

1 [State Video Franchise Holders.]

2 **Ordinance amending the San Francisco Administrative Code by: (1) amending Section**
3 **11.1 and adding Section 11.28-A, to establish a fee for state video franchise holders**
4 **offering services in San Francisco to support public, educational, and government**
5 **channel facilities and activities; and (2) amending Section 11.1 and adding Section**
6 **11.83-A, to establish penalties for violation of customer service and consumer**
7 **protection standards by state video franchise holders.**

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strikethrough italics Times New Roman*~~.
10 Board amendment additions are double underlined.
11 Board amendment deletions are ~~strikethrough normal~~.

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. The San Francisco Administrative Code is hereby amended by amending
14 Chapter 11, Article I, Section 11.1, to read as follows:

15 SEC. 11.1. DEFINITIONS.

16 For purposes of Articles I through VIII of this Chapter, and of any Franchise granted
17 pursuant to this Chapter, the following terms, phrases, words, abbreviations, their derivations,
18 and other similar terms, when capitalized, shall have the meanings given herein. When not
19 inconsistent with the context, words used in the present tense include the future tense; words
20 in the plural number include the singular number; and words in the singular number include
21 the plural number. The words "shall" and "will" are mandatory. "May" is permissive. However,
22 as applied to official action, the words "shall" and "will" shall be directory in effect. Unless
23 otherwise expressly stated, words not defined herein shall be given their common and
24 ordinary meaning. References to governmental entities (whether persons or entities) refer to
25 those entities or their successors in authority. Unless otherwise expressly stated, if specific

1 provisions of law referred to herein are renumbered or amended, then the reference shall be
2 read to refer to the renumbered or amended provision.

3 (a) "Affiliate," when used in relation to any Person means another Person who owns
4 or Controls is owned or Controlled by, or is under common ownership or Control with, such
5 Person.

6 (b) "Applicable law" means all applicable federal, state, and City laws, ordinances,
7 codes, rules, regulations and orders, as the same may be amended or adopted from time to
8 time.

9 (c) "Applicant" means any Person submitting a Proposal pursuant to this Chapter.

10 (d) "Board" means the City's Board of Supervisors.

11 (e) "Bona Fide Institutional Lender" means any one or more of the following: (1) a
12 savings bank, a savings and loan association, a commercial bank or trust company, an
13 insurance company, a real estate investment trust, or any other Person which at the time a
14 pledge in trust or mortgage is recorded in favor of such Person or Persons, has assets of at
15 least \$500 million in the aggregate (or the equivalent in foreign currency, and is regularly
16 engaged in the financial services business; or (2) any special account, managed fund,
17 department, agency or Affiliate of any of the foregoing. For purposes hereof: (1) acting in a
18 "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar
19 capacity under a mortgage, loan agreement, indenture or other loan document; and (2) a
20 lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide
21 Institutional Lender if, no more than thirty (30) City business days after such loan is
22 consummated, the notes or other evidence of indebtedness or the collateral securing the
23 same are assigned to a Person then qualifying as a Bona Fide Institutional Lender.

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1 (f) "Cable Service" means the one way transmission to Subscribers of video
2 programming or other programming service and subscriber interaction, if any, required to
3 select or use such video programming or other programming service.

4 (g) "Cable System" means a Facility that consists of a set of closed transmission
5 paths and associated signal generation, reception, and control equipment designed to provide
6 Cable Service to multiple Subscribers. Except where expressly stated otherwise, Cable
7 System includes an Open Video System. Cable System does not include: (1) a Facility that
8 serves only to retransmit the television signals of one or more television broadcast stations,
9 (2) a Facility of a common carrier which is subject, in whole or in part, to the provisions of Title
10 II of the Communications Act of 1934 (47 U.S.C. Sections 201—276) except that such Facility
11 shall be considered a Cable System to the extent such Facility is used to provide Cable
12 Services; and (3) any Facilities of a gas or electric utility necessary or proper and used solely
13 for: (i) the transmission, distribution, or supply of gas or electricity; or (ii) the transmission or
14 collection of gas and electric usage and pricing information incidental thereto; or (iii) to provide
15 services required by the City.

16 (h) "Cable System Franchise" means a Franchise authorizing construction,
17 installation, or operation of a Cable System or the provision of Cable Service over a Cable
18 System. "Cable System Franchise" includes an OVS Franchise, unless expressly excluded
19 hereunder.

20 (i) "CPUC" means the California Public Utilities Commission.

21 (j) "City" means the City and County of San Francisco, a municipal corporation of
22 the State of California.

23 (k) "Control" means the power to control the affairs and key decisions of another
24 Person, in whatever manner exercised, whether directly or indirectly.

1 (l) "Department," in reference to a Cable System Franchise or any other
2 communications-related Franchise, means the Department of *Technology Telecommunications*
3 *and Information Services*. In reference to any gas, electric, or steam Franchise, "Department"
4 means the San Francisco Public Utilities Commission. In reference to any other type of
5 Franchise, "Department" means the City department assigned by the Board to process the
6 Proposal or administer the Franchise.

7 (m) "Facilities" includes any physical element used in connection with, or designed
8 to be used in connection with, the provision of Services, whether or not located in the Public
9 Rights-of-Way, including, without limitation, pedestals, cabinets, ducts and conduits (whether
10 empty or occupied), transformers, equipment, drains, handholds, lines, line extensions,
11 service drops, manholes, poles, power supplies and generators, splice boxes, surface location
12 markers, vaults, tunnels, amplifiers, power guards, nodes, cables, and fiber optics (whether
13 active or dark).

14 (n) "FCC" means the Federal Communications Commission.

15 (o) "Final Report" means a report submitted to the Board by the Department making
16 a final recommendation upon a Proposal.

17 (p) "Franchise" means an authorization granted by ordinance of the Board to a
18 Person to construct, install, or operate Facilities in the Public Rights-of-Way or to provide
19 Services using Facilities installed in the Public Rights-of-Way. "Franchise" shall not mean or
20 include any license or permit required for the privilege of transacting and carrying on a
21 business within the City as required by other ordinances or laws of the City, including, without
22 limitation:

23 (1) Any permit, agreement or authorization required in connection with operations
24 on public streets or property such as permits and agreements for placing devices on or in
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1 poles, conduits or other structures, whether owned by the City or a private entity, or for
2 excavating or performing other work in or along Public Rights-of-Way; and

3 (2) Express or implicit authorization to provide Service to, or install Facilities on,
4 private property without owner consent.

5 (q) "Franchise Area" means the geographic area of the City in which a Franchise
6 authorizes a Grantee to construct, install, or operate Facilities or to provide Services.

7 (r) "Franchise Fee" means a payment made to the City in accordance with Section
8 11.21 below. In the case of a UVPP, "Franchise Fee" shall mean a fee in lieu of a franchise
9 fee, pursuant to 47 U.S.C. Section 573(c)(2)(B).

10 (s) "Grantee" means a Person granted a Franchise by the City, and any lawful
11 permitted successor or assign.

12 (t) "Gross Revenues" means any and all income, receipts and other revenue of any
13 kind or nature arising from or in connection with the operation of, or provision of Service using,
14 Facilities in the Franchise Area and as may be more specifically defined in a Franchise, except
15 that when used in Section 11.28-A, "Gross Revenues" shall mean and refer to the definition of that term
16 contained in California Public Utilities Code Section 5860(d), as amended.

17 (u) "Material Breach" means a breach of the Franchise that has a substantial and
18 significant effect on the rights or benefits either party to the Franchise has secured pursuant to
19 the Franchise. "Material Breach" shall include, but not be limited to, those breaches
20 designated as such in the Franchise and this Chapter, except that when used in Section 11.83-A,
21 "Material Breach" shall mean any substantial and repeated failures by a State Video Franchise holder
22 to comply with standards specified in Section 11.83-A(a).

23 (v) "Open Video System" or "OVS" means a Cable System owned, operated, or
24 Controlled by a Person certified by the FCC pursuant to 47 U.S.C. Section 573 and holding an
25 OVS Franchise pursuant to this Article.

1 (w) “Operator” means any Person who: (1) provides Service over Facilities and
2 either directly or indirectly owns, or has an Affiliate that owns, a significant interest in the
3 Facilities; or (2) otherwise Controls, or is responsible for, through any arrangement, the
4 operation or management of Facilities.

5 (x) “OVS Franchise” means a Franchise authorizing construction, installation, or
6 operation of an Open Video System or the provision of Cable Service over an Open Video
7 System.

8 (y) “Permittee” means a person granted a UCP.

9 (z) “Person” means any individual, group, company, partnership, association, joint
10 stock company, trust, corporation, society, syndicate, club, business, or governmental entity.
11 “Person” shall not include the City.

12 (aa) “Personal Wireless Service” means commercial mobile services provided under
13 a license issued by the FCC.

14 (bb) “Personal Wireless Service Facilities” means antennas and related Facilities
15 used to provide or facilitate the provision of Personal Wireless Service.

16 (cc) “Personal Wireless Service Facilities Site Permit” means a permit issued by the
17 Department of Public Works authorizing a Person to construct Personal Wireless Service
18 Facilities.

19 (dd) “Proposal” means any application proposal submission or request filed pursuant
20 to the requirements of this Chapter to; (1) obtain a new Franchise; (2) Transfer a Franchise;
21 (3) extend a Franchise; or otherwise modify a Franchise. A Proposal includes an Applicant's
22 initial proposal, submission or request, as well as any and all amendments or supplements to
23 the Proposal and relevant correspondence.

24 (ee) “Proposal Fee” means a charge to recover the City's actual costs of processing
25 Proposals hereunder.

1 (ff) "Public Rights-of-Way" means the area in, on, upon, above, beneath, within,
2 along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways,
3 alleys, spaces, and boulevards within the geographic area of the City in which the City now or
4 hereafter holds any property interest, which is dedicated to Public use and which, consistent
5 with the purposes for which it was dedicated, may be used for the purpose of installing and
6 maintaining Facilities to provide Service to customers.

7 (gg) "Required Service Area" means the geographic area of the City a Grantee must
8 construct, install or operate Facilities in or provide Service in, pursuant to its Franchise.

9 (hh) "Revocation" means the City's affirmative act of Terminating a Franchise.

10 (ii) "Service" means any service provided on a Commercial or for hire basis using
11 Facilities installed in the Public Rights-of-Way. "Service" includes without limitation: (1)
12 leasing or, through any other arrangement, offering the use of a Facility installed in the Public
13 Rights-of-Way (except for the mandatory provision of Facilities pursuant to 47 U.S.C. Section
14 224 or California Public Utility Commission orders) and (2) the transmission of electronic
15 signals through Facilities installed in the Public Rights-of-Way, whether or not owned by
16 Person providing service to Subscribers. "Service" shall not include Telecommunications
17 Service, State Video Service or Personal Wireless Service.

18 (jj) "State Video Service" means video programming services, Cable Service, or
19 OVS Service authorized under a State Video Service Franchise that is provided through
20 Facilities located at least in part in Public Rights-of-Way without regard to delivery technology,
21 including Internet protocol or other technology.

22 (kk) "State Video Service Franchise" means a franchise issued by the CPUC
23 pursuant to California Public Utilities Code Section 5800, et. seq.

24 (ll) "Subscriber" means the City or any Person who legally receives any Service.
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1 (mm) "Telecommunications Service" means any service subject to regulation by the
2 CPUC or the FCC as a telecommunications service and provided to customers by a telephone
3 corporation regulated by the CPUC.

4 (nn) "Termination" means the conclusion of a Franchise by any means, including, but
5 not limited to, by expiration of its term, abandonment, or Revocation.

6 (oo) "Transfer" means any transaction in which: (1) all or a portion of any Facilities or
7 any rights to use or operate Facilities located in the Public Rights-of-Way are sold, conveyed,
8 transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part,
9 directly or indirectly, by one or more transactions to another Person, whether voluntarily or by
10 operation of law or otherwise; or (2) there is any change, acquisition, or transfer in the identity
11 of the Person in Control of the Grantee, or any Person that controls Grantee, including,
12 without limitation, forced or voluntary sale, merger, consolidation, or receivership; or (3) the
13 rights or obligations under the Franchise are sold, conveyed, transferred, assigned,
14 encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by
15 one or more transactions to another Person, whether voluntarily or by operation of law or
16 otherwise. It will be presumed, for purposes of clause (2) above, that any transfer or
17 cumulative transfer of a voting interest by a Person or group of Persons acting in concert of
18 twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or any change
19 in the managing general partners of a Grantee is a change of Control. "Transfer" does not
20 include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the
21 transmission of a commodity or electronic signal using Facilities on a common carrier basis;
22 (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224,
23 California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in
24 trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a
25 Bona Fide Institutional Lender in connection with a loan or other financing required to secure

1 the construction, operation, or repair of the Facilities (“Loan”) provided that such Loan is
2 subject to the rights and powers of the City pursuant to the Franchise and Applicable Law,
3 including, without limitation, the right of the City to approve any Transfer pursuant to Section
4 11.14 below upon foreclosure. “Transferring” and “Transferee” shall have correlative
5 meanings.

6 (pp) “Unaffiliated Video Programming Provider” or “UVPP” means any Person who
7 uses capacity on a franchised Cable System to deliver Cable Service or other
8 communications service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers and
9 who is not an Affiliate of the Grantee.

10 (qq) “Utility Conditions Permit” or “UCP” means a permit issued by the Department of
11 Public Works authorizing a Person to construct, install, and maintain specific Facilities in the
12 Public Rights-of-Way.

13 Section 2. The San Francisco Administrative Code is hereby amended by adding
14 Section 11.28-A to Chapter 11, Article II, to read as follows:

15 SEC. 11.28-A. PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNELS
16 FACILITIES AND ACTIVITIES FEE.

17 (a) Amount of Fee. After January 1, 2010, any State Video Franchise holder providing
18 State Video Service in the City shall pay to the City a fee to support the ongoing costs of public,
19 educational, and government access channel facilities and activities in the amount of three percent
20 (3%) of the State Video Franchise holder’s annual Gross Revenues from providing State Video Services
21 in the City.

22 (b) Payment of Fee.

23 (1) A State Video Franchise holder shall pay the fee due to the City in this Section on a
24 quarterly basis. Each quarterly payment shall be made to the City Controller no later than forty-five
25 (45) days after the end of the calendar quarter.

1 (2) A State Video Franchise holder shall include with the payment a statement of its Gross
2 Revenues from providing State Video Services during the calendar quarter.

3 (c) Use of Fee.

4 (1) The City shall use the first one percent (1%) of the fee required under this Section to
5 support public, educational, and government channel facilities.

6 (2) The City shall use any amounts over one percent (1%) of the fee required under this
7 Section to support public, educational, and government channel facilities and activities.

8 Section 3. The San Francisco Administrative Code is hereby amended by adding
9 Section 11.83-A to Chapter 11, Article VIII, to read as follows:

10 SEC. 11.83-A. PENALTIES FOR VIOLATION OF CUSTOMER SERVICE AND
11 CONSUMER PROTECTION STANDARDS.

12 (a) Applicable Standards. A State Video Franchise holder shall comply with all of the
13 customer service and consumer protection standards contained in: (1) California Government Code
14 Sections 53055, 53055.1, 53055.2, and 53088.2; and (2) Title 47, Code of Federal Regulations, Section
15 76.309(c), or any other customer service standards pertaining to the provision of video service
16 subsequently established by federal law or adopted by federal regulation.

17 (b) Amount of Penalties.

18 (1) If the Department finds that a State Video Franchise holder is in Material Breach of any
19 of the customer service or consumer protection standards identified in subsection (a) above, and that
20 such Material Breach was in the reasonable control of the State Video Franchise holder, the
21 Department may impose the following monetary penalties: (A) a maximum of five hundred dollars
22 (\$500) for each day of each Material Breach, not to exceed one thousand five hundred dollars (\$1,500)
23 for each occurrence of a Material Breach; (B) a maximum of one thousand dollars (\$1,000) for each
24 day of each Material Breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the
25 Material Breach for any subsequent Material Breach of the same nature occurring within twelve (12)

1 months; and (C) a maximum of two thousand five hundred dollars (\$2,500) for each day of each
2 Material Breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the
3 Material Breach for a third or further Material Breach of the same nature occurring within those same
4 twelve (12) months; provided that the increased penalties may only be assessed after the Department
5 has provided the State Video Franchise holder with notice and a penalty has been assessed pursuant to
6 subsection (c) below.

7 (2) The Department shall not seek to impose a penalty on a State Video Franchise holder
8 for a violation of any of the customer service or consumer protection standards contained in subsection
9 (a) above other than in the amounts authorized by this Section. For other violations of this Chapter,
10 the penalties authorized by Section 11.77 shall still apply.

11 (c) Procedure to Impose Penalties.

12 (1) The Department shall notify a State Video Franchise holder in writing of any Material
13 Breach of any of the customer service or consumer protection standards contained in subsection (a)
14 above, and the penalty to be imposed for such Material Breach. The State Video Franchise holder
15 shall have thirty (30) days from the receipt of the notice to remedy the specified Material Breach or the
16 penalties set forth in the notice shall be imposed.

17 (2) The Department shall not seek to impose a penalty on a State Video Franchise holder
18 for a violation of any of the customer service or consumer protection standards contained in subsection
19 (a) above without first sending the State Video Franchise holder notice of the violation as required by
20 this Section. For other violations of this Chapter, the notice required by Section 11.75 shall still apply.

21 (d) Material Breach. A Material Breach for the purposes of assessing penalties under this
22 Section shall be deemed to have occurred for each day following the expiration of the thirty (30)-day
23 notice period that any Material Breach has not been remedied by the State Video Franchise holder,
24 irrespective of the number of Subscribers affected.

1 (e) Use of Penalties. Any penalty assessed under this Section shall be divided as follows:
2 (1) fifty percent (50%) of the penalty assessed shall be placed in the Subscriber Service Account
3 established under Section 11.82; and (2) fifty percent (50%) of the penalty assessed shall be remitted to
4 the State of California to be placed in the Digital Divide Account established under California Public
5 Utilities Code Section 280.5.

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7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By: _____
10 William K. Sanders
11 Deputy City Attorney