

ORDINANCE NO. 1551

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING TITLE VI, CHAPTER 4, SECTION 6566 OF ARCATA MUNICIPAL CODE REAUTHORIZING THE PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG) FEE ON STATE CABLE/VIDEO SERVICE FRANCHISES OPERATING IN THE CITY OF ARCATA

WHEREAS, Public Utilities Code Section 5870(n), which was enacted as part of the Digital Infrastructure and Video Competition Act of 2006, authorized the Cities and County to adopt an ordinance establishing a fee on state-franchised cable/video services providers to support public, educational, and government access channels (“PEG”); and

WHEREAS, in 2010 Humboldt County and the Cities of Arcata, Eureka, Blue Lake, Fortuna, Ferndale, and Rio Dell (“Cities/County”) each enacted an ordinance updating its respective government code (“Cities/County Codes”) to include provisions addressing the obligations of the holders of state video franchises issued by the California Public Utilities Commission (“CPUC”), pursuant to the Digital Infrastructure and Video Competition Act (“DIVCA”); and

WHEREAS, commencing on various dates in 2014, Suddenlink began operating its cable system (or portions thereof) located within the Cities/County under the terms and conditions of a state video franchise ("Suddenlink State Video Franchise") granted by the CPUC and the Cities/County Codes, as these documents may have been and/or may in the future be lawfully amended from time to time in accordance with applicable law; and

WHEREAS, Public Utilities Code Section 5870(n) states that such an ordinance shall expire, and may be reauthorized, upon the expiration of a state franchise; and

WHEREAS, this amendment is not intended to impose a new or increased fee, but rather is intended to reauthorize the already existing PEG fee at the same level, to the extent such reauthorization may be needed to continue to collect said fee.

NOW, THEREFORE, the City Council of the City of Arcata does ordain as follows:

Section 1: Chapter 4 (Cable systems and Open Video Systems), Section 6566 of Title VI (Business Professions and Trades) of the Arcata Municipal Code is hereby amended by the addition of new subsection 6566(B)(5) as shown in the following bold double underscore:

SEC. 6566. Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage.

A. *PEG channel capacity.*

1. 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 City satisfies the standards set forth in Section 5870(d) of the California Public Utilities Code or any entity designated by the City to manage one (1) or more of the PEG channels.

B. *PEG support.*

1. Amount of PEG support fee. Any state franchise holder shall pay to the City—or if directed by the City, to the City's designated PEG provider—a PEG fee equal to one-and-four-hundred-one-thousandths percent (1.401%) of gross revenues, an amount equivalent to the level of PEG funding remitted by the incumbent cable operator to the City's designated PEG provider during the period of January 1, 2006, to December 30, 2006.

2. The PEG support fee shall be used for PEG activities, in a manner that is consistent with the terms of the incumbent cable operator's franchise during the period of January 1, 2006, to December 30, 2006, and settlements.

3. A state franchise holder shall remit the PEG support fee quarterly, within forty-five (45) 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 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.

5. Notwithstanding Public Utilities Code Section 5870(n), upon the expiration of any state franchise, without any action of the City of Arcata, this Section shall be deemed to have been automatically reauthorized, unless the state franchise holder has given the City Manager written notice sixty (60) days prior to the expiration of its state franchise that the section will expire pursuant to the terms of Public Utilities Code Section 5870(n).

C. *PEG carriage and interconnection.*

1. As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchise holders shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest-cost tier

of service. PEG access capacity provided by a state franchise holder shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchise holder at a lower quality or with less functionality), shall be capable of carrying a National Television System Committee (NTSC) television signal, and shall be carried on the state franchise holder's lowest-cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest-cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

2. Where technically feasible, 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 § 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 City 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 City and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each state franchise holder requesting the interconnection unless otherwise agreed to by the parties.

Section 2: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 3: This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that reauthorizing the existing PEG fee at the same level may have a significant effect on the environment.

Section 4: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: October 6, 2021

ATTEST:

/s/ Bridget Dory
City Clerk, City of Arcata

APPROVED:

/s/ Brett Watson
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1551, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California on the 6th day of October, 2021, by the following vote:

AYES: WATSON, ATKINS-SALAZAR, GOLDSTEIN, MATTHEWS, SCHAEFER

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Bridget Dory
City Clerk, City of Arcata