

# CALIFORNIA PUBLIC UTILITIES COMMISSION

## Communications Division

Second Annual Report to the Governor and the Legislature

August

# 2009 DIVCA Report



The Digital Infrastructure and Video Competition Act of 2006

“To promote competition, the state should establish a state-issued franchise authorization process that allows market participants to use their networks and systems to provide video, voice, and broadband services to all residents of the state...” DIVCA 5810



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# Executive Summary

This second annual report under the Digital Infrastructure and Video Competition Act of 2006 (DIVCA),<sup>1</sup> is submitted on behalf of the California Public Utilities Commission (CPUC) to the Legislature and Governor. As indicated by the Act's title, the purpose of DIVCA is twofold:

- 1) Promote widespread competition in the video and broadband markets.
- 2) Accelerate the deployment of video and advanced broadband infrastructure and services within California, especially in unserved and underserved areas.

As required by DIVCA, this Report is based on data for calendar year 2008, that were submitted by state-issued video franchise holders and their affiliates, on April 1, 2009. This Report publishes these data in an aggregated fashion, along with our analysis and findings.<sup>2</sup>

**This Report is not intended to be a comprehensive market analysis of the video and broadband services offered in the state.** The CPUC does not receive data describing the activities of entities which have not been granted state video franchises. Neither locally-franchised cable operators without a state-franchised affiliate, nor independent ISPs, whose wireless broadband services are a key element of rural broadband service, are included in this report.

The data submitted indicate how many households were offered video and broadband services by state-issued franchise holders throughout the state as well as the number of households that subscribed to those services. The Report also shows the progress that state-issued video franchise holders made in deploying video infrastructure and increasing broadband penetration<sup>3</sup> during 2008.<sup>4</sup>

The Report's **key findings** are summarized below and on the next two pages:

- AT&T and Verizon combined more than tripled the number of households to which they offer video during 2008.
- Verizon has exceeded its two year build out obligation / milestone by offering video services to more than 25% of the households in its telephone service area.

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<sup>1</sup> A.B. 2987, 2005-2006 Session, (Ca. 2006); Cal. Pub. Util. Code, Division 2.5, The Digital Infrastructure and Video Competition Act of 2006. ("DIVCA").

<sup>2</sup> This report does not include the services offered by Internet service providers, locally-franchised cable operators, satellite or wireless service providers unaffiliated with holders of state video franchises, as DIVCA does not require them to provide data to the state.

<sup>3</sup> Penetration is defined as number of subscribers / number of households in the relevant area.

<sup>4</sup> Some providers made changes in the methodologies they used in their data gathering / reporting processes for 2008. Those changes in methodologies may have resulted in changes in the data they reported that do not align with the data they reported in prior years using different methodologies.

- The number of households subscribing to video from **state-issued video franchisees and their local affiliates** increased by 13% to 7.1 million in 2008.
- Incumbent cable companies are shifting from local to state-issued franchises. As a result, the number of households **subscribing to video** from state-issued video franchise holders increased by 40% during 2008.
- 55% (up from 37% last year) or 7.0 million of the households in California<sup>5</sup> are **located in census tracts in which two or more state video franchise holders offer video services**. This means that more households have more video choices.
- 93% (up from 79% last year) or 11.8 million of the households in California are **located in census tracts in which two or more state video franchise holders offer broadband services**. This means that more households have more broadband choices.
- The number of **broadband capable wireless devices** used by customers of video franchise holders grew to more than 3 million during 2008. Fifty eight percent (58%) of those are associated with a data plan; the rest are used for voice or text messaging only.
- There are now more than 1.7 million **mobile wireless devices in the state being used to access broadband data**.<sup>6</sup> This is a 133% increase over the prior year.
- The state-wide residential **wireline broadband penetration rate** increased to 62% (7.9 million households) during 2008.<sup>7</sup> This compares with 55% (6.8 million households) recorded a year earlier. The seven percentage point increase translates into a 12.7% annual growth rate.
- The **median broadband penetration rate** among counties in 2008 is 47.5%, up ten percentage points from 37.5% in 2007.
- Marin, Contra Costa and Orange counties are tied for having the highest residential wireline broadband penetration rate of 74%.

Speed tiers for broadband services are new metrics made possible by the change in FCC reporting rules this year. These new state-wide data show:

- 58% of residential broadband connections have a **download speed** greater than 3 mbps.
- 34% of residential broadband connections have an **upload speed** greater than 768 kbps.

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<sup>5</sup> There were 12,733,414 households in the State on 1/1/2009, according to the California Dept. of Finance.

<sup>6</sup> Mobile wireless subscribers include those customers subscribing to monthly mobile broadband wireless service plans from state video franchisees, when the addresses on the mobile bills are located in geographical areas that are served by terrestrial mobile wireless services.

<sup>7</sup> For the purposes of this DIVCA report, residential wireline broadband includes 879 connections of fixed wireless.

The type of broadband technology being used for broadband service is a new metric made possible by the change in FCC reporting rules this year. These new state-wide data show:

- **Cable modems** serve 47% of residential broadband subscribers.
- **DSL** is used to serve 49% of residential broadband subscribers.
- **Optical Fiber to the home** is used to serve 4% of residential broadband subscribers

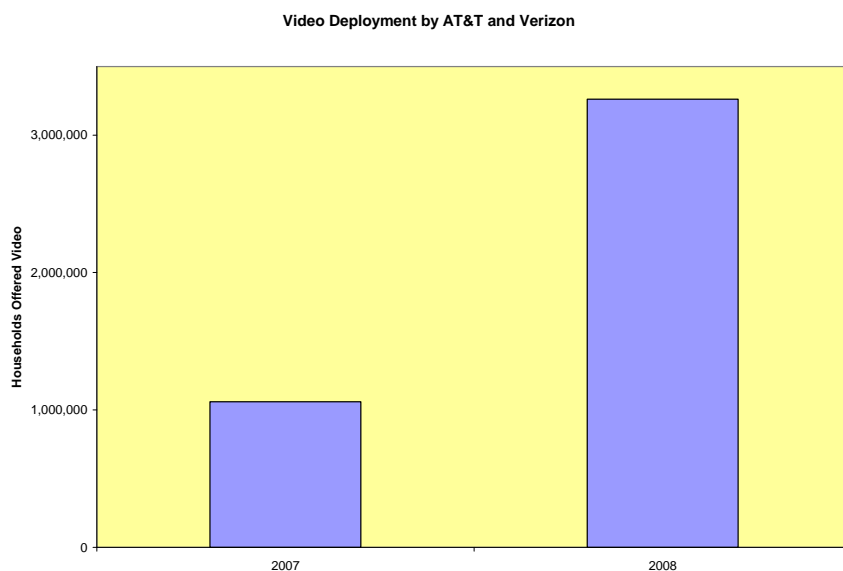
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# I. Video Findings

This section summarizes data describing video services that were provided by state-issued video franchise holders in response to the statutory requirements of DIVCA. These data were aggregated and show the success of DIVCA in enabling telephone companies to rapidly deploy infrastructure and offer video services to households throughout California.

## A. Video Deployment

- The number of households **offered video** by all state-issued video franchise holders increased 22% during 2008, to 16.4 million households. This gain is largely a result of incumbent cable operators shifting from local franchises to state-issued franchises and AT&T and Verizon tripling their video infrastructure build out.
- AT&T and Verizon combined, have more than tripled the number of households to which they now **offer video** during 2008, as can be seen in the bar chart below.



- Verizon has exceeded its **two year build out obligation** / milestone by offering video services to more than 25% of the households in its telephone service area. The obligation is to offer video service to at least 25% of customer households in their telephone service area within two years.<sup>8</sup>

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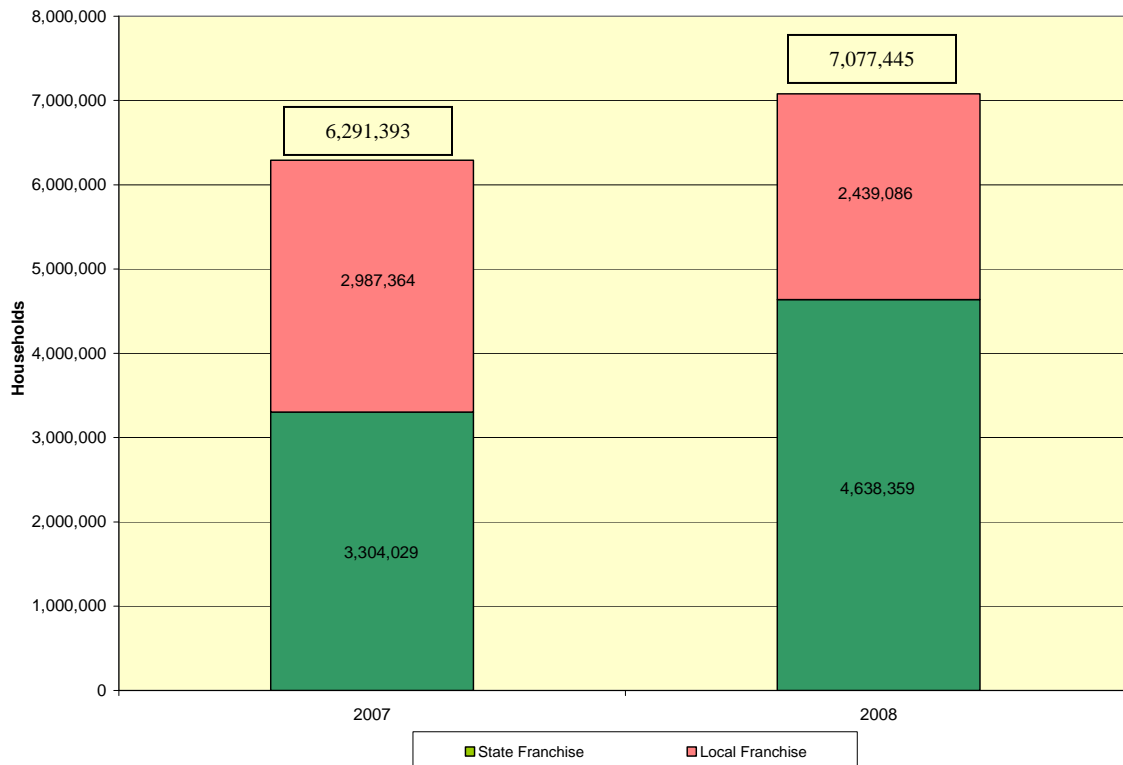
<sup>8</sup> While Verizon's first build out milestone occurred two years after receiving a franchise, AT&T's first milestone occurs at the 3-year mark. Additional details about the video build out requirements are described in appendix A on page 44.



## B. Video Subscribers

- The number of households subscribing to video from **state-issued video franchisees and their affiliates with local franchises** increased by 13% in 2008 to 7,077,445, as shown in the chart below.
- The number of households subscribing to video from state-issued video franchise holders (**excluding affiliates with local franchises**) increased by 40% during 2008 to 4.6 million households, as shown in the chart below. This gain is the result of:
  - Incumbent cable operators have been shifting from local franchises to state-issued franchises, either because their local franchises expired during 2008, or they have chosen to “opt out” of their local franchises and seek a franchise from the state.
  - AT&T and Verizon have tripled their video infrastructure build out and are adding increasing numbers of video subscribers.
- The number of households subscribing to video from **locally-franchised affiliates** of state-issued video franchise holders decreased by 18% during 2008 to 2,439,086 households, as shown in the chart below. This decrease continues the trend we reported in the first DIVCA Report, as state-issued franchise holders continue to shift their operations from local franchises to state franchises.

**Video Subscribers by State and Local Franchise in 2007 and 2008**

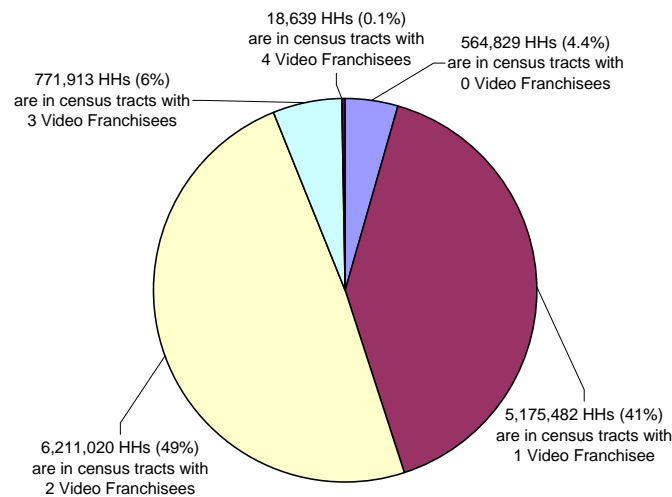


Source: State Franchise Holders' Annual DIVCA Data as of December 31, 2007 and 2008

### C. More Households Have More Video Choices: HHs Offered Video Services by Multiple State Franchise Holders

- 55% (up from 37% last year) or 7.0 million of the households in California<sup>9</sup> are located in census tracts **in which two or more state video franchise holders** offer video services, as illustrated in the pie chart below, This is further illustrated on the map on page 8.<sup>10</sup> The map shows the number of video franchise holders providers offering video services in each census tract in the state.
- 6% (up from 4% last year) or 790,552 households are in census tracts **in which three or four state video franchise holders** offer video services.

Households in Census Tracts in which Multiple State Franchisees Offer Video Service in CA



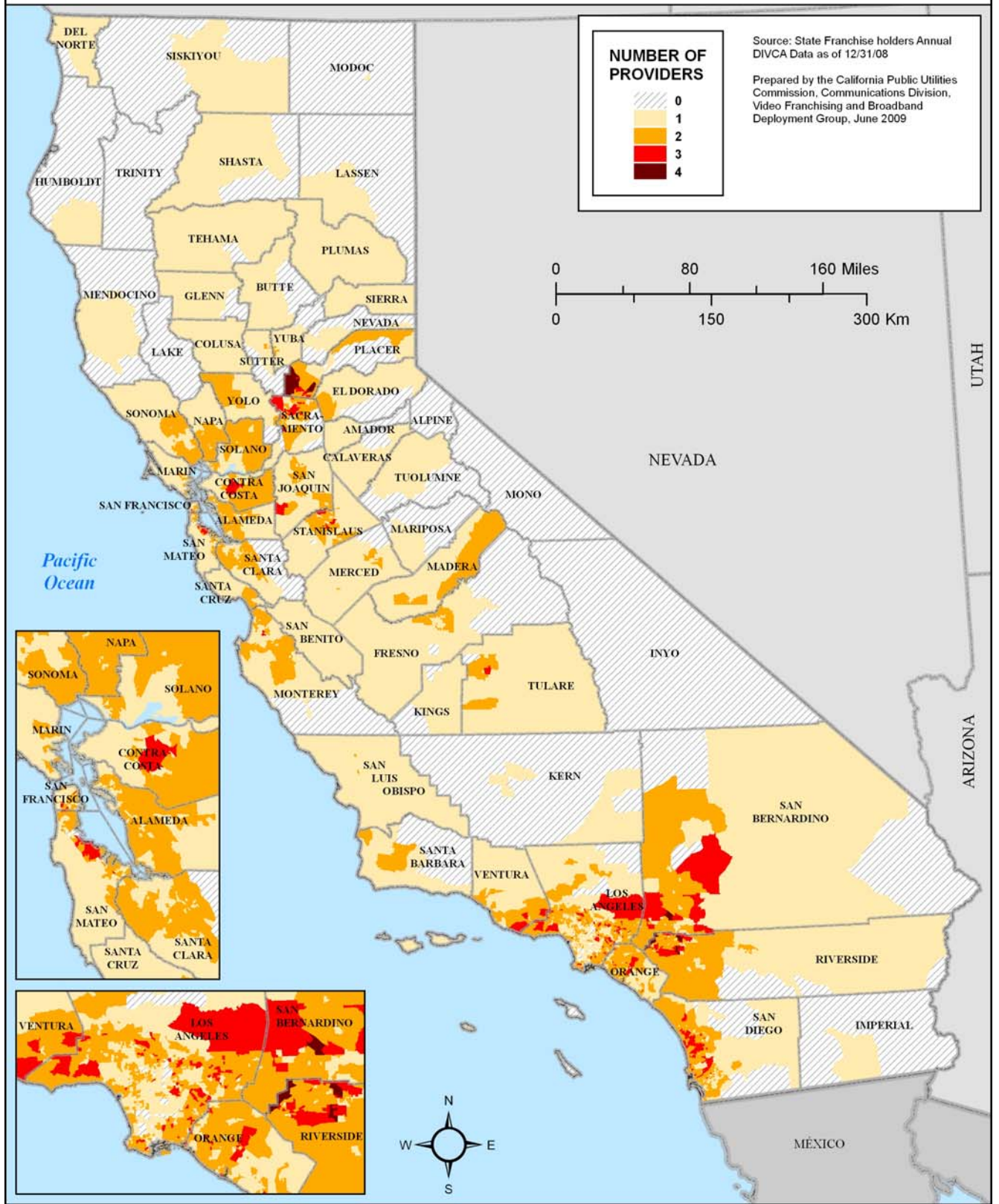
In areas where multiple state-issued franchisees offer video within the same census tracts, it is possible that they may not directly compete for the same subscribers.

Franchise holders are not required to report where within each census tract they have deployed their video services. Therefore, we are not able to determine whether the franchise holders offering video services in the same census tracts are offering video services to the same households. The limitations of census tract data reporting are explained in detail in the census tract data limitations section in Appendix D on page 55.

<sup>9</sup> There were 12,733,414 households in the State on 1/1/2009, according to the California Dept. of Finance.

<sup>10</sup> This report does not include the services offered by unaffiliated Internet service providers, or unaffiliated cable, satellite or wireless service providers, as DIVCA does not compel them to provide data to the state.

# NUMBER OF STATE-FRANCHISED VIDEO PROVIDERS BY CENSUS TRACT (Number of Providers Offering Video Service to at Least one Household)



## D. Low Income Households Offered Video

DIVCA requires state video franchise holders to provide information describing the number of low-income households in their video service areas, as well as the number of low-income households to which they offer video service.<sup>11</sup> These data have been aggregated, and are shown in the table below.

Note that the reported number of households offered video in 2008 has gone down from the number reported in 2007. One reason for this decline is that many providers made improvements in the methodologies they used in their data gathering / reporting processes for 2008, and therefore, 2008 data representing low-income households offered video can not be reliably compared with 2007 data.

Low Income Households Offered Video

	2007 # Households	2008 # Households
Low Income Households in Holders' Video Service Areas	6,659,157	
<b>Low Income Households Offered Video</b> by both State- and locally-franchised affiliates	5,529,425	
Low Income Households in Holders' Video Service Areas		7,387,793
<b>Low Income Households Offered Video</b> by both State- and locally-franchised affiliates		5,024,002

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<sup>11</sup> P.U. Code §5960

## **E. State Video Franchise Territories**

The map on the next page shows the geography of the state-issued video franchise territories in California.

The territory covered by state franchises grew by 0.38% during 2008 to 121,652 square miles and includes 12,265,361 households, or 96.3% of all households in the state. In 2008, new franchise territories totaling 4,327 square miles were granted by the CPUC.



# STATE-ISSUED VIDEO FRANCHISE TERRITORIES IN CALIFORNIA - JAN. 1, 2009



## F. Residential Video Penetration by County

The table below, which continues on the next page, shows the residential video penetration rate<sup>12</sup> in each county in California.

County Name	2008 Residential Video Penetration	Projected Households In County 2009 <sup>13</sup>
Alameda	54%	555,772
Alpine	0%	569
Amador	18%	14,932
Butte	47%	90,013
Calaveras	45%	20,185
Colusa	24%	7,097
Contra Costa	68%	387,147
Del Norte	14%	9,807
El Dorado	32%	69,760
Fresno	39%	292,429
Glenn	15%	9,987
Humboldt	1%	54,676
Imperial	35%	50,059
Inyo	0%	7,895
Kern	2%	252,216
Kings	38%	40,061
Lake	0%	26,173
Lassen	23%	10,595
Los Angeles	52%	3,274,667
Madera	27%	44,696
Marin	74%	104,239
Mariposa	3%	7,833
Mendocino	27%	35,746
Merced	33%	79,502
Modoc	6%	4,075
Mono	0%	6,238
Monterrey	45%	129,893
Napa	61%	50,807
Nevada	21%	41,967
Orange	81%	1,000,798
Placer	39%	133,208
Plumas	10%	10,458
Riverside	68%	677,582

<sup>12</sup> The penetration rate is the percentage of households in each county that subscribe to video services from a state franchised provider or their local affiliates.

<sup>13</sup> For this DIVCA report, we used household metrics published by the California Department of Finance.

<b>County Name</b>	<b>2008 Residential Video Penetration</b>	<b>Projected Households In County 2009</b>
Sacramento	48%	530,060
San Benito	20%	17,112
San Bernardino	55%	610,352
San Diego	76%	1,099,130
San Francisco	57%	347,916
San Joaquin	45%	219,970
San Luis Obispo	50%	106,416
San Mateo	61%	263,848
Santa Barbara	58%	149,157
Santa Clara	55%	612,463
Santa Cruz	57%	96,597
Shasta	13%	71,561
Sierra	5%	1,586
Siskiyou	23%	20,380
Solano	62%	146,663
Sonoma	61%	187,632
Stanislaus	28%	170,928
Sutter	59%	32,175
Tehama	10%	24,608
Trinity	0%	5,988
Tulare	21%	130,958
Tuolumne	30%	22,703
Yolo	38%	71,216
Yuba	46%	24,469



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## II. Broadband Findings

This section summarizes data describing broadband services that were provided by state-issued video franchise holders in response to the statutory requirements of DIVCA. These data were aggregated and show how much state-wide broadband penetration has grown. These data also show download and upload speed tier information and the predominant technologies used to deploy broadband both statewide and in individual census tracts.

### A. Broadband Penetration Growth

**This Report only includes data submitted by state-issued video franchise holders.**

This Report does not include data from unaffiliated / non state-franchised providers such as; wireless, satellite and wireline Internet service providers and other unaffiliated / non state-franchised telephone or cable Internet / broadband service providers.

Tables 1 and 2 below illustrate the growth of broadband services offered by state-issued video franchise holders in California between 2007 and 2008.

- The residential **wireline broadband penetration rate** increased to 62% (7.9 million households) in the state of California during 2008.<sup>14</sup> This compares with 55% recorded a year earlier. The seven percentage point increase translates into a 12.7% annual growth rate.
- The **mobile broadband wireless service plan<sup>15</sup> penetration rate** more than doubled to 14% (1.77 million subscribers) in the state of California during 2008. This compares with 6% recorded a year earlier. The eight percentage point increase translates into a 133% annual growth rate.

Table 1 - Growth in Statewide Broadband Penetration

	2007 Penetration	2008 Penetration <sup>16</sup>	2007 - 2008 Growth Rate
Residential Wireline Broadband	55%	62%	12.7%
Mobile Broadband Wireless Service Plans <sup>17</sup>	6%	14%	133%

<sup>14</sup> For the purposes of this DIVCA report, residential wireline broadband includes 879 connections of fixed wireless.

<sup>15</sup> See next page for definition of "mobile broadband wireless service plan."

<sup>16</sup> Penetration = Number of Subscribers / 12,733,414 households

<sup>17</sup> In some cases, wireless broadband is purchased by many of the same households that also purchase wireline broadband. However, the DIVCA data do not allow this to be quantified.

Subscribers to mobile broadband wireless service plans<sup>18</sup> included in these tables are those customers subscribing to monthly prepaid mobile broadband wireless service plans from state-issued video franchisees, when the addresses on the mobile bills are located in geographical areas that are served by terrestrial mobile wireless services.<sup>19</sup> The devices that are used to access mobile broadband wireless services include smart phones and “data cards” or “air cards” that are inserted by subscribers into their laptops or are built into laptops by PC manufacturers.

Table 2 - Households Subscribing to Wireline and Wireless Broadband

	2007 Subscribers	2008 Subscribers	Subscriber Growth 2007-2008
Residential Wireline Broadband	6,851,743	7,910,166	1,058,423
Mobile Broadband Wireless Service Plans	776,903	1,768,216	991,313

Projected Households in CA on 1/1/2009 by Dept. of Finance: 12,733,414<sup>20</sup>

Table 3 below shows that the number of **broadband capable wireless devices** used by customers of video franchise holders grew to 3.1 million during 2008. **Fifty eight percent (58%) of those are associated with a data plan**, the rest are used for voice or text messaging only.

Table 3 – Broadband Capable Wireless Devices and Prepaid Broadband Service Plans in 2008

Broadband Capable Wireless Devices	Mobile broadband wireless service plans	Percentage of Wireless Data Devices with Prepaid Broadband Service Plans
3,057,176	1,768,216	58%

While there are nearly 3.1 million broadband capable devices in use in California, 1.3 million or 42% of these devices in California do not yet have broadband plans associated with them. These devices are “broadband ready” and could be connected to broadband almost instantaneously, when and if their owners choose to subscribe.

<sup>18</sup> AT&T and Verizon Wireless are the two state video franchisees who provided this data for 2007 and 2008.

<sup>19</sup> Using this definition, mobile broadband subscribers are **not** included in the totals if the address on their bill is located in a geographical area where wireless broadband is not offered, even if the subscriber pays for the mobile broadband wireless service so they can use their smart phone or “data cards” / “air cards” in other locations where wireless broadband is offered.

<sup>20</sup> Total statewide households provided by the California Department of Finance

DIVCA data yield broadband penetration rates very similar to results from survey data reported by two other organizations. For example, the wireline broadband penetration rate for subscribers of state-issued video franchisees, 62%, is exactly the same as the finding of the Public Policy Institute of California regarding broadband Internet connection at home.<sup>21</sup> The 2009 Pew Internet & American Life Project found a similar result nationally. In their nationwide telephone survey of 2,253 Americans, Pew found that “63% of adult Americans have broadband internet connections at home.”<sup>22</sup>

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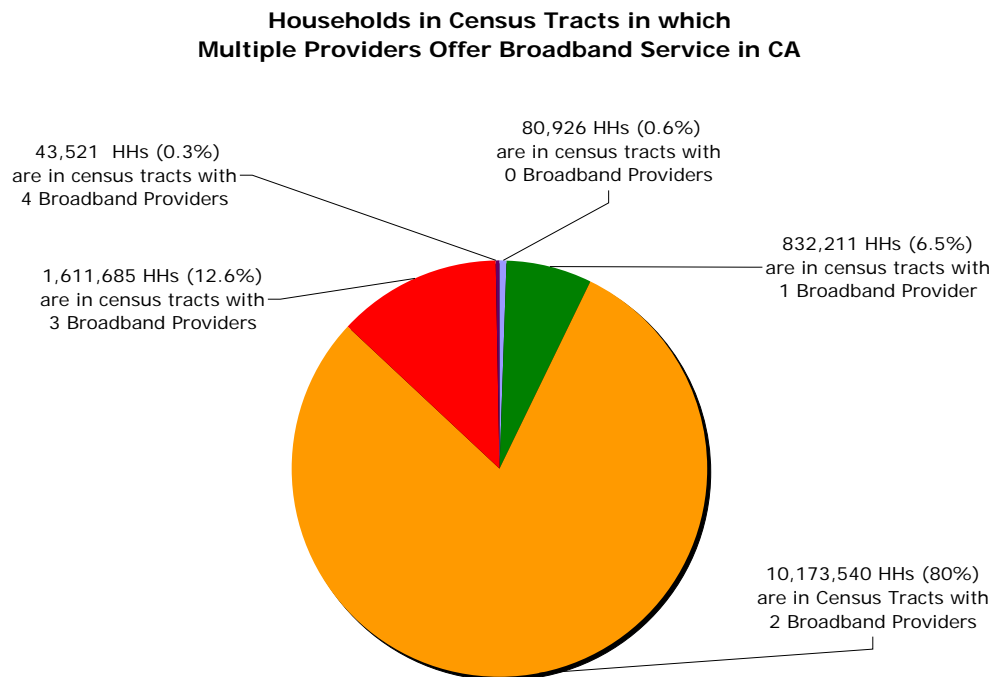
<sup>21</sup> The Public Policy Institute of California conducted telephone interviews with 2,502 Californians and found that 62 percent said they had broadband at home, a seven-point increase from last year. The results are published in the report titled: “Californians & Information Technology,” June 24, 2009.

<sup>22</sup> According to the April 2009 survey conducted by the Pew Research Center and published in “Home Broadband Adoption 2009, ” published by The Pew Internet & American Life Project, June 2009.

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## B. More Households Have More Broadband Choices: HHs Offered Broadband Service by Multiple State Franchise Holders

- 93% (up from 80% last year) or 11.8 million of the households in California are located in census tracts in which two or more state video franchise holders or their locally franchised affiliates offer broadband services, as illustrated in the pie chart below. This is further illustrated on the map on page 21.<sup>23</sup>
- 13% (up from 9% last year) or 1.7 million households in California are located in census tracts in which three or four state video franchise holders or their locally franchised affiliates offer broadband services, as illustrated in the pie chart below. This is further illustrated on the map on page 21.



**This Report only includes data submitted by state-issued video franchise holders.**

This Report does not include data from unaffiliated / non state-franchised providers such as; wireless, satellite and wireline Internet service providers and other unaffiliated / non state-franchised telephone or cable Internet / broadband service providers.

<sup>23</sup> This report does not include the services offered by unaffiliated Internet service providers, or unaffiliated cable, satellite or wireless service providers, as DIVCA does not compel them to provide data to the state.

It is important to note that in the areas where multiple state-issued franchisees (or locally franchised affiliates), offer broadband within the same census tracts, it is possible that they may not directly compete for the same subscribers.

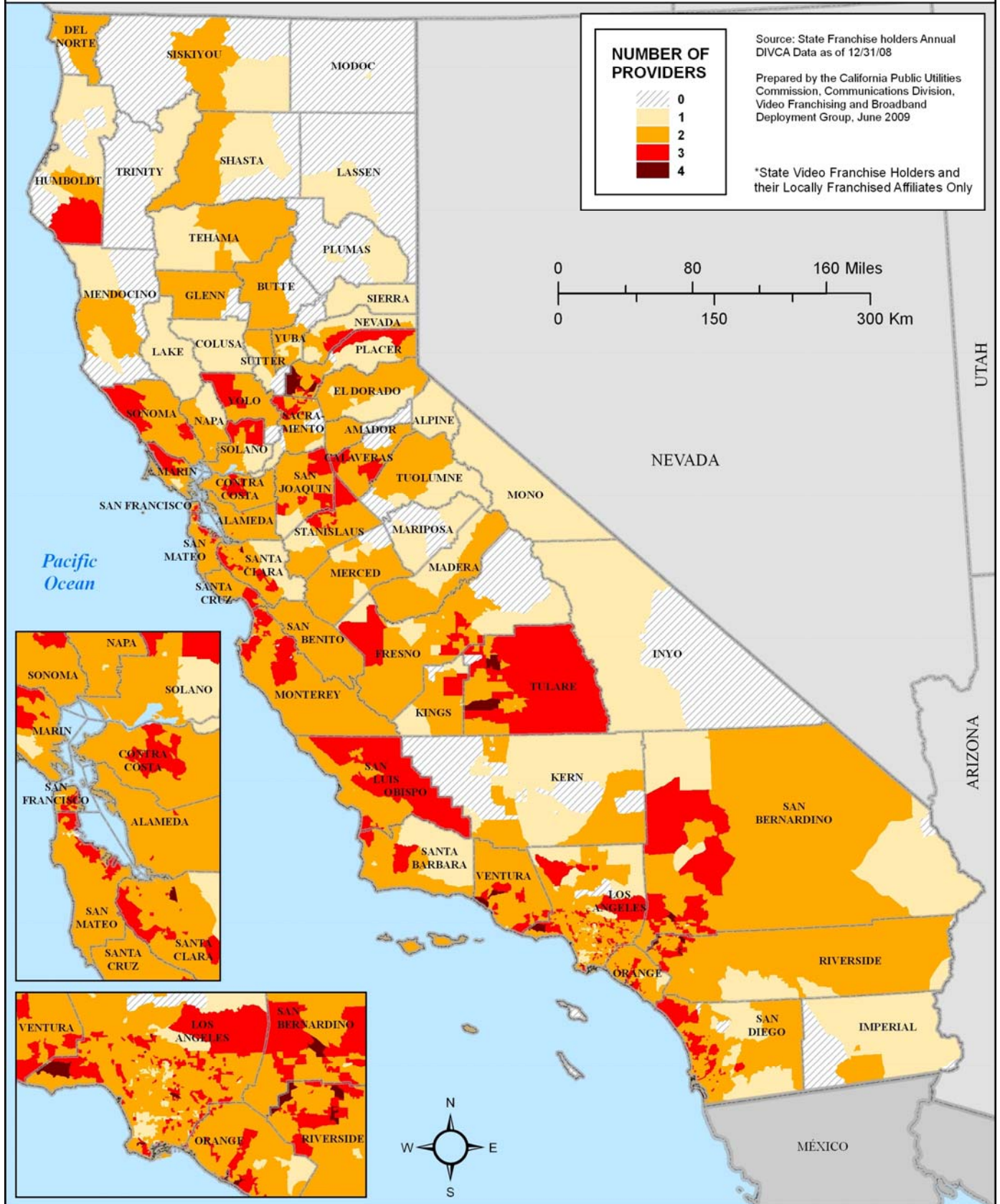
Providers are not required to report where within each census tract they have deployed their broadband services. Therefore, we are not able to determine whether the franchise holders offering broadband services in the same census tracts are offering broadband services to the same households. The limitations of census tract data reporting are explained in detail in the census tract data limitations section in Appendix D on page 56.

### **Map Showing the Number of Franchise Holders Offering Broadband in Individual Census Tracts**

The map on the following page is color-coded to show where multiple state-issued video franchise holders offer broadband service within the same census tracts.

When compared with the similar map from the First DIVCA report, this map shows that the number of census tracts with multiple broadband providers is increasing. In 2008, most of the increases occurred in central and southern California, where some counties went from having one or two providers, to three or four. Some counties that have experienced increasing numbers of broadband providers find that it varies throughout their geographical areas. For example, in some counties, while there may be an increase in the number of providers offering video services in some census tracts within a county, there may be other census tracts with 0 or 1 provider in other census tracts within that same county.

**NUMBER OF WIRELINE AND FIXED WIRELESS BROADBAND PROVIDERS\* BY CENSUS TRACT**  
 (Number of Providers Offering Broadband to at Least one Household per Census Tract)





## **C. New Broadband Speed Tier and Technology Type Data Reported by Broadband Service Providers**

The definition of broadband fundamentally changed in June 2008 when the FCC changed how they define and gather data about broadband services. Between 1996 and June, 2008 the FCC considered services to be “broadband” if they involved transmission speeds in excess of 200 kbps in one direction. All that changed on June 12, 2008<sup>24</sup> when The FCC passed new Form 477 Reporting Requirements for Broadband and Internet Service Providers.

As a result of the FCC’s action, on July 10 2008, the CPUC amended G.O. 169 to require state-issued video franchise holders to report broadband subscription speeds. Video franchisees satisfy this obligation by submitting their Form 477 data for California directly to the CPUC, identical to the way they report to the FCC. The CPUC aggregated these data and summarized them on the next few pages of this report.

This FCC order changed the way the FCC required service providers to report broadband services beginning with their April 1, 2009 filing. This new order required service providers to report their services and subscribers by different technologies and the following eight speed tiers<sup>25</sup> in each census tract:

- 200 kbps to < 768 kbps
- 768 kbps to < 1.5 mbps
- 1.5 mbps to < 3 mbps
- 3 mbps to < 6 mbps
- 6 mbps to < 10 mbps
- 10 mbps to < 25 mbps
- 25 mbps to <100 mbps
- Greater than 100 mbps

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<sup>24</sup> Form 477, available at <http://www.fcc.gov/form477>.

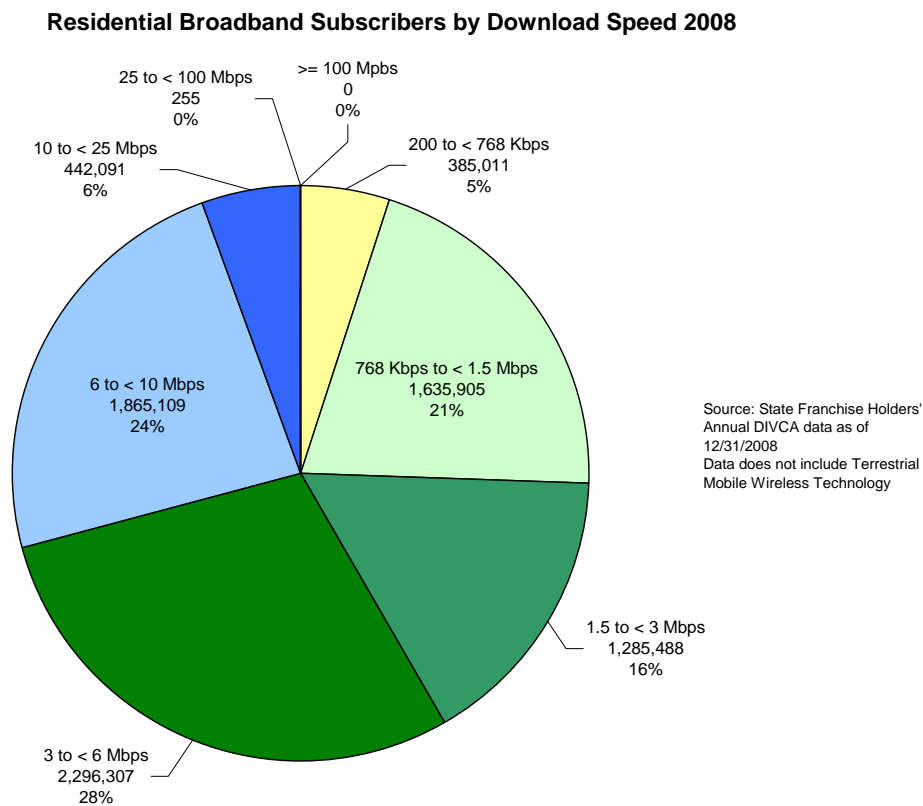
<sup>25</sup> The data in this section is based on 477 data, which are advertised speeds. Advertised speeds do not necessarily equal the speeds users receive.

## 1. Broadband Download Speed Tiers

The pie chart below describes the aggregated broadband speed tier data reported by state-issued video franchise holders. Analyzing these data yields the following three wireline download broadband speed tier metrics:

- 58% of residential broadband download connections provided by DIVCA franchise holders in California are reported at more than 3 mbps.
- 30% of residential broadband download connections provided by DIVCA franchise holders in California are reported at more than 6 mbps

The pie chart below illustrates the residential broadband download bandwidth reported by state-issued video franchise holders at the end of 2008:



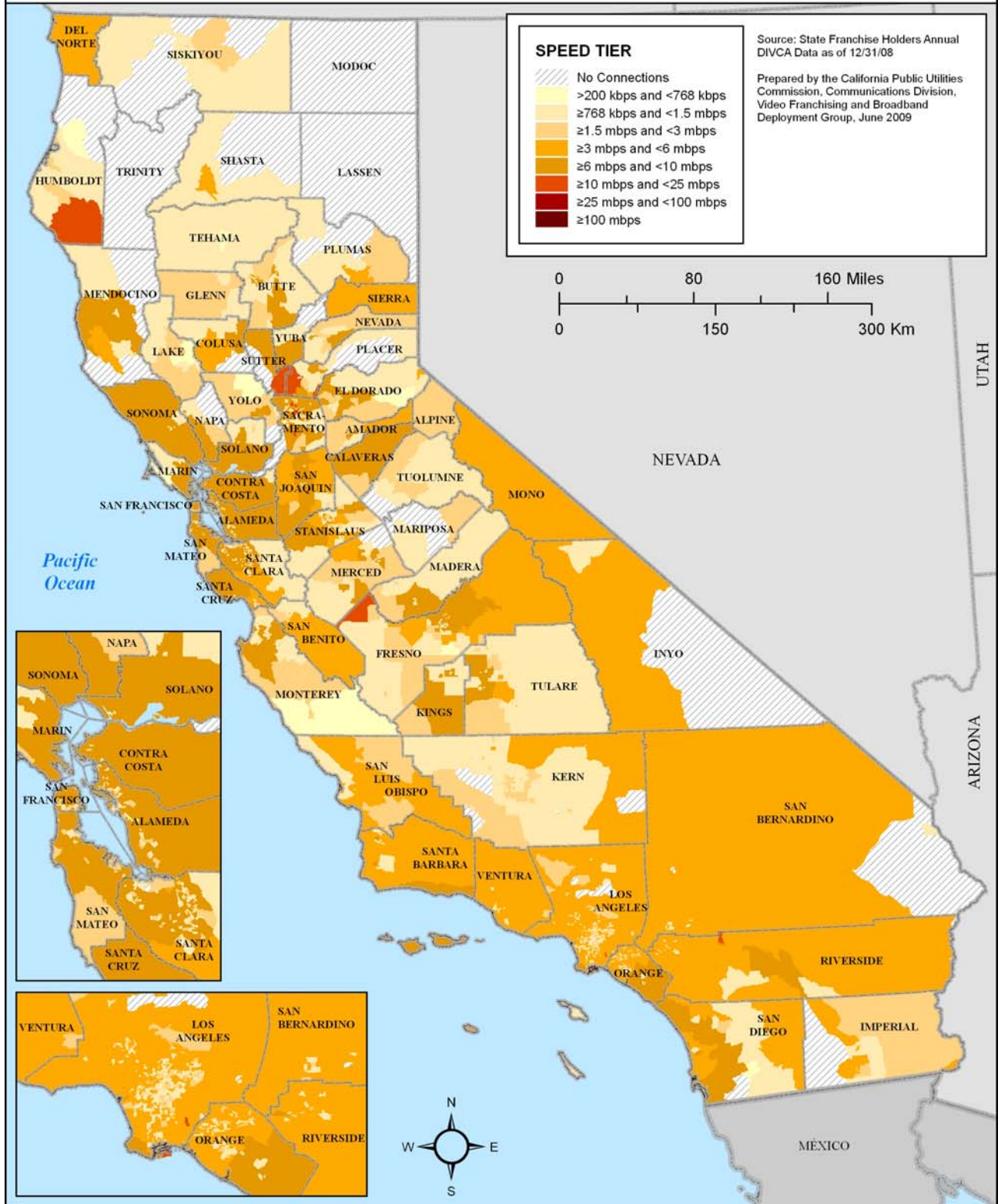
## 2. Map of Predominant Broadband Download Speed Tiers by Census Tract

The map on the next page uses the download speed tier information that is summarized in the pie chart on the previous page to display which one speed tier is the predominant<sup>26</sup> broadband download speed tier for each census tract in the state of California. While 6% (442,091) of the broadband download connections throughout the state are between 10 mbps and 25 mbps, that speed tier does not appear on the map on the next page because all the 10mbps and 25 mbps connections are in census tracts that have slower predominant download speeds.

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<sup>26</sup> The **predominant** speed tier in a census tract is the speed tier with the largest number of connections in that census tract.

# PREDOMINANT BROADBAND DOWNLOAD SPEED TIER BY CENSUS TRACT (Speed Tier with Greatest Number of Residential Connections)

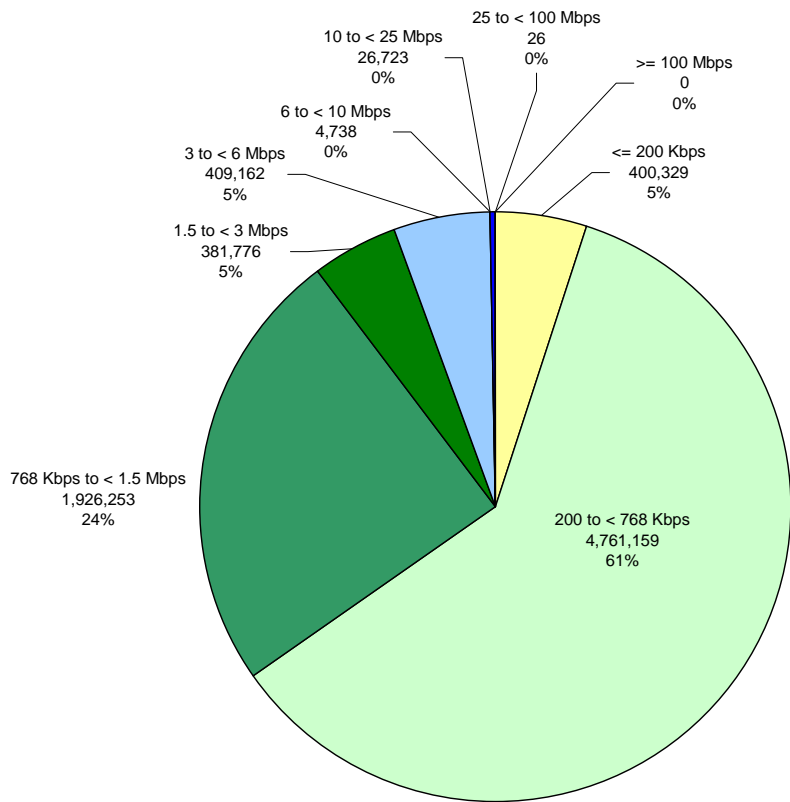


### 3. Broadband Upload Speed Tiers

The pie chart below shows the residential broadband upload speeds delivered by DIVCA franchise holders at the end of 2008. Below are four key upload speed tier metrics:

- 24% of residential broadband upload connections are between 768 kbps and 1.5mbps.
- 90% of residential broadband upload connections are below 1.5 mbps.
- 5% of residential broadband upload connections are greater than 3 mbps
- Less than 0.5% (31,461) of residential broadband upload connections are greater than 6 mbps

**Residential Broadband Subscribers by Upload Speed 2008**

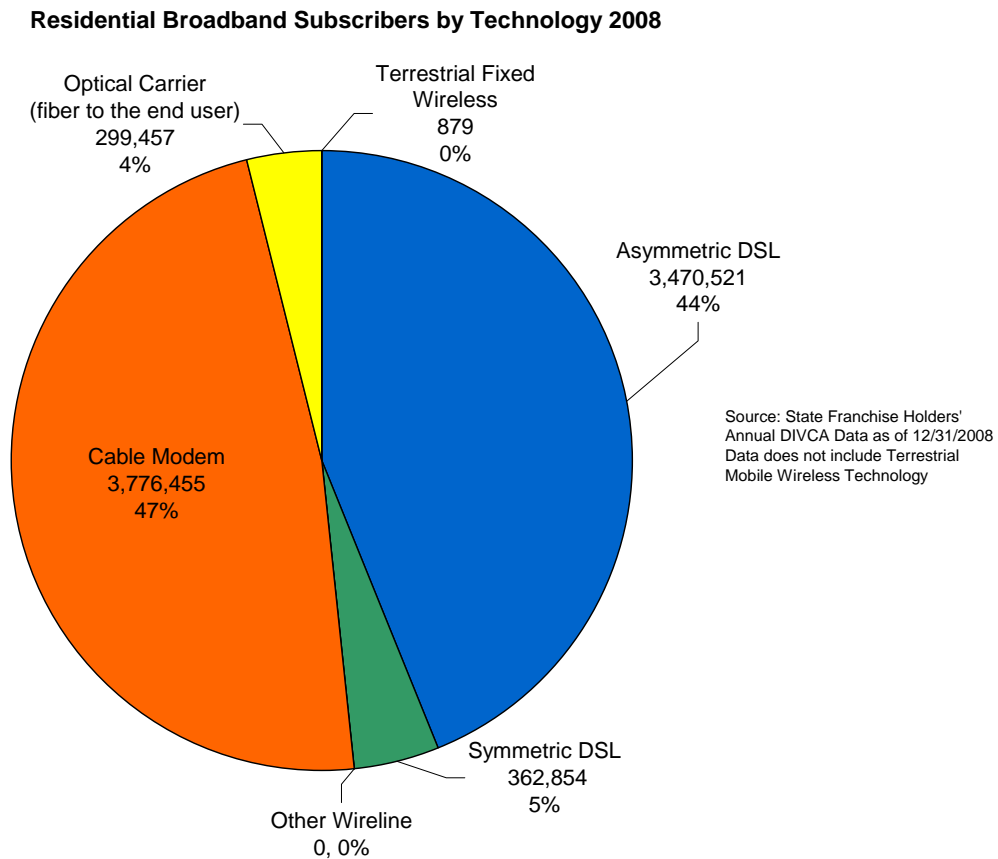


Source: State Franchise Holders Annual DIVCA Data as of 12/31/2008  
Data does not include Terrestrial Mobile Wireless Technology

## 4. Broadband Technologies

The distribution of broadband technology deployed is a new metric made possible by the changes in the FCC Form 477 reporting rules mandated by the FCC this year. Below is a statewide pie chart that shows the technologies DIVCA franchise holders used to deploy broadband as of December 31, 2008. The pie chart shows:

- **Cable modems** are used by state-issued video franchise holders to serve 47% of the residential households in their franchise territories that subscribe to broadband.
- **DSL** is used by state-issued video franchise holders to serve 49% of the residential households in their franchise territories that subscribe to broadband. (49% = 44% asymmetric DSL + 5% symmetric DSL)
- **Optical Fiber to the home** is used by state-issued video franchise holders to serve 4% of the residential households in their franchise territories that subscribe to broadband.



## 5. Map Showing Predominant Technologies to Deploy Broadband in Individual Census Tracts

The map on the next page uses the information shown in the pie chart on the previous page to illustrate which one technology is most predominant<sup>27</sup> in each census tract in the state of California. While this is a good tool for showing where different technologies are deployed around the state, one of its limitations is that the second, third and fourth most predominant technologies in each census tract do not appear in the map.

This map shows:

- In most metropolitan areas in California cable modems and asymmetric DSL are the two predominant technologies used to deploy broadband.
- Symmetric DSL is the predominant technology in approximately ten rural census tracts in southern and eastern portions of the State and in Santa Barbara.
- Fiber optic cable (to the home) is the predominant technology in some census tracts in the following counties: Los Angeles, Venture, Riverside, San Bernardino, Sutter and Placer.
- Fixed wireless is the predominant technology in only one census tract, in eastern San Diego county. As shown on the pie chart on the previous page, statewide fixed wireless access is deployed by state-issued video franchise holders to serve only 879 households.

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<sup>27</sup> The **predominant** technology in a census tract is the technology used to deploy the largest number of broadband connections in that census tract.



# PREDOMINANT WIRELINE BROADBAND TECHNOLOGY BY CENSUS TRACT (Technology Type with Greatest Number of Residential Connections)





## D. Broadband Penetration by County

The graph and table on the following pages show the residential wireline broadband penetration rate<sup>28</sup> of each county and how they compare with other counties throughout California.

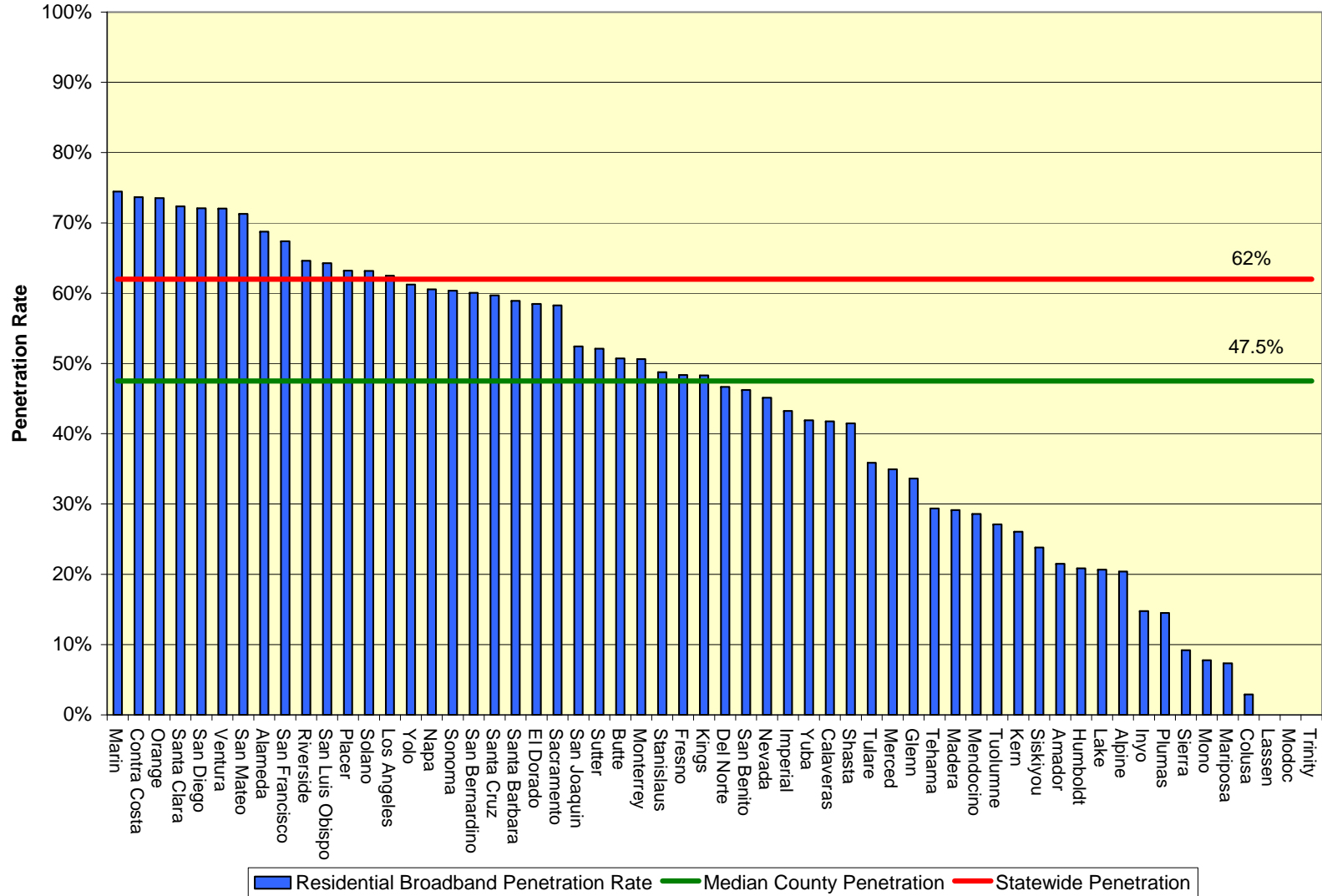
Below are some key facts describing broadband penetration rates in California:

- The statewide residential wireline broadband penetration rate is 62%.
- The median broadband penetration rate among counties in 2008 is 47.5%, up ten points from 37.5% in 2007.
- Marin, Contra Costa and Orange counties are tied for having the highest residential wireline broadband penetration rate of 74%.

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<sup>28</sup> For the purposes of this DIVCA report, residential wireline broadband includes 859 connections of fixed wireless.

### Residential Broadband Penetration by County 2008 (Wireline and Fixed Wireless)



Source: State Franchise Holders' Annual DIVCA data as of 12/31/2008, Household Projections from CA Department of Finance 1/1/2009

## Residential Broadband Penetration by County

The table below, which continues on the next page, is another way of displaying the same broadband penetration data that is shown in the graph on the previous page.

County Name	2008 Residential Wireline & Fixed Wireless Broadband Penetration	Projected Households In County 2009 <sup>29</sup>
Alameda	69%	555,772
Alpine	20%	569
Amador	21%	14,932
Butte	51%	90,013
Calaveras	42%	20,185
Colusa	3%	7,097
Contra Costa	74%	387,147
Del Norte	47%	9,807
El Dorado	58%	69,760
Fresno	48%	292,429
Glenn	34%	9,987
Humboldt	21%	54,676
Imperial	43%	50,059
Inyo	15%	7,895
Kern	26%	252,216
Kings	48%	40,061
Lake	21%	26,173
Lassen	0%	10,595
Los Angeles	62%	3,274,667
Madera	29%	44,696
Marin	74%	104,239
Mariposa	7%	7,833
Mendocino	29%	35,746
Merced	35%	79,502
Modoc	0%	4,075
Mono	8%	6,238
Monterrey	51%	129,893
Napa	61%	50,807
Nevada	45%	41,967
Orange	74%	1,000,798
Placer	63%	133,208
Plumas	14%	10,458
Riverside	65%	677,582
Sacramento	58%	530,060
San Benito	46%	17,112
San Bernardino	60%	610,352
San Diego	72%	1,099,130

<sup>29</sup> For this DIVCA report, we used estimates for households generated by the California Department of Finance.

<b>County Name</b>	<b>2008 Residential Wireline &amp; Fixed Wireless Broadband Penetration</b>	<b>Projected Households In County 2009</b>
San Francisco	67%	347,916
San Joaquin	52%	219,970
San Luis Obispo	64%	106,416
San Mateo	71%	263,848
Santa Barbara	59%	149,157
Santa Clara	72%	612,463
Santa Cruz	60%	96,597
Shasta	41%	71,561
Sierra	9%	1,586
Siskiyou	24%	20,380
Solano	63%	146,663
Sonoma	60%	187,632
Stanislaus	49%	170,928
Sutter	52%	32,175
Tehama	29%	24,608
Trinity	0%	5,988
Tulare	36%	130,958
Tuolumne	27%	22,703
Ventura	72%	268,444
Yolo	61%	71,216
Yuba	42%	24,469

## E. Infrastructure Build-out: Deployment Incentives

There are a number of efforts underway to provide incentives to service providers to increase their deployment of broadband services in unserved and underserved areas.

Though market forces in conjunction with lower-cost technology will always influence broadband availability, a variety of programs are underway to encourage more competition and investment in video and broadband infrastructure. DIVCA is but one example. Below are brief descriptions of several programs that are intended to create incentives for deployment of additional infrastructure in unserved and underserved areas throughout California:

**The California Advanced Services Fund (CASF)** provides matching funds for the deployment of broadband infrastructure in unserved and underserved areas in California. Senate Bill 1193 (Padilla, Chapter 393, 2008) requires the CPUC to provide for transfer payments to encourage service providers to deploy high quality advanced communications services to all Californians. The goal is to promote economic growth, job creation and other social benefits of advanced information and communications technologies.

**The California Emerging Technology Fund** makes investments in programs and projects to minimize the digital divide by accelerating the deployment and adoption of broadband and other advanced communication services to unserved and underserved communities, and to increase subscribership to these services.

**The California Telehealth Network** is a three year pilot program funded by a \$22 million grant from the FCC. The Telehealth network uses advanced telecommunications and information services to connect more than 300 rural healthcare sites with a network of specialized healthcare providers at academic medical centers and other healthcare providers throughout the state of California.

**The California Rural Telecommunications Infrastructure Grant Program** aids in the establishment of telecommunications service in areas not currently served by existing local exchange carriers. In 2008, the Governor signed SB 1149 which extended the program to January 2012. The CPUC can now grant \$40 million over a four year period and can issue individual grants of \$5 million.

**The Federal American Recovery and Reinvestment Act of 2009 (ARRA)** was passed by Congress and appropriated:

- \$2.5 billion to the Dept. of Agriculture's Rural Utilities Service to fund broadband loans, loan guarantees and grants to support distance learning, telemedicine and broadband.
- \$4.7 billion dollars to be used by the National Telecommunications and Information Administration (NTIA) to fund the Broadband Technology Opportunities Program . The Recovery Act requires NTIA initiate the Broadband Technology Opportunities Program (BTOP) to accelerate broadband deployment to unserved and underserved areas and ensure that institutions strategically placed to create jobs and provide other public benefits have broadband access.

- BTOP has five overarching purposes:
  - 1) Extend broadband access to unserved areas;
  - 2) Provide improved access in underserved areas;
  - 3) Improve use of broadband by public safety agencies; and
  - 4) Stimulate broadband demand as an engine for economic growth.
  - 5) Provide education, training, equipment and support to strategic institutions such as at libraries, community organizations and job-creating facilities;

### III. Franchising Activities under DIVCA

#### A. Number Video Franchises / Amendments Issued in 2008

Following the adoption of rules implementing DIVCA, the CPUC accepts applications for video franchises, amendments and issues new and amended ten-year state video franchises.<sup>30</sup> Table 1 below summarizes the number of applications received, and the number of franchises issued between January 1, 2008 and December 31, 2008.

State Issued Video Franchises Through December 31, 2008

Applications for Video Franchise or Amendment Received	Franchises or Amendments Issued
49	48

During 2008, video franchises and/or amendments were issued to the following firms:

SureWest TeleVideo, Champion Broadband, Baldwin County Internet / DSSI Service, Audeamus LLC, Calaveras Cablevision, Cable USA, Northland Cable Television, Astound Broadband, Cox Communications, Comcast, Falcon Cablevision (Charter), Falcon Cable Systems (Charter), Falcon Cable Systems II (Charter), Charter Communications Entertainment II, Charter Communications Properties, LLC, Long Beach, LLC (Charter), Dalton Cablevision (Charter), Marcus Cable Associates (Charter), Time Warner NY Cable, Time Warner Entertainment, Time Warner Entertainment – Advance / Newhouse Partnership, CAC Exchange (Time Warner Cable), CAC Exchange II LLC (Time Warner Cable), C-Native Exchange I (Time Warner Cable).

In 2008, there was one more application than the number of amendments. This is because one firm that applied for an amendment in 2008 was granted their amendment in 2009, after the cut off date for the data included in this report.

The map on page 11 illustrates the overall geography of the state video franchise territories. Appendix E, beginning on page 58, contains maps of the territories of most state video franchises.

<sup>30</sup> The aggregated data contained in this report reflects data submitted by video franchise holders as of April 1, 2009. The reported data was intended to be current as of January 1, 2009. All reported data pertinent to new franchises granted after this date will be reflected in next year's report. See General Order 169, Implementing the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) (Cal. P.U.C. March 1, 2007), at VII (C)(1). (G.O. 169).

The state video franchise application process is ministerial. Because video franchise holders are not public utilities, the DIVCA application process does not include the opportunity for protests by interveners.

DIVCA allowed “incumbent” cable operators with existing locally-issued franchisees, under certain circumstances, to file applications for state-issued franchises to become effective on or after January 1, 2007.<sup>31</sup> As a part of their applications, such operators must identify one of four circumstances under which they become eligible for a state franchise:<sup>32</sup>

- 1) The expiration of an existing local cable franchise.
- 2) A mutually agreed upon date set by both the local franchising entity and video service provider to terminate the franchise provided in writing by both parties to the Commission.
- 3) A video service provider that holds a state franchise has provided notice to a local jurisdiction that it intends to initiate providing video service in all or part of that jurisdiction.
- 4) Local entities may also require all operators to seek a state franchise to replace their local franchise with a state-issued franchise if and when such a local entity has received notice that any one video service provider has received a state-issued franchise and is about to provide service.<sup>33</sup>

The map on page 11 is color-coded to graphically show the state-issued video franchise territories of the local exchange carriers (Green) as well as the cable companies (Red Cross hatch) as of December 31, 2008. Both the new entrant LECs and incumbent cable companies have franchises that cover the major urban areas of the state. See Appendix E beginning on page 58 for maps of individual franchisees.

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<sup>31</sup> P.U. Code §5930 (b).

<sup>32</sup> P.U. Code §5840 (o).

<sup>33</sup> P.U. Code §5390(c). No local entity has yet triggered the transition to a state-issued franchise through a unilateral decree.



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**Appendix A:  
Overview of  
The Digital Infrastructure and  
Video Competition Act**

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## A. Overview of DIVCA

On September 29, 2006, the Governor signed into law Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA).<sup>34</sup> DIVCA's overriding goals are to promote rapid, widespread competition in the broadband and video markets and accelerate the deployment of additional infrastructure in California.

DIVCA, which the CPUC implements, addresses not only video franchising, but also the deployment of additional broadband infrastructure within California, particularly to unserved and underserved areas. DIVCA fundamentally changed video franchising within California by transferring the authority for issuing franchises for the provision of video services from local entities to the State of California. The State Legislature designated the CPUC as the sole franchising authority for issuing state video franchises as of January 1, 2007.

California was the eighth state to fundamentally reform video franchising to facilitate competitive video entry.<sup>35</sup> Approximately 17 states have transferred video franchising authority to the state. These states include California, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Michigan, Missouri, New Jersey, North Carolina, Nevada, Ohio, South Carolina, Texas, Virginia and Louisiana.<sup>36</sup>

Prior to DIVCA, cable television franchises were issued by local entities, primarily cities, counties and special districts. This required cable operators to negotiate separate franchise agreements with each locality where they wished to provide video service. California is made up of 58 counties encompassing over 6,000 cities and towns.<sup>37</sup> These local franchise agreements required that service providers comply with specified customer service and performance standards and other requirements that often varied by locality.

For new entrants seeking to provide video and broadband services on a widespread basis, the process of negotiating franchise agreements with each individual local entity would inevitably have been a long process, delaying the widespread market entry of additional competitive service providers for many years. To speed the entry of new video and broadband providers into the marketplace, the Legislature sought to replace the local franchising system with one in which video franchises would be issued by the state. The CPUC was designated as the agency charged with issuing state video franchises.

In order to carry out its statutory goals, the CPUC developed and adopted rules to implement DIVCA through a series of three formal decisions and several resolutions. See pages 43 – 45 in Appendix C for descriptions of these decisions.

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<sup>34</sup> A.B. 2987, 2005-2006 Session, (Ca. 2006); Cal. Pub. Util. Code, Division 2.5, The Digital Infrastructure and Video Competition Act of 2006. ("DIVCA").

<sup>35</sup> Passage of Cal. Video Bill Expands Franchise Reform to 1/3 of U.S. Population, *Communications Daily*, September 5, 2006.

<sup>36</sup> Miller & Van Eaton, PLLC., *State Cable Franchise Laws at a Glance*, available at <http://www.millervaneaton.com/00130020.pdf>. (Last visited June 16, 2008).

<sup>37</sup> *California Gazetteer: City Profiles, Physical and Cultural Features*, <http://california.hometownlocator.com/cities/> (Last visited June 16, 2008); *California State Association of Counties*, <http://www.csac.counties.org/> (Last visited June 16, 2008).

Following the adoption of these new rules, the CPUC began issuing ten-year state video franchises. The state video franchise application process is ministerial. A state video franchise will be issued, so long as an applicant is eligible for a state franchise, the application is complete, and the applicant swears that it will adhere to all state and federal laws, rules, and regulations.

Holders of state video franchises are required to submit certain data annually on April 1 relating to their provision of video and broadband services, and information pertaining to their service to low-income households within the holders' video service areas as of December 31 of the previous year. DIVCA directs the CPUC to aggregate the data described above and to report the aggregated totals to the Governor and the Legislature annually.

While DIVCA provides that the CPUC is the sole franchising authority for issuing state video franchises,<sup>38</sup> the statute also provides that video service providers are not public utilities and prohibits the Commission from imposing any requirements on state franchise holders that are not expressly provided by DIVCA.<sup>39</sup>

DIVCA defined the jurisdiction of the Commission quite narrowly. The Commission is charged with the following tasks:<sup>40</sup>

- Issuing and renewing 10-year video franchises.
- Gathering data from franchise holders on their deployment of video and broadband services on an annual basis.
- Aggregating data submitted by holders for use in an Annual Report from the CPUC to the Governor and Legislature.
- Monitoring Franchise holders' deployment of infrastructure and services to protect against discrimination and enforce build-out requirements contained within the statute.
- Protecting against telco-video cross subsidization.
- Collecting fees from state franchise holders to equal the cost of carrying out the CPUC's duties under DIVCA.

DIVCA guided the CPUC in its job of implementing the act by setting forth the following goals:<sup>41</sup>

- Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.
- Promote widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status.
- Protect local government revenues and their control of public rights-of-way.
- Require market participants to comply with all applicable consumer protection laws.

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<sup>38</sup> P.U. Code § 5890.

<sup>39</sup> *Id.* at §5840 (a).

<sup>40</sup> Phase I Decision, at p. 7.

<sup>41</sup> *Id.* at §5840 (a).

- Complement efforts to increase investment in broadband infrastructure and close the digital divide.
- Continue access to and maintenance of the public, education, and government (PEG) channels.
- Maintain all existing authority of the California Public Utilities Commission as established in state and federal statutes.

## B. Enforcement of Video Build-out Requirements: Protecting Against Discrimination and Closing the Digital Divide

DIVCA requires the CPUC to monitor holders' deployment of infrastructure and services to protect against discrimination and enforce build-out requirements contained in the statute.<sup>42</sup> Also, as discussed above, DIVCA mandates that the CPUC should promote efforts to increase investment in broadband infrastructure and close the digital divide.

In order to carry out these goals, the Commission applies a number of nondiscrimination and build-out tests to protect against discrimination and enforce DIVCA's build-out requirements. For example, the build-out requirements for holders with over one million telephone customers are set out in the table below:

	More than ONE million telephone customers in CA	
	Predominantly fiber optic to premises	Not predominantly fiber optic to premises
Within 2 years	25% of customer households in telephone service area must have access to video service	
Within 3 years		35% of households in telephone service area must have access to video service

As can be seen in this table, the trigger points for this build-out requirement do not occur until the end of the second year of operation (in the case of holders predominantly deploying fiber optic to the premises) or the end of the third year (in the case of holders not predominantly deploying fiber optic to the premises.)<sup>43</sup> Similarly, the other benchmarks that holders must reach with regard to building out facilities and doing so in a nondiscriminatory manner are only to be applied in future years.

- Verizon has exceeded their two year build out obligation / milestone by offering video services to more than 25% of the households in their telephone service area. The obligation is to offer video service to at least 25% of customer households in their telephone service area within two years. AT&T's first build out obligation must be satisfied within 3 years.

<sup>42</sup> Phase I Decision, at 7; See P.U. Code §5890.

<sup>43</sup> *Id.* at (e)(1) and (2).

## C. Protecting Against Telco-Video Cross Subsidization

DIVCA directs the CPUC to assure that state franchise holders that provide stand-alone, residential, primary line basic telephone service shall not increase their rate for such service to finance the cost of deploying a network to provide video service.<sup>44</sup>

Both DIVCA<sup>45</sup> and the CPUC's Uniform Regulatory Framework (URF) decision<sup>46</sup> prohibited AT&T and Verizon from raising these rates at all, prior to January 1, 2009, except to reflect increases in inflation. The CPUC's decision D 08-09-042 OP 12 extended this freeze on basic rate increases (other than inflation) to December 30, 2010.

To date, these safeguards have served to protect against cross-subsidization.

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<sup>44</sup> P.U. Code § 5940

<sup>45</sup> *Id.* at § 5950

<sup>46</sup> Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities, Decision 06-08-030, Opinion (Cal. P.U.C. August 24, 2006).



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## **Appendix B: Methodology**

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## A. Data & Method

### Annual Data

DIVCA requires that State franchise holders submit annual data on their territories, availability of service, and subscribership. For this second annual Report, data were to be as of December 31, 2008. These data were used throughout this report and provided a base from which to compare and evaluate providers' year-to-year performance under DIVCA.

All state video franchise holders who had state franchises and/or amendments issued before December 31, 2008, submitted annual data pursuant to Sec. 5960. Each parent company of a state video franchise holder filed one annual report which included broadband and video service data for all of their state franchised operations as well as their local affiliates that operate in California and provide video or broadband service in the state.

The companies that filed annual reports include: AT&T California Inc., Verizon Communications Inc., SureWest TeleVideo, Champion Broadband, Baldwin County Internet / DSSI Service, Audeamus LLC, Calaveras Cablevision, Cable USA, Astound Broadband, Comcast Communications Holdings, Cox Communications, Great Western Alliance Group, Falcon Cablevision (Charter), Falcon Cable Systems (Charter), Falcon Cable Systems II (Charter), Charter Communications Entertainment II, Charter Communications Properties, LLC, Long Beach, LLC (Charter), Dalton Cablevision (Charter), Marcus Cable Associates (Charter), Northland Cable Television, Time Warner NY Cable, Time Warner Entertainment, Time Warner Entertainment – Advance / Newhouse Partnership, CAC Exchange (Time Warner Cable), CAC Exchange II LLC (Time Warner Cable), C-Native Exchange I (Time Warner Cable), and WaveDivision Holdings, L.P.

All state video franchise holders reported, by census tract as of December 31, 2008, the following:

1. Broadband service
  - a. The number of households to which the holder makes broadband available. If the holder does not maintain this information on a census tract basis in its normal course of business, the holder may reasonably approximate the number of households based on information it keeps in the normal course of business
  - b. The number of households that subscribe to broadband to which the holder makes available
  - c. Whether the broadband provided by the holder utilizes wireline-based facilities or another technology
  - d. Number of subscribers to each download and upload broadband speed tier
  - e. Types of technology used to deploy broadband services
2. Video service
  - a. If the holder is a telephone corporation:
    - i. The number of households in the holder's telephone service area
    - ii. The number of households in the holder's telephone service area that are offered video service by the holder
  - b. If the holder is not a telephone corporation:

- i. The number of households in the holder's video service area
- ii. The number of households in the holder's video service area that are offered video service by the holder
- c. The number of low-income households in the holder's video service area
- d. The number of low-income households in the holder's video service area to which video service is made available by the holder

The analyses of video and broadband service are based on these self-reported data from parent companies of the state video franchise holders listed above and exclude companies that are not yet state franchise holders.

## **Method**

We used an Oracle database and a Geographic Information Software System (GIS) to aggregate the data reported by census tract and map and analyze it. We also used Excel spreadsheets to aggregate, analyze and create graphs of the annual data. The findings are illustrated in maps, graphs, and charts throughout the report.

Broadband speed tier data was first made available this year, in accordance with the FCC's new *Form 477 Reporting Requirements*, which changed the way service providers are required to report broadband services.

Because annual data was reported to us by census tract rather than by address, staff was limited in its ability to analyze and depict the availability of broadband and video service. Census tracts are the largest census geography before the county level. There are 7049 census tracts in California, ranging in size from 0.021 square miles to 8007 square miles, averaging 22 square miles. The number of households in each tract ranges from 0 to 8530, averaging 1628. As a result, using census tracts as the minimum mapping unit, is far too large to map with accuracy, or make well informed decisions about, the distribution of broadband and video availability in certain locations.

Census tract basis reporting makes it impossible to accurately estimate an absolute number of households offered broadband or video service by census tract. Individual franchise holders reported the number of households to which they offered service by census tract, and for census tracts where they were the only provider, this figure could be used as an accurate estimate of the total number of households offered service in that tract. But for census tracts in which there were multiple providers, it was impossible to know whether the two (or more) services were offered to different households, or to the same households. Adding the "households offered" figures from two or more providers could result in double or triple counting, bringing some availability and subscription rates to over 100%.

Consequently, mapping where competition has occurred (one of the core concerns of DIVCA) is complicated by this lack of granularity. Rather than being able to show where different franchise holders are providing service in a census tract, we were forced to classify an entire census tract as being either served or unserved by each provider, then simply add up the number of providers for each tract, regardless of where they are actually offering

service within that tract. In this way, the current level of broadband and video competition was also overstated.

To determine availability of broadband, if one household in a census tract was offered broadband or video service by any franchise holder, then it was assumed that all households within it were offered the service, and the tract was mapped as 'served.' This naturally resulted in an overstatement of the level of availability. Error estimation was not done for this report, so it is not known how inaccurate these estimates are.

On the other hand, the population density within California varies widely (as evidenced by the extreme variation in its census geography sizes). This means that the total number of census tracts comprising California's rural heartland (where most of the error in the results may lie) are relatively few, and that the total number of households this represents are also relatively few.

Adoption or subscription to broadband and video services was analyzed using penetration rate, or the ratio of households that purchase broadband or video service to the total number of households in the census tract. The holders used a variety of consultants to derive census numbers for 2007, since the Census Bureau does not report population and household counts by census tract for inter-census years. Accordingly, the census tract values reported by the holders vary.

For this second DIVCA Report, to estimate the number of households in California, we used the estimates derived by the State Department of Finance. Last year for the first Report, CPUC staff was not aware of the Department of Finance's metrics, so we calculated the number of households ourselves.

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## **Appendix C:**

### **Implementing DIVCA: Decisions and Resolutions**



## **Rules Adopted to Implement DIVCA**

Shortly after DIVCA was enacted on September 29, 2006, the CPUC, on October 5, 2006 issued its Order Instituting Rulemaking to consider the adoption of a General Order and procedures to implement the Digital Infrastructure and Video Competition Act of 2006 (R. 06-10-005) (“Rulemaking”). Under this Rulemaking, the CPUC has developed rules for implementing DIVCA. This was accomplished in three phases.

### **Phase I - Adopting Rules to Implement the DIVCA**

On March 1, 2007, following the receipt of comments and reply comments on the OIR and subsequent Proposed Decision, the CPUC issued Decision 07-03-014 establishing rules for implementing DIVCA and adopting General Order 169. (“Rules”) These rules set forth application requirements, CPUC procedures for considering applications, build-out, anti-discrimination, annual reporting requirements of both cable and broadband information by census tract, and other requirements as mandated by DIVCA.<sup>47</sup>

### **Phase II - Adopting Non-Discriminatory Build-out Requirements for Small LECs**

On May 7, 2007 the assigned Commissioner issued a Scoping Ruling setting out issues to be addressed in Phase II of the Rulemaking. On October 4, 2007, the CPUC issued a Phase II decision adopting non-discriminatory build-out requirements for smaller companies and additional reporting requirements.<sup>48</sup> In Phase II, the CPUC determined that the “reasonable time” deployment standard applicable to franchise holders who are telephone companies with fewer than one million telephone customers should largely mirror the build-out timetable required of the larger telephone companies. Further, the CPUC determined that, in their annual reports to the CPUC, holders must provide video subscriber data, finding that such data are necessary in order for the CPUC to determine whether state franchise holders are adhering to the requirements of DIVCA.<sup>49</sup>

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<sup>47</sup> On October 5, 2006, the Commission issued an Opinion Modifying Decision 07-03-014, in order to amend the form of the franchise certificate adopted in Phase I to conform to statutory requirements (available at [http://docs.cpuc.ca.gov/published/FINAL\\_DECISION/65225.htm](http://docs.cpuc.ca.gov/published/FINAL_DECISION/65225.htm)).

<sup>48</sup> *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Decision 07-10-013, *Opinion Resolving Issues in Phase II* (Cal. P.U.C. October 4, 2007).

<sup>49</sup> Previously, the Commission’s Rules required the submission of data related to the number of households offered video services, but not the number of households subscribing to such services.

### Phase III - Adopting New Rules to Administer DIVCA

On March 27, 2008, the CPUC issued a Scoping Ruling setting out issues to be addressed in the third, and final, phase of the DIVCA Rulemaking. On July 10, 2008, the CPUC issued the Phase III decision amending the bonding requirements under DIVCA, adopting new rules regarding deadline extensions for build out requirements, and additional reporting requirements.

Under DIVCA, holders of a state video franchise are subject to statutory requirements regarding, among other things, the extent and pace at which state franchise holders must build out facilities and offer video services to households. The statute provides that state franchise holders may apply to the CPUC for an extension of the time for such build out requirements to be satisfied, under certain circumstances. The Phase III added procedural requirements to ensure that holders' extension requests are made and decided in a timely fashion.

Further, Phase III eliminates an unintended and unfair asymmetry in the bond requirement under GO 169 between new entrants in the video marketplace and incumbent cable operators. Local franchises held by incumbent cable operators tend to be held by many separate affiliates of an ultimate parent. Verizon and AT&T, by contrast, have each applied for only one state franchise covering their entire video service areas. The Phase III decision changes the rules under DIVCA to require only one bond to be posted to cover all affiliated holders rather than separate bonds so that "incumbent" applicants for video franchises do not have additional burdens placed on them due to their historic corporate organization under the local franchising scheme.

Finally, Phase III requires holders to include in their annual data submitted to the CPUC broadband speed "tiers" that state video franchise holders make available. Numerous commenters urged the CPUC to wait until the FCC released its order requiring broadband reporting by census tract, broken down by speed tier and technology, and, thereafter, to adopt the FCC's speed reporting regime. The FCC released its Report and Order and Further Notice of Proposed Rulemaking adopting new requirements for reporting broadband service by speed tier on June 12, 2008.<sup>50</sup> The CPUC issued this decision to reflect the FCC's speed tier reporting requirements. Holders are now required to report the same broadband speed information that it reports to the FCC to the CPUC.

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<sup>50</sup> Form 477 Order, fn 21, *Supra*.

## Resolutions

After gaining experience in processing applications, CPUC staff has made several recommendations for revisions to the application forms through two resolutions, T-17107 and T-17141, which were subsequently adopted by the CPUC. In addition, DIVCA provides for video franchise holders to pay fees to the CPUC calculated to equal the amount authorized in the CPUC budget for DIVCA implementation. Resolution T-17137 set the user fee due per household in a video franchise holders' service area for the 2007-2008 fiscal year. Subsequent to this Resolution, the user fee will be determined annually based on the pro-rata percentage of all state video franchise holders' gross state video franchise revenues that is attributable to an individual state video franchise holder.

## DIVCA Application Process

The application process was designed to be simple and straight forward. It requires applicants to file the following: a completed application form; a \$2,000 application fee; confirmation of technical, managerial, and financial qualifications demonstrated through the posting of a bond (\$100,000 to \$500,000); an affidavit attesting to the lawful operation of the franchise; a definition of the video service area sought; demographic information by census block group; the expected date for the deployment of video service in the video service area; and, a list of affected local entities.

The CPUC must determine within 30 days if an application is complete and issue the franchise within 14 days of such determination.<sup>51</sup> If the application is not complete, CPUC staff is required to notify the applicant, and the 30-day clock restarts. If the CPUC does not issue the franchise within the required 14 days, it is deemed issued. The new franchise holder and Commission staff then notify the affected local entities.<sup>52</sup>

The CPUC's Phase I Decision allowed applicants, except for incumbent cable operators, to begin filing applications for state-issued video franchises as of March 1, 2007.<sup>53</sup> The first such application was filed by Verizon California Inc. on March 2, 2007. AT&T California filed its application on March 7, 2007. These franchise applications were reviewed for completeness, and video franchises Nos. 0001 and 0002 were issued to Verizon and AT&T on March 8 and March 30, 2007, respectively. All franchise applications and grants may be viewed on the Commission's web site.

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<sup>51</sup> P.U. Code §5840 (h).

<sup>52</sup> See P.U. Code §5840 (n).

<sup>53</sup> <sup>53</sup> DIVCA required the CPUC to begin accepting applications no later than April 1, 2007; P.U. Code §5847(g)

## **Appendix D: Collecting Data Mandated by DIVCA**

## A. DIVCA's Data Reporting Requirements

Holders of state video franchises are required to submit data relating to their provision of video and broadband services annually by April 1.<sup>54</sup> Pursuant to DIVCA, all video franchise holders must report, by census tract, the following:<sup>55</sup>

### 1. Broadband Information:

- a. The number of households to which the franchise holder makes broadband available in California. If the holder does not maintain this information on a census tract basis, in its normal course of business, the holder may reasonably approximate the number of households based on information it keeps in the normal course of business.
- b. The number of households that subscribe to broadband that the holder makes available in this state.
- c. Whether the broadband provided by the franchise holder utilizes wireline-based facilities or another technology.
- d. Number of subscribers to each download and upload broadband speed tier
- e. Types of technology used to deploy broadband services

### 2. Video Information:

- a. If the franchise holder is a telephone corporation:
  - i) The number of households in the holder's telephone service area.
  - ii) The number of households in the holder's telephone service area that are offered video service by the holder.
- b. If the holder is not a telephone corporation:
  - i) The number of households in the holder's video service area.
  - ii) The number of households in the holder's video service area that are offered video service by the holder.

### 3. Low-Income Household Information:

- a. The number of low-income households in the holder's video service area.
- b. The number of low-income households in the holder's video service area that are offered video service by the holder.

DIVCA directs the CPUC to aggregate the data described above and to report the aggregated totals to the Governor and the Legislature annually no later than July 1.<sup>56</sup> In the following sections, we will discuss the broadband and video data submitted by the Video Franchise holders as of April 1, 2008.

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<sup>54</sup> P.U. Code §5960.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* The issuance of this first Report has been delayed due to start-up issues regarding data formatting and the delayed hiring of staff.

## B. Census Tract Data Limitations

CPUC staff created methodologies to obtain, quantify and analyze data describing where video franchise holders offer broadband and video services in California and to what extent households are purchasing those services.

As specified in DIVCA and the CPUC's DIVCA Decisions, video franchise holders provided the CPUC with data identifying the number of households to which they offer broadband and video services in each of the state's census tracts. In addition, they reported by census tract the number of households that subscribe to their broadband and video services.

This census-tract level granularity is one of the key limitations of the data submitted under DIVCA.<sup>57</sup> All mapping and analysis had to be done at the level at which the data was submitted. Census tracts are too large a minimum mapping unit to accurately map broadband and video services throughout the state of California. There are 7,049 census tracts in California, ranging in size from 0.021 square miles to 8,007 square miles, averaging 22 square miles. The number of households in each tract ranges from 0 to 8,530, averaging 1,628 households per census tract. These variations made it difficult to determine the actual distribution of broadband and video availability in certain locations within the state.

At this time, DIVCA does not require franchise holders to provide the street-level, census block-level, or household-level data that would be needed to determine precisely where households are actually offered broadband and video services.

As a result, we found it to be impossible to determine where, within each census tract, service is being provided. Therefore, we assumed that if any household in a census tract was offered broadband by any video franchise holder, all households within that census tract are offered broadband and the entire tract was mapped as 'served' by broadband. We used the same methodology for video. This assumption results in some over counting of the number of households to which service is made available within some census tracts. For example, in some rural census tracts, it appears as if a census tract is completely served when in reality only a small geographic area within a rural tract is offered broadband or video service. Fortunately, because relatively few households in California are located in predominately rural census tracts, relatively few households are in the overstated category. Unfortunately, the areas where results may be somewhat overstated are exactly the areas where high accuracy would be important to identify unserved areas.

For census tracts in which there were multiple providers, it was impossible to know how many providers offered service to any given household. Adding the "households offered" figures from two or more providers could result in double or triple counting and create significant inaccuracies in estimates of service availability.

The methodology we used attempted to overcome these limitations. In most census tracts, we believe this methodology yielded accurate data. However, without census-block, street-level or household-level data, the precision of our estimates of the availability of service

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<sup>57</sup> The granularity of data refers to size of the geographic areas by which data are reported.

within a census tract is uncertain. As a result, in some census tracts, this methodology resulted in an overstatement of the estimated level of broadband or video availability.

Our ability to analyze where competition exists was also limited. When multiple service providers report that they offer service in the same census tract, there was no way of knowing where within the tract each operates, and we were faced with the double-counting issue again. For example, consider an average sized census tract with 1,600 households. If two franchise holders each report that they offer broadband service to 800 households, it is not possible to know which of the households are served broadband by one, both, or neither of the service providers. It is possible that both service providers might be competing by offering services to the same 800 households, while the other 800 households are offered no service by either provider. Or, it is possible that all 1,600 households might be offered service by one provider and there is no real competition taking place within the census tract.

Finally, it is important to keep in mind that throughout this Report, only services offered by state-issued video franchise holders and their affiliates are reflected in DIVCA data. Broadband and video services are likely offered in many areas by other entities, unrelated to state video franchise holders. Examples of this would be small local exchange carriers, which provide broadband service, but are not yet providing video services, wireless and satellite ISPs, which provide broadband but are not affiliated with state franchise holders. These providers did not report data so we did not include them in the analysis contained in this Report.

## **Appendix E: Video Franchise Area Maps**