

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 2 A Limited Liability Partnership
 3 Including Professional Corporations
 4 SHANNON Z. PETERSEN, Cal. Bar No. 211426
 5 spetersen@sheppardmullin.com
 6 LISA S. YUN, Cal Bar No. 280812
 7 lyun@sheppardmullin.com
 8 12775 El Camino Real, Suite 200
 9 San Diego, California 92130
 10 Telephone: 858.720.8900
 11 Facsimile: 858.509.3691

9 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 10 PAUL A. WERNER (*pro hac vice* to be submitted)
 11 pwerner@sheppardmullin.com
 12 J. AARON GEORGE (*pro hac vice* to be submitted)
 13 ageorge@sheppardmullin.com
 14 2099 Pennsylvania Avenue NW, Suite 100
 15 Washington, D.C. 20006-6801
 16 Telephone: 202.747.1900
 17 Facsimile: 202.747.1901

18 Attorneys for Plaintiffs
 19 CHARTER COMMUNICATIONS INC. and
 20 TIME WARNER CABLE PACIFIC WEST LLC

18 **UNITED STATES DISTRICT COURT**
 19 **SOUTHERN DISTRICT OF CALIFORNIA**

21 CHARTER COMMUNICATIONS,
 22 INC., and TIME WARNER CABLE
 23 PACIFIC WEST LLC,

24 Plaintiffs,

25 vs.

26 CITY OF EL CENTRO,
 27 CALIFORNIA,

28 Defendant.

Case No. **'18CV0679 AJB NLS**

**COMPLAINT FOR VIOLATION
 OF DIVCA; PREEMPTION; AND
 DECLARATORY RELIEF**

1 Plaintiffs Charter Communications, Inc., and Time Warner Cable Pacific
2 West LLC (collectively, “Charter”), file this Complaint against Defendant City of El
3 Centro, California (the “City” or “El Centro”), and allege as follows:

4 **INTRODUCTION**

5 Charter brings this litigation to stop El Centro’s unlawful interference with an
6 ongoing commercial dispute between Charter and a television broadcaster regarding
7 the amount that Charter will be required to pay the broadcaster to retransmit its
8 over-the-air signals in the City. The City is neither a party to nor a third party
9 beneficiary of that retransmission agreement.

10 Nevertheless, to pressure Charter to carry the channels, regardless of the price
11 demanded by the broadcaster and the impact on Charter’s service and its customers,
12 the City invoked and moved to enforce against Charter preempted, unlawful and
13 inapplicable local code provisions. These enforcement actions, in essence, would
14 impose fines on Charter for the broadcaster’s decision to withhold its programming
15 from Charter and its customers to gain leverage over Charter in the ongoing
16 negotiations. The City has no right to interfere with Charter’s commercial
17 negotiations, or its customer relationships, or the programming it carries. The City’s
18 actions violate and are preempted by California law.

19 Charter’s dispute with the City grows out of the City’s effort to force Charter
20 to concede in protracted commercial negotiations between Charter and Northwest
21 Broadcasting, Inc. (“Northwest”) – the parent company of several broadcast stations
22 that serve El Centro and other communities – over the terms on which Northwest
23 will consent to retransmission of its broadcast signals on Charter’s cable system.
24 Negotiations over retransmission consent are often contentious, and the parties’
25 negotiations here stalled when Northwest insisted on an unprecedented and
26 unwarranted increase over its previous rates for Charter to retransmit otherwise free
27 over-the-air broadcast stations on its system. Northwest demanded payment of a
28 per-subscriber rate that is 80 percent higher than specified in the parties’ prior

1 agreement and more than double the retransmission rate Charter pays any other
2 broadcaster in the entire country – an increase that would significantly and unfairly
3 burden Charter’s customers.

4 Charter’s prior retransmission agreement with Northwest expired by its terms
5 on January 31, 2018. To increase its leverage, on February 2, 2018, Northwest
6 decided to pull its authorization for Charter to retransmit its broadcast signals on all
7 of Charter’s cable systems, including its El Centro system, despite ongoing
8 negotiations. As a result, because federal law prohibits Charter from retransmitting
9 Northwest’s broadcast signals without its consent, Charter could no longer transmit
10 them to its customers.

11 When Northwest removed its programming from Charter’s cable system, El
12 Centro responded by attempting to force Charter to carry Northwest’s signals, by
13 agreeing to the broadcaster’s proposed carriage terms. In addition to filing an
14 unwarranted action against Charter before the Federal Communications Commission
15 (“FCC”),¹ El Centro invoked 20-year-old provisions of its City Code – that have
16 since been preempted by state law – and that purport to impose requirements on
17 recipients of locally issued cable franchises and issued a series of citations against
18 Charter. The citations, which carry monetary penalties, allege that Charter failed to
19 provide sufficient notice to its customers that Northwest’s programming would not
20 be available, and that Charter somehow has discriminated against some customers
21 by failing to carry Northwest’s stations. The effect of the City’s actions has been to
22 harden Northwest’s negotiating position and make a deal on reasonable terms even
23 more difficult. The City’s actions also damage Charter’s reputation and its
24 relationship with its customers.

25
26
27 _____
28 ¹ Other cities where Northwest stations were removed from Charter’s cable system
also joined the FCC petition.

1 The City’s enforcement effort is unlawful and its citations against Charter are
2 unenforceable. Charter operates in the City under a state-issued franchise held by its
3 subsidiary pursuant to the Digital Infrastructure & Video Competition Act of 2006
4 (“DIVCA”), Cal. Pub. Util. Code § 5800 *et seq.* DIVCA expressly preempts each of
5 the City Code provisions upon which El Centro’s citations are based. The City thus
6 cannot lawfully punish Charter for alleged violations of preempted City Code
7 provisions or enforce its citations.

8 Because the City has refused to withdraw its improper citations, Charter
9 brings this action for declaratory and injunctive relief. Charter seeks a declaration
10 that the City Code provisions on which El Centro’s citations are based are
11 preempted, that the citations themselves are unlawful and unenforceable, and that
12 the City has violated DIVCA by attempting to force Charter to carry Northwest’s
13 programming. Charter further seeks preliminary and permanent injunctive relief
14 prohibiting the City from engaging in its preempted and unlawful conduct.

15 **PARTIES**

16 1. Time Warner Cable Pacific West LLC (“TWC”) provides advanced
17 cable communications services to residents and businesses in the City of El Centro
18 under a DIVCA franchise. TWC is a wholly owned subsidiary of Charter
19 Communications, Inc.

20 2. The City of El Centro is a municipal corporation operating under the
21 council-manager form of local government in California.

22 **JURISDICTION AND VENUE**

23 3. The Court has subject matter jurisdiction pursuant to 28 U.S.C.
24 §§ 1332, 1367 & 2201.

25 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332
26 because there is complete diversity between the parties. For purposes of diversity
27 jurisdiction, a political subdivision of a state, including a municipal corporation, is a
28 “citizen” of the state unless it is simply the arm or alter ego of the state. *See Moor v.*

1 *Cnty. of Alameda*, 411 U.S. 693, 717-18 (1973). The City was and continues to be a
2 municipality that is a “citizen” of California.

3 5. Pursuant to 28 U.S.C. § 1332(c), a “corporation shall be deemed to be a
4 citizen of every State . . . by which it has been incorporated and of the State . . .
5 where it has its principal place of business.” The citizenship of a limited liability
6 company is determined by the citizenship of each of its members. *See Provident*
7 *Energy Assocs. of Montana v. Bullington*, 77 Fed. Appx. 427, 428-29 (9th Cir.
8 2003). Charter Communications, Inc., is incorporated in Delaware with its primary
9 place of business in Stamford, Connecticut. TWC is a Delaware limited liability
10 company. None of TWC’s members or its members’ members reside in California.

11 6. The value of the declaratory and injunctive relief Charter seeks exceeds
12 the sum or value of \$75,000. Charter seeks to protect rights that are worth far more
13 than the diversity threshold and is threatened with damage that also exceeds the
14 threshold.

15 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because
16 the acts and omissions giving rise to Charter’s claims occurred in this District.

17 **BACKGROUND**

18 **A. Regulatory Background.**

19 8. Prior to 2006, local governments, like El Centro, served as cable
20 franchising authorities under California and federal law. Under these laws, local
21 governments had authority to grant cable franchises which regulated cable
22 operators, subject to applicable law, through agreements and/or ordinances.

23 9. In 1998, El Centro passed Ordinance No. 98-7, adding Article X to
24 Chapter 16 of the City Code, entitled “Cable Communications Franchise
25 Ordinance.” City Code §§ 16-328 *et seq.* El Centro last amended the Cable
26 Communications Franchise Ordinance in 2002, under Ordinance No. 02-01.

27 10. At the time of its adoption, the Cable Communications Franchise
28 Ordinance established El Centro’s authority to grant franchises, *id.* § 16-330, and

1 specified certain requirements applicable to local franchise holders, *see id.* §§ 16-
2 332 through 16-340.²

3 11. Section 16-322, for example, prohibited locally franchised cable
4 operators from discriminating against subscribers or prospective subscribers. *See id.*
5 § 16-332(a). Other sections of the City Code imposed customer service obligations
6 on locally franchised cable operators, including advance notice of changes to the
7 channel lineup, *id.* § 16-334, and response times and reimbursement obligations
8 related to cable system outages, *id.* § 16-336.

9 12. But in 2006, California enacted DIVCA in an effort to promote
10 competition for video services and lower prices for consumers. Cal. Pub. Util. Code
11 §§ 5810(a)(1) & (a)(2). DIVCA moved cable franchising from the local to state
12 level, installing the California Public Utilities Commission as “the sole franchising
13 authority for a state franchise to provide video service under” the Act.³ *See id.*
14 § 5840(a).

15 13. In effect, DIVCA preempted all other franchising authorities in the
16 state, including all cities and counties, from issuing cable franchises or serving as
17 local regulators or enforcers, except as specifically provided in DIVCA. DIVCA’s
18 preemptive effect “is an essential element of the new regulatory framework
19 _____

20 ² It remains an open question whether the requirements of the City’s Ordinance
21 were lawful when they were in effect, or would be applicable here if Charter did not
22 hold a state-issued franchise. But that is not an issue before the Court.

23 ³ TWC is both a cable operator and a video service provider under DIVCA.
24 DIVCA defines a “cable operator” as “any person or group of persons that either
25 provides cable service over a cable system and directly, or through one or more
26 affiliates, owns a significant interest in a cable system; or that otherwise controls or
27 is responsible for, through any arrangement, the management and operation of a
28 cable system, as set forth in Section 522(5) of Title 47 of the United States Code.”
Cal. Pub. Util. Code § 5830(b). DIVCA defines “[v]ideo service” as “video
programming services, cable service, or OVS service provided through facilities
located at least in part in public rights-of-way without regard to delivery technology,
including Internet protocol or other technology.” *Id.* § 5830(s).

1 established by [DIVCA] as a matter of statewide concern to best ensure equal
2 protection and parity among providers and technologies, as well as to achieve the
3 goals stated by the Legislature in enacting [DIVCA].” *Id.* § 5810(4).

4 14. The Legislature’s preemption of other franchising authorities under
5 DIVCA is complete and unambiguous. *Id.* § 5840(a). Other than those
6 requirements expressed in DIVCA, “[n]either the commission nor any local
7 franchising entity or other local entity of the state may require the holder of a state
8 franchise to obtain a separate franchise or otherwise ***impose any requirement on***
9 ***any holder of a state franchise except as expressly provided***” in DIVCA. *Id.*
10 (emphasis added).

11 15. DIVCA additionally prohibits local governments from “demand[ing]
12 any additional fees or charges or other remuneration of any kind from the holder of
13 a state franchise . . . other than as set forth” in the Act. *Id.* § 5860(c).

14 16. Under DIVCA, local governments have carefully-defined and narrow
15 authority to enforce certain state and federal non-discrimination and customer
16 service obligations. *See id.* §§ 5890 & 5900. They do not otherwise have any
17 authority to adopt or enforce local requirements.

18 17. Section 5890(a) prohibits discrimination against any group of
19 residential subscribers because of the income of the residents or the local area in
20 which the group resides. *Id.* § 5890(a). While DIVCA authorizes local governments
21 to enforce this DIVCA provision, they may not enforce them through any local
22 procedures. Instead, they must “bring complaints to the state franchising authority.”
23 *Id.* § 5890(g). Thus, the state commission, not a local municipality, is tasked with
24 holding hearings, determining whether a holder is in violation of applicable
25 requirements, and imposing any applicable fines. *Id.* § 5890(g)-(h).

26 18. Charter’s carriage dispute with Northwest does not implicate any non-
27 discrimination requirements, whether imposed locally or by the state. In any event,
28 local governments have no authority under DIVCA to establish or enforce their own

1 non-discrimination requirements, let alone apply any local enforcement procedures,
2 or impose fines for purported violations of local cable service code provisions.

3 19. Section 5900 of DIVCA further requires holders of state-issued
4 franchises to “comply with the provisions of Sections 53055, 53055.1, 53055.2, and
5 53.088.2 of the Government Code, and any other customer service standards
6 pertaining to the provision of video service *established by federal law or regulation*
7 *or adopted by subsequent enactment of the Legislature.*” *Id.* § 5900(a) (emphasis
8 added).

9 20. Government Code Sections 53055, 53055.1, and 53055.2 are
10 incorporated into DIVCA and require cable operators to adopt and comply with their
11 own customer service standards – not those adopted by any local government.
12 Government Code Section 53088.2 further imposes certain customer service
13 requirements, including related to outages (§ 53088.2(g)) and customer notice for
14 channel lineup changes (§ 53088(h)).

15 21. Federal law further imposes additional customer service requirements
16 related to channel lineup changes and outages. *See, e.g.*, 47 C.F.R. §§ 76.309
17 (customer service obligations) & 76.1603 (notices).

18 22. While DIVCA permits local governments to enforce these federal and
19 state customer service standards under certain circumstances, they “*may not adopt*
20 *or seek to enforce any additional or different customer service or other*
21 *performance standards under . . . any other authority or provision of law.*” Cal.
22 Pub. Util. Code § 5900(c) (emphasis added).

23 23. Under DIVCA, local governments may only impose monetary penalties
24 for customer service violations up to the amounts set by statute, and only after they
25 provide written notice and at least 30 days to cure. *Id.* § 5900(d)-(e). DIVCA
26 further allows any interested person to “utilize any judicial remedy available to it,”
27 including by seeking “judicial review of a decision of the local entity in a court of
28 appropriate jurisdiction.” *Id.* § 5900(h)-(i). Indeed, DIVCA provides for *de novo*

1 judicial review and, as such, any actions taken by a local government are not
2 binding on the court. *Id.*

3 **B. Factual Allegations.**

4 24. Charter provides video programming services over its cable systems
5 throughout the country, including to residents and business customers in El Centro
6 and surrounding areas.

7 25. Charter's video programming includes hundreds of channels, including
8 local broadcast stations, national cable channels (*e.g.*, A&E, AMC, Animal Planet,
9 BET, Bravo, CNN, Disney Channel, Discovery, ESPN, and more), and premium
10 entertainment channels (*e.g.*, HBO, Showtime). Charter also provides on-demand
11 and pay-per-view programming. To carry all of this programming on its cable
12 system, Charter must reach agreement with the owners of the programming,
13 including with the local broadcast stations that have elected under federal law to
14 require Charter to obtain their express consent for carriage. 47 U.S.C. § 325(b).
15 Charter uses its editorial discretion and, with a few exceptions not relevant here,
16 ultimately chooses the channels that it does and does not carry on its cable systems
17 based on its ability to negotiate acceptable terms and conditions of carriage.

18 26. Prior to February 2, 2018, Charter carried the over-the-air broadcast
19 signals of KYMA, an NBC affiliate, and KWST, a CBS affiliate, both of which are
20 owned by Northwest, on its cable system in El Centro. Charter carried these
21 broadcast stations in El Centro, and other markets, based on negotiated
22 retransmission agreements with Northwest.

23 27. Because Charter's retransmission agreements with Northwest were set
24 to expire on January 31, 2018, the parties began negotiating new retransmission
25 agreements in 2017. While Charter negotiated in good faith, Northwest demanded
26 an outrageous increase in carriage fees. As the expiration date approached,
27 Northwest continued to demand an 80-percent increase in carriage fees, more than
28 double the rate Charter pays any other broadcaster anywhere else in the entire

1 country. Because Northwest's demanded carriage fees would substantially and
2 unfairly impact Charter's customers, Charter refused to accept them.

3 28. In light of Northwest's unreasonable demands, the parties were unable
4 to reach a new retransmission consent agreement before their existing agreement
5 expired. While the parties agreed to two 24-hour extensions, through 5:00 pm
6 Eastern Standard Time on February 2, 2018, they still could not reach a new
7 agreement.

8 29. On February 2, 2018, in an effort to exert additional leverage over
9 Charter in the parties' negotiations, Northwest "blacked out" its broadcast signals
10 from Charter's lineups, including KYMA and KWST, by refusing to allow Charter
11 to retransmit them without a new retransmission consent agreement. Under federal
12 law, Charter may not "retransmit the signal of any commercial broadcasting station
13 [electing retransmission consent] without the express authority of the originating
14 station." 47 U.S.C. § 325(b); 47 C.F.R. § 76.64(a).

15 30. At the time that Northwest pulled its broadcast authorization from
16 Charter's channel lineup, the stations' ratings were in steep decline – more than 13
17 percent in over the last five years.

18 31. Northwest is notorious for blacking out its television broadcast signals
19 in retransmission consent negotiations with video distributors. Through this
20 approach, it seeks to gain leverage by creating disruption, depriving the distributor's
21 customers of programming, and attempting to turn the distributor's customers
22 against it. Northwest precipitated blackouts on Verizon FiOS and Cable One in
23 2017, and both DirectTV and DISH Network a few years before, in order to bolster
24 its negotiating position in retransmission consent negotiations.

25 32. Northwest's blackout of its programming on Charter's cable system is
26 rare for Charter. Charter has successfully negotiated carriage arrangements with
27 hundreds of broadcast stations, including ABC, NBC, CBS, and FOX affiliated local
28 stations.

1 33. While Charter similarly hoped for a mutually beneficial resolution
2 without any blackout in this situation, it was unable to provide 30 days' advance
3 notice to its customers because Northwest's decision to pull its authorization for
4 Charter to transmit KYMA and KYST was not within Charter's control.
5 Negotiations between cable operators and broadcasters usually come down to the
6 final 30 days of an agreement – indeed, often down to the final day or hours – and
7 are often marked by vigorous and even at times contentious exchanges. The
8 negotiations between Charter and Northwest have been no different. Until
9 Northwest withdrew its authorization, Charter remained hopeful that an agreement
10 could be reached without a blackout.

11 34. Once Northwest pulled its authorization, Charter immediately notified
12 its customers through multiple communication channels, including on-air
13 announcements, emails, and its website. Charter also sent a courtesy notice to
14 impacted municipalities, including El Centro.

15 35. Following these notifications, on or about February 15, 2018, the City
16 and Charter began communicating about the blackouts of KYMA and KWST on its
17 cable system and Charter's efforts to resolve its carriage dispute with Northwest.

18 36. On March 7, 2018, El Centro served two sets of citations on Charter,
19 related to each of the two channels for which Northwest revoked Charter's
20 authorization: Case No. 18-0056 (Citation No. 18-0002) and Case No. 18-0057
21 (Citation No. 18-0003). The citations allege violations of five provisions of Article
22 X of the City Code, with separate violations asserted for each Code provision over
23 each day from March 1, 2018, through March 6, 2018. Each citation imposes a
24 \$100 fine for each violation, each day.

25 37. The City alleges violations of local nondiscrimination and customer
26 service requirements:

- 27 • Section 16-332(a) – Prohibiting discrimination among subscribers
28 based on specified protected classes.

- 1 • Section 16-334(b) – Requiring notices to the City and subscribers 30
- 2 days in advance of making any change in cable service or rates.
- 3 • Section 16-336(a)(2) – Establishing time frames for responding to
- 4 service interruptions and service problems.
- 5 • Section 16-336(b) – Requiring rebates for service interruptions
- 6 exceeding a stated duration and failure to make a service call within
- 7 specified time period.
- 8 • Section 16-336(g)(3) – Requiring 30 days’ advance notice to the City
- 9 and subscribers of rate increases or changes in the channel lineup,
- 10 except where the local franchisee is not aware of the changes in
- 11 advance and the changes are not under the franchisee’s control.

12 38. The citations purported to require Charter to pay the fines by March 13,

13 2018, and/or to appeal the citations by March 28, 2018.

14 39. When Charter requested the City withdraw the unlawful and preempted

15 citations, the City extended Charter’s appeal deadline to April 4, 2018, so that it

16 could consider Charter’s request. But, to date, the City has City not withdrawn its

17 citations.⁴

18 40. Northwest’s pulling its authorization for Charter to carry its broadcast

19 signals is not a “service interruption” within the meaning of the City Code

20 provisions in question. Even if it were, while El Centro demands that Charter

21 “cure” its alleged violations, the only means for Charter to do so is to finalize a

22 retransmission agreement with Northwest. The City’s citations are thus intended to

23 pressure Charter to accept Northwest’s unreasonable terms by imposing fines and

24 intentionally damaging Charter’s reputation and harming its goodwill and

25 relationships with its existing and prospective customers.

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28 ⁴ The City indicated on the eve of the appeal deadline that it would be willing to withdraw some, but not all, of the citations.

1 41. As part of this effort, on March 15, 2018, El Centro joined with the
2 Town of Jackson, Wyoming, and the City of Yuma, Arizona, to petition the FCC to
3 enforce federal customer service obligations related to Charter’s inability to carry
4 Northwest’s broadcast stations in those markets (the “FCC Petition”) against
5 Charter. Based wholly on representations by Northwest’s Chief Executive Officer
6 that contain numerous omissions, inaccuracies, and erroneous characterizations of
7 the facts and the sequence of events that led up to the blackout, the cities allege
8 Charter intentionally violated the FCC’s notice rules and ask the FCC to impose
9 severe penalties on Charter. The FCC Petition is in effect an effort by El Centro
10 (along with the other cities and Northwest) to put itself in the middle of this dispute
11 and therefore pressure Charter to carry Northwest’s programming, no matter the
12 cost, by harming Charter’s reputation and poisoning Charter’s relationships with its
13 customers.

14 42. El Centro also submitted a declaration, under penalty of perjury under
15 28 U.S.C. § 1746, in support of the FCC Petition. *See id.*, Declaration of Elizabeth
16 L. Martyn (“Martyn Decl.”). The declaration admitted that “Charter operates in El
17 Centro under a state video services franchise issued to its subsidiary, [TWC], by the
18 California Public Utility [sic] Commission.” *Id.*, Martyn Decl. ¶ 2. The declaration
19 further concedes that “El Centro is authorized under [DIVCA] to enforce customer
20 service standards” arising under federal law. *Id.*, Martyn Decl. ¶ 3.

21 43. The City’s enforcement actions and follow-on proceedings have
22 harmed and will continue to harm Charter’s reputation and goodwill. If the City is
23 allowed to enforce its citations, Charter will not only be subject to potential liability
24 for the fines so far assessed, but also for additional fines based on alleged violations
25 of the same City Code provisions accruing since March 7, 2018. Under Section 16-
26 336 of the El Centro Code, the City might also require Charter to issue refunds to
27 customers that are contrary to Charter’s terms of service, and in so doing improperly
28 interfere with Charter’s contractual relationship with its customers. Finally, the only

1 means for Charter to “cure” the alleged City Code violations and to prevent further
2 efforts by the City to enforce these requirements as continuing violations is to
3 knuckle under to Northwest’s unreasonable demands.

4 44. The City’s actions, in coordination with Northwest, interfere with
5 Charter’s relationships with its existing and prospective customers, who are being
6 encouraged to cancel Charter’s services and subscribe to video services from
7 Charter’s video distribution competitors.

8 **COUNT I**

9 **(Violation of DIVCA, Cal. Pub. Util. Code §§ 5800 *et seq.*)**

10 45. Charter incorporates by reference the allegations contained in
11 Paragraphs 1-44 as if fully restated herein.

12 46. DIVCA carefully and narrowly defines and restricts the scope of local
13 governmental authority, specifically proscribing local regulations that purport to
14 expand the obligations of cable operators holding state-issued franchises. DIVCA
15 nowhere gives local governments like the City authority to impose and enforce their
16 own local nondiscrimination and customer service requirements.

17 47. DIVCA also prohibits local governments like the City from imposing
18 or assessing any fees or monetary penalties not specifically authorized by the
19 statute. DIVCA nowhere authorizes the penalties the City seeks to impose under the
20 Citations.

21 48. DIVCA explicitly preempts each of the City Code provisions upon
22 which El Centro’s Citations are based.

23 49. El Centro’s efforts to enforce its preempted City Code provisions,
24 including through the Citations, violate and exceed its authority under DIVCA.

25 **COUNT II**

26 **(Declaratory Judgment Under 28 U.S.C. §§ 2201 & 2202)**

27 50. Charter incorporates by reference the allegations contained in
28 Paragraphs 1-44 as if fully restated herein.

1 51. "In the case of actual controversy within its jurisdiction, . . . any court
2 of the United States . . . may declare the rights and other legal relations of any
3 interested party seeking such declaration." 28 U.S.C. § 2201. That declaration
4 "shall have the force and effect of a final judgment." *Id.*

5 52. An actual controversy has arisen and now exists between Charter and
6 El Centro with respect to the enforceability of City Code provisions purporting to
7 regulate cable franchisees.

8 53. In light of DIVCA and its broad preemptive effect, Charter disputes the
9 lawfulness of El Centro's efforts to enforce, through the Citations, provisions of
10 Article X of the City Code related to nondiscrimination and customer service
11 requirements. Charter also disputes the lawfulness of El Centro's efforts to compel
12 Charter to carry Northwest's signals on Charter's cable system.

13 54. Pursuant to 28 U.S.C. § 2201, a judicial determination of the respective
14 rights of the parties is necessary and appropriate under the circumstances.

15 **PRAYER FOR RELIEF**

16 With respect to its Complaint, and based on the foregoing, Charter prays for
17 the following relief:

18 1. For a declaration that DIVCA preempts each of the City Code
19 provisions upon which El Centro's Citations are based, and the City cannot lawfully
20 seek to enforce its Citations.

21 2. For a declaration that El Centro's efforts to enforce its preempted City
22 Code provisions, including through the Citations, violate and exceed its authority
23 under DIVCA.

24 3. For a preliminary and permanent injunction preventing El Centro from
25 seeking to enforce its preempted City Code provisions, whether through the
26 Citations, additional code enforcement citations, or any other unlawful action.

27 4. For costs of this action to the fullest extent permitted by law.
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5. For such other further relief as the Court may deem just and proper.

Dated: April 4, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By s/Lisa S. Yun
LISA S. YUN
PAUL A. WERNER (*p.h.v.* to be submitted)
J. AARON GEORGE (*p.h.v.* to be submitted)

Attorneys for Plaintiffs
Charter Communications, Inc., and Time
Warner Cable Pacific West LLC
Email: lyun@sheppardmullin.com

CIVIL COVER SHEET

JS 44 (Rev. 06/17)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 CHARTER COMMUNICATIONS, INC., and TIME WARNER CABLE PACIFIC WEST LLC
 (b) County of Residence of First Listed Plaintiff Fairfield County, CT
 (EXCEPT IN U.S. PLAINTIFF CASES)
 (c) Attorneys (Firm Name, Address, and Telephone Number)
 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 SHANNON Z. PETERSEN, CBN 211426; LISA S. YUN, CBN 280812
 12775 El Camino Real, Suite 200, San Diego, California 92130
 Telephone:858.720.8900, Facsimile:858.509.3691

DEFENDANTS
 CITY OF EL CENTRO, CALIFORNIA
 County of Residence of First Listed Defendant Imperial County, CA
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
 Attorneys (If Known)

'18CV0679 AJB NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District
 6 Multidistrict Litigation-Transfer
 8 Multidistrict Litigation - Direct File
 (specify)

VI. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332, 1367 & 2201
 Brief description of cause:
Violation of Cal. Pub. Util. Code §§ 5800 et seq. and Declaratory Judgment Under 28 U.S.C. §§ 2201 & 2202

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE April 4, 2018 SIGNATURE OF ATTORNEY OF RECORDS/Lisa S. Yun Email: lyun@sheppardmullin.com

FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

