise. The use of cable systems to deliver broadband services is generally known as “mixed-use,” and rules regarding regulating mixed-use cable systems have generated conflicts over regulators’ franchise powers.

Existing federal law authorizes franchise issuers to regulate service quality of cable service; however, federal law also limits the extent to cable franchise regulators can regulate non-cable services delivered by cable franchises. Existing federal statute (Title 47 U.S.C. §544) expressly prohibits franchise regulators from regulating the “...services, facilities, and equipment provided by a cable operator except to the extent consistent with this subchapter.” Federal statutes subsequently clarify that franchise regulators’ power only extends to cable services, and FCC orders have affirmed those limitations. Federal regulation (Title 47 Code of Federal Regulations §76.43) states, “A franchising authority may not regulate the provision of any services other than cable services offered over the cable system of a cable operator, with the exception of channel capacity on institutional networks.” To the extent that this bill is interpreted as expanding CPUC regulatory authority over cable services to regulate the provision of broadband service, this bill may conflict with federal law.

*Bill’s hearing requirements may not be feasible.* This bill would substantially extend the CPUC’s process for reviewing cable franchise applications and renewals. This bill would extend deadlines for reviewing these applications and renewals, require the CPUC to conduct a series of public hearings for renewals based on the number of customers each franchise serves, and hold those hearings

in areas of the state served by the franchise. At least one of these hearings must occur in a virtual or telephone format, and this bill requires the CPUC to issue a specified evaluation of the cable franchise within the 30-days before the first hearing. Under this bill, the CPUC would need to review a franchise application, issue an evaluation of the franchise's compliance history and population served not earlier than 30 days before holding its first hearing on the franchise, and hold multiple hearings in various locations of the state in under 90 calendar days. While this bill indicates that these requirements are intended to establish a record for a CPUC proceeding on the franchise renewal, these requirements may not enable the CPUC to comply with both this bill and the CPUC's existing rules for practice and procedure.

*Bill likely requires proceedings for each franchise application and renewal.* While this bill specifies that an application for a new cable franchise does not require a hearing, existing CPUC rules of practice and procedure indicate that the CPUC does not permit the use of an advice letter process to approve the expansion of existing service or the operation of new services without a formal proceeding. Under the CPUC rules of practice and procedure, the advice letter process is generally reserved for noncontroversial matters that do not require hearings or modifications of existing CPUC enforcement requirements. Since this bill requires the CPUC to hold a public hearing on each cable franchise renewal, this bill would likely require the CPUC conduct a formal proceeding for the renewal of each cable franchise. To-date, the CPUC has issued 30 different cable franchises. Each cable franchise is renewed on a different timeline. As a result, this bill may require the CPUC to conduct a formal proceeding for each of these 30 franchises when they seek renewal.

*More than this?* Portions of this bill are substantially similar to those included in AB 41 (Holden, 2023), which was heard by this committee last year. In addition to changes to the application review process and fines for non-compliance, AB 41 also established an equal access principle for cable services and deleted anti-discrimination safe harbors in existing law. Despite making substantial changes to DIVCA, the Governor vetoed AB 41 while indicating that he did not think the bill went far enough. In his veto message, the Governor stated:

While I greatly value and appreciate the efforts made by the author, the changes this bill makes will not meaningfully increase digital equity in California. I deeply committed to providing access to broadband services to ALL Californians. So much so that in 2021, I worked with the Legislature to pass a historic \$6 billion broadband infrastructure investment to bridge the Digital Divide. If we are going to close the Digital Divide once and for all, we must build on these efforts and consider strategic reforms to the policy

tools at our disposal. To that end, I look forward to partnering with the Legislature to further our broadband access and affordability efforts.

While the Governor indicated that he supported additional reforms, his veto statement did not provide any detail about what reforms are necessary. This bill does not contain the equal access provisions or safe harbor deletions contained in AB 41; however, it would increase fines for violations of certain customer service rules and gives greater opportunities for groups and individuals to engage in cable franchise applications and renewals.

*Need for Amendments.* As currently drafted, this bill could establish an infeasible public hearing framework for cable franchise renewals, create conflicting rules for application reviews and penalty assessments, and expand the CPUC's authority for regulating franchise without specifying how such authority should be exercised.

*For these reasons, the author and committee may wish to amend this bill to do the following:*

- *Limit the information that the CPUC can require at application to those items specified in statute.*
- *Limit the expansion of the CPUC's authority to regulate the terms and conditions of cable video services.*
- *Reduce the number of hearings for each franchise application to one public hearing per franchise.*
- *Modify deadlines for the CPUC's review of applications for the issuance or renewal of cable franchises to specify the following:*
  - *The CPUC shall notify an applicant about the completeness of an application within 60 days of receiving the application.*
  - *Approve or deny a franchise application within 120 days of deeming the application complete.*
- *Delete the requirement that the CPUC issue an evaluation of a franchise prior to holding public hearings on the franchise application.*
- *Other technical and conforming changes.*

### **Prior/Related Legislation**

AB 41 (Holden, 2023) contained provisions substantially similar to some in this bill. The bill was vetoed.

AB 414 (Reyes, Chapter 436, Statutes of 2023) defined equal access to broadband service and establishes a state policy of supporting subscribers' equal access to broadband services. The bill's definition of equal access is substantially similar to the one included in this bill.

AB 2748 (Holden, 2022) contained provisions substantially similar to those in this bill. This bill would establish build-out obligations, anti-discrimination prohibitions, and maximum fines that differ from the provisions in AB 2748. The bill died in the Senate.

AB 2752 (Wood, Chapter 801, Statutes of 2022) clarified that the CPUC can collect data from broadband providers at the address level for the purposes of mapping access to broadband services and prohibited the CPUC from disclosing personal consumer information protected by existing telecommunications consumer privacy laws.

SB 28 (Caballero, Chapter 673, Statutes of 2021) required the CPUC to collect granular data on actual locations served by state cable franchises and required the CPUC to adopt customer service requirements for cable franchises and adjudicate customer complaints. The bill prohibited the CPUC from disclosing personally-identifiable information collected under the bill.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

**SUPPORT:**

California Alliance for Digital Equity  
California Emerging Technology Fund

**OPPOSITION:**

California Broadband & Video Association  
California Chamber of Commerce  
USTelecom: The Broadband Association

**ARGUMENTS IN SUPPORT:** According to the author:

The Digital Infrastructure in Video and Cable Act of 2006 (DIVCA) was passed with the intention of opening the video and cable market to new emerging providers to drive down costs for consumers while promoting the expansion of services. Over 18 years later and DIVCA has fallen short of its promises. AB 1826 creates a public process at the Public Utilities Commission to change the streamlined state video franchising renewal process to one that will focus on transparency and accountability. This bill will ensure Californians are included in reviewing the service provided by cable providers.

**ARGUMENTS IN OPPOSITION:** In opposition, US Telecom, the California Chamber of Commerce (CalChamber) and the California Broadband and Video Association (CalBroadband) states:

Last year, CalBroadband was able to negotiate with the author and go neutral on AB 41 in the Senate. Unfortunately, the Governor disagreed and vetoed the bill. CalBroadband has not been told by the Administration exactly what they would like to see out of a bill amending the DIVCA statute. We understood that the author wanted to try again, and we agreed to come to the table. Unfortunately, the bill in print does not reflect the negotiated language that passed the Senate last year easily. Instead, it reflects a version the Associations above opposed, and multiple members of this committee understood the flaws. Thus, the Associations are compelled to oppose AB 1826.

**-- END --**