

# CITY OF MENIFEE

**Wallace Edgerton**  
*Mayor*  
**Darcy Kuenzi**  
*Mayor Pro Tem*  
**John Denver**  
*Councilmember*  
**Scott Mann**  
*Councilmember*  
**Fred Twyman**  
*Councilmember*

State of California )  
County of Riverside ) ss  
City of Menifee )

I, Kathy Bennett, City Clerk of the City of Menifee, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 2008-13 adopted by the City Council of the City of Menifee, California, at a regular meeting thereof, held on the 2<sup>nd</sup> day of December, 2008, by the following vote:

Ayes: Denver, Edgerton, Mann, Twyman  
Noes: None  
Abstain: None  
Absent: Kuenzi

  
\_\_\_\_\_  
Kathy Bennett, City Clerk

Dated: December 3, 2008

**ORDINANCE NO.2008-13**

**URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENIFEE  
ADOPTING MENIFEE MUNICIPAL CODE SECTION REGARDING CABLE FRANCHISE AND  
VIDEO SERVICE AND CONTINUING FRANCHISE FEES**

THE CITY COUNCIL OF THE CITY COUNCIL OF MENIFEE DOES ORDAIN AS  
FOLLOWS:

**SECTION 1. CHAPTER 5.06: CABLE SYSTEM FRANCHISE** is added to the City of  
Menifee Municipal Code to read as follows:

**CHAPTER 5.06**

**Video Franchise Fees, Customer Service and  
Other Video-Related Matters**

**Sections**

- 5.06.010 Regulation of Video Franchises and Definitions**
- 5.06.020 State Video Franchise Fees**
- 5.06.030 Audit Authority**
- 5.06.040 Customer Service and Protection Standards**
- 5.06.050 Material Breach of Customer Standards**
- 5.06.060 Response to Notice of Breach**
- 5.06.070 Request for Exemption from Breach**
- 5.06.080 Penalties for Customer Service and Protection  
Standards Violations**
- 5.06.090 Appeal of Penalties for Customer Service and  
Protection Standards Violations**
- 5.06.100 City Response to State Video Franchise  
Applications**

**5.06.010. Regulation of Video Franchises and Definitions.**

(a) Under Division 2.5 of the California Public Utilities Code ("CPUC"), the Digital Infrastructure and Video Competition Act of 2006, commencing at Section 5800, et seq. ("DIVCA"), the California Public Utilities Commission (PUC) has the exclusive authority to grant and administer state video franchises. The definitions contained in DIVCA apply to this Chapter.

(b) Notwithstanding, DIVCA confers certain rights and responsibilities on the City with respect to state video franchise holders ("SVFH") operating within the City under DIVCA, including but not limited to, receipt of fees for rent of right of ways in the form of a franchise fee and additional fees for support of public, educational, and governmental ("PEG") access channels. Both fees are based on a percentage of the gross revenues of state franchise holders. The City also hereby establishes and enforces penalties for violations of customer service rules. The City retains authority, without change, over all City video franchisees until such time as they no longer hold a City franchise, or are no longer operating under a current City franchise. The City may modify, renew, extend or terminate existing City video franchises.

(c) The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**5.06.020. State Video Franchise Fees.**

(a) Each SVFH, shall pay a fee to the City equal to five percent (5%) of that SVFH's gross revenue, as defined in CPUC section 5860, pursuant to CPUC section 5840(q)(1). Failure to pay this fee in a timely manner will incur fines to the City as set out in that section.

(b) Such fees shall be payable as of October 1, 2008, the date of City's incorporation.

**5.06.030. Audit Authority.**

Not more than once annually, the City Manager or his/her designee may examine and perform an audit of an SVFH's records kept in the ordinary course of business, such as those commonly used and relied upon for accounting purposes or in preparation of financial statements or pro formas, to ensure compliance with this section. In the event that the audit discloses an underpayment of five percent (5%) or more, the SVFH shall pay for the audit. If the audit discloses that all fees have been paid, the City shall pay for the audit; otherwise, the cost shall be divided evenly between the parties.

**5.06.040. Customer Service and Protection Standards.**

(a) An SVFH shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service. In addition, the SVFH shall prepare, adopt and annually review its own consumer standards regarding installation and service; telephone and office hours; billing procedures; termination of service; change in service; and complaint procedures. Each SVFH annually must distribute such standards to the City and to each customer.

(b) The City shall give the SVFH written notice of its failure to distribute such notice. If distribution does not occur within 60 days after receipt of the notice, the City may impose and collect a penalty of \$500 for each year in which the notice is not distributed after such notice.

**5.06.050. Material Breach of Customer Standards.**

Where the City Manager determines that an SVFH has materially breached any provision of its own consumer standards or of state or federal law, including but not limited to nonpayment of franchise fees, the City may provide written notice of the breach ("Notice of Breach") to the SVFH.

(a) A "Material Breach" is defined as an SVFH's substantial and repeated failure to comply with service quality and other standards of federal or state law or of its own consumer standards.

(b) Receipt of a Notice of Breach shall be deemed to have occurred either:

(1) Five (5) calendar days after the date on which the Notice of Breach was deposited to be mailed with the United States Postal Service or equivalent;

(2) Two (2) calendar days after the date the Notice of Breach was sent via facsimile or e-mail; or

(3) On the date an SVFH's designated representative was personally served the Notice of Breach.

**5.06.060. Response to Notice of Breach.**

An SVFH which has been issued a Notice of Breach shall either remedy the conduct described in the Notice of Breach ("Notice of Breach Conduct") to the satisfaction, and in the sole discretion of, the City Manager no later than thirty (30) calendar days from the date of receipt of the notice; or assert that the SVFH should be exempted from violation because the violation is out of its control.

(c) If the SVFH asserts that the Notice of Breach Conduct is out of its reasonable control, then the SVFH shall submit a Request for Exemption From Breach. A Request for Exemption From Breach shall contain all of the following points in order to be considered by the City Manager: It shall be in writing; it shall describe in detail why the conduct was out of its reasonable control; it shall describe in detail the Notice of Breach Conduct, the reasons for its occurrence, all factors and/or influences asserted to be outside the SVFH's control thereby creating the conduct, and all facts precluding the SVFH's ability to remedy; and it shall include as attachments any and all supporting documentation which the SVFH wishes the City Manager to review. Only information so submitted shall be considered by the City Manager.

**5.06.070. Request for Exemption from Breach.** Where the City Manager receives a Request for Exemption From Breach, City Manager shall review the Request for Exemption From Breach promptly; and shall render a final determination on the Request for Exemption From Breach. This final determination shall be in writing and shall include one of the following conclusions: (i) The Notice of Breach Conduct is outside the SVFH's control and is therefore Exempt or (ii) The Notice of Breach Conduct is within the SVFH's control and is therefore subject to the provisions of this Chapter.

(d) The City Manager's decision is final.

**5.06.080. Penalties for Customer Service and Protection Standards Violations.**

(a) Each SVFH that fails to remedy the Notice of Breach Conduct in violation of this Section ("Un-remedied Breach,") and/or that fails to obtain an exemption determination shall pay a penalty to the City as set out here.

(b) Penalties for an SVFH's failure to remedy the Notice of Breach Conduct shall accrue daily as follows:

(1) Commencing on the first calendar day following expiration of the time to cure in through the date of remedy of the breach under Section; or

(2) Commencing on the first calendar day following receipt of denial of a Request for Exemption From Breach through the date of remedy of the breach.

(c) An SVFH shall pay a penalty for the un-remedied first Notice of Breach not to exceed a fine of \$500 for each calendar day, not to exceed \$1,500 for each occurrence of an Un-remedied Breach.

(d) For a second Material Breach of a similar nature as the Notice of Breach for which a penalty was assessed, occurring within twelve (12) months from the date of the first Notice of Breach, whether remedied or not, an SVFH shall pay a penalty accruing not to exceed \$1,000 per calendar day, not to exceed \$3,000, for each occurrence of an Un-remedied Breach.

(d) For a third or further Material Breach, of a similar nature as the Notice of Breach for which a penalty was assessed, occurring within the same twelve (12) months of the date of the Notice of Breach, whether or not remedied an SVFH shall pay a penalty not to exceed \$2,500 per calendar day, not to exceed \$7,500 for each occurrence of an Unremedied Breach.

**5.06.090. Appeal of Penalties for Customer Service and Protection Standards Violations.**

(a) An SVFH assessed a penalty under Section 5.06.080 may appeal the assessed penalty only by satisfying all of the following: Submit to the City Manager a written appeal describing in detail the basis for the appeal; and file the appeal no later than sixty (60) calendar days from receipt of the notice of penalties; and

(b) Where the City Manager receives an appeal under this Section, the City Manager shall review the appeal promptly, render a final determination on the appeal, and provide a final written determination; and

(c) The City Manager's determination on the appeal shall be final. The penalty owing shall be a debt to the City that may be collected in any legally available manner.

**5.06.100. City Response to State Video Franchise Applications.**

(a) Applicants for state video franchises within the boundaries of the City of Menifee shall concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. The applicant shall provide one complete copy to the City Clerk, and another complete copy to the City Manager.

(b) In its discretion, the City may provide any comments to the PUC on the application or amendments to the application.

**SECTION 2. EFFECTIVE DATE.** The City of Menifee incorporated October 1, 2008. This ordinance needs to take effective immediately in order to assure the continued receipt of franchise fees and related fees pursuant to state franchises.

**SECTION 3. POSTING/PUBLICATION.** The City Clerk shall certify the passage of this ordinance and have it published or posted in accordance with Council Policy and state law, either in a daily newspaper of general circulation in the City of Menifee or by posting for ten (10) days in three public places designated by the City Council.

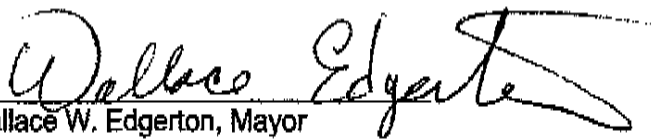
**PASSED, APPROVED AND ADOPTED**, this \_\_\_\_ day of December, 2008 by the following vote:

AYES: *Derber, Edgerton, Mann, Meyman*

NOES: *none*

ABSENT: *Kuunzi*

ABSTAIN: *none*

  
Wallace W. Edgerton, Mayor

ATTEST:

  
\_\_\_\_\_  
Kathy Bennett, Deputy City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Elizabeth Martyn, City Attorney

## AGREEMENT

The undersigned agree as follows:

*Whereas*, Verizon California Inc. (Verizon) and the County of Riverside (County) entered into a local cable franchise agreement, pursuant to County Ordinance 503.11, effective on or about December 1, 2006, governing provision of Verizon's cable television service within the unincorporated territory of the County;

*Whereas*, the City of Wildomar, formerly located within the unincorporated territory of the County, voted to incorporate as a municipality with an effective date on or about July 1, 2008;

*Whereas*, the City of Menifee, formerly located within the unincorporated territory of the County, voted to incorporate as a municipality with an effective date on or about October 1, 2008;

*Whereas*, Verizon holds a valid state video franchise issued by the California Public Utilities Commission (Commission) pursuant to the Digital Infrastructure and Video Competition Act of 2006, Public Utilities Code §§ 5800 et seq. (DIVCA);

*Whereas*, DIVCA authorizes a video service provider that currently holds a local franchise agreement to seek a state franchise in the area designated in the local franchise under certain conditions, e.g., 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;

*Whereas*, the undersigned desire to facilitate a smooth transition to a state video franchise pursuant to DIVCA for the newly-incorporated municipalities of Wildomar and Menifee;

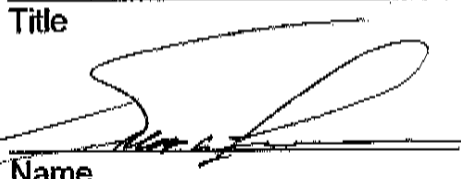
Now, therefore, the undersigned agree as follows:

1. The parties agree to terminate the currently existing Riverside County local franchise agreement insofar as it applies to the newly-incorporated areas covered by the cities of Wildomar and Menifee, effective January 1, 2009.
2. Upon execution, Verizon will apply to amend its existing state video franchise to add the cities of Wildomar and Menifee, effective January 1, 2009, and will continue to operate under the Riverside County franchise agreement until such time as authorization is received.
3. This agreement may be executed in counterparts.

4. The undersigned represent that they have the authority to enter into this agreement on behalf of the entity indicated.

<u>County of Riverside</u>	<u>Date</u>	<u>Name</u>
		<u>Address</u>
		<u>Title</u>

City of Wildomar 1-14-09  
City of Wildomar                      Date



Name  
 SCOTT FARNAM  
Address  
 23873 Clinton Keith Rd Suite 201  
 Wildomar, CA 92595  
Title  
 Mayor

<u>City of Menifee</u>	<u>Date</u>	<u>Name</u>
		<u>Address</u>
		<u>Title</u>

<u>Verizon California Inc.</u>	<u>Date</u>	<u>Name</u>
		<u>Address</u>
		<u>Title</u>



**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

445



**FROM:** Purchasing and Fleet Services

**SUBMITTAL DATE:**  
February 24, 2009

**SUBJECT:** First Amendment to the Local Cable Franchise Agreement between the County of Riverside and Verizon California, Inc.

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Approve the attached First Amendment to the Agreement with Verizon California, Inc. and authorize the Chairman to execute the Amendment on behalf of the County;
- 2) Direct the Clerk of the Board to file one executed copy and return two (2) original signed copies of the First Amendment to Purchasing and Fleet Services.

**BACKGROUND:**

On November 14, 2006 the Board approved Agenda Item Number 9.4 to enter into a local cable franchise agreement with Verizon California, Inc. (Verizon). This agreement provided cable television service within the unincorporated territory of the County.

(continued on page 2)-  
Attachment

  
 \_\_\_\_\_  
 Robert J. Howdysshell, Director  
 Purchasing and Fleet Services

**FINANCIAL DATA**

Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	FY2008-2009

**SOURCE OF FUNDS:** N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**

BY: Serena Chow  
 Serena Chow

**County Executive Office Signature**

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Buster, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Wilson and Ashley  
 Nays: None  
 Absent: None  
 Abstained: Stone  
 Date: February 24, 2009  
 xc: Purchasing

Nancy Romero  
 Clerk of the Board  
 By: [Signature]  
 Deputy

**Prev. Agn. Ref.:** 9.4 of 11/14/2006 | **District:** 1,3 | **Agenda Number:**

ATTACHMENTS FILED

3.41

FORM APPROVED COUNTY COUNSEL  
 BY: [Signature] 2/11/09  
 NEAL R. KIPNIS DATE  
 Departmental Concurrence

Dep't Recomm.:  Consent  Policy   
 Per Exec. Ofc.:  Consent  Policy

**TO: BOARD OF SUPERVISORS**

**DATE:** February 24, 2009

**PAGE:** 2

**SUBJECT:** First Amendment to the Local Cable Franchise Agreement between the County of Riverside and Verizon California, Inc.

**BACKGROUND (con't.)**

The City of Wildomar and the City of Menifee, formerly located within the unincorporated areas of the County voted to incorporate as municipalities, with effective dates of July 1, 2008 and October 1, 2008, respectively.

The attached amendment will allow the City of Wildomar and the City of Menifee to transition out of the local franchise agreement and into a state video franchise agreement with Verizon. The effective date of the transfer will be April 1, 2009.

**AMENDMENT NO. 1 TO**  
**VERIZON CABLE FRANCHISE AGREEMENT**

The undersigned agree as follows:

*Whereas*, Verizon California Inc. (Verizon) and the County of Riverside (County) entered into a local cable franchise agreement, pursuant to County Ordinance 503.11, dated November 14, 2006 ("Agreement"), governing provision of Verizon's cable television service within the unincorporated territory of the County;

*Whereas*, the City of Wildomar, formerly located within the unincorporated territory of the County, voted to incorporate as a municipality with an effective date on or about July 1, 2008;

*Whereas*, the City of Menifee, formerly located within the unincorporated territory of the County, voted to incorporate as a municipality with an effective date on or about October 1, 2008;

*Whereas*, Verizon holds a valid state video franchise issued by the California Public Utilities Commission (Commission) pursuant to the Digital Infrastructure and Video Competition Act of 2006, Public Utilities Code §§ 5800 et seq. (DIVCA);

*Whereas*, DIVCA authorizes a video service provider that currently holds a local franchise agreement to seek a state franchise in the area designated in the local franchise under certain conditions, e.g., 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;

*Whereas*, the undersigned desire to facilitate a smooth transition to a state video franchise pursuant to DIVCA for the newly-incorporated municipalities of Wildomar and Menifee;

Now, therefore, the undersigned agree as follows:

1. The parties agree to terminate the currently existing Riverside County local franchise agreement only insofar as it applies to the newly-incorporated areas covered by the cities of Wildomar and Menifee, effective April 1, 2009.
2. Upon execution, Verizon will apply to amend its existing state video franchise to add the cities of Wildomar and Menifee, effective April 1, 2009, and will continue to operate under the Riverside County franchise agreement until such time as authorization is received.

- 3. All other terms of the Agreement shall remain unchanged and in effect.
- 4. The undersigned represent that they have the authority to enter into this Amendment on behalf of the entity indicated.

Jeff Stone FEB 24 2009  
 County of Riverside Date

JEFF STONE  
 Name  
 Address  
CHAIRMAN, BOARD OF SUPERVISORS  
 Title

ATTEST:  
 NANCY ROMERO, Clerk  
 By [Signature]  
 DEPUTY

Timothy J. McCallion 2/3/2009  
 Verizon California Inc. Date

TIMOTHY J. McCALLION  
 Name  
112 LAKEVIEW CYN RD  
 Address  
THOUSAND OAKS, CA 91320  
PRESIDENT - WEST REGION  
 Title

FORM APPROVED COUNTY COUNSEL  
 BY: [Signature]  
 NEAL R. KIPNIS DATE

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS CERTIFIED TO BE A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

Dated: FEB. 25, 2009  
 Nancy Romero  
 Clerk to the Board of Supervisors  
 County of Riverside, California  
 By [Signature]



February 19, 2009

Mr. Gary Thompson  
City of Menifee  
29683 New Hub Drive  
Menifee, CA 92586

**VIA FEDERAL EXPRESS**

**Re: City of Menifee**

Dear Mr. Thompson:

In accordance with California Public Utilities Code Section 5840(c), attached please find a copy of the application for a state video franchise for the **City of Menifee**, filed by Time Warner Cable. A copy of the CD containing the completed templates is also enclosed. This letter will also serve as Time Warner Cable's notice, pursuant to Section 5840(n) of the California Public Utilities Code, of its intent to provide video service in your community under a state issued franchise.

Sincerely,



Stefanie Kruczkiewicz

**Enclosures**

cc: Kristy Hennessey  
David Miller - AT&T  
Gary George - Verizon ✓



February 19, 2009

Mr. Brad Evanson  
City of Wildomar  
23873 Clinton Keith Road  
Wildomar, CA 92595

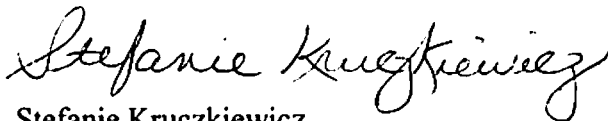
**VIA FEDERREAL EXPRESS**

**Re: City of Wildomar**

Dear Mr. Danielson:

In accordance with California Public Utilities Code Section 5840(c), attached please find a copy of the application for a state video franchise for the **City of Wildomar**, filed by Time Warner Cable. A copy of the CD containing the completed templates is also enclosed. This letter will also serve as Time Warner Cable's notice, pursuant to Section 5840(n) of the California Public Utilities Code, of its intent to provide video service in your community under a state issued franchise.

Sincerely,



Stefanie Kruczkiewicz

***Enclosures***

cc: Kristy Hennessey  
David Miller – AT&T  
Gary George – Verizon