ORDINANCE NO. 2010-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AVENAL REPEALING TITLE 7, CHAPTER 1, ARTICLE 1 – 6 OF THE AVENAL MUNICIPAL CODE (CABLE TELEVISION SYSTEMS) AND REPLACING WITH TITLE 7, CHAPTER 1, ARTICLE 1 SECTIONS 1 - 5 (STATE VIDEO FRANCHISE) TO THE AVENAL MUNICIPAL CODE RELATING TO REGULATIONS FOR THE PROVISION OF VIDEO SERVICE BY STATE FRANCHISE HOLDERS

WHEREAS, local public entities within the State of California have traditionally had the authority to regulate, in accordance with federal, state and local law, certain aspects of the provision of video services, including the authority to award franchises, within the boundaries of those local entities; and

WHEREAS, the California Legislature adopted the Digital Infrastructure and Video Competition Act of 2006, California Public Utilities Code sections 5800 et seq. ("DIVCA"), which became effective January 1, 2007; and

WHEREAS, DIVCA substantially changed California law by establishing a statewide franchising procedure for video service providers to be administered by the California Public Utilities Commission ("CPUC"); and

WHEREAS, DIVCA establishes that the CPUC is the sole authority to award statewide franchises for the provisions of video services, which preempts local franchising authority; and

WHEREAS, the City of Avenal desires to exercise that authority and to facilitate the implementation of DIVCA by setting forth regulations for the provision of video service by state franchise holders within the City of Avenal, in accordance with the requirements set forth in DIVCA.

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

SECTION 1. STATE VIDEO FRANCHISES of the Avenal Municipal Code to read as follows:

Article 1

1.1 Purpose and Application
1.2 State Video Franchise and PEG Fees
1.3 Audit Authority
1.4 Customer Service Penalties Under State Franchises

Section 1.1 Purpose and Application.

This Chapter is designed to regulate video service providers holding state video franchises and operating within the City of Avenal.

Section 1.2 State Video Franchise and PEG Fees.

(a) Any state video franchise holder operating within the boundaries of the City shall pay a fee to the City equal to five percent (5%) of the gross revenue of that state video franchise holder.

(b) Any state video franchise holder operating within the boundaries of the City shall also pay the City a fee equal to one percent (1%) of the gross revenue of that state video franchise holder, which fee shall be used by the City for any Public, Educational, and/or Government (PEG) purposes consistent with state and federal law.

(c) Any state franchisee that has held a locally issued franchise agreement shall, consistent with Public Utilities Code Section 5870, continue to fully provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings to the maximum extent permitted by law.

(d) Gross revenue, for the purposes of (a) and (b) above, shall have the definition set forth in California Public Utilities Code Section 5860.

Section 1.3 Audit Authority.

Not more than once annually, the City Manager or the City Manager's designee may examine and perform an audit of the business records of a holder of a state video franchise to ensure compliance with Section 4.2.

Section 1.4 Customer Service Penalties Under State Franchises.

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

(b) The City shall have the right to monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The City Manager or the City Manager's designee will provide the state video franchise holder written notice of any material breaches of applicable customer service standards, and will allow the state video franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period shall be subject to the following penalties to be imposed by the City Manager or designee:

(1) For the first occurrence of a violation, a fine of up to $500.00 may be imposed for each day the violation remains in effect, not to exceed $1,500.00 for each violation.
(2) For a second violation of the same nature within 12 months, a fine of up to $1,000.00 may be imposed for each day the violation remains in effect, not to exceed $3,000.00 for each violation.

(3) For a third or further violation of the same nature within 12 months, a fine of up to $2,500.00 may be imposed for each day the violation remains in effect, not to exceed $7,500.00 for each violation.

(c) A state video franchise holder may appeal a penalty assessed by the City Manager or the City Manager's designee to the City Council within 60 days of the initial assessment. The City Council shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

SECTION 2. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, 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.

SECTION 3. CEQA – EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 4. EFFECTIVE DATE. The foregoing Ordinance shall take effect thirty (30 days from the date of passage hereof.

SECTION 5. PUBLICATION. Within fifteen (15) days after the passage of this ordinance, the City Clerk shall cause this ordinance or a summary thereof to be published or to be posted in at least three public places in the City of Avenal in accordance with the requirements of California Government Code Section 36933.

PASSED AND ADOPTED by the City Council of the City of Avenal at a regular meeting held on the 28th day of October, 2010 by the following vote of the members thereof:

ROLL CALL VOTE:
AYES: **CRAIGHEAD, JEPSEN, OVALLE, CASIDA, CURTY.**

NOES: **NONE.**

ABSENT: **NONE.**

APPROVED: _____
Mayor

ATTEST: _____
City Clerk