
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

SB 28 (Caballero) - Rural Broadband and Digital Infrastructure Video Competition Reform Act of 2021

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Urgency: No

Hearing Date: May 17, 2021

Policy Vote: E., U., & C. 14- 0, G.O. 11 - 0

Mandate: No

Consultant: Ashley Ames

Bill Summary: This bill would expand the authority of the California Public Utilities Commission (CPUC) to regulate cable video franchises, require the CPUC to consult with local governments regarding franchise violations, require the CPUC to evaluate a franchisee's service obligations, and require 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.

Fiscal Impact:

- CPUC estimates ongoing costs of at least \$1.44 million (special fund) to undertake new rulemakings; adjudicate customer complaints; perform ongoing assessment of build out obligations; consult with local governments; collect, map, and analyze granular data on the actual locations served by the video franchise holder; enforce new requirements; and create information technology infrastructure necessary to implement this bill.
- Unknown costs for CDT, in collaboration with other 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, collaborate on the development of a standardized agreement to enable those state-owned resources to be leased or licensed for that purpose, and post the inventory and agreement on the department's internet website, among other things.

Background: 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.

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.

Proposed Law: This bill would:

1. Require 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. Require 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. Delete 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. Require 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. Delete 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. Require the holder of a state franchise to submit the following information to the CPUC by April 1st 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.
 - c. The bill would prohibit CPUC from disclosing any personally identifiable information collected.
7. Define "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. Include legislative findings and declarations relating to inequality caused by California's persistent digital divide.

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."

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.

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.

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