

---

**SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION**

**Senator Bill Dodd**

**Chair**

**2021 - 2022 Regular**

---

**Bill No:** SB 28 **Hearing Date:** 4/20/2021  
**Author:** Caballero, et al.  
**Version:** 4/5/2021 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Brian Duke

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

**DIGEST:** The Rural Broadband and Digital Infrastructure Video Competition Reform Act of 2021 requires the California Department of Technology (CDT) to compile an inventory of state-owned resources that may be available for use in the deployment of broadband, as specified; expands the authority of the California Public Utilities Commission (CPUC) to regulate cable video franchises, as specified; and, requires the CPUC to consult with local governments regarding franchise violations, as specified.

**ANALYSIS:**

Existing law:

- 1) Establishes CDT and makes it responsible for approval and oversight of information technology (IT) projects.
- 2) Requires the Department of General Services (DGS) to compile and maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities.
- 3) 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.
- 4) Prohibits the state from designating a franchisee as a public utility because it obtains a state video 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.

- 5) 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.
- 6) 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.
- 7) Allows local governments to bring complaints to the CPUC regarding cable franchises that are not offering video service required by existing law, and authorizes the CPUC to initiate an investigation on its own, regardless of whether it has received a complaint from a local government.
- 8) Requires every cable franchise holder to submit specified data to the CPUC by April 1<sup>st</sup> of each year, as specified.

This bill:

- 1) Requires CDT, in collaboration with DGS, the State Department of Education (CDE), the Department of Transportation (Caltrans), and other relevant state agencies to:
  - a. Compile an inventory of state-owned resources that may be available for use in the deployment of broadband networks in rural, unserved, and underserved communities.
  - b. Develop a standardized agreement to enable state-owned resources to be leased or licensed for the purpose described above, as specified.
- 2) Requires CDT to post on its internet website the inventory of state-owned resources and the standardized agreement described above, and to update them as necessary. CDT shall provide technical assistance to state departments and agencies for the purposes of this bill.
- 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 the actual locations served by the holder of a state franchise, as specified.
  - b. Adopt customer service requirements for a holder of a state franchise and adjudicate any customer complaints.
  - c. Assess the build out obligations of a holder of a state franchise to further competition and expansion of video service, as specified.
- 6) Requires the holder of a state franchise to submit the following information to the CPUC by April 1<sup>st</sup> of each year:
  - a. Information relative to the locations that the holder made broadband service available and that received broadband service during the previous year, as specified. For each location, the information shall show, among other things, the upload and download speeds, the technology or technologies used to provide broadband service at each location, the price at which broadband service was offered at each upstream and downstream speed combination.
  - b. Information relative to the locations that the holder made video service available and that received video service during the previous year, as specified.
- 7) Defines "state-owned resources" to mean, but not be limited to, state-owned real properties, rights-of-way, spectrums, facilities and structures, infrastructure, programs, and other resources suitable for that purpose. The term does not include any state-owned resources that, if used for that purpose, would be inimical to the public health, safety, or welfare.
- 8) Includes legislative findings and declarations relating to inequality caused by California's persistent digital divide.

## Background

*Purpose of the bill.* According to the author's office, "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.”

*California Department of Technology.* Existing law establishes CDT, within the Government Operations Agency (GovOps), and makes CDT responsible for the approval and oversight of IT projects. According to its internet website, CDT is the guardian of public data, a leader in IT services and solutions, and has broad responsibility and authority over all aspects of technology in California state government, including: policy information, inter-agency coordination, IT project oversight, information security, technology service delivery, and advocacy.

This bill requires CDT, in collaboration with DGS, CDE, Caltrans, and other relevant state agencies, to compile an inventory of state-owned resources that may be available for use in the deployment of broadband networks in rural, unserved, and underserved communities. Additionally, this bill requires CDT to develop a standardized agreement to enable state-owned resources to be leased or licensed for the purpose described above. The agreement shall include provisions that ensure the broadband network developer uses the state-owned resource to provide broadband access to rural, unserved, or underserved communities and deploys broadband infrastructure that has the capacity to provide service at a minimum speed of 100 megabits per second (Mbps) downstream. CDT will be required to post the inventory of state-owned resources and the standardized agreement described above on its internet website and to update them as necessary.

*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 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% 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 allows a state or local entity issuing cable franchises to establish and enforce customer service requirements and build out requirements. However, existing federal law 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.* This bill was previously heard in the Senate Energy, Utilities and Communications Committee where amendments were discussed. However, due to timing limitations, the author agreed to take amendments in this committee. The analysis from the Energy, Utilities and Communications Committee described the amendments as follows:

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**

AB 14 (Aguiar-Curry, 2021) would extend the California Advanced Services Fund (CASF) and make various modifications to the fund, including increasing the minimum speed standards for CASF-funded infrastructure, expanding the definition of an "unserved" area eligible for grants, and expanding the types of projects eligible for CASF funding to include projects that deploy broadband to specified "anchor institutions." (Pending in the Assembly Local Government Committee)

SB 4 (Gonzalez, 2021) extends and makes various modifications to the CASF, including increasing the minimum speed of broadband infrastructure funded by the program, expanding the communities eligible for grants, allowing the CPUC to issue bonds secured by CASF revenues. (Pending in the Senate Judiciary Committee)

SB 732 (Bates, 2021) would establish a \$10 billion Rural Broadband Infrastructure fund, administered by the CPUC to deploy high-speed broadband to unserved rural areas. (Pending in the Senate Energy, Utilities and Communications Committee)

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, as specified. 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. (Held on the Senate Appropriations Committee suspense file)

SB 752 (Stern, 2019) would have created the Commission on Tech Equity and would have required the commission to, among other things, convene a public process to gather input and to understand the economic, social, workplace, and technological landscape of innovation and technology in California. (Held on the Senate Appropriations Committee suspense file)

SB 1422 (Glazer, Chapter 156, Statutes of 2016) specified that cable franchises are considered "other service providers" 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.

SB 1462 (Padilla, Chapter 338, Statutes of 2010) established the California Broadband Council to promote broadband deployment and adoption throughout the state, and required the council to ensure that state agencies are coordinating efforts and resources to promote broadband deployment and adoption.

AB 2987 (Nunez, Chapter 700, Statutes of 2006) the Digital Infrastructure and Video Competition Act of 2006 created a mechanism for a state-issued franchise for the provision of cable and video service in California.

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

**SUPPORT:**

Association of California School Administrators  
California Medical Association  
California State Association of Counties  
Central Valley Education Coalition  
City Council Member of Gilroy, Zach Hilton  
City Councilperson of San Juan Bautista, John Freeman  
City of Los Banos



City of Huron  
City of King  
City of Merced  
City of Salinas  
City of Soledad  
Community Bridges  
Livable California  
Salinas League of United Latin American Citizens, Council #2055  
San Benito County League of United Latin American Citizens, Council #2890  
San Benito High School District  
San Juan Bautista Rotary Club  
Seniors Council of Santa Cruz and San Benito Counties  
The Utility Reform Network  
Youth Alliance  
Numerous individuals

**OPPOSITION:**

California Cable and Telecommunications Association  
Consolidated Communications Inc.  
Frontier Communications

**ARGUMENTS IN SUPPORT:** In support of the bill, the California State Association of Counties (CSAC) writes that, “SB 28 would help close the Digital Divide in two ways. First, it would have the state identify resources, such as suitable property, easements, and even spare state-owned conduit, that can aid in deployment. This issue is identified by the California Broadband Council in its recently adopted Broadband For All Action Plan, which CSAC supports in its entirety. Secondly, the bill would make important reforms to DIVCA, which was implemented 15 years ago and has not been substantively reexamined since, despite changes in technology and business models. Under its terms, cable and telecommunication providers have been able to decide for themselves which services to provide in different areas, even with a single local jurisdiction, instead of negotiating with counties and cities over the terms of service.”

**ARGUMENTS IN OPPOSITION:** In opposition of the bill, the California Cable and Telecommunications Association (CCTA) writes that, “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.”

Further, CCTA argues that, “[e]ven if SB 28 were not preempted by federal law, the bill would modify DIVCA in several ways that creates uncertainty and potential disruption for existing service providers and their customers, which ultimately would deter, not advance, broadband deployment. Under the established DIVCA framework, cable companies have continued to build out their networks, which have maintained robust performance, notwithstanding the immense surge in network traffic due to shut-down orders during the pandemic.”

Finally, CCTA states that, “SB 28 also is not technology neutral. A variety of broadband providers offer service in California, including many that operate without a DIVCA franchise. SB 28 would impose new mandates only on DIVCA franchisees, establishing differential regulatory treatment among competing providers that is unfair and would act as an impediment to market forces that have generated billions of dollars in broadband network investment in recent years.”

**DUAL REFERRAL:** Senate Energy, Utilities and Communications Committee (14-0) & Senate Governmental Organization Committee