

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking for Adoption of
Amendments to a General Order and Procedures to
Implement the Franchise Renewal Provisions of the Digital
Infrastructure and Video Competition Act of 2006.

R.13-05-007
(Filed May 23, 2013)

**OPENING COMMENTS OF
PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C)
ON THE FINAL OPINION AMENDING GENERAL ORDER 169 TO IMPLEMENT
THE FRANCHISE RENEWAL PROVISIONS OF THE DIGITAL INFRASTRUCTURE
AND VIDEO COMPETITION ACT OF 2006**

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Pacific Bell Telephone Company d/b/a AT&T California (U-1001-C) (“AT&T”), pursuant to Rule of Practice and Procedure 14.3, hereby comments on the “Final Opinion Amending General Order 169 to Implement the Franchise Renewal Provisions of the Digital Infrastructure and Video Competition Act of 2006” proposed by President Peevey on May 27, 2014 (hereinafter, “Proposed Decision”).¹

I. INTRODUCTION

As noted previously in this proceeding, the Legislature passed DIVCA to promote competition in the market for video and broadband services by streamlining and expediting the California video franchising process.² Accordingly, DIVCA requires the granting of video franchises pursuant to a streamlined 44-day application process, upon submission of specified and limited information. Also in order to promote competition, DIVCA mandates that the renewal process be no more burdensome than the initial application process.³ The Proposed Decision is consistent with the Legislature’s intent, except in one respect.

II. DISCUSSION

A. The Intent of DIVCA

The guiding principle of statutory construction is to ascertain and follow the intent of the Legislature.⁴ The renewal process established by the Commission thus must be consistent with

¹ Because AT&T does not propose to change the language of the Proposed Decision’s Findings of Fact and Conclusions of Law, AT&T has not included an “appendix setting forth proposed findings of fact and conclusions of law” herewith, as called for by Rule 14.3(b). As discussed herein, AT&T does propose a change to the draft rules contained in the Attachments.

² See, e.g., Comments of Pacific Bell Telephone Company d/b/a AT&T California on Rulemaking Amending General Order 169 to Implement the Franchise Renewal Provisions of the Digital Infrastructure and Video Competition Act of 2006 (July 22, 2013) (hereinafter, “AT&T Opening Comments”), pp. 2-3.

³ *Id.* at 4-7.

⁴ Code of Civ. Proc. § 1859; *Los Angeles County v. Frisbie* (1942), 19 Cal.2d 634, 122 P.2d 526.

the Legislature's intent to bring the benefits of increased competition to California consumers by streamlining the California video franchising process.⁵

B. The Proposed Decision Largely Is Consistent with DIVCA.

The Proposed Decision would establish rules that, for the most part, are consistent with the plain language of DIVCA and the Legislative intent to promote competition. DIVCA's renewal section, Public Utilities Code section 5850, states: "Except as provided in this section, the criteria and process described in Section 5840 [governing initial applications] shall apply to a renewal registration, and the commission shall not impose any additional or different criteria."⁶ Thus, except as provided within section 5850 itself, franchise renewal must follow the same process used to issue initial franchises.

The Proposed Decision is largely consistent this requirement, with one exception. Even though the initial application process does not include formal notice and opportunity for comment, such a requirement has been grafted onto the renewal process.⁷ Like the Staff Report, the Proposed Decision attempts to justify this departure from the initial application process by concluding that it is necessary to ensure consistency with federal law, as directed by subsection 5850(c).⁸ However, the federal renewal provisions cited by the Proposed Decision are not mandatory; therefore, no departure from the initial application process is compelled by subsection 5850(c).⁹ In other words, renewing California video franchises pursuant to DIVCA's

⁵ AT&T Opening Comments, pp. 2-3.

⁶ Pub. Util. Code § 5850(b).

⁷ See Proposed Decision, Attachment A, Proposed Rule V.B. There are no public notice and comment provisions in DIVCA related to initial applications. See OIR, *mimeo*, p. 15 ("[T]he streamlined process referenced in Pub. Util. Code § 5850(b) does not contemplate a notice and comment period...."); see also D.07-03-014, *mimeo*, pp. 93-98; G.O. 169, Rule IV.C.

⁸ Proposed Decision, pp. 16-17.

⁹ AT&T Opening Comments, pp. 8-9.

initial application process is a permissible alternative process under federal law and therefore “consistent with” federal law.¹⁰ As a result, the Commission must follow the Legislature’s direction that “the criteria and process described in Section 5840 [governing initial applications] *shall apply* to a renewal registration, and the commission shall not impose any additional or different criteria.”¹¹

Had the Legislature intended federal renewal procedures to be required in California, it would have stated so expressly. Other provisions of DIVCA plainly require compliance with federal law, thus demonstrating that the Legislature knows how to import federal law when it wishes to do so. For example, section 5900 of DIVCA provides that a franchise holder “shall comply with . . . customer service standards pertaining to the provision of video service established by federal law or regulation,” among other things.¹² No similar language is found in DIVCA’s renewal section. Therefore, canons of statutory construction compel the conclusion that the Legislature did not intend the importation of federal renewal law.

¹⁰ *Id.*

¹¹ Pub. Util. Code § 5850(b) (emphasis added).

¹² Pub. Util. Code § 5900(a).

III. CONCLUSION

As explained above, the renewal rules that would be established by the Proposed Decision are consistent with DIVCA, except that they would depart from the initial application process by requiring formal notice and opportunity for comment. AT&T respectfully requests that this provision be removed from the proposed rules. With this correction, the proposed rules would be consistent with the letter and spirit of DIVCA.

Respectfully submitted,

/s/

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