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UNFINISHED BUSINESS

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Bill No: SB 28  
Author: Caballero (D), et al.  
Amended: 8/30/21  
Vote: 21

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SENATE ENERGY, U. & C. COMMITTEE: 14-0, 4/12/21  
AYES: Hueso, Dahle, Becker, Borgeas, Bradford, Dodd, Eggman, Gonzalez,  
Grove, Hertzberg, McGuire, Min, Rubio, Stern

SENATE GOVERNMENTAL ORG. COMMITTEE: 11-0, 4/20/21  
AYES: Dodd, Nielsen, Allen, Archuleta, Becker, Borgeas, Glazer, Hueso,  
Kamlager, Portantino, Rubio  
NO VOTE RECORDED: Bradford, Jones, Melendez, Wilk

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/20/21  
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

SENATE FLOOR: 36-0, 5/24/21  
AYES: Allen, Archuleta, Atkins, Becker, Borgeas, Bradford, Caballero, Cortese,  
Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado,  
Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen,  
Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg,  
Wieckowski, Wiener  
NO VOTE RECORDED: Bates, Dahle, Melendez, Wilk

ASSEMBLY FLOOR: 74-0, 9/8/21 - See last page for vote

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**SUBJECT:** Digital Infrastructure and Video Competition Act of 2006:  
deployment data

**SOURCE:** Author

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**DIGEST:** This bill expands the authority of the California Public Utilities Commission (CPUC) to collect data to enforce requirements for cable franchises and authorizes the CPUC to set customer service requirements for cable providers.

*Assembly Amendments* delete provisions related to the California Department of Technology and provisions that would have the CPUC's authority to regulate cable franchises beyond establishing customer service requirements.

**ANALYSIS:**

Existing law:

- 1) Establishes a 10-year state license for cable video service providers and gives the CPUC sole authority for approving cable video franchises in the state. (Public Utilities Code §5800 et. seq.)
- 2) Prohibits the state from designating a franchisee as a public utility because it obtains a state video service license. Existing law prohibits the CPUC from using its state franchise authority as an authority to regulate the rates, terms, and conditions of video services beyond statutory requirements for issuing franchises. (Public Utilities Code §5820)
- 3) Establishes requirements for video service providers applying for a state franchise and specifies the information franchise holders must provide to the CPUC to obtain and retain a state franchise. (Public Utilities Code §5840 et. seq.)
- 4) Prohibits franchised video providers from discriminating against or denying access to their services on the basis of a potential subscriber's income. Existing law establishes criteria for determining whether a video service provider has discriminated against residential subscribers. Existing law establishes different criteria for demonstrating compliance with non-discrimination prohibitions for franchise holders providing telephone service to more than one million Californians and those franchise holders providing telephone service to less than one million Californians. (Public Utilities Code §5890 (a-f))
- 5) 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 §583)

This bill:

- 1) Deletes existing data collection requirements for video service franchisees and instead requires the CPUC to collect granular data on actual locations served by a franchisee.
- 2) Requires the CPUC to adopt customer service requirements for cable franchises and adjudicate customer complaints.
- 3) Prohibits the CPUC from publicly disclosing any personally identifiable information collected from video franchises pursuant to this bill.
- 4) Restricts the CPUC’s ability to disclose any data collected from a cable providers under the bill unless the CPUC conducts a specified public hearing to identify information that is not confidential and may be publicly disclosed.

## **Background**

*Cable regulation and the shift from local to state 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. The enhanced data collection required by this bill may provide information that could enable the CPUC to better identify communities that lack service.

*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 data collection requirements in this bill could enable the CPUC to better identify instances of redlining and enforce its existing cable franchise oversight powers.

*This bill expands the CPUC's ability to exercise customer service oversight.* This bill requires the CPUC to establish consumer service requirements for franchise holders and adjudicate complaints brought by consumers regarding their service. 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 state law limits the CPUC's ability to carry out the full scope of oversight duties delegated to state and local bodies under federal law. This bill expands the CPUC's authority to set and enforce customer service requirements for cable franchise holders in a manner consistent with federal law.

### **Related/Prior 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

According to the Assembly Appropriations Committee, this bill creates significant new workload, and associated costs, to the CPUC, to conduct rulemaking; adjudicate customer complaints; assess video franchise holders buildout obligations; consult with local governments regarding violations of customer service requirements and buildout obligations; collect, map and analyze granular service data and gather and analyze pricing; and enforce requirements, including suspension or revocation of video franchises.

The CPUC estimates workload will entail ongoing annual costs of roughly \$1.5 million, mainly to cover salaries for seven positions (including two regulatory analysts, a data specialist, a telecommunications engineer, a supervisor, an attorney and an administrative law judge), as well as equipment and travel cost. The CPUC also anticipates information technology cost of an unknown, but likely significant amount (Public Utilities Commission Utilities Reimbursement Account).

**SUPPORT:** (Verified 9/1/21)

Access Committee of the San Juan Bautista Rotary  
Access Humboldt

Alliance for Community Media-West Region  
Association of California Egg Farmers  
Association of California School Administrators  
Association of Water Agencies  
California Action Fund  
California Association of Nonprofits  
California Association of Wheat Growers  
California Bean Shippers Association  
California Center for Rural Policy  
California Community Foundation  
California Cotton Alliance  
California EDGE Coalition  
California Emerging Technology Fund  
California Environmental Justice League  
California Farm Bureau  
California Forward  
California Grain & Feed Association  
California League of Food Producers  
California Medical Association  
California Seed Association  
California State Association of Counties  
California State PTA  
California Telehealth Network  
California Warehouse Association  
California Women for Agriculture  
Central Valley Community Foundation  
Central Valley Education Coalition  
Central Valley Higher Education Consortium  
Central Valley Leadership Round Table  
Children Now  
Cindy Gustafson, Placer County Supervisor, District 5  
Cities of Firebaugh, Huron, King, Los Banos, Merced, Patterson, Salinas, and  
Soledad  
City of Huron Police Department  
Common Sense  
Community Bridges  
Community Health Councils  
Community Media Access Collaborative  
Community Media Center of Marin  
Community Television of Santa Cruz County

County of Monterey  
County of Santa Clara  
CreaTV San José  
Davis Media Access  
Dolores Huerta Foundation  
Electronic Frontier Foundation  
Eliseo Gamino, Trustee, Firebaugh-Las Deltas School District 1  
Foster Care Counts  
Fresno Business Council  
Great Public Schools Now  
John Freeman, City Councilperson of San Juan Bautista  
JVS SoCal  
LA Voice  
League of California Cities  
Livable California  
Local Government Commission  
Los Angeles County Economic Development Corporation  
Madera County Economic Development Commission  
Mani Grewal, Stanislaus County Supervisor, District 4  
Manuel Thomas Faria III, Mayor of Los Banos  
Marin County Board of Supervisors  
Michelson Center for Public Policy  
Monterey Bay Economic Partnership  
Next Century Cities  
NextGen California  
OCHIN  
Pacific Egg & Poultry Association  
Parent Institute for Quality Education  
Robert L. Poythress, Madera County Supervisor, District 3  
Salinas League of United Latin American Citizens Council #2055  
San Benito County League of United Latin American Citizens Council #2890  
San Francisco Foundation  
Seniors Council of Santa Cruz and San Benito Counties  
Silicon Valley Community Foundation  
Stanislaus County Board of Supervisors  
Superintendent Deneen Guss, Monterey County Office of Education  
Superintendent Krystal Lomanto, San Benito County Office of Education  
Superintendent Shawn Tennenbaum, San Benito High School District  
Tahoe Truckee Media  
TechEquity Collaborative

The Education Trust-West  
The Rural Caucus of the California Democratic Party  
The Utility Reform Network  
UNITE-LA  
Youth Alliance in San Benito County  
Vito Chiesa, Stanislaus County Supervisor, District 2  
Zach Hilton, Gilroy City Council Member  
2 individuals

**OPPOSITION:** (Verified 9/1/21)

California Cable and Telecommunications Association  
Consolidated Communications, Inc.  
Frontier Communications  
Inland Empire Economic Partnership  
Los Angeles County Business Federation  
Monterey County Business Council  
Orange County Business Council

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

The Digital Infrastructure Video Competition Act (DIVCA) was enacted in 2005 and the franchise holders of a financially valuable ten-year long statewide franchise license have self-reported where they build their digital video networks to provide pay television services across the state.

This self-reported data comes to the California Public Utilities Commission at the census tract level from the cable and telecommunications companies that offer pay TV to large service territories that they select. These service providers consider all households served even if they serve just one house in the census tract. Urban areas are digitally redlined and large swaths of rural areas are left unserved because of this incomplete and obfuscated view of the DIVCA franchisees service network to ensure compliance with the franchise agreement. This is why so many of our residents all over the state were unable to work from home, and their children and teens were unable to connect to the internet to comply with school obligations. There simply was a lack of infrastructure capacity to support their internet service needs. Senate Bill 28 authorizes the CPUC to collect granular data from these service providers.

SB 28 also authorizes the CPUC to address customer service complaints against DIVCA providers. With more granular data that identifies where networks

exist, and helps to determine the quality of the service on the network, the CPUC can address complaints such as a lack of actual service delivery or receipt of poor quality service.

Thus, SB 28 gives the CPUC two important tools to understand how DIVCA franchisees have built their networks over the past 15 years, and gain important customer service oversight of DIVCA franchisees.

**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 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.”

ASSEMBLY FLOOR: 74-0, 9/8/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Choi, Davies, Flora, Fong, Smith

Prepared by: Sarah Smith / E., U., & C. / (916) 651-4107  
9/8/21 21:28:50

\*\*\*\* END \*\*\*\*