

CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-21-55 ENACTMENT NO. _____

SPONSORED BY: Cynthia D. Borrego, by request

1 ORDINANCE
2 **AMENDING SECTION 13-5-2-1 ROA 1994, THE ALBUQUERQUE CABLE**
3 **FRANCHISE AND HEARING BOARD: TO RENAME IT THE ALBUQUERQUE**
4 **CABLE, INTERNET AND PEG ADVISORY BOARD; TO ENLARGE ITS**
5 **MEMBERSHIP; TO AUGMENT ITS DUTIES TO REFLECT CHANGES IN THE**
6 **COMCAST FRANCHISE RENEWAL ORDINANCE AND TECHNOLOGIES; AND TO**
7 **PROVIDE A PEG APPEAL PROCESS.**

8 **WHEREAS** the Albuquerque City Council enacted Ordinance 2019-009, codified at
9 Sections 13-5-3-1 to 13-5-3-15, granting a cable franchise renewal to Comcast of New
10 Mexico, LLC (“Comcast Franchise Ordinance”); and

11 **WHEREAS** the Comcast Franchise Ordinance incorporates by reference the
12 Customer Service Standards (“Customer Bill of Rights”) which shall govern Comcast’s
13 customer relations;¹ and

14 **WHEREAS** the Customer Bill of Rights establishes a Complaint Procedure that
15 includes the presentation of customer complaints regarding services, billing and other
16 customer issues to the Cable Board;² and

17 **WHEREAS** the Cable Board has long served as an advisory body on the best use of
18 public, education and government access (PEG) channels;³ and

19 **WHEREAS** the Cable Board is uniquely qualified to review public input regarding the
20 best use of PEG resources and provide a PEG appeal process; and

¹ See Section 6 and Exhibit B, Customer Service Standards (“Customer Bill of Rights) of the Comcast Franchise Ordinance, effective June 2019.

² Customer Bill of Rights, Section IV.

³ Current Cable Franchise and Hearing Board Ordinance, Section 13-5-2-1(C)(3).

1 **WHEREAS** the Cable Board has long served as an advisory body on the state of
2 electronic technology;⁴ and

3 **WHEREAS** the “convergence of technology” means that the same corporations are
4 providing in customer “bundles” essential electronic services such as telephone, cable
5 television and data transmission; and

6 **WHEREAS** customers cannot always separate their issues, concerns and
7 complaints into separate categories, one each for telephone, cable television and data
8 transmission services; and yet each of these services is essential; and

9 **WHEREAS** the Cable Board is uniquely qualified to provide a forum for community
10 education on issues related to the provision of cable and cable-affected services,
11 including issues such as the open internet and net neutrality.

12 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
13 **ALBUQUERQUE:**

14 **SECTION 1.** Section 13-5-2-1 is amended as follows:

15 “§ 13-5-2-1 ALBUQUERQUE CABLE~~[FRANCHISE AND HEARING]~~, [INTERNET AND
16 PEG ADVISORY] BOARD.

17 (A) *Board Established.* There hereby is established the Albuquerque Cable~~[Franchise~~
18 ~~and Hearing]~~, [Internet and PEG Advisory] Board which shall consist of ~~[three]~~[five]
19 members to be appointed by the Mayor with the advice and consent of the City Council.
20 [The term “PEG” means public, education and government access cable television.]
21 The provisions of §§ 2-6-1-1 et seq. apply.

22 (1) Board members shall be persons of diverse backgrounds; they should have
23 experience in mass media~~[or]~~, communications, [information technology, consumer
24 advocacy,] business, or [government] service, [especially] on or as staff to government
25 boards and commissions~~[which hold formal hearings]~~.

26 (2) No current employee or board member of any television or telecommunications
27 provider shall be a member of the Board; the term "television [or telecommunications]
28 provider" shall be broadly construed.

29 (3) All members must sign a Conflict of Interest statement prior to appointment.

⁴ Current Cable Franchise and Hearing Board Ordinance, Section 13-5-2-1(C)(4).

1 (B) *Legal Authority.* The Cable Television Consumer Protection and Competition Act of
2 1992 requires the local regulator to provide community participation in rate and [~~service-~~
3 ~~quality~~][quality of service][~~issues~~] [matters] in conformity with federal laws and
4 regulations. This Board will fulfill that duty[, as well as serve, pursuant to Article X,
5 Section 6 of the New Mexico constitution, as an advisory body to the city government, a
6 home rule municipality, on municipal policies on cable and cable-affected services].

7 (C) *Duties of the Board.* The Board shall act as the city's [~~administrative hearing~~
8 ~~authority~~][advisory body] on cable television (or wireless cable) [~~matters, primarily~~
9 ~~issues regarding~~] [services, specifically including those matters subject to the city's
10 regulation [or review]] within the local franchise area as allowed by federal, state and
11 local laws[, and on services that are affected by or affect the sale and delivery of cable
12 services]. The Board will represent consumers and allow for local cable television
13 providers' input on rates, service quality and equipment issues [to the extent authorized
14 by law]. More particularly, the Board's duties include but are not limited to the following:

15 (1) Advise the Mayor and Council on matters which might constitute grounds for
16 revocation of [authorized] right-of-way usage[,] [or] franchise [authority] or [constitute]
17 FCC violations that may require appropriate sanctions of a cable television [franchise]
18 [franchisee] or [~~permit~~][permittee] in accordance with the terms of [~~the §§ 13-5-3-1 et~~
19 ~~seq.~~] [Ch. 13, Art. 5, Parts 1 and 3] and/or the Cable Television Consumer Protection
20 and Competition Act of 1992;

21 (2) Attempt to resolve complaints and disagreements [~~on matters covered by~~
22 ~~regulations~~] between the holder of a cable television franchise or permit and [~~the users~~
23 ~~of the system~~][its customers] that cannot be resolved [~~administratively~~][by customer
24 complaints made directly to the company; complaint and review procedures shall be
25 consistent with the Customer Service Standards ("Customer Bill of Rights") attached to
26 the Comcast Franchise Ordinance as Exhibit B];

27 (3) [Review operations and procedures to ensure the proper and fair distribution of
28 resources (personnel, equipment, and financing) among each of the PEG channels and]
29 [M][m]ake recommendations to the Mayor and Council for the best use of the [~~public~~
30 ~~access, education, and government (PEG) channels of the cable television system~~

1 ~~made available for public use~~[PEG channels based on those reviews and other
2 information that the Board may have];

3 (4) ~~[Provide technology updates to the Mayor and City Council upon request]~~ [Receive
4 public comment and other input regarding the City's allocation of air time and other
5 resources related to the use of PEG channels and provide the Mayor and Council
6 recommendations based on that input and other information that the Board may have];

7 [(5) Receive and decide the merits of complaints and appeals from PEG community
8 producers and/or interested members of the public regarding disciplinary actions by the
9 city's PEG administration and/or denials of access to or other alleged misallocations of
10 PEG resources. The Cable Board shall hear and consider these complaints and
11 appeals according to the following procedures]:

12 [(a) Any aggrieved party shall file its complaint or appeal with the Cable Board within
13 ten (10) days of the date upon which the aggrieved action took place; and]

14 [(b) The Cable Board shall conduct a public hearing on the complaint or appeal at its
15 next regularly scheduled meeting;]

16 [(c) The Cable Board shall render its written decision including the grounds for that
17 decision within twenty (20) days of the conclusion of the public hearing; in rendering its
18 decision the Cable Board shall post that decision on its webpage and mail the decision
19 to the appealing party; and]

20 [(d) The Cable Board shall render final decisions on only those PEG complaints or
21 appeals solely affecting a single program, a program series of less than six months,
22 and/or the use of City-owned PEG equipment. The Cable Board shall provide
23 recommendations for the Mayor's final disposition of all other PEG complaints or
24 appeals, including appeals of disciplinary actions.]

25 ~~[(5)]~~[(6)] Provide a forum for public participation in the event the City decides to
26 pursue the franchise renewal process outlined under the Cable Television Consumer
27 Protection and Competition Act of 1992;

28 ~~[(6)]~~[(7)] Review the cable provider's performance under applicable adopted laws,
29 rules and regulations [and recommend that the City administration undertake
30 discretionary performance evaluations, financial audits, ascertainments of programming

1 and customer satisfaction, and technical engineering audits as provided in the Comcast
2 Franchise Ordinance and as needed];

3 ~~[(7)]~~[(8)] Review and make recommendations on the level of service in the franchise
4 area, including channel capacity of the system and how that meets the community
5 needs;

6 ~~[(8)]~~[(9)] Recommend to the Mayor and City Council regulations and procedures
7 regarding rates, ~~[service]~~ quality [of service,] and equipment ~~[issues]~~[cases] consistent
8 with Ch. 13, Art. 5, ~~[Part]~~[Parts] 1 [and 3]; any information will be provided in
9 accordance with applicable federal law and, if necessary, pursuant to appropriate
10 confidentiality agreements;

11 ~~[(9)]~~[(10)] Act as hearing examiner for all public hearings required pursuant to the
12 Cable Television Consumer Protection and Competition Act of 1992 on rate, service
13 quality, equipment and other appropriate issues [as authorized by law];

14 [(11) Provide technology updates to the Mayor and City Council upon request; and]

15 [(12) Provide a forum for educating the public and sharing information on services that
16 are affected by or affect the sale and delivery of cable services, such as information on
17 the quality, cost and availability of internet services.]

18 (D) *Public Availability of Documents.* To better accomplish the purposes of the Board,
19 the Mayor ~~[shall]~~[may] arrange for the televising of [Cable Board] public [hearings
20 and]~~[forum]~~ [forums] and make available at city libraries those public documents ~~[for~~
21 ~~rate and service decisions]~~ [related to such public hearings and forums].

22 ~~[(E) Board Recommendations and Time Considerations. In cases not involving cost-of-~~
23 ~~service showings, the Board shall have 60 days after submission of a cable operator's~~
24 ~~existing or proposed rates to consider such proposal, take any necessary additional~~
25 ~~information, hear comments, and forward its hearing transcript, findings and written~~
26 ~~recommended decision to the Mayor. The Board shall have 120 days in cases involving~~
27 ~~cost-of-service showings. The Mayor shall in turn submit such hearing transcript,~~
28 ~~findings and recommended decision to the Council along with the Mayor's~~
29 ~~recommendation within 15 days of receipt of the same from the Mayor. The Council~~
30 ~~shall consider such transcripts, findings, and recommendations within 45 days of receipt~~
31 ~~of the same from the Mayor. The City Council may restrict its consideration to the record~~

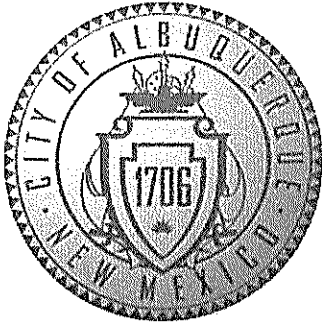
1 received, or it may elect to accept additional testimony so long as such testimony is
2 made a part of the record for purposes of an appeal. The Council shall adopt its written
3 decision within the allotted time constraints required by the FCC regulations. For
4 purposes of appeal to the FCC of the decision of the franchising authority, the date of
5 the final Council action shall control.]”

6 **SECTION 2. Severability Clause.** If any section, paragraph, sentence, clause,
7 work or phrase of this ordinance is for any reason held to be invalid or unenforceable by
8 any court of competition jurisdiction, such decision shall not affect the validity of the
9 remaining provisions of this ordinance.

10 **SECTION 3. Compilation.** Section 1 of this ordinance shall amend, be
11 incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico,
12 1994.

13 **SECTION 4. Effective Date.** This ordinance shall take effect five days after
14 publication by title and general summary.

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**CITY OF
ALBUQUERQUE**
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTEROFFICE MEMORANDUM

March 18, 2021

TO: Cynthia D. Borrego, President, City Council

FROM: Timothy M. Keller, Mayor

**SUBJECT: Amendments to Cable Franchise and Hearing Board Ordinance
Section 13-5-2-1 (ROA)**

These amendments to the Cable Franchise and Hearing Board ordinance amendments would rename the Cable Franchise and Hearing Board (“Cable Board”) to the Albuquerque Cable, Internet and PEG Advisory Board, enlarge the Board’s membership from three members to five members, augment its duties to reflect changes in the 2019 Comcast franchise ordinance and in technologies, and provide a PEG appeal process. The term “PEG” means public, educational, and governmental access cable television.

The amendments are needed to update the Cable Board’s duties to include service as a community advisory and hearing board for:


- a. Consumer complaints pursuant to the 2019 Comcast franchise ordinance and its consumer service standards;
- b. Community appeals of the allocation of PEG resources consistent with the City’s current PEG management policies; and
- c. Public education and information sharing on services affected by or affecting the provision of cable services, including the quality, cost and availability of internet services consistent with the current state of communications technology.

In addition, the amendments would increase the membership of the Cable Board so that it will be able to carry out these additional duties. The change of the Cable Board’s name would better reflect the scope of its duties under the amended ordinance.

Legislation Title:

Amending Section 13-5—2-1 ROA 1994, the Albuquerque Cable Franchise and Hearing Board.

Recommended:



Sarita Nair
Chief Administrative Officer

3/29/21

Date


Approved as to Legal Form:

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Esteban A. Aguilar, Jr.
City Attorney

Date

Recommended:



Esteban A. Aguilar, Jr.
City Attorney

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Date

Cover Analysis

1. What is it?

Amendments to the Cable Franchise and Hearing Board Ordinance, Section 13-5-2-1 (ROA).

2. What will this piece of legislation do?

These amendments would rename the Cable Franchise and Hearing Board (“Cable Board”) to the Albuquerque Cable, Internet and PEG Advisory Board, enlarge the Board’s membership from three members to five, augment its duties to reflect changes in the 2019 Comcast franchise ordinance and in technologies, and provide a PEG appeal process. The term “PEG” means public, educational, and governmental access cable television.

3. Why is the project needed?

These amendments are needed to update the Cable Board’s duties to include service as a community advisory and hearing board for:

- a. Consumer complaints pursuant to the 2019 Comcast franchise ordinance and its consumer service standards;
- b. Community appeals of the allocation of PEG resources consistent with the City’s current PEG management policies; and
- c. Public education and information sharing on services affected by or affecting the provision of cable services, including the quality, cost and availability of internet services consistent with the current state of communications technology.

In addition, the amendments would increase the membership of the Cable Board so that it will be able to carry out these additional duties. The change of the Cable Board’s name would better reflect the scope of its duties under the amended ordinance.

4. How much will it cost and what is the funding source?

There is no cost associated with this legislation.

5. Is there a revenue source associated with this legislation? If so, what level of income is projected?

There is no revenue source associated with this legislation.

6. What will happen if the project is not approved?

The Cable Board ordinance would not reflect its duties according to the 2019 Comcast franchise ordinance, the City’s current PEG management policies, and the current state of communications technology.