

ORDINANCE NO. 2007-236

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF CALABASSAS AMENDING THE CALABASSAS
MUNICIPAL CODE TO ADD CHAPTER 5.14 REGARDING
STATE VIDEO FRANCHISEES**

WHEREAS, the Legislature of the State of California (the State) has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA); and

WHEREAS, the Governor of the State of California signed DIVCA on September 29, 2006; and

WHEREAS, DIVCA became effective on January 1, 2007; and

WHEREAS, DIVCA establishes a regulatory structure for the State to issue franchises to video service providers; and

WHEREAS, DIVCA establishes that local entities, such as the City of Calabasas, are responsible for administration and implementation of certain provisions of DIVCA; and

WHEREAS, DIVCA requires that the City establish, by ordinance, financial support provisions for Educational and Governmental Access (EG) channel facilities; and

WHEREAS, DIVCA requires that the City adopt, by ordinance or resolution, a schedule of penalties for any material breach by a State video franchise holder for violation of customer service and protection standards that the City is permitted to enforce; and

WHEREAS, as of December 31, 2006, there were three City-franchised cable operators providing cable service within the City; and

WHEREAS, two of the cable franchises in the City are held by Time Warner NY Cable LLC serving the Calabasas Park area of the City and CAC Exchange I, LLC serving the Saratoga Hills area of the City (collectively Time Warner Cable); and

WHEREAS, the Time Warner Cable franchises imposed a requirement for up to three percent of gross revenues to be provided for EG channel facilities capital as of December 31, 2006; and

WHEREAS, the Time Warner Cable franchises were required to pay two percent of gross revenues for EG channel facilities capital as of December 31, 2006; and

WHEREAS, the Time Warner Cable franchises expire on December 1, 2015; and

WHEREAS, the cable franchise in the City held by Falcon Cablevision, doing business in the City as Charter Communications (Charter Communications), is for service to the areas of the City commonly referred to as Lost Hills and Mulwood; and

WHEREAS, the Charter Communications franchise imposes a requirement combining two, one-time capital grants plus an ongoing per-subscriber capital grant for EG channel facilities; and

WHEREAS, it was the intent of the City at the time the franchise with Charter Communications was negotiated that the combination of EG channel facilities capital grants would be the equivalent of the two percent of gross revenues provided for in the Time Warner Cable franchises for EG channel facilities capital support; and

WHEREAS, the Charter Communications franchise expires on October 1, 2014.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION 1: CODE AMENDMENT. The Calabasas Municipal Code is hereby amended by adding a new Chapter 5.14 to read as set forth in the Exhibit A attached to this Ordinance.

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calabasas hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 3. CONSTRUCTION. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect thirty days after its adoption pursuant to California Government Code section 36937.

SECTION 5. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED this ___ day of July, 2007.

James R. Bozajian, Mayor

ATTEST:

Robin Parker, City Clerk

APPROVED AS TO FORM:

Lawrence G. Permaul,
Assistant City Attorney

ATTACHMENT A

Chapter 5.14 State Video Franchises

5.14.010 State Video Service Fees for Educational and Governmental Access

(a)(1) As of December 31, 2006, the city was imposing a fee for educational and government access (hereinafter, "EG") channel facilities capital uses of up to three percent (3%) of gross revenues as part of the two (2) city-granted cable franchises held by Time Warner Cable. The actual payment required as of December 31, 2006 was two percent (2%) of gross revenues.

(2) As of December 31, 2006, the city was imposing a fee for EG channel facilities capital uses of eighty five cents (\$0.85) per month per subscriber as part of the city-granted cable franchise held by Charter Communications. This fee represented recovery of a one-time capital grant plus on-going capital support of fifty cents (\$0.50) per subscriber per month. At the time the franchise was granted, it was the intent of the city and the cable operator that the negotiated grants would be equal to the EG channel facilities capital support of two percent (2%) of gross revenues required by the Time Warner Cable franchises in the city.

(3) The EG capital support fees of subsections (a)(1) and (a)(2) of this section are for EG capital support and are in addition to the franchise fee paid to the city by the cable operators.

(b)(1) As required by section 5870(n) of the California Public Utilities Code, the City hereby establishes a fee of two percent (2%) of gross revenues to support EG channel facilities capital support to be paid by any state video franchise holder operating in the Time Warner Cable service areas of Saratoga Hills and Calabasas Park, as such service areas are detailed in the Time Warner Cable franchise agreements with the City. The fee shall be paid quarterly no later than the sixty (60) days following the quarter for which the payment is due.

(2) As required by section 5870(n) of the California Public Utilities Code, the city hereby establishes a fee of eighty five cents (\$0.85) per month per subscriber to support EG channel facilities capital support to be paid by any state video franchise holder operating in the Charter Communications service areas of Lost Hills and Mulwood, as such service areas are detailed in the Charter Communications franchise agreement with the City. The fee shall be paid quarterly no later than the sixty (60) days following the quarter for which the payment is due.

(3) Additionally, the city-granted franchise to Charter Communications for the provision of video service in the city in the Lost Hills and Mulwood service areas contains a requirement for a fifty thousand dollar (\$50,000) capital grant to be paid by not later than July 1, 2009. As required by section 5870(l) of the California Public Utilities Code, any state video franchise holder operating in the Lost Hills or Mulwood areas of the city as of the date of the grant payment shall be responsible for a pro-rata, per-subscriber share of this capital grant.

(4) The EG capital support fees of subsections (b)(1), (b)(2) and (b)(3) of this section are for EG capital support and are in addition to the franchise fee to be paid to the city by the state video service franchise holders.

(c) As of December 31, 2006, the capital support fees of subsections (a) and (b) of this section were intended to be the equivalent of two percent (2%) of the gross revenues of the city-franchised cable operators in the city. Upon the expiration of the city-granted franchise to Charter Communications on October 1, 2014, all state video franchise holders operating in all areas of the city shall pay a fee to support EG channel facilities equal to two percent (2%) of gross revenues. The fee shall be payable quarterly no later than June 1, September 1, December 1 and March 1 for the preceding calendar quarter for which the payment is due.

5.14.020 – Customer Service Penalties

(a) Any holder of a state video service franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(b) The city will provide any holder of a state video franchise written notice of any material breach of applicable customer service and protection standards, and will allow the franchise holder at least thirty (30) calendar days from the receipt of the notice to remedy the specified material breach. A material breach that is not remedied by the state video franchise holder within the remedy period shall subject the state video franchise holder to the following penalties to be imposed by the city:

(1) For the first occurrence of a material breach, a penalty of not more than five hundred dollars (\$500) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of a material breach.

(2) For the second violation of the same nature within twelve (12) months, a penalty of one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.

(3) For a third or further violation of the same nature within twelve (12) months, a penalty of two thousand five hundred dollars (\$2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach.

(c) Any notice and any penalty may be issued or imposed by the city manager. Any notice shall be in writing. Notices shall be transmitted by United States Postal Service certified or registered mail, return receipt requested and postage prepaid, or by private commercial delivery or courier service for same day or next business day delivery with delivery and receipt signature required.

(d) The state video service franchise holder may appeal any finding of material breach or imposition of penalties to the city council. Any appeal must be made within ten (10) calendar days of receipt by the state video service franchise holder of the finding of material breach or the imposition of penalties, and must be submitted in writing to the city clerk and the city manager in order to be placed on a city council agenda for consideration. Any appeal must contain a detailed explanation of why the appellant believes that the finding of material breach or the imposition of penalties was inconsistent with statutory requirements.

(e) The city and any state video service franchise holder may mutually agree to extend the time periods specified herein. Any such agreement shall be in writing and executed by the city manager and an authorized representative of the state video franchise holder.

(f) Any penalty imposed on a state video franchise holder shall be paid to the city. As provided for in section 5900(g) of the California Public Utilities Code, the city shall submit one half of all penalties received from a state video franchise holder to the Digital Divide Account established by section 280.5 of the California Public Utilities Code.

5.14.030 – Procedures for Appeal of Denial of an Encroachment Permit

(a) As provided by section 5885 of the California Public Utilities Code, the city shall either approve or deny an application from a state video service franchise holder for an encroachment permit within sixty (60) days of receiving a completed application.

(b) For purposes of this section, an “encroachment permit” means any permit issued by the City relating to construction or operation of facilities relating to the provision of video service under a state video service franchise.

(c) An application for an encroachment permit is considered complete when the applicant has complied with all statutory requirements for such an application, including those of the California Environmental Quality Act, Public Resources Code sections 21000 et seq., title 15 of this code, and other applicable ordinances of the city.

(d) Any city denial of an application for an encroachment permit shall be in writing and shall contain a detailed explanation of the reason for the denial.

(e) An applicant whose application for an encroachment permit has been denied may appeal the denial in the manner specified in chapter 17.74 of this code.