



ORDINANCE No. _____
OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**AN ORDINANCE AMENDING ARTICLE 2;
REPLACING ARTICLES 2.A AND 2.B; AND
REPEALING ARTICLE 2.C TO CHAPTER II OF THE
NEVADA COUNTY GENERAL CODE, PERTAINING
TO IMPLEMENTATION OF THE DIGITAL
INFRASTRUCTURE AND VIDEO COMPETITION ACT
OF 2006**

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I:

Article 2 of Chapter II of the Nevada County General Code is hereby amended to read as shown in Exhibit A attached hereto and incorporated herein by this reference.

SECTION II:

Article 2.A of Chapter II of the Nevada County General Code is hereby replaced to read as shown in Exhibit B attached hereto and incorporated herein by this reference.

SECTION III:

Article 2.B of Chapter II of the Nevada County General Code is hereby replaced to read as shown in Exhibit C attached hereto and incorporated herein by this reference.

SECTION IV:

Article 2.C of Chapter II of the Nevada County General Code is hereby repealed.

SECTION V:

Severability. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the

fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION VI:

The Board of Supervisors hereby finds that this Ordinance is exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines (Title 14, Chapter 3 of the California Code of Regulations), as this action will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility the activity in question may have a significant effect on the environment.

SECTION VII:

To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior County ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof.

SECTION VIII:

Pursuant to Government Code sections 25123, 25131, 53066 and 53066.3, this Ordinance shall be passed and adopted immediately after notice and a public hearing as required by statute, and shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the Supervisors voting for and against same in The Union, a newspaper of general circulation printed and published in the County of Nevada.

EXHIBIT A

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ARTICLE 2 CABLE SYSTEMS AND OPEN VIDEO SYSTEMS

Sec. G-II 2.1 Definitions

For the purposes of this Article, the following terms, phrases, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined in this Article shall have the same meaning as in Title 47 of the United States Code [§§ 521 et seq.], and if not defined therein, the California Public Utilities Code (CPUC) Sections 5800-5970, and if not defined therein, their common and ordinary meaning.

References to governmental entities or officials, whether persons or entities, refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- A. “Access,” “PEG access,” or “PEG use” refers to the availability of a Cable system or open video system for public, education or government use (including Institutional Network use) by various agencies, institutions, organizations, groups, and individuals, including Nevada County and its designated Access providers, to acquire, create, and distribute programming not under a Franchisee’s editorial control, including, but not limited to:
 - 1. “Public Access” or “Public Use” means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
 - 2. “Education Access” or “Education Use” means access where accredited educational institutions are the primary or designated programmers or Users having editorial control over their communications;
 - 3. “Government Access” or “Government Use” means access where government institutions or their designees are the primary or designated programmers or Users having editorial control over their communications;
- B. “Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

- C. “Basic Service” means any service tier regularly provided to all subscribers which includes the retransmission of local television broadcast signals.
- D. “Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.
- E. “Cable Communications System” refers to Cable systems.
- F. “Cable system” is defined as set forth in Section 522(7) of Title 47 of the United States Code.
- G. “Cable Service” as defined in California Public Utility Code section 5830(c) means:
 - 1. The one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and
 - 2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- H. “Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable system and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any Channel to the transmission of analog television signals or one way transmission.
- I. “County” means the County of Nevada and all departments, divisions, and agencies established by state law or by the Nevada County General Code.
- J. “Construction, Operation or Repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.
- K. “Downstream Channel” means a Channel designed and activated to carry a transmission from the headend to other points on a Cable communications system, including interconnections.
- L. “FCC” means the Federal Communications Commission.
- M. “Franchise” means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of

any network in the right-of-way capable of providing video service to subscribers, as defined in CPUC 5830(f).

- N. “Franchise Area” means the area of Nevada County that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.
- O. “Franchisee” refers to a person holding a Cable Communications System Franchise.
- P. “Franchise Fee” means the fee adopted pursuant to CPUC Section 5840.
- Q. “Gross Revenues” means all revenue actually received by the holder of a state franchise as defined in CPUC 5860(d).
- R. “License” refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public rights-of-way to construct, operate, or repair a cable system.
- S. “Nevada County Administrator” means the Nevada County Executive Officer or his/her designee.
- T. “Operator” when used with reference to a system, refers to a person:
 - 1. who directly or through one or more Affiliates provides service over a Cable Communications System and directly or through one or more affiliates owns a significant interest in such facility; or
 - 2. who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.
- U. “OVS” means an open video system. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS.
- V. “Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not Nevada County.
- W. “Public Rights-of-Way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within Nevada County which may be properly used for the purpose of installing, maintaining, and operating a cable communications system; and any other property that a Franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.
- X. “Public property” means any property that is owned or under the control of Nevada County that is not a public rights-of-way, including, for purposes of

this Article, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned by or leased to Nevada County.

- Y. “Revocation” means Nevada County’s affirmative act of terminating a franchise.
- Z. “School” means any accredited primary school, secondary school, college, and university.
- AA. “Subscriber” means Nevada County or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system with Franchisee’s express permission, whether or not a fee is paid for such service.
- BB. “Termination” means the conclusion of a franchise by any means, including, but not limited to, by expiration of its term, abandonment, or revocation.
- CC. “Transfer” means any transaction in which:
 - 1. all or a portion of any facilities or any rights to use or operate facilities located in the public rights-of-way are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or
 - 2. there is any change, acquisition, or transfer in the identity of the person in control of the Franchisee, or any person that controls Franchisee, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or
 - 3. the rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise.
- DD. “Unaffiliated Video Programming Provider” or “UVPP” means any person who uses capacity on a franchised cable system to deliver cable service or other communications service (as that term is used in 47 U.S.C. §542(h)) to subscribers and who is not an affiliate of the Franchisee.
- EE. “Upstream Channel” means a channel designed and activated to carry transmissions from a point on the cable system, other than the headend, to the headend or another point on the cable system.
- FF. “User” means a person or Nevada County utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting video,

voice and data materials contrasted with receiving it in the capacity of a subscriber.

Sec. G-II 2.2 Franchise Required

No person may construct or operate a Cable Communications System in Nevada County without first obtaining a Franchise; provided that the following shall not be required to obtain a Franchise under this Article:

- A. Nevada County; or
- B. A UVPP that is only delivering Cable service or other communications service (as that term is used in 47 U.S.C. §542(h)) to subscribers.

Sec. G-II 2.3 Possessory Interest of Public Property

- A. A Franchise granted pursuant to this Article shall notify the Franchisee of potential tax liability for property taxes pursuant to Cal. Rev. and Tax Code §107.6.

Sec. G-II 2.4 Failure to Obtain a Franchise

Consistent with the requirements of due process, a person's failure to obtain a Franchise as required by this Article may, in the County's discretion, result in:

- A. Forfeiture, by operation of law, of the person's facilities located in the public Rights-of-Way that are not authorized by an existing Franchise; and/or
- B. A County order and/or court order that the facilities be removed, and that penalties and damages be paid as set forth in the County Code or in state law.

Sec. G-II 2.5 Existing Franchises

Franchisees existing as of the effective date of this Article shall, in addition to all the obligations and duties prescribed by the terms of their existing Franchises, be subject to the substantive and procedural requirements herein, except as prohibited by applicable law. Nothing herein is intended to invalidate a lawful, existing Franchise or to waive any obligations imposed by such a Franchise.

Sec. G-II 2.6 Administration of Ordinance; Adoption of Regulations

- A. Adoption of Regulations. Nevada County may from time to time adopt regulations to implement the provisions of this ordinance.
- B. Delegation. The Nevada County Administrator or its designees are hereby authorized to administer the provisions of this ordinance and any franchise issued pursuant thereto, and to provide any notices (including non-

compliance notices) and to take any action on Nevada County's behalf that may be required hereunder or under applicable law.

- C. No Waiver. The failure of Nevada County, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- D. Administration of Public, Educational and Government Access. Nevada County may designate one or more entities, including itself, to control and manage the use of Public, Educational and Government Access Channels, facilities and equipment.

Sec. G-II 2.7 General Conditions Upon Construction, Operation and Repair

- A. Franchisee Must Follow Local Rules. The construction, operation, and repair of cable communications systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. No Permit Without Franchise. A franchise is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon Nevada County's demand.
- C. Permits Must Be Obtained. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper Nevada County officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of Nevada County, any work and/or construction undertaken that is not completed in compliance with Nevada County's requirements, or which is installed without obtaining necessary permits and approvals shall be removed.
- D. No Interference. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. Nevada County may require a person using

the rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.

E. Plans for and Publicizing Work. Work shall be publicized as Nevada County may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems, of the impending work, in order to minimize inconvenience and disruption to the public.

1. Each Franchisee shall provide Nevada County a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the County that will be affected.
2. The Nevada County Administrator may from time to time, when the County receives application for a permit to use a particular route, or upon the Nevada County Administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may (1) require all persons who wish to emplace underground facilities along that route or any part thereof to install them during a specified period provided all costs are shared equitably and (2) otherwise prohibit initial emplacement of such facilities along the route or any part thereof for twenty-four (24) months or after such other, longer period as is necessary to protect the public interest.

F. Existing Poles to Be Used. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the Nevada County Administrator.

1. To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights of way capacity, or to protect environmentally sensitive areas, the Nevada County Administrator may require as a condition of issuing any rights of way permit for erection of new poles or construction of underground conduit, the installation of which requires excavation of or along any traveled way that the Franchisee, Licensee, or holder of the rights of way permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the County and/or other franchisees and licensees.

G. Undergrounding

1. Whenever all existing utilities are located underground in an area in Nevada County, every cable communications systems operator in the

same area must locate its cable communications system underground.

2. Whenever the owner of a pole locates or relocates underground within an area of Nevada County, every cable communications systems operator in the same area shall concurrently relocate its facilities underground.
3. The Nevada County Administrator may, for good cause shown, exempt a particular system or facility or group of facilities from the obligation to locate or relocate facilities underground, where relocation is impractical, or where the County and the subscriber's interest can be protected in another manner. Nothing in Sec. G-II 2.12.G prevents Nevada County from ordering communications facilities to be located or relocated underground except for Franchisee's ordinary engineering practice making undergrounding impracticable or infeasible under other provisions of the Nevada County Code.

H. Prompt Repairs. Any and all public rights-of-way, other public property, or private property that is disturbed or damaged during the construction, operation, maintenance or repair of a cable communications system shall be promptly repaired by the operator. Public property and public rights-of-way must be restored to the satisfaction of Nevada County or to a condition as good or better than before the disturbance or damage occurred.

I. Movement of Facilities for Government

1. A cable communications systems operator shall, by a time specified by Nevada County, protect, support, temporarily disconnect, relocate, or remove any of its property when required by Nevada County by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); public right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."
2. Except in the case of emergency, Nevada County shall provide written notice describing where the public work is to be performed at least one week prior to the deadline by which a cable communications systems operator must protect, support, temporarily disconnect, relocate or remove its facilities. However, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, Nevada County may protect, support, temporarily disconnect,

remove, or relocate any or all parts of the cable communications system without prior notice, and charge the cable communications systems operator for costs incurred.

J. Movement for Others

1. To accommodate the construction, operation, or repair of the facilities of another person authorized to use the streets or public property, a Franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The Franchisee must be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. Nevada County may resolve disputes as to responsibility for costs associated with removal, relaying, or relocation of facilities among entities authorized to install facilities in the streets or on public property if such entities are unable to do so themselves.
2. A cable communications systems operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications systems operator shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

K. Abandonment in Place

1. A cable communications systems operator may abandon any property in place in the public rights-of-way upon written notice to Nevada County. However, if, within ninety (90) days of the receipt of written notice of abandonment, Nevada County determines, that the safety, appearance, functioning or use of the public rights-of-way and facilities in the public rights-of-way will be adversely affected, the property must be removed by a date specified by Nevada County.
2. A cable communications systems operator that abandons its property must, upon request, transfer ownership of the properties to Nevada County at no cost, and execute necessary quitclaim deeds and indemnify Nevada County against future costs associated with mitigating or eliminating any environmental hazard associated with the abandoned property.

L. System Subject to Inspection. Every cable communications system shall be subject to inspection and testing by Nevada County. Each operator must respond to requests for information regarding its system and plans for the system as Nevada County may from time to time issue, including requests

for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

- M. Underground Services Alert. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for Nevada County at no charge.
- N. Plan for construction. Every franchise shall specify for Nevada County a construction schedule that will apply to any required construction, upgrade, or rebuild of the cable communications system. The schedule shall provide for the prompt completion of the project, shall show its timetable for construction of each phase of the project, with benchmarks for deliverables and the areas of Nevada County that will be affected. Nevada County shall have the right to impose penalties on the operator for a failure to meet the accepted timetable and benchmarks.
- O. Use of Facilities by Nevada County. Nevada County shall have the right to install and maintain, free of charge upon any poles or in any conduit owned by a Franchisee any wire and pole fixtures that do not unreasonably interfere with the cable service operations of the Franchisee.

EXHIBIT B

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ARTICLE 2.A STATE VIDEO SERVICE FRANCHISES

Sec. G-II.2.A.1 Findings

- A. The County encourages and supports community, public, educational and government video and cable programming throughout Nevada County.
- B. In 2006, the State of California adopted the “Digital Infrastructure and Video Competition Act” (DIVCA), embodied in California Public Utilities Code section 5800 et seq., which transferred the authority for issuing franchises to cable television providers from local entities to the Public Utilities Commission. DIVCA authorized the County of Nevada to continue regulating franchise agreements directly with cable television providers through its existing agreements until the expiration of those agreements.
- C. DIVCA establishes that local entities are responsible for administration and implementation of certain provisions of DIVCA, but they are preempted from regulating most other provisions governing state-issued cable television franchises.
- D. DIVCA authorizes that the County establish, by ordinance, financial support provisions for Public, Education and Government Access (PEG) channel facilities.
- E. The intent of this Article is to ensure that the County will continue to have the financial resources to maintain quality PEG programming. A video service provider PEG fee is needed to support such continued public, educational and government programming consistent with the provisions in state and federal law governing the use of such fees.
- F. The County’s existing franchise agreements expired on June 27, 2016. In order to ensure that the County continues to receive PEG fees, the County desires to adopt a new General Code Section consistent with the DIVCA provisions and replace existing code sections pertaining to local franchise agreements that no longer apply.
- G. It is the intent of the Board of Supervisors in adopting this Article to facilitate the implementation of DIVCA by setting forth regulations for the provision of video service by State Franchise Holders within the County of Nevada, in accordance with the requirements set forth in DIVCA.
- H. This action furthers the Board of Supervisors’ goals and objectives for improved government transparency, public engagement, investment in technology, and fiscal sustainability.

Sec. G-II.2.A.2 General Provisions

- A. Purpose. This Section is applicable to video service providers who 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 [“DIVCA”]), to provide cable or video services in any location(s) within the unincorporated boundaries of the County. It is the purpose of this Section to implement within the unincorporated boundaries of the County the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated thereunder that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.
- B. Rights Reserved.
1. The rights reserved to the County under this Article are in addition to all other rights of the County, whether reserved by this Article or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the County.
 2. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:
 - i. compliance with applicable requirements for the privilege of transacting and carrying on a business within the County, including, but not limited to, compliance with the conditions that the County may establish before facilities may be constructed for, or providing, non-video services;
 - ii. any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and
 - iii. any permit, agreement or authorization for occupying any other property of the County or any private person to which access is not specifically granted by the state franchise.
 3. No permit issued by the County to a State Franchise Holder is itself a franchise, nor shall any permit create a vested right that would prohibit the County from revoking or amending the permit.
- C. Compliance with County Ordinances. Nothing contained in this Article shall be construed so as to exempt a State Franchise Holder from compliance with all ordinances, rules or regulations of the County now in effect or which may be hereafter adopted which are consistent with this Article or California Public Utilities Code section 5800 *et seq.*, or any obligations under any franchise issued by the County insofar as those

obligations may continue to be enforced under California Public Utilities Code section 5800 et seq.

- D. Compliance with DIVCA. When a video service provider holding a state franchise provides notice to the County pursuant to 5840(m) of DIVCA that it is commencing to provide video service to the County, a holder of a local franchise is entitled to seek a state franchise pursuant to 5930(c) and upon issuance of a state franchise by the California Public Utilities Commission for the franchise area the local franchise shall terminate.

Sec. G-II.2.A.3 Definitions

Definitions Generally -- Interpretation of Language. For purposes of this Article the following terms, phrases, words, and their derivations shall have the meaning as set forth in this Section. Words not defined in this Section, shall have the same meaning as established in: (1) DIVCA, and if not defined therein, (2) California Public Utilities Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47 USC § 521 *et. seq.*, and if not defined therein (4) their common and ordinary meaning. 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 words "shall" and "will" are always mandatory, but the use of those terms grants no private rights to any person with respect to the County. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

- A. "Gross Revenues" defined in DIVCA section 5860(d) means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the unincorporated areas of the County.
- B. "PEG Access," or "PEG" means the availability of a cable or State Franchise Holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the County and its designated access providers, to acquire, create, and distribute programming not under a State Franchise Holder's editorial control.
- C. "State Franchise Holder" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the unincorporated limits of the County.

- D. “Incumbent Cable Operator,” as defined in DIVCA 5830(i), means a cable operator or OVS serving subscribers under a franchise in a particular city, county or city and county franchise area on January 1, 2007.
- E. “Material Breach,” as defined in DIVCA 5900(j), means any substantial and repeated failure of a video service provider to comply with service quality and other standards specified in Public Utilities Code section 5900(a).

Sec. G-II.2.A.4 Franchise Fees

- A. Franchise Fees. Any State Franchise Holder operating within the unincorporated areas of the County shall pay to the County a franchise fee equal to five percent (5%) of gross revenues that may be subject to a franchise fee under California Public Utilities Code section 5860.
- B. Payment of Franchise Fees. The franchise fee required pursuant to this Article shall be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The State Franchise Holder shall deliver to the County, by check or other means, which shall be agreed to by the County, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the County.
- C. Examination of Business Records. The County may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).
- D. Late Payments. In the event a State Franchise Holder fails to make payments required by this Article on or before the due dates specified herein, the County shall impose, pursuant to DIVCA section 5860(h), a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).
- E. Lease of County-Owned Network. In the event a State Franchise Holder leases access or spectrum to a fiber network owned by the County, the County may set a franchise fee for access to the County-owned network separate and apart from the franchise fee charged to State Franchise Holders pursuant to this Article which fee shall otherwise be payable in accordance with the procedures established by this subsection.

Sec. G-II.2.A.5 Customer Service

- A. Customer Service Standards. A State Franchise Holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code

of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and, to the extent consistent with DIVCA, all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including any such federal or state standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

- B. Penalties for Violations of Standards. The County shall enforce the compliance of State Franchise Holders with respect to the state and federal customer service and consumer protection standards set forth in this Article. The County will provide a State Franchise Holder with a written notice of any alleged Material Breaches, as defined in California Public Utilities Code section 5900 and in this Article, of applicable customer service or consumer protection standards, and will allow the State Franchise Holder 30 days from the receipt of the notice to remedy the specified Material Breach. Material Breaches not remedied by a State Franchise Holder within the 30-day time period, irrespective of the number of customers affected, will be subject to the following penalties to be imposed by the County:
1. For the first occurrence of a Material Breach, a fine of \$500 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.
 2. For a second Material Breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.
 3. For a third Material Breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.
 4. Any penalties imposed by the County shall be imposed in a manner consistent with California Public Utilities Code section 5900.

Sec. G-II.2.A.6 Permits and Construction

- A. Except as expressly provided in this Article, all provisions of Nevada County Code Title III, the Nevada County Land Use and Development Code, and all County administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a State Franchise Holder on any County public rights-of-way, public property, or County easement.

- B. Permits. Prior to commencing any work for which a permit is required by the Nevada County Land Use and Development Code, a State Franchise Holder shall apply for and obtain a permit in accordance with the provisions of Title 3, Chapter II of the Land Use and Development Code and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act). Any work requiring County Land Use permits, building permits and/or grading permits, other than encroachment permits described below, shall be applied for and approved or denied in accordance with the provisions of Title 3, Chapter II of the Land Use and Development Code including the appeal process of such an approval or denial outlined in Section L-II 5.12 of Chapter II of the Land Use and Development Code.
- C. The Community Development Director or designee shall either approve or deny State Franchise Holder's application for an encroachment permit, as defined in DIVCA 5885(c)(1), required under the Land Use and Development Code within sixty (60) days of receiving a completed permit application from the State Franchise Holder.
- D. If the Community Development Director denies a State Franchise Holder's application for an encroachment permit, the Community Development Director 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.
- E. A State Franchise Holder that has been denied an encroachment permit by final decision of the Community Development Director may appeal the denial to the County Board of Supervisors. Upon receiving a notice of appeal, the Board of Supervisors shall take one of the following actions:
1. Affirm the action of the Community Development Director without any further hearing; or
 2. Refer the matter back to the Community Development Director for further review with or without instructions; or
 3. Set the matter for a *de novo* hearing before the Board of Supervisors.
- F. In rendering its decision on the appeal, the Board of Supervisors shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the Community Development Director unless the Board of Supervisors is itself conducting a public hearing on the matter.
- G. The issuance of an encroachment permit 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, in accordance with applicable law.

Sec. G-II.2.A.7 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. To the extent consistent with Public Utilities Code section 5880, each State Franchise Holder shall install and maintain an audio override on all channels for transmission of emergency messages and alerts, and shall provide for character generated information to be superimposed on all channels for the hearing impaired.

Sec. G-II.2.A.8 Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage

A. PEG Channel Capacity.

1. There are currently four (4) PEG access channels activated. 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.
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.
3. All State Franchise Holders shall comply with the provision of DIVCA related to PEG channels. Without limiting the foregoing, the PEG channels shall be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated from other channels carried on the basic service tier and channel numbers for the PEG channels shall be the same channel numbers used by the Incumbent Cable Operator, as defined in DIVCA section 5830(i), unless prohibited by Federal Law and shall provide picture and sound quality, channel accessibility, and location equal to, or substantially equal to, that provided by incumbent cable providers. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law.

B. PEG Support.

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 one and four tenths percent (1.4%) 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.

2. The PEG support fee shall be used in a manner that is consistent with state and federal law.
3. A State Franchise Holder shall remit the PEG support fee quarterly, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.
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, pursuant to DIVCA section 5860(h), 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.

C. Interconnection.

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 unless otherwise agreed to by the parties.

Sec. G-II.2.A.9 Notices

- A. Each State Franchise Holder or applicant for a state franchise shall file with the County a copy of all applications or notices that the State Franchise Holder or applicant are required to file with the California Public Utilities Commission.
- B. Unless otherwise specified in this Section, all notices or other documentation that a State Franchise Holder is required to provide to the County under this Section or the California Public Utilities Code shall be

provided to both the County Manager and the County staff person in charge of cable and telecommunications, or their successors or designees.

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EXHIBIT C

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ARTICLE 2.B MISCELLANEOUS

Sec. G-II 2.B.1 Captions

The captions to sections throughout this Article are intended solely to facilitate reading and reference to the sections and provisions of this Article. Such captions shall not affect the meaning or interpretation of this Article.

Sec. G-II 2.B.2 Calculation of Time

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Article or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

Sec. G-II 2.B.3 Severability

If any term, condition, or provision of this Article shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by Nevada County and shall thereafter be binding on the Franchisee and Nevada County.

Sec. G-II 2.B.4 Connections to Cable System; Use of Antennae

- A. **Subscriber Right to Attach.** To the extent consistent with federal law, subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a Franchisee's cable system. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.
- B. **Removal of Existing Antennae.** A Franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna, provided that such antenna is connected with an appropriate device and complies with applicable law.

Sec. G-II 2.B.5 Discrimination Prohibited

- A. **No Retaliatory Actions.** A cable communications systems operator shall not discriminate among persons or Nevada County or take any retaliatory action against a person or Nevada County because of that entity's exercise of any right it may have under federal, state, or local law, nor may the cable communications systems operator require a person or Nevada County to waive such rights as a condition of taking service.

- B. Employment and Hiring Practices. A cable communications systems operator shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, sexual orientation, age, disability, religion, ethnic background, or marital status. A cable communications systems operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time.

Sec. G-II 2.B.6 Transitional Provisions

- A. Persons Operating Without a Franchise. The cable communications systems operator of any facility installed as of the effective date of this Article, for which a franchise is required under this Article, shall have three (3) months from the effective date of this Article to file one or more applications for a franchise. Any cable communications systems operator timely filing such an application under this Sec. G-II 2.C.6 shall not be subject to a penalty for failure to have such a franchise so long as said application remains pending; provided, however, nothing herein shall relieve any cable communications systems operator of any liability for its failure to obtain any permit or other authorization required under other provisions of Nevada County Code, and nothing herein shall prevent Nevada County from requiring removal of any facilities installed in violation of Nevada County Code.
- B. Persons Holding Franchises. Any person holding an existing franchise for a cable communications system may continue to operate under the existing County Code provisions to the conclusion of its present term (but not any renewal or extension thereof) with respect to those activities expressly authorized by the franchise; and provided further that, such person shall be subject to the other provisions of this Article to the extent permitted by law.
- C. Persons with Pending Applications. Pending applications shall be subject to this Article. A person with a pending application shall have thirty (30) days from the effective date of this Article to submit additional information to comply with the requirements of this Article governing applications.