



Legislation Text

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**CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL**

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

SPONSORED BY: Cynthia D. Borrego, by request

ORDINANCE

Amending Section 13-5-2-1 ROA 1994, The Albuquerque Cable Franchise And Hearing Board: To Rename It The Albuquerque Cable, Internet And PEG Advisory Board; To Enlarge Its Membership; To Augment Its Duties To Reflect Changes In The Comcast Franchise Renewal Ordinance And Technologies; And To Provide A PEG Appeal Process (Borrego, by request)

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

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

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

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

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

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

WHEREAS the “convergence of technology” means that the same corporations are providing in

customer "bundles" essential electronic services such as telephone, cable television and data transmission; and

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

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

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

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

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

(A) *Board Established.* There hereby is established the Albuquerque Cable~~[Franchise and Hearing]~~, [Internet and PEG Advisory] Board which shall consist of ~~[three]~~[five] members to be appointed by the Mayor with the advice and consent of the City Council. [The term "PEG" means public, education and government access cable television.] The provisions of §§ 2-6-1-1 [et seq.](http://library.amlegal.com/nxt/gateway.dll?f=jumpink$jumpink x=Advanced$jumpink vpc=first$jumpink xsl=querylink.xsl$jumpink sel=title;path;content-type;home-title;item-bookmark$jumpink d=new%20mexico(albuqwin)$jumpink q=%5bfield%20folio-destination-name:%272-6-1-1%27%5d$jumpink md=target-id=JD 2-6-1-1) apply.

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

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

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

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

services].

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

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

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

(3) [~~Review operations and procedures to ensure the proper and fair distribution of resources (personnel, equipment, and financing) among each of the PEG channels and~~] [~~M~~][~~m~~]ake recommendations to the Mayor and Council for the best use of the [~~public access, education, and government (PEG) channels of the cable television system made available for public use~~][~~PEG channels based on those reviews and other information that the Board may have~~];

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

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

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

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

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

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

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

~~[(6)]~~[(7)] Review the cable provider's performance under applicable adopted laws, rules and regulations [and recommend that the City administration undertake discretionary performance evaluations, financial audits, ascertainments of programming and customer satisfaction, and technical engineering audits as provided in the Comcast Franchise Ordinance and as needed];

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

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

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

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

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

(D) *Public Availability of Documents.* To better accomplish the purposes of the Board, the Mayor [

shall][may] arrange for the televising of [Cable Board] public [hearings and][forum] [forums] and make available at city libraries those public documents [for rate and service decisions] [related to such public hearings and forums].

~~[(E) Board Recommendations and Time Considerations. In cases not involving cost-of-service showings, the Board shall have 60 days after submission of a cable operator's existing or proposed rates to consider such proposal, take any necessary additional information, hear comments, and forward its hearing transcript, findings and written recommended decision to the Mayor. The Board shall have 120 days in cases involving cost-of-service showings. The Mayor shall in turn submit such hearing transcript, findings and recommended decision to the Council along with the Mayor's recommendation within 15 days of receipt of the same from the Mayor. The Council shall consider such transcripts, findings, and recommendations within 45 days of receipt of the same from the Mayor. The City Council may restrict its consideration to the record received, or it may elect to accept additional testimony so long as such testimony is made a part of the record for purposes of an appeal. The Council shall adopt its written decision within the allotted time constraints required by the FCC regulations. For purposes of appeal to the FCC of the decision of the franchising authority, the date of the final Council action shall control.]”~~

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

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

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

