



Agenda Date: 5/3/2005  
Agenda Placement: 8B  
Set Time: 9:30 AM PUBLIC HEARING  
Estimated Report Time: 20 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Bennett Wilson - Director  
Information Technology Services  
**REPORT BY:** Bennett Wilson, Director, 253-4829  
**SUBJECT:** Public Hearing - Cable Franchise Ordinance

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### **RECOMMENDATION**

First reading and intention to adopt an ordinance amending Chapter 5.12 of the Napa County Code regulating occupancy and use of public rights-of-way by cable systems and open video systems, providing for establishment of customer service standards, franchise and licensing requirements of such systems and prescribing minimum charges, terms and conditions for construction, maintenance and repair of such systems.

**ENVIRONMENTAL DETERMINATION:** General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

### **EXECUTIVE SUMMARY**

The County received notification from Comcast Cable Communications, Inc. on August 13, 2003 of their desire to renew their cable franchise with Napa County. This started a process where the County has worked cooperatively with the cities of Napa and American Canyon to review the franchise renewal process. A key part of the process was a review of the existing ordinance. The review indicated several updates are necessary to address changes in federal law and to give the County an instrument to deal with current and future cable and open video systems.

The cities of Napa and American Canyon have already adopted new ordinances with the same content as the proposed amended County ordinance.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Cable franchise fees.

Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Adoption of the amended ordinance is expected to result in the receipt of the full amount of franchise fees provided for by Congress when it passed the Telecommunications Act of 1996. Additionally, the ordinance has been updated to include other provisions of the Telecommunications Act of 1996, which provide greater flexibility to the County in managing its cable franchises and at the same time provide for an enhanced level of service to the residents of Napa County.
Is the general fund affected?	Yes
Future fiscal impact:	Franchise fee receipts may increase in future years with enhanced levels of cable service, assuming more residents of Napa subscribe to cable services.
Consequences if not approved:	The County would continue to manage its cable franchises under the existing ordinance, which has not been updated since 1986.
Additional Information:	None

### **ENVIRONMENTAL IMPACT**

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### **BACKGROUND AND DISCUSSION**

#### TELECOMMUNICATIONS MARKET CONDITIONS AND FEDERAL REGULATION

Chapter 5.12 of the Napa County Code, titled "CABLE TELEVISION FRANCHISES," was last amended in 1986. Since that time, significant technological, legal, and business developments in the telecommunications field have impacted the cable industry and cable services. These changes are not accounted for in the County's current cable ordinance. Therefore, an ordinance, which reflects these changes and is consistent with the provisions of the Telecommunications Act of 1996 (the "1996 Act"), has been prepared and submitted for the Board's consideration. The ordinance will enhance cable services for the residents of Napa County, while providing the County maximum ability to exercise its rights to manage its cable franchises as intended by Congress when it passed the 1996 Act.

The 1996 Act, which introduced significant changes to telecommunications regulation, including the removal of existing "barriers to entry" for business and individuals wishing to provide telecommunications services in any market. For example, it repealed the ban imposed by the 1984 Cable Act on telephone-cable cross-ownership, which prohibited telephone companies from providing video programming directly to subscribers in their telephone service areas. In the same act, Congress established a new framework for entry into the video programming delivery marketplace with the intent to stimulate competition with cable service providers. This new framework is known as the "open video system" (OVS).

Under the OVS, an entity, such as a phone company, which makes two-thirds of its cable capacity available to unaffiliated entities, may provide cable-type services with decreased requirements such as specifying the amount or type of capacity or system or institutional networks. A cable operator may also switch to being an OVS operator

when there is effective competition. As designed by Congress, this open video framework provides an option for the distribution of video programming other than as a "cable system."

The 1996 Act authorized local governments to enter into agreements with operators of open video systems which include requirements for public, education, and government ("PEG") access channels, equipment, facilities and support and a fee which is equivalent to the fee paid by an existing cable franchisee. This matter is addressed in the proposed ordinance.

The 1996 Act also preserved local management of public rights-of-way and directed telecommunications and cable service providers to pay local governments a fair and reasonable compensation for right-of-way use, which includes a franchise fee not to exceed five percent of gross revenues. At the same time, the act immediately deregulated "expanded basic" tier cable rates for providers serving 50,000 subscribers or less and directed the "expanded basic" tier cable rates to be deregulated in 1999, regardless of the number of subscribers served.

In the 1996 Act, Congress also established a general duty of telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other carriers and not to install network features, functions or capabilities that are incompatible with other systems. The issue of interconnection of cable systems is addressed in the proposed ordinance for purposes of providing public, education, and government access and institutional network services and for sharing these programming resources with subscribers in adjacent systems.

The proposed ordinance sets the framework for all cable franchises, laying out minimum standards and assuring a level playing field. This framework provides for currently available technologically advanced services to be offered to Napa County residents. It also assures Napa County residents of a certain minimum level of service such as signal quality, PEG Access channels, and customer service.

Technological advances such as the development of fiber-optic cable and the growth of the Internet have led to the emergence of new telecommunications services being offered to consumers, while providers and cable operators now have use of the public rights-of-way to construct fiber optic networks. These new developments are addressed under the "System Design" section of the proposed ordinance to ensure that new services, including two-way activated services, are available to consumers in the County of Napa. The proposed ordinance also seeks to minimize pavement damage to public rights-of-way from additional street cuts by requiring persons using the right-of-way to cooperate with others through joint trenching and the use of existing poles and conduit, and by requiring a provision for further expansion.

#### DEVELOPMENT OF AN AMENDED CABLE ORDINANCE FOR NAPA COUNTY

In close cooperation with the County, the cities of American Canyon and Napa engaged the consultant services of the Buske Group in 2003 to assist and guide them through the cable re-franchising process. An important element of that process was the development of an amended enabling ordinance that reflects the provisions of the 1996 Act. The Buske Group assisted with the preparation of a new ordinance for all three jurisdictions, which the cities of Napa and American Canyon have recently adopted. A copy of the County's proposed ordinance has been provided to Comcast, the current cable franchisee. Upon adoption of the proposed ordinance, it is anticipated that a new franchise agreement with Comcast will be entered into.

In brief, the proposed ordinance provides minimum service levels for any cable operator wishing to provide cable services in the County and cities; establishes minimum customer service standards; provides application, renewal and transfer procedures for a cable franchise agreement; and updates, security fund and bonding requirements. It is structured in four Articles and two Appendices as follows:

**Division I. General Provisions.** This section sets forth the ordinance's general provisions, which include definitions of terms; regulations pertaining to the administration of the ordinance; transfers of a franchise;

conditions upon construction, operation and repair of a system; indemnity and insurance requirements; and records required. For example, Section 5.12.080, Transfers, preserves the County's interests by requiring a right of approval whenever a change in ownership of more than ten percent occurs. Section 5.12.090, General Conditions, which is applicable to construction, operation and repair, sets forth new standards for undergrounding of cable and requires cable operators to underground cable whenever electricity or telephone utilities are undergrounded. This section also provides new standards for County inspection, co-location of antennas, and minimizing pavement damage caused by additional cuts.

**Division II. Cable Systems.** This section lays out special rules applicable to cable systems such as applications for initial franchises, renewals, and transfers. Consistent with the Board's authority and its responsibility to manage the public rights-of-way for the public good, the proposed ordinance also sets forth minimum franchise conditions. Section 5.12.230, Application Contents, includes requirements for system design. This requirement is necessary to assure minimum signal quality to allow for high-speed connection to the Internet and for two-way interactive services. This section also sets forth requirements for public access, government, and education (PEG) channels, and for the interconnection of PEG channels within each cable system and with other cable systems; and also provides for the interconnection of cable systems throughout the County.

**Division III. Open Video Systems.** This section sets forth requirements governing open video systems and includes application procedures for initial franchises, renewals and transfers; minimum requirements such as obligations for PEG access, construction, testing and consumer protection provisions; and requirements for franchise fees.

**Division IV. Violations - Enforcement.** This section describes how the County will enforce any violations of either the cable ordinance or franchise agreements.

In conclusion, the cable television system affects nearly all residents of the County and many of them consider it an important part of their daily lives. Adoption of the ordinance, which protects the interests of the residents of Napa County and which has the flexibility to allow for future changes in the telecommunications industry, is recommended.

### **SUPPORTING DOCUMENTS**

- A . Tracked Ordinance
- B . Clean Ordinance

CEO Recommendation: Approve

Reviewed By: Andrew Carey