
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Ben Hueso, Chair
2021 - 2022 Regular

Bill No: SB 28 **Hearing Date:** 4/12/2021
Author: Caballero
Version: 4/5/2021 Amended
Urgency: No **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Rural Broadband and Digital Infrastructure Video Competition Reform Act of 2021

DIGEST: This bill expands the authority of the California Public Utilities Commission (CPUC) to regulate cable video franchises, modifies annual data reporting requirements for video service provider holding a state video franchise, requires the CPUC to consult with local governments regarding franchise violations, and requires the CPUC to evaluate a franchisee's service obligations.

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) 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 court may assess on violating franchisees. (Public Utilities Code §5890 (g-i))
- 6) Requires every cable franchise holder to submit specified data to the CPUC by April 1st each year. Existing law requires franchisees to submit specified broadband, video, telephone, and low-income service metrics to the CPUC on a census tract basis. Existing law permits a franchise holder to “reasonably estimate” the number of households to which it provides broadband service in the state if the provider does not maintain broadband service information on a census tract basis. Existing law 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 §5960 and Public Utilities Code §583)

This bill:

- 1) Requires the Department of Technology to create an inventory of state-owned resources that may be available for deploying broadband in rural, unserved, and underserved communities. State-owned properties may include real property, facilities, rights of way, spectrums, infrastructures, programs, and other resources. State-owned properties for broadband deployment shall not include any resources that if used, would harm public health, safety, or welfare.
- 2) Requires the Department of Technology to establish a model agreement allowing state-owned resources to be leased or licensed for broadband service providing rural, unserved, and unserved communities with service capable of downstream speeds of at least 100 megabits per second (mbps).

- 3) Deletes existing prohibitions that limit the state's ability to treat video franchises as public utilities and eliminates restrictions on the CPUC's ability to regulate the rates, terms and conditions of video franchise service.
- 4) Requires the CPUC to consult with local governments within a video service franchisee's service territory regarding remedies for violations of franchise requirements when those violations trigger a proceeding to consider revocation of the holder's franchise.
- 5) Deletes existing data collection requirements for video service franchisees and instead requires the CPUC to do the following:
 - a) Collect granular data on actual locations served by a franchisee.
 - b) Adopt customer service requirements for video service franchises and adjudicate customer complaints.
 - c) Evaluate a franchise holder's build-out obligations to determine whether the franchise holder serves all locations within its service territory and identify the extent to which the franchisee can reasonably build to locations outside existing territory while considering reasonable costs and timelines for build-out.
- 6) Requires a video service franchise holder to report the following information to the CPUC by April 1 each year:
 - a) Data for the locations where the franchise holder provided broadband service during the prior year. This data must be in a format designated by the CPUC and must include the following information for each location: upload and download speeds of broadband service, technologies used to provide broadband service, prices offered for the broadband service, with and without promotional or bundled service deals.
 - b) Data for the locations where the franchise holder provided video service during the prior year, including other information regarding the franchise holders' video service offerings, as requested by the CPUC.

Background

Cable regulation and the shift from local to state cable franchises. Under federal law, cable service is a communications service; however, federal law classifies cable services separately from telephone corporations, which are considered "common carriers" and separately from internet services, which are currently considered "information services." Under federal law, the Federal Communications Commission (FCC) retains the authority to regulate cable providers, but federal law authorizes states and local governments to issue franchises that allow cable providers to operate within those states and local

jurisdictions. Federal law also allows state and local franchising bodies to establish certain requirements for cable franchises.

In 2006, the Legislature passed the Digital Infrastructure and Video Competition Act (DIVCA), which established a state cable franchise process at the CPUC. Prior to the passage of DIVCA, local governments licensed cable franchises. A cable provider seeking to offer video service in every part of California needed to obtain over 400 franchise agreements before the creation of a state franchise process. Few areas had more than one cable provider and the primary service competing against cable, satellite television service, was not required to obtain franchise agreements. DIVCA was intended to grow cable service in the state and increase competition between cable providers by lowering barriers associated with local franchising.

This bill modifies data reporting for DIVCA franchises to reflect the growing reliance on internet service. In addition to providing video service, many DIVCA franchisees are also internet service providers and frequently provide video and internet services through some of the same infrastructure. Over 96 percent of Californians with broadband receive their internet service from a DIVCA franchisee. Since the enactment of DIVCA, the video service market has changed dramatically due to rise of web-based streaming video subscriptions and the growth of wireless personal communications devices. As of 2018, the Motion Picture Association of America reported that total online streaming platform subscriptions surpassed total cable subscriptions.

While existing law requires cable providers to provide information about the number of households to which it provides internet service, existing law only requires this information on a census tract level and allows cable providers to submit an estimate of this figure if the company does not maintain the data. A census tract's size depends on the density of the population. As a result, rural counties generally have fewer census tracts than contained in more urban counties. Given the potentially large geographic area that a census tract may contain, data at this level is unlikely to provide enough detail to identify whether a franchise is discriminating against a specific community. Broadband providers are already required to provide more detailed data on broadband deployment to the FCC, including the locations where they provide service, where subscribers are obtaining service, and the speed of that service. The enhanced data collection required by this bill may provide information that could enable the CPUC to better identify communities that lack broadband service and target universal service resources, including California Advanced Service Fund grants for broadband infrastructure.

Closing the “donut holes” of internet service gaps. Existing federal and state law prohibits video franchises from discriminating against or denying access to service to potential subscribers on the basis of a person’s income. Existing state law also establishes specific benchmarks that cable providers must meet to demonstrate compliance with the non-discrimination requirements. While these non-discrimination requirements were established to prevent redlining in which a provider would choose to serve only wealthier communities, the requirements only distinguish video franchises as telephone service providers and do not reflect the degree to which they are internet providers. As a result, the requirements do not address circumstances in which a video service provider may be providing video service and telephone service to a city or county, but has not provided internet service to lower income communities within that jurisdiction.

This bill modifies the existing prohibitions on discrimination by deleting the existing standards by which a cable provider can demonstrate compliance with prohibitions against discrimination and instead simply prohibits providers from discriminating against any potential subscriber or community. Removing the existing standards for nondiscrimination could eliminate the presumption that a cable provider is not discriminating against a community or subscriber on the basis of income or other protected classifications. Eliminating this presumption could enable the CPUC to use its state franchise authority and data obtained through this bill to require a franchise to better address access concerns as a condition of retaining a state franchise.

This bill significantly expands the CPUC’s ability to regulate cable providers, but federal law limits its application. This bill eliminates existing law that prohibits the CPUC from treating cable franchise holders as utilities and removes limits on the CPUC’s ability to regulate the rates, terms, and conditions of services provided by franchise holders. This bill requires the CPUC to establish consumer service requirements for franchise holders and adjudicate complaints brought by consumers regarding their video service. This bill also requires the CPUC to evaluate a cable franchise’s build-out obligations to determine whether the franchise holder serves all locations within its service territory and identify the extent to which the franchise can reasonably build to locations outside its existing footprint.

Existing federal law (47 U.S.C. §552) allows a state or local entity issuing cable franchises to establish and enforce customer service requirements and build out requirements. However, existing federal law (47 U.S.C. §543) generally prohibits state and local governments from establishing regulations over cable that would conflict with FCC requirements, including preempting state and local governments’ ability to rate regulate cable subscriptions where the FCC has

established rate requirements. An entity issuing cable franchises can challenge rates that are unreasonable pursuant to FCC regulations and bring a complaint regarding rate increases to the FCC. While federal law prohibits the CPUC from treating cable as a “common carrier” for the purposes of strict regulation, it does not preempt the CPUC from requiring state informational tariffs that could provide more transparency on the rates, terms, and conditions of cable providers’ services. Federal limitations on the CPUC’s ability to regulate certain aspects of cable service may restrict the CPUC’s ability to resolve certain consumer complaints, including complaints about rates that comply with federal requirements. However, expanding the CPUC’s authority to establish requirements where federal preemptions do not exist may improve the CPUC’s ability to require franchise holders to close service gaps within its existing footprint and remedy DIVCA violations when a franchise does not meet its requirements.

Need for Amendments. As currently drafted, this bill requires the CPUC to collect more granular data on broadband and video service that may include addresses and subscriber-level information. This bill also deletes existing law that prohibits the CPUC from publicly disclosing video service franchise data publicly unless the CPUC orders the disclosure through a proceeding. *To the extent that the author and committee wish to expressly prohibit the CPUC from disclosing personal information, the author and committee may wish to amend this bill to prohibit the CPUC from publicly disclosing any personally identifiable information.*

Prior/Related Legislation

SB 1058 (Hueso, 2020) would have required the CPUC to direct every internet service provider (ISP) in the state to file an emergency operations plan detailing the provider’s plan for retaining or restoring service in response to an emergency, including the provision of an affordable internet plan for certain individuals affected by the emergency. The bill would have allowed the CPUC to revoke the license of a cable franchise if an affiliate ISP violates the emergency operations plan requirements. The bill died in the Senate.

SB 1422 (Glazer, Chapter 156, Statutes of 2016) specified that cable franchises are considered “other service suppliers” for the purpose of local user utility taxes, which provides public utilities with liability protections for collection of local utility taxes assessed on utility customers.

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

SUPPORT:

Dr. Deneen Guss, Monterey County Superintendent of Schools
Mani Grewal, Stanislaus County Board of Supervisors, District 4
Vito Chiesa, Stanislaus County Board of Supervisors, District 2
John Freeman, City Councilperson of San Juan Bautista
Advocacy Committee of the Seniors Council of Santa Cruz and San Benito
Counties
Association of California School Administrators
California Environmental Justice League
California State Association of Counties
Central Valley Education Coalition
Central Valley Higher Education Consortium
Central Valley Leadership Round Table
City of Firebaugh
City of Huron
City of Huron Police Department
City of King
City of Los Banos
City of Merced
City of Patterson
City of Salinas
City of Soledad
Community Bridges
Electronic Frontier Foundation, if amended
Salinas League of United Latin American Council 2055
Livable California
San Benito County League of United Latin American Citizens, Council #2890
San Benito County Office of Education
San Benito High School District
San Juan Bautista Rotary (Internet) Access
The Utility Reform Network
Youth Alliance
4 individuals

OPPOSITION:

California Cable & Telecommunications Association
Consolidated Communications Inc.

ARGUMENTS IN SUPPORT: According to the author:

The Rural Broadband and Digital Infrastructure Video Competition Reform Act of 2021 helps rural, unserved, and underserved communities build broadband networks that reach all Californians lacking access to a high-speed internet connection by encouraging the state to identify assets it can contribute to public-private partnerships that will spur development, and by empowering local governments to control their destiny through gaining back negotiating power for their digital infrastructure franchise licenses.

ARGUMENTS IN OPPOSITION: Opponents argue that this bill significantly expands the CPUC's cable franchising authority in a way that is federally pre-empted. In opposition, the California Cable and Telecommunications Association (CCTA) states:

SB 28 would significantly expand the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), which transitioned California from requiring cable companies and other video service providers to obtain operating authority from each local government to instead obtain a state franchise from the California Public Utilities Commission ("CPUC"). The authority to move to state franchising is derived from the federal cable law, Title VI of the Communications Act ("Title VI"). This law expressly prohibits franchising authorities, like the CPUC, from regulating broadband internet access service provided by cable operators, except in limited circumstances that do not include broadband availability requirements like those in SB 28.

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