

**BEST PRACTICES OF CABLE/BROADBAND
CONSUMER COMPLAINTS**

SELECT CUSTOMER SERVICE STANDARDS

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BEST PRACTICES OF CABLE/BROADBAND CONSUMER COMPLAINTS

SELECT FEDERAL AND CALIFORNIA CUSTOMER SERVICE STANDARDS

AUTHORITY PROVIDED TO LOCAL FRANCHISING AUTHORITIES (LFAs)

FCC Rules §§76.309(a), §76.1602(a) and §76.1603(a)¹

A cable franchise authority may enforce the customer service standards set forth [elsewhere in the pertinent sections against cable operators]. The franchise authority must provide affected cable operators [ninety (90)] days written notice of its intent to enforce the standards.

FCC Rules §76.309(b)

Nothing in this rule should be construed to prevent or prohibit:

...

- (4) The establishment or enforcement of any State or municipal law or regulation concerning customer service requirements that exceed or address matters not addressed by the standards set forth in Paragraph (c) of this section.²

Calif. Gov. Code §53088.2(p)

Nothing in this division limits any power of a city, county or city and county or video provider to adopt and enforce service standards and consumer protection standards which exceed those established in this division.³

¹ The federal rules referenced are found in Title 47, Part 76 of the Code of Federal Regulations.

² The latitude provided to LFAs in this section and in California Govt. Code Section 53088.2(p) (cited below) is consistent with the position that cable television consumer service standards fall within the LFAs' police powers. Of such police powers, the following has been stated: "It is a fundamental power essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government." *Blacks Law Dictionary* (West Publishing Co. 1999, 7th ed.) at 1178. LFAs that have recently adopted comprehensive cable television customer service standards include Chicago, Illinois and Seattle, Washington. See, http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/ConsumerProtection.txt and http://cityofseattle.net/cable/customer_service.htm. Please note that these cities' standards also extend to cable modem service.

³ Section 53088.2 is a component of California's Video Customer Service Act. Section 530881 of this act states: "A 'video provider' shall include, but not be limited to, providers of cable television, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology." Section 53066 applies only to "community antenna television systems."

Calif. Gov. Code §53088.2(o)

Disputes concerning the provisions of this article shall be resolved by the city, county or city and county in which the customer resides. For video providers under Section 53066, the franchise authority shall resolve disputes.

Calif. Penal Code §637.5(c)

(c) A satellite or cable television corporation shall not make individual subscriber information available to government agencies in the absence of legal compulsion, including, but not limited to, a court order or subpoena. If requests for information are made, a satellite or cable television corporation shall promptly notify the subscriber of the nature of the request and what government agency has requested the information prior to responding unless otherwise prohibited from doing so by law.

Nothing in this section shall be construed to prevent local franchising authorities from obtaining information necessary to monitor franchise compliance pursuant to franchise or license agreements. This information shall be provided so as to omit individually identifiable subscriber information whenever possible.

(Emphasis added.)⁴

⁴ When refusing responses to LFAs' requests for information, cable operators sometimes state that federal privacy legislation (47 U.S.C. §551 is usually cited) prohibits complying with such requests. Questions exist regarding whether federal privacy legislation preempts the emphasized language of Section 637.5 of the California Penal Code.

Courts may find that governments should be accorded great deference when requesting information in the context of cable television. See, for example, *Charter Communications. v. County of Santa Cruz*, 304 F. 3d 927 (9th Cir., Sept. 20, 2002), where the court states:

A government's discretion is treated deferentially by courts especially when its requests for information are necessary to evaluate an application for government privileges; a denial of that privilege is hardly arbitrary when a government's information request is refused. *Gifford v. City of Los Angeles*, 88 Cal.App.4th 801, 806 (2001). This is not to say that government bodies can elicit information of any kind or any quantity, but that the discretion within which the government operates is broad.

Admittedly, the court was addressing LFA informational requests which, rather than being of the day-to-day variety, had occurred in the context of a request for LFA consent to a cable franchise transfer in control.

CABLE OPERATOR CUSTOMER SERVICE TELEPHONE NUMBER(S), LOCAL OFFICE

FCC Rules §76.309(c)(1)(i)

The cable operator shall maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

FCC Rules §76.309(c)(1)(v)

Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

FCC Rules §76.309(c)(4)(i)

The term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, ‘normal business hours’ must include some evening hours at least one night per week and/or some weekend hours.

Calif. Gov. Code §53088.2(e)

All video providers shall provide to customers a toll-free or local telephone number for installation, and service, and complaints calls. These calls shall be answered promptly by the video providers. The city, county, or city and county may establish standards for what constitutes promptness.

CABLE OPERATOR CUSTOMER SERVICE TELEPHONE RESPONSE

FCC Rules §76.309(c)(1)(ii)

Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards are to be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

FCC Rules §76.309(c)(4)(ii)

The term normal operating conditions means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

Calif. Gov. Code §53088.2(e)

All video providers shall provide to customers a toll-free or local telephone number for installation, and service, and complaints calls. These calls shall be answered promptly by the video providers. The city, county, or city and county may establish standards for what constitutes promptness.

INFORMATION CABLE OPERATORS MUST PROVIDE TO SUBSCRIBERS

FCC Rules §76.1602(b)

. . . [T]he cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

Calif. Gov. Code §53088.2(c)

At the time of installation, and annually thereafter, all video providers shall provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address and telephone number of the local franchise authority.

Calif. Gov. Code §53055.

Each cable television operator or video provider in the state shall establish customer service standards. These customer service standards shall include, but not be limited to, standards regarding the following:

- (a) Installation, disconnection, service and repair obligations, employee identification and service call response time and scheduling.
- (b) Customer telephone and office hours; procedures for billing, charges, refunds, and credits.
- (c) Procedures for termination of service.
- (d) Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.
- (e) Complaint procedures and procedures for bill dispute resolution.

Calif. Gov. Code §53055.1

(a) Each cable television operator or video provider shall annually distribute to employees, to each customer and to the city, county, city or county in which the cable operator or video provider furnishes service to customers, a notice describing these customer service standards. New customers shall also be provided with this notice when service is initiated.

(b) The notice given to new customers pursuant to this section shall include, in addition to all of the information described in subdivisions (a) to (e), inclusive, of Section 53055, all of the following:

- (1) A listing of the services offered by the cable television operator or video provider which clearly describes all levels of service, provided that, if the information concerning levels of service and rates is otherwise distributed to new customers upon installation by the cable television operator or video provider, the information need not be included in the notice to new customers required by this section.
- (2) The telephone number or numbers through which customers may subscribe to change, or terminate service, request customer service, or seek general or billing information.
- (3) A description of the rights and remedies which the cable television operator or video provider may make available to its customers if the cable television operator or video provider does not materially meet its customer service standards.

Calif. Gov. Code §53055.2

After the customer service standards established pursuant to Section 53055 have been in effect for one year, each cable television operator and video provider shall report annually on the performance of the cable television operator and video provider with regard to meeting its

customer service standards. This report shall be included in the annual notice required by Section 53055.1.

NOTICE TO CUSTOMERS OF CABLE OPERATOR COMPLAINT PROCEDURES

FCC Rules §76.1602(b)

[T]he cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

...

- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

FCC Rules §76.1602(c)

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

FCC Rules §76.1619(b)

In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

NOTICE TO CUSTOMERS OF CHANGES IN RATES, PROGRAMMING, ETC.

FCC Rules §76.1603

....

(b) Customers will be notified of any change in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant change in the other information required by §76.1602.

(c) . . . [C]able systems shall give 30 days written notice to both subscribers and local franchise authorities before implementing any rate change or service charge. Such notice shall state the precise amount of any rate changes and briefly explain in readily understandable

fashion the cause of the rate change. . . . When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. . . .

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchise authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber. . . .

Calif. Gov. Code §53088.2(h)

All video providers shall provide a minimum of 30 days’ written notice before increasing rates or deleting channels. All video providers shall make every reasonable effort to submit the notice to the city, county or city and county in advance of distribution to customers. The 30-day notice is waived if the increase in rates or deletion of channels is outside the control of the video provider. In those cases the video provider shall make reasonable efforts to provide customers with as much notice as possible.

CABLE OPERATOR IDENTIFICATION OF THE LFA

FCC Rules §76.1602(b)(6); FCC Rules §76.1602(c); FCC Rules §76.1603(d).

See Page 6 above and above on this Page 7.

FCC Rules §76.952

All cable operators must provide the following information to subscribers on monthly bills:

- (a) The name, mailing address and phone number of the franchise authority unless the franchising authority is writing requests the cable operator to omit such information;
- (b) The FCC community unit identifier for the cable system

ITEMIZED CUSTOMER BILLS

FCC Rules §76.1619

. . . [Customers’] bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

Calif. Gov. Code §53088.2(f)

All video providers shall render bills which are accurate and understandable.

INSTALLATIONS

FCC Rules §76.309(c)(2)(i)

Standard installations will be performed within seven (7) business days after an order has been placed. “Standard” installations are those that are located up to 125 feet from the existing distribution system.

FCC Rules §76.309(c)(2)

Under normal operating conditions, [the four standards discussed in this subsection] will be met no less than ninety-five (95) percent of the time measured on a quarterly basis. . . .”

SERVICE APPOINTMENT WINDOW

FCC Rules §76.309(c)(2)(iii)

The ‘appointment window’ alternatives for installations, service calls, and other installation activities will be either a specified time or, at maximum, a four-hour block during normal business hours. The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

FCC Rules §76.309(c)(2)

Under normal operating conditions, [the four standards discussed in this subsection] will be met no less than ninety-five (95) percent of the time measured on a quarterly basis. . . .

Calif. Civil Code §1722(b)

(b)(1) Cable television companies shall inform their subscribers of their right to service connection or repair within a four-hour period, if the presence of the subscriber is required, by offering the four-hour period at the time the subscriber calls for service connection or repair. Whenever a subscriber contracts with a cable television company for a service connection or repair which is to take place at a later date, and the parties have agreed that the presence of the subscriber is required, the cable company and the subscriber shall agree, prior to the date of service connection or repair, on the time for the commencement of the four-hour period for the service connection or repair.

(2) If the service connection or repair is not commenced within the specified four-hour period, except for delays caused by unforeseen or unavoidable occurrences beyond the control of the company, the subscriber may bring an action in small claims court against the company for lost wages, expenses actually incurred or other actual damages not exceeding a total of six hundred dollars (\$600).

(3) No action shall be considered valid if the subscriber was not present at the time, within the specified period, that the company attempted to make the service connection or repair or made a diligent attempt to notify the subscriber by telephone or in person of its inability to do so because of unforeseen or unavoidable occurrences beyond its control. If notification is by telephone, the cable television company or its agent shall leave a telephone number for a return telephone call by the subscriber to the company or its agent, to enable the consumer to arrange a new two-hour period for service connection or repair.

(4) In any small claims action, logs and other business records maintained by the company or its agents in the ordinary course of business shall be prima facie evidence of the time period specified for the commencement of the service connection or repair and the time that the company or its agents attempted to make the service connection or repair, or of a diligent attempt by the company to notify the subscriber in person or by telephone of a delay caused by unforeseen or unavoidable occurrences.

(5) It shall be a defense to the action if a diligent attempt was made to notify the subscriber of a delay caused by unforeseen or unavoidable occurrences beyond the control of the company or its agents, or the company or its agents were unable to notify the subscriber because of the subscriber's absence or unavailability during the four-hour period, and, in either instance, the cable television company commenced service or repairs within a newly agreed upon two-hour period.

(6) No action shall be considered valid against a cable television company pursuant to this section when the franchise or any local ordinance provides the subscriber with a remedy for a delay in commencement of a service connection or repair and the subscriber has elected to pursue that remedy. If a subscriber elects to pursue his or her remedies against a cable television company under this section, the franchising or state or local licensing authority shall be barred from imposing any fine, penalty, or other sanction against the company, arising out of the same incident.

CABLE SYSTEM OUTAGES/SERVICE INTERRUPTIONS

FCC Rules §76.309(c)(2)(ii)

Excluding conditions beyond the control of the operator, the cable operator will begin working on ‘service interruptions’ promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

FCC Rules §76.309(c)(2)

Under normal operating conditions, [the four standards discussed in this subsection] will be met no less than ninety-five (95) percent of the time measured on a quarterly basis. . . .

Calif. Gov. Code §53088.2 (g)

All video providers shall respond to a complete outage in a customer’s service promptly. The response shall occur within 24 hours of the reporting of such outage to the provider, except in those situations beyond the reasonable control of the video provider.

PAYMENT CYCLES, SERVICE TERMINATION NOTICES AND LATE FEES

Calif. Gov. Code §53088.2(i)

Every video provider shall allow every residential customer who pays his or her bill directly to the video provider at least 15 days from the date the bill for services is mailed to the customer. . . . Customer payments shall be posted promptly. No video provider may terminate residential service for nonpayment of a delinquent account unless the video provider furnishes notice of delinquency and impending termination at least 15 days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the customer to whom the service is billed. Notice shall not be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No video provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.

Calif. Gov. Code §53088.2(j)

Every notice of termination of service pursuant to subdivision (i) shall include all of the following information:

- (1) The name and address of the customer whose account is delinquent.
- (2) The amount of the delinquency.

- (3) The date by which payment is required in order to avoid termination of service
- (4) The telephone number of a representative of the video provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

Service may only be terminated on days in which the customer can reach a representative of the video provider either in person or by telephone.

Calif. Gov. Code §§53088.6-53088.8

53088.6. Notwithstanding Section 53088.2, a fee may not be imposed upon consumers for any delinquent payment for sale of cable television services unless all of the following apply:

(a) For all contracts entered into on or after January 1, 1997, at or before the time the consumer enters into the initial agreement for services, the consumer is provided with written notice that it is

the policy of the seller to impose a fee on delinquent accounts.

(b) At least 10 days prior to the date a fee is imposed, the consumer is warned on the face of the notice, in writing of the late fee that will be imposed if a consumer's delinquency is not paid. This notice shall specify the date on or after which a late fee will be charged.

(c) The consumer's invoice specifies a due date that is not earlier than the 10th day of the service period for which the invoice is issued.

(d) The fee is assessed no earlier than 27 days after the due date specified in the invoice.

(e) The fee is assessed on a delinquent balance of more than ten dollars (\$10).

53088.7. Notwithstanding Section 53088.2, a delinquency fee charged in a cable television transaction which is not in excess of four dollars and seventy-five cents (\$4.75) and which is imposed in accordance with the procedures set forth in Section 53088.6 shall be valid. The delinquency fee may not exceed four dollars and seventy-five cents (\$4.75), unless the Federal Communications Commission expressly requires late fees to be fully included when setting benchmark rates applicable to a cable television operator. If this requirement is imposed by the Federal Communications Commission, then the maximum delinquency fee charged by the cable television provider shall be 1½ percent of the delinquent amount in the relevant franchise areas for as long as late fees are fully included in benchmark rates.

(b) A collection fee which is not in excess of ten dollars (\$10) and is in addition to the delinquency fee shall also be valid in a cable television consumer service transaction if the service provider sends an employee or contractor to the customer's residence in order to collect payment or disconnect service and the fee is imposed in accordance with the procedures set forth in Section 53088.6.

REFUNDS AND CREDITS

FCC Rules §76.309(c)(3)

- (i) Refund checks will be issued promptly, but no later than either-
 - (A) The customers next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (B) The return of equipment supplied by the cable operator is service is terminated.”
- (ii) Credits for service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

Calif. Gov. Code 53088.2(l)-(m)

(l) All video providers shall issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and following the return of the equipment supplied by the video provider, if service is terminated.

(m) All video providers shall issue security or customer deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions permitted by law.

MONETARY PENALTIES ASSESSED FOR CUSTOMER SERVICE VIOLATIONS

California Gov. Code §53088.2(q)-(s)

(q) The legislative body of the city, county, or city and county, may, by ordinance, provide a schedule of penalties for the material breach by a video provider of subdivisions (a) to (n) [of Section 53088.2], inclusive. No monetary penalties shall be assessed for a material breach where the breach is out of the reasonable control of the video provider. Further, no monetary penalties may be imposed prior to the effective date of this section. Any schedule of monetary penalties adopted pursuant to this section shall in no event exceed two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach. However, where a material breach of any of subdivisions (a) to (n), inclusive, has occurred and the city, county, or city and county has provided notice and a fine or penalty has been assessed, in a subsequent material breach of the same nature occurring within 12 months, the penalties may be increased by the city, county, or city and county to a maximum of four hundred dollars (\$400) for each day of each material breach, not to exceed twelve hundred dollars (\$1,200) for each occurrence of the material breach. Where a third or further material breach of the same nature occurs within those same 12 months, and the city, county, or city and county has provided notice and a fine or penalty has been assessed, the

penalties may be increased to a maximum of one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach. With respect to video providers subject to a franchise or license, any monetary penalties assessed under this section shall be reduced dollar for dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures, and no other monetary damages may be assessed. However, this section shall in no way affect the right of franchising authorities concerning assessment or renewal of a cable television franchise under the provisions of the Cable Communications Policy Act of 1984.

(r) If the legislative body of a city, county, or city and county adopts a schedule of monetary penalties pursuant to subdivision (o), the following procedures shall be followed:

- (1) The city, county, or city and county shall give the video provider written notice of any alleged material breaches of the consumer service standards of this division and allow the video provider at least 30 days from receipt of the notice to remedy the specified breach.
- (2) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day, following the expiration of the period specified in paragraph (1), that any material breach has not been remedied by the video provider, irrespective of the number of customers affected.

(s) Notwithstanding subdivision (m), or any other provision of law, this section shall not preclude a party affected by this section from utilizing any judicial remedy available to that party without regard to this section. Actions taken by a local legislative body, including a franchising authority, pursuant to this section shall not be binding upon a court of law. For this purpose a court of law may conduct de novo review of any issues presented.

California Gov. Code §53056

(a) The legislative body of the city, county, or city and county in which the cable television operator or video provider furnishes service to customers may, by ordinance, provide a schedule of penalties for the failure of the cable television operator or video provider to distribute the annual notice required by Section 53055.1, not to exceed five hundred dollars (\$500) for each year in which the notice is not distributed to all customers.

(b) The city, county, or city and county shall give a cable television operator or video provider written notice of any alleged failure to distribute to all customers the annual notice required by Section 53055.1 before imposing any penalty pursuant to subdivision (a). If the cable television operator or video provider distributes this notice to all customers within 60 days after receipt of the notice from the city, county, or city and county pursuant to this subdivision, no penalty shall be imposed upon the cable television operator or video provider pursuant to subdivision (a).