Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 5/27/14)

**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. | Rulemaking 13-05-007<br>(Filed May 23, 2013) |

# DECISION AMENDING GENERAL ORDER 169 TO IMPLEMENT THE FRANCHISE RENEWAL PROVISIONS OF THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

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# DECISION AMENDING GENERAL ORDER 169 TO IMPLEMENT THE FRANCHISE RENEWAL PROVISIONS OF THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

## 1. Summary

This decision amends General Order 169 and adopts procedures for implementing the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006, Assembly Bill 2987 (DIVCA) (Ch. 700, Stats. 2006).[1] This proceeding is closed.

## 2. Legislative Background and Procedural History

To promote video service competition in California, the Legislature created a new state video franchising process under the Digital Infrastructure and Video Competition Act (DIVCA) of 2006. In so doing, the Legislature found that "increasing competition for video and broadband services is a matter of statewide concern."[2] The Legislature noted that video providers offer "numerous benefits to all Californians including access to a variety of news, public information, education, and entertainment programming."[3] According to the Legislature, "competition for video service should increase opportunities for programming that appeal to California's diverse population and many cultural communities."[4] The Legislature added that increased video service competition

[1] DIVCA is codified at Cal. Pub. Util. Code §§ 5800 *et seq*.

[2] Cal. Pub. Util. Code § 5810(a)(1).

[3] Id. at § 5810(a)(1)(A).

[4] Id. at § 5810(a)(1)(D).

"lowers prices, speeds the deployment of new communication and broadband technologies, creates jobs, and benefits the California economy."[5]

On October 5, 2006, the Commission initiated Rulemaking (R.) 06-10-005 to adopt a general order and establish procedures for implementing DIVCA.[6] However, after three phases of the proceeding, the Commission had not implemented rules for the renewal process.[7] Because Public Utilities Code Section 1701.5 requires the Commission to conclude a rulemaking within 18 months, R.06-10-005 was closed before this final implementation task could be accomplished. This rulemaking was initiated to establish video franchise renewal procedures on May 23, 2013.

In its order initiating this rulemaking, the Commission summarized the issues to be resolved:

- establishing procedures for implementing the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006;
- establishing renewal procedures to reflect DIVCA's requirement that a video service provider's franchise shall not be renewed if it is in violation of a final nonappealable court order, as discussed in section 3.1.3.1 of this Order Instituting Rulemaking (OIR);
- establishing procedures for a notice and comment period on franchise renewal applications, as discussed in section 3.1.3.2 of this OIR;

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[5] *Id*. at § 5810(a)(1)(B).

[6] *Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006* (2007) Cal. P.U.C. Dec. No. 07-03-014 (Decision (D.) 07-03-014).

[7] *See*, D.07-03-014; *Opinion Resolving Issues in Phase II* (2006) Cal. P.U.C. Dec. No. 07-10-013 (D.07-10-013); *Decision Amending General Order 169* (2008) Cal. P.U.C. Dec. No. 08-07-007 (D.08-07-007).

- the timing of franchise renewal application submissions as discussed in section 3.1.3.3 of this OIR;
- whether establishing formal franchise renewal procedures consistent with 47 U.S.C. § 546(a)-(g) is necessary, as discussed in section 3.1.4 of this OIR; and
- if a formal franchise renewal procedure consistent with 47 U.S.C. § 546(a)-(g) is necessary, the specific requirements and procedures that should be adopted, including how DIVCA's division of regulatory authority between the Commission and local entities would be preserved in the context of a formal proceeding (section 3.1.4.1); the timing of franchise renewal applications (section 3.1.4.2); the reimbursement for Commission resources spent on formal proceedings (section 3.1.4.3); how the commencement of the ascertainment phase described in 47 U.S.C. § 546(a) would be initiated and carried out (section 3.1.4.4); how "future cable related needs" and "past performance review" should be defined (section 3.1.4.5); what procedures should be established for the submission of renewal proposals and preliminary assessment of nonrenewal (section 3.1.4.6); how the administrative proceeding described in 47 U.S.C. § 546(c)-(d) should be implemented, including whether the Commission's formal application procedure prescribed by Article 2 of the Commission's Rules of Practice and Procedure should be used and participation limited (section 3.1.4.7); and how the adverse findings and notice procedures in 47 U.S.C. § 546(d) should be implemented (section 3.1.4.8).

Initial comments were filed on July 22, 2013, by the League of California Cities and the California State Association of Counties, California Cable and Telecommunications Association (CCTA), Verizon California, AT&T California,

Office of Ratepayer Advocates (ORA),[8] and the City of Palm Desert. Reply comments were filed on August 12, 2013, by Verizon, AT&T, The Utility Reform Network, Division of Ratepayer Advocates, CCTA and, jointly, by The California State Association of Counties, The City of Mountain View, The City of Long Beach, Sacramento Metropolitan Cable Television Commission, The City of Palm Desert, The County of Los Angeles, and the League of California Cities.

On December 24, 2013, the assigned Commissioner issued his scoping memo, which found that evidentiary hearings were not required. The scoping memo explained that in response to the comments on the issues Commission staff prepared a Staff Report, with proposed amendments to General Order (GO) 169. The scoping memo set a schedule for comments on the Staff Report.

## 3. Summary of the Staff Report

The Staff Report specified that the renewal process for state video franchises must be consistent with both DIVCA and federal law, and as identified in Cal. Pub. Util. Code § 5850(b)[9] should largely mirror the initial application process identified in § 5840.[10] As discussed in the Staff Report, DIVCA establishes a highly expedited process for the issuance of franchises and defines all of the obligations and requirements a video service provider must meet as a condition of being granted a franchise. DIVCA envisions a renewal process identical to the process required for the initial grant of a state-issued franchise under § 5840, except that it must be consistent with federal law and the

[8] Since the filing of comments, the Division of Ratepayer Advocates has changed its name to the Office of Ratepayer Advocates (ORA).

[9] Unless otherwise noted, statutory references are to the Cal. Pub. Util. Code.

[10] Staff Report, at 4-6.

Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order with respect to any provision of DIVCA.[11]

Federal law contains what is commonly referred to as a formal and informal process to renew cable television franchises.[12] The Staff Report concluded that the California renewal process in § 5850(b) is consistent with the federal informal process set out in 47 U.S.C. § 546(h) as long as it is modified to provide adequate opportunity for notice and comment.[13] The proposed rules set forth in the Staff Report accommodated this opportunity for notice and comment by providing for limited comment on the issue of whether a video service provider seeking renewal is in violation of a nonappealable court order of any section of DIVCA.

However, the Staff Report did not propose developing a complex set of rules to accommodate the federal formal process. As explained in the Staff Report, the renewal process DIVCA contemplates is distinctly different from the formal federal process outlined in 47 U.S.C. § 546(a)-(g).[14] The federal formal process is not mandatory, and as discussed in the Staff Report, it is not likely that a cable operator would choose to invoke such a process in lieu of the expedited renewal process envisioned by DIVCA.[15] Further, the Staff Report reasoned that the language and intent of DIVCA constrain the Commission's ability to invoke

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[11] Staff Report, at 5; *see also*, Cal. Pub. Util. Code § 5850.

[12] *See*, 47 U.S.C. § 546.

[13] Staff Report, at 8.

[14] *Id*. at 13.

[15] *Id*. at 14-15.

the formal process, and concluded that the Commission should not exercise this option.[16] Nonetheless, since cable operators have a right to invoke the formal process, the Staff Report proposed revisions to GO 169, to specify that where a cable operator seeks to invoke the formal federal process identified in 47 U.S.C. § 546(a)-(g), that cable operator must file a formal application pursuant to Article 2 of the Commission's Rules of Practice and Procedure, and provide notice to the Commission, local entities within its franchise area, and ORA of its decision within the time specified by federal law.[17]

Finally, the Staff Report proposed modifications to the renewal process identified in § 5850(b) to accommodate DIVCA's prohibition against renewing the franchise of a video service provider that is in violation of a final nonappealable court order.[18] The Staff Report proposed revisions to the rules in GO 169 and the attached application and affidavit to reflect this requirement.

## 4. Positions of the Parties

Pursuant to the December 24, 2013 scoping memo, further comments on the Staff Report were filed on January 24, 2014, by AT&T California, CCTA, Verizon California, ORA, and jointly by the League of California Cities, the California State Association of Counties, the Cities of Long Beach, and Palm Desert, California, the County of Los Angeles, California and the Sacramento Metropolitan Cable Television Commission (Local Entities Group). Reply comments were filed on February 18, 2014, by ORA, Verizon California, CCTA,

[16] *Id.* at 14.

[17] *Id*. at 15.

[18] *Id.* at 11-13.

AT&T California, and The Media Alliance. We briefly summarize the positions of the parties taken in these comments below, and where appropriate also include positions taken in comments on the OIR.

**Local Entities Group**[19]

The Local Entities oppose the proposed procedural schedule for the renewal application and argue that 15 days for comments on a renewal application is inadequate if those comments are to be meaningful. The Local Entities also oppose limiting the scope of comments on the renewal application to whether a video service provider is in violation of a nonappealable court order.

The Local Entities recommend that the Commission limit renewal applications to a defined time period prior to expiration to prevent a video service provider from gaming the informal renewal process by, for example, applying early for renewal while a court proceeding is pending.

Finally, the Local Entities contend that the proposal to not develop detailed rules for the formal renewal process at this time but to defer the task to an administrative law judge during the six month period following a provider's notice of intent to invoke is likely legally permissible but inadvisable due to the time limits imposed on such a process.

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[19] The "Local Entities Group" is comprised of the League of California Cities, the California State Association of Counties, the Cities of Long Beach, and Palm Desert, California, the County of Los Angeles, California and the Sacramento Metropolitan Cable Television Commission, and states that Group members represent the vast majority of the cities and counties in the State of California and collectively have extensive familiarity with cable and video franchising requirements and processes under state and federal law, garnered through decades serving as local franchising authorities prior to the enactment DIVCA and now serving as co-regulators of state franchise holders with this Commission under DIVCA.

**CCTA**

CCTA supports the proposed renewal process because it fits squarely with the federal informal process by limiting the scope of notice and comment to whether a cable operator is in violation of a nonappealable court order regarding DIVCA.

CCTA opposes the Local Entities and ORA efforts to impose expansive notice and comment procedures because such procedures would render § 5850(b) meaningless. CCTA explains that § 5850(b) requires that the Commission apply to the franchise renewal registration the same "criteria and process" as used for the issuance of the franchise. Two exceptions are also set forth in § 5850 in subsections (c) and (d), for consistency with federal law and regulations, and the directive that the Commission may not renew the franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to DIVCA.

Moreover, CCTA concludes, these proposals are contrary to the purpose of DIVCA because they would return the franchising process to the prior local franchising system that DIVCA was meant to replace.

In response to the Staff Report's proposal regarding violations of nonappealable court orders, CCTA suggests that if the answer to the first two questions is affirmative, then the applicant may also submit a declaration, if it does not have an order or ruling, attesting that it has cured the violation of the nonappealable court order. CCTA makes this suggestion because courts do not typically issue orders or rulings showing that a violation has been cured. If a declaration is used, the renewal should be granted with the condition that the franchise may be revoked if anyone disputes the applicant's declaration and

obtains a court order finding a continuing violation of the nonappealable court order.

CCTA also suggests adding language to the rules to reflect the statutory language of DIVCA. DIVCA states that the Commission cannot renew the franchise of an applicant that is "in violation of any final nonappealable court order *issued pursuant to this division.*" [Emphasis added.] Thus, CCTA recommends that the Commission add the language "issued pursuant to this division" to prevent the use of this rule to reach orders that have nothing to do with DIVCA. CCTA claims that such an overreach would also exceed § 5850(b) which requires the Commission to follow the initial franchise criteria and process. These changes should also be made to the affidavit and application.

**Office of Ratepayer Advocates**

ORA argues that the Commission made a legal mistake and promulgated bad policy in D.07-03-014, the Phase 1 DIVCA Decision, by determining that § 5840 does not permit any parties to file protests or comments to DIVCA applications, and that the Commission is making the same legal and policy mistakes with the proposed renewal process. In addition, ORA argues that the only way to reconcile the renewal provisions of DIVCA set forth in § 5850 with ORA's right to advocate on behalf of consumers in a renewal proceeding, as set forth in § 5900(k), is to allow it to file protests or substantive comments on renewal applications on the DIVCA obligations relating to cross-subsidization, build out/discrimination, consumer protection, and Public Education and Government channels.

ORA also claims the term "complete "as applied to the franchise application process should be interpreted to mean complete from a substantive perspective. In other words, the Commission should interpret the criteria for

determining whether an application is complete as used in § 5840 for processing initial applications, which is the process § 5850 requires, to permit ORA to submit comments or protests of a substantive nature. Furthermore, ORA argues that if the Commission interprets the term "complete" as used in § 5840(h) to mean substantively complete, the Commission can delay approving or denying an application for renewal indefinitely, beyond the prescribed 44 days under § 5840(h), if it determines that an application for renewal is substantively incomplete.

ORA recommends that the Commission give ORA the opportunity to file substantive comments on renewal applications, and all parties the opportunity to comment on the completeness and veracity of renewal applications without restriction. ORA also contends that the Commission erred in D.07-03-014 when it concluded that ORA may not file complaints against video service providers under DIVCA.

Like the Local Entities, ORA supports setting the earliest date upon which a renewal application may be received. ORA explains that allowing video service providers to submit applications at any time could impose scheduling burdens on the Commission and its staff with renewal applications being submitted on unexpected schedules, and that state video franchises are valid for 10 years and it is clear that the Legislature did not intend for franchises to be renewed on some other timetable. Additionally, ORA contends there may be a DIVCA proceeding that is underway and a final resolution may not yet have occurred. Although DIVCA does not statutorily require a specific timeframe for when applications must be received, the Commission has authority under § 701 to set a reasonable timeframe for receipt of applications. Therefore, ORA

recommends a deadline of six months before expiration of the existing franchise as the point at which the Commission will begin accepting applications.

ORA also agrees with the Local Entities that the 15 days for comment on a renewal application is insufficient, particularly if the Commission seeks meaningful comments on renewal applications. ORA further agrees with Local Entities that the scope of the comments should include substantive issues such as whether the applicant carried out its various responsibilities as attested to in the application, and a review for discrimination and cross subsidization.

**AT&T**

AT&T states that any rules in implementing DIVCA must be guided by the Legislature's intent to streamline the video franchising process in order to promote competition and pass along the benefits of competition to consumers, and that the proposed renewal process meets the intent of DIVCA except for the provision of notice and opportunity to comment. AT&T argues that this is a violation of Public Utilities Code § 5850 which states "except as provided in this section, the criteria and process described in § 5840 [governing initial applications] shall apply to a renewal registration, and the commission shall not impose any additional or different criteria."

AT&T opposes ORA's improper collateral attack of the first DIVCA decision which is a final decision. AT&T also disagrees with ORA's procedural requests as being at odds with DIVCA's mandate that the Commission regulate video service providers only as expressly provided in DIVCA, not as public utilities.

**Media Alliance**[20]

Media Alliance believes that 15 days for notice and comment is extremely short and does not provide enough time to gather local input, do statistical research, or access internal records. In support of this, Media Alliance argues that "there is a significant body of public proceedings in California and data reveals an average public comment period of not less than 30 days and frequently 60-90 day periods being a matter of course."

Media Alliance also opposes the proposed limited scope of the franchise renewal process, and argues that Federal law requires the Commission to consider more of the operator's past performance than merely whether the applicant is in violation of a non-appealable court order.

**Verizon California**

Verizon supports the proposals in the Staff Report as reflecting the law and legislative policy. Verizon opposes ORA's attempt to re-litigate D.07-13-014, and the Local Entities' argument that past performance should be considered in the renewal process because DIVCA makes clear that the renewal process should be ministerial and that performance issues must be addressed in other forums.

## 5. Discussion

The procedures and criteria for renewing a state-issued video franchise are set forth in Pub. Util. Code § 5850(a)-(d). Section 5850(b) sets forth the general rule that "except as provided in this section, the criteria and process described in

[20] Media Alliance states that it is a community-based organization that represents both professional and amateur media-makers and citizens interested in free speech rights and democratic expressions.

§ 5840[21] shall apply to a renewal registration, and the commission shall not impose any additional or different criteria."

Two exceptions are set forth in sections (c) and (d). Section 5850(c) states that the renewal process must be consistent with federal laws and regulations, and § 5850(d) states that the Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this division.

We conclude that § 5850(b) requires that the process for renewing state-issued franchises be identical to the process set forth in § 5840(a)-(q) unless the requirements set forth in §§ 5850(c) and (d) necessitate that this process be modified. Although for the reasons discussed below we allow for the filing of comments, this process does not encompass the filing of protests to renewal applications.[22]

### 5.1. Consistency with the Federal Informal Process

As analyzed in detail in the Staff Report, the California initial application process set out in § 5840, and thus the renewal process required by § 5850, is

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[21] *See generally*, Pub. Util. Code § 5840(a)-(q) and General Order (GO) 169. The process requires an application, an affidavit of compliance with federal, state and local law, posting a bond as demonstration that it possesses the legal, financial, and technical capabilities to construct and operate a system capable of providing video services, paying a $2,000. If the application is complete and the applicant found eligible, the Executive Director of the Commission will issue state video franchise to the applicant.

[22] ORA reargues its claim of broader procedural and substantive rights in initial franchise applications, and extends these arguments to renewal applications. As to the initial applications, ORA's arguments were disposed of in D.07-11-014, again on rehearing in D.07-11-049, and summarily rejected by the Court of Appeals. For renewal applications, ORA contends that § 5850(b) allows the Commission to use a different process, including allowing ORA to file protests. We find that ORA's argument contradicts the plain language in § 5850(b) which requires the same process for both initial and renewal applications.

consistent with the federal informal process as specified in 47 U.S.C. § 546(h), but requires modification to include the opportunity for notice and comment.[23] Accordingly, the modifications to GO 169 attached to today's decision as Attachment A include the requirement that all franchise renewal applications provide a copy of the application to each local entity where service will be provided, as well as ORA, and these entities may file and serve comments on the application in accordance with the scope discussed below. As so modified, we find that the California video franchise renewal process is consistent with the federal informal process.

We also adopt ORA's proposed requirement that an expedited renewal application may not be submitted more than six months before the existing franchise expires, to prevent early applications in anticipation of violating a nonappealable court order. This change is reflected in the attached rules amending GO 169.[24]

#### 5.1.1. Scope of Comments on Renewal Applications

Consistent with D.07-11-014, we find that substantive issues raised in comments on a franchise renewal application would be outside the scope of the

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[23] *Id*. at 8.

[24] We recognize that 47 U.S.C. § 546(h) permits a cable operator to "submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may…grant or deny such proposal at any time." However, Cal. Pub. Util. Code § 5840(h) requires the Commission to act on a franchise application within 44 days or else it is be deemed an issuance of the franchise certificate. Therefore, if a video service provider chose to submit an application in advance to game the application process as discussed above, the Commission would be required to act on that application within 44 days or else the franchise certificate is issued by default. Creating a six-month window during which a video service provider may seek a renewal reduces the risk of such a scenario occurring.

Commission's review. As noted in the Staff Report, however, § 5850(d) states that we shall not renew the franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to DIVCA.

Accordingly, to reconcile our limited role and discretion in approving franchise applications under DIVCA with the requirement in 47 U.S.C. § 546(h) for adequate notice and comment, we will provide opportunity for comment on the issue of whether a video service provider is in violation of a final nonappealable court order. This interpretation is reasonable as it is consistent with the language and purpose of DIVCA, which limits franchise renewal determinations to the existence of a final nonappealable court order issued pursuant to DIVCA.[25]

We reject the Local Entities' claim that federal law requires comment on the entire renewal application because 47 U.S.C. § 546(h) does not provide for such broad comment, and the California statute limits this Commission's renewal inquiry to whether a video service provider is in violation of a final non-appealable court order issued pursuant to DIVCA.

### 5.2. Consistency with the Federal Formal Process

For the California franchise renewal applicants that wish to invoke the federal formal application process set out in 47 U.S.C. § 546(a)–(g), such applicants must file and serve an application as provided in Article 2 of the Commission's Rules of Practice and Procedure. This will lead to an

[25] Further, we agree with the Staff Report that affording the public 15 days notice from the date an application for renewal is posted on the Commission's website is sufficient time for parties to submit comments on this limited issue, and is consistent with the strict deadlines imposed for the renewal application process under § 5850(b).

Administrative Law Judge being assigned to the proceeding and a specific procedural schedule adopted for the issues that are presented in that specific renewal application. We find that this portion of the California video franchise renewal process is consistent with the federal formal process. We caution cable operators that invoking the formal process merely for the purpose of preserving their due process rights will trigger the initiation of a proceeding in which the Commission undertakes the difficult task of reconciling the rules and procedures of the formal process with DIVCA. However, even if cable operators elect to forego invoking the formal process, the rules we adopt today ensure that a video service provider has a right of appeal under state law in the event the application is denied.

For the reasons set forth in the Staff Report, we conclude that although a franchise authority may invoke the formal process, the Commission may not because it would expand the renewal process beyond the process for the issuance of an initial franchise in violation of § 5850(b). Taken together, we conclude that the modifications we have adopted today to the process for the issuance of a franchise set forth in § 5840 result in a renewal process that is consistent with federal law as required by § 5850(c).

### 5.3. Violation of Final Nonappealable Court Order Issued Pursuant to DIVCA

As directed by § 5850(d), this Commission shall not renew a video franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to California video franchise law. To implement this provision, the revised GO in Attachment A requires video franchise renewal applicants to attest that no such violations are occurring or are alleged to be occurring. If such violations have been found, the Applicant must submit an

order or ruling showing that the violations have been cured. We find reasonable CCTA's recommendation that the Commission should also permit an Applicant to attest that it has cured the violation because courts do not typically issue orders or rulings showing that a violation has been cured. The rules have been amended to this effect.

We also find reasonable CCTA's recommendation to add language to the rules regarding violations of nonappealable court orders to reflect the statutory language of DIVCA. Therefore, after the phrase "in violation of any final nonappealable court order" we add the language "issued pursuant to the Digital Information and Video Competition Act (Cal. Pub. Code §§ 5800 *et seq.*)" because we wish to clarify that these rules only apply to court orders issued pursuant to DIVCA. However, in order to capture the requirements of § 5840(d), we have added language to make explicit that no person or corporation shall be eligible for the renewal of a state video franchise, if that person or corporation is in violation of any final nonappealable court order relating to either Cable Television and Video Providers Customer Service and Information Act (Cal. Govt. Code §§ 53054 *et seq.*), or the Video Customer Service Act (Cal. Govt. Code §§ 53088 et seq.).

Lastly, we add that if an Applicant is ineligible to have its franchise renewed, the Commission's Executive Director will send a letter to the Applicant within 30 days from the date its Application was submitted as required by existing rule IV.A.4 stating that the Applicant is ineligible for the renewal of its video franchise. The effect of this letter will be to stop the 44 day clock on the

application.[26] Following the issuance of this letter, the Commission will issue a decision or resolution denying the application. The purpose of this addition is to provide an Applicant with a vehicle with which it may seek appeal of a decision denying its renewal application.

We find that these provisions are consistent with § 5850(d) and we adopt the revised GO 169 attached to today's decision as Attachment A.

We have reviewed the remaining recommendations from the parties seeking a broader scope and expansive procedural steps for the franchise renewal process. As analyzed in the Staff Report and in D.07-03-014, the Legislature adopted a streamlined franchise authority process with limited substantive requirements and continued that narrow scope and process through the franchise renewal process in § 5850. To the extent not discussed herein, we find that the proposals put forward by the parties are not consistent with California video franchise law and we decline to adopt them.

## 6. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on June 16, 2014, by AT& T, Verizon, CCTA and ORA. Verizon and CCTA supported the proposed decision. AT&T contended that the proposed decision of Commissioner Peevey went too far by allowing public comment on renewal applications at all, and ORA argued that the proposed decision did not go far enough by limiting the scope of the public

[26] See, Cal. Pub. Util. Code § 5840(h).

comment to violations of a final nonappealable court order. As analyzed below, we find that the proposed decision of Commissioner Peevey strikes the right balance between these extremes and we adopt Commissioner Peevey's proposed decision.

AT&T is correct that the no such public comment is provided for initial applications.[27] However, the renewal process statute, § 5850(c) and (d), requires consistency with the federal law and regulation and no on-going violations of a final nonappealable court order. These two requirements are met with the public comment opportunity on the only new substantive standard – violation of a final nonappealable court.

As required by §5850 (b), GO 169, in subsection V., provides that the requirements and the process for renewing a state video franchise is the same as issuing the initial franchise, with narrow exceptions. ORA misread the proposed decision as "finding that the sole inquiry in the renewal application is whether there is a violation by the cable operator of a violation of a final non-appealable court order." As stated in subsection V: "the Application requirements and process for a renewal of a state franchise shall be the same as those for issuance of an initial state franchise." This statement is reflected in Attachment B to the proposed decision where the application form is modified to indicate that the same form is used for both initial applications and renewal applications. Thus, in reviewing the renewal applications, the Commission will go beyond violations of a final nonappealable order, and include a review of completeness, as specified in §5840(h)(2).

[27] AT&T Opening Comments at 2.

Accordingly to give greater effect to §5900(k) and allow ORA to "advocate on behalf of video subscribers regarding renewal of a state-issued franchise," we will modify the proposed decision to expand the scope of ORA's comments on a renewal application to be consistent with the Commission's review and allow it to provide comments not only on the existence of violations of nonappealable court orders, as discussed in section 5.3 of this Decision, but also on whether a renewal application meets the requirements of §5840(h)(2). We will also allow ORA to include additional information regarding the applicant's compliance with the obligations referenced in §5840(e), which the Commission will not consider as part of the franchise renewal process but may lead to further action outside the renewal process.

We clarify that in granting ORA the ability to comment on compliance with §5840(e), such comments must be filed according to the schedule for comments set forth in section (V)(B) of GO 169 as adopted in today's decision.and will not interfere with the schedule for approving renewal applications established in §5840(h). As set forth in §5840 (b), the Commission's authority is limited to that set out in DIVCA and the Commission may not expand the application process beyond that contemplated by the statute. Further, allowing ORA to offer additional information for the Commission's consideration and potential use outside the franchise renewal process will have no bearing on the process for renewal required by §5850(b).

## 7. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

## Findings of Fact

1. On December 24, 2013, the assigned Commissioner filed and served the Commission Staff Report Proposing Rules to Amend GO 169 to Implement the Franchise Renewal Provisions of the DIVCA of 2006.

2. With the modifications to GO 169 as set forth in Attachment A, the California video franchise renewal process is consistent with federal laws and regulations.

3. With the modifications to GO 169 as set forth in Attachment A, the California video franchise renewal process is consistent with the requirement that the Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this division.

4. No hearing is required.

## Conclusions of Law

1. Section 5850(b) sets forth the general rule that except as provided in this section, the criteria and process described in § 5840 shall apply to a renewal registration, and the Commission shall not impose any additional or different criteria.

2. Section 5850 has two exceptions to the general rule: the renewal process must be consistent with federal laws and regulations, and the Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this division.

3. The process for renewing state-issued franchises must be identical to the process for issuing initial franchises unless modifications are necessary to be consistent with federal regulations or to prohibit renewal where a video service provider is in violation of a final nonappealable court order.

4. Pursuant to §5840 (h)(2), the Commission may not approve an incomplete renewal application.

5. As provided in §5850(d), the Commission must formally deny a renewal application if the applicant is in violation of any final nonappealable court order of any provision of DIVCA.

6. Permitting ORA to submit comments on compliance with §5840(h)(2) of DIVCA in addition to the existence of violations of nonappealable court orders as discussed in section 5.3 of this Decision is not only consistent with the Commission's review of renewal applications but will give greater effect to §5900(k) which permits ORA to "advocate on behalf of video subscribers regarding renewal of a state-issued franchise." In addition, allowing ORA to provide the Commission with information regarding the applicant's compliance with the obligations referenced in §5840(e) when subject to the limitations discussed in this decision will have no bearing on the process for renewal of franchises set forth in §5840.

7. The Commission lacks authority to expand the video franchise renewal process beyond that set forth in §§5840 and 5850.

8. The proposals put forward by the parties to broaden the scope and expand the procedural steps for video franchise renewals are not consistent with California video franchise law and should not be adopted except as noted herein.

9. The proposals put forward by the parties to broaden the scope and expand the procedural steps for video franchise renewals are not consistent with California video franchise law and should not be adopted.

10. The modifications to GO 169 set forth in Attachment A to today's decision should be adopted.

11. The modifications to application forms set forth in Attachment B to today's decision should be adopted.

12. This proceeding should be closed.

13. This decision should be effective immediately.

## O R D E R

Therefore, **IT IS ORDERED** that the revised General Order 169 attached to today's decision as Attachment A and the revised application forms in Attachment B are adopted and this proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

# ATTACHMENT A

# REVISION TO GENERAL ORDER 169 IMPLEMENTING FRANCHISE RENEWAL PROVISIONS FOR THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

## Table of Contents

## I. Definitions

A. "Access" means that the State Video Franchise Holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide similar two-way broad band Internet accessibility and similar video programming.

B. "Affiliate" means any company 5% or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

C. "Applicant" means any person or entity that files an Application

D. "Application," unless otherwise specified herein, means an Application in the form prescribed by the Commission for seeking a grant, or amendment, or renewal of a State Video Franchise.

E. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.[28]

F. "Broadband" or "Broadband Service" means any service defined as broadband, or having advanced telecommunications capability, in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).[29]

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[28] CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

[29] *Id.* at § 5830(a). The Federal Communications Commission currently uses the term "broadband" and "advanced telecommunications capability" to describe services and

*Footnote continued on next page*

G. "Census Tract" has the same meaning as used by the U.S. Census Bureau.[30]

H. "Commission" means the Public Utilities Commission.

I. "Community Center" means any facility run by an organization that has qualified for the California Teleconnect Fund, as established in Public Utilities Code § 280, and that will make the State Video Franchise Holder's service available to the community.[31]

J. "DIVCA" means the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).[32]

K. "Effective Date of this General Order" means January 2, 2007 or the date when this Order is adopted, whichever is later.

L. "Household" means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.[33] Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.[34]

M. "Incumbent Cable Operator" means a cable operator or open-video system serving subscribers under a franchise in a particular city, county, or city and county franchise area on January 1, 2007.[35]

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facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9, 2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. *Id*.

30 CAL. PUB. UTIL. CODE § 5960(a).

31 *Id*. at § 5890(b)(3).

32 In this General Order, all further references to Public Utilities Code are to those sections adopted or amended in DIVCA.

33 CAL. PUB. UTIL. CODE § 5890(j)(1).

34 *Id*.

35 *Id*. at § 5830(j).

N. "Local Entity" means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.[36]

O. "Low-Income Household" means a residential Household where the average annual Household income is less than $35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.[37]

P. "State Video Franchise" means a franchise issued by the Commission pursuant to DIVCA.[38]

Q. "State Video Franchise Holder" means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.[39]

R. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.

S. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § 234.

T. "User Fee" means the fee paid to the Commission quarterly by each Holder pursuant to Public Utilities Code § 442(a).

U. "Video Service" means video programming services, cable service, or open-video system 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. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that

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[36] *Id*. at § 5830(k).

[37] *Id*. at § 5890(j)(2) (defining "low-income households" for the purposes of imposing build-out requirements).

[38] *Id*. at § 5830(p).

[39] *Id*. at § 5830(i).

enables users to access content, information, electronic mail, or other services offered over the public Internet.[40]

V. "Video Service Area" means the area proposed to be served under a State Video Franchise.

W. "Video Service Provider" means any entity providing Video Service.[41]

## II. Purpose of the General Order

The purpose of this General Order is to promulgate the rules necessary to implement Assembly Bill (AB) 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which was signed into law by Governor Arnold Schwarzenegger on September 29, 2006. In enacting this Order, we remain mindful of the fact that the Legislature intends for the state video franchising process to achieve the following objectives:

- Create a fair and level playing field for all market participants that does not disadvantage or advantage one service provider or technology over another;
- Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner, regardless of their socioeconomic status;
- Protect local government revenues and control of public rights-of-way;
- Require Video Service Providers to comply with all applicable consumer protection laws;
- Complement efforts to increase investment in Broadband infrastructure and close the digital divide;
- Continue access to and maintenance of public, education, and government (PEG) channels; and
- Maintain all existing authority of the Commission as established by state and federal statutes.[42]

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[40] *Id.* at § 5830(s).

[41] *Id.* at § 5830(t).

This Commission will act to bring these intended economic and social benefits of Video Service competition to California.

We also recognize that the Legislature found that the public interest is best served when sufficient funds are appropriated to the Commission to provide adequate staff and resources to appropriately and timely process applications of Video Service Providers and to ensure full compliance with the requirements of Division 2.5 of the Public Utilities Code.[43] Accordingly, the General Order assesses fees that will ensure that our video franchising operations are adequately funded and staffed.

## III. When Various Applicants Can/Must Apply for a State Video Franchise

### A. The Commission's Role in Processing Applications

The Commission shall begin accepting Applications for State Video Franchises on the Effective Date of this General Order.[44] Between the Effective Date of this General Order and January 1, 2008, persons wishing to offer Video Service in an area where a local franchise has not already been granted to that person may seek a State Video Franchise from the Commission or a local franchise from the local franchising authority.

After January 1, 2008, the Commission shall be the sole franchising authority for new Video Service franchises in the state of California.[45]

After January 1, 2008, any person or corporation that seeks to provide Video Service for which a franchise has not already been issued shall file an Application for a State Video Franchise with the Commission.[46]

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[42] *Id*. at §§ 5810(2)(A)-(G).

[43] *Id*. at § 401(a).

[44] *See Id*. at § 5840(g) (ordering the Commission to commence accepting Applications for a State Video Franchise no later than April 1, 2007).

[45] *Id*. at §§ 5840(c),(g).

[46] *Id*. at § 5840(c).

### B. Applications for New Franchises

An Applicant shall not be considered an "Incumbent Cable Operator" for the purpose of an Application if the Application is for an area in which the Applicant did not have a local franchise granted as of January 1, 2007.

Applications for State Video Franchise in areas where a franchise has not already been granted to that Applicant may be submitted on or after the Effective Date of this General Order.[47]

### C. Applicants with Existing Franchises

#### 1. Eligibility Conditions

Incumbent Cable Operators are not eligible to apply for a State Video Franchise for the same service area covered by their local franchise unless at least one of the following three conditions applies: (i) the local franchise expires prior to its renewal or extension; (ii) the Applicant and the local franchising authority mutually agree to terminate the local franchise, and submit their agreement in writing to the Commission; or (iii) a Video Service or cable provider with a State Video Franchise notifies the Local Entity and Incumbent Cable Operators of its intent to begin offering Video Service in all or part of the Local Entity's jurisdiction.[48]

#### 2. Franchise Effectiveness Date

In no case shall a State Video Franchise issued to an Incumbent Cable Operator for a service area in which it has an existing local franchise become effective prior to January 2, 2008.[49] Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise may choose to renew the local franchise or seek a State Video Franchise. If an Incumbent Cable Operator's franchise expires before January 2, 2008, it can apply for a State Video Franchise that begins on January 2, 2008. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the State Video Franchise is effective.[50]

#### 3. Terms of Service Offered

An Incumbent Cable Operator that chooses to replace its local franchise with a State Video Franchise shall continue to serve all areas as required by its local franchise

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[47] *Id.* at § 5840(g).

[48] *Id.* at § 5840(o).

[49] *Id.* at § 5930(b).

[50] *Id.* at § 5930(b).

agreement existing on January 1, 2007, until that local franchise otherwise would, under its terms, have expired.[51]

An Incumbent Cable Operator that alone or in conjunction with its Affiliates has less than 1,000,000 telephone customers in California and is providing video service in competition with another Incumbent Cable Operator shall be required to continue providing Video Service only in the areas in which it provided Video Service as of January 1, 2007.[52]

### 4. Effect of a New Competitor's Entry into a Video Market

When a Video Service Provider that holds a State Video Franchise provides the notice required pursuant to Public Utilities Code § 5840(m) to a Local Entity, the Local Entity may require Incumbent Cable Operators to seek a State Video Franchise.[53] The Local Entity shall terminate the local franchise when the Commission issues a State Video Franchise to the Video Service Provider that includes the entire service area served by the Video Service Provider and the Video Service Provider gives notice to the Local Entity that it will begin providing service in that area under a State Video Franchise.

### 5. Exception for a Party to a Stipulation and Consent Judgment Approved by a Federal District Court

Any Video Service Provider that currently holds a franchise with a local franchising entity in a county that is a party, either alone or in conjunction with any other local franchising entity located in that county, to a stipulation and consent judgment executed by the parties thereto and approved by a federal district court shall neither be entitled to seek a State Video Franchise in any area of that county, including any unincorporated area and any incorporated city of that county, nor abrogate any existing franchise before July 1, 2014. Prior to July 1, 2014, the Video Service Provider shall continue to be exclusively governed by any existing franchise with a local franchising entity for the term of that franchise and any and all issues relating to renewal, transfer, or otherwise in relation to that franchise shall be resolved pursuant to that existing franchise and otherwise applicable federal and local law. This rule shall not be deemed to extend any existing franchise beyond its term.[54]

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[51] *Id.* at § 5840(p).

[52] *Id.*

[53] *Id.* at § 5930(c).

[54] *Id.* at § 5930(a).

## IV. Application Process for a State Video Franchise

### A. Steps for Obtaining a State Video Franchise

#### 1. Step 1: Complete the Application for a State Video Franchise[55] (Appendix A to the General Order)

The Application shall include all information required by Public Utilities Code § 5840(e), as well as information required to ascertain an Applicant's eligibility requirements, as described in Public Utilities Code §§ 5840(c), 5840(d), 5840(f), 5840(o), 5840(p), 5930(a), 5930(b), and 5930(c).

##### a) Adequate Assurance of Financial, Legal, and Technical Qualifications

An Applicant is required to provide adequate assurance that it possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the Applicant. To meet this requirement, the Applicant shall submit a copy of a fully executed bond in the amount of $100,000 per 20,000 households in its Video Service Area to the Executive Director prior to initiating video service and no later than five business days after the date of the Commission's issuance of a State Video Franchise to the Applicant. The amount of the bond under any circumstances shall not be less than $100,000 nor more than $500,000 per State Video Franchise Holder, except that a person or entity holding more than one State Video Franchise, directly or through its Affiliate, will not be required to execute bonds in a cumulative amount exceeding $500,000. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California. A State Video Franchise Holder shall not allow its bond to lapse during any period of its operation pursuant to a State Video Franchise.

##### b) Application Fee

Upon filing its initial Application, an Applicant is required to pay an Application Fee in the amount of $2,000 to the Commission. This fee does not exceed the actual and reasonable costs of processing an Application.[56]

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[55] *Id.* at § 5840(e).

[56] *Id.* at § 5840(c).

### 2. Step 2: Application Submission Requirements

#### a) Submit Completed Application to the Commission[57]

The Commission requires all Applicants to submit Applications in the format – paper or electronic – that the Commission directs. In all cases, the Applicant must complete the attached affidavit, submitting one paper original and one paper copy to the Commission's Video Franchise Group.

#### b) Concurrently Deliver a Copy of the Application to the Affected Local Entity

An Applicant shall concurrently deliver a copy of its Application to the appropriate contact person for each Local Entity where the Applicant will provide service.[58] Delivery may be accomplished by serving the document as provided in Commission Rules of Practice and Procedure 1.9 or 1.10.

### 3. Step 3: Commission Review of the Application for Completeness

The Commission shall review the Application and determine whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.[59]

### 4. Step 4: Notification Regarding Application Status

The Commission, acting through the Executive Director, shall notify the Applicant and affected Local Entities[60] as to whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.[61]

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[57] *Id*. at § 5840(a).

[58] *Id.* at § 5840(e)(1)(D).

[59] *Id.* at § 5840(h)(1).

[60] The Commission will use the local authority contact information provided by the Applicant in the Application.

[61] Cal. Pub. Util. Code § 5840(h)(1).

The Commission's notice of a complete Application will include notification that the Commission shall issue a State Video Franchise before the fourteenth calendar day after the determination of completeness was made.[62]

The Commission's notice of an incomplete Application to Applicants and affected Local Entities will include a statement specifying with particularity which items are incomplete and a statement permitting the Applicant to amend the Application.[63] There is no fee associated with such amendments.

The Commission shall have 30 calendar days from the date an incomplete Application is amended and submitted to the Commission to determine its completeness.[64]

Notice of complete and incomplete amended Applications and review of subsequent incomplete amended Applications shall follow the procedures outlined in Steps 3 and 4 above.

If an Applicant is statutorily ineligible for a State Issued Franchise, the Commission will notify the Applicant and any affected Local Entities of the reasons for the Applicant's ineligibility.

#### 5. Step 5: State Video Franchise Issued for Complete Applications

The Commission, acting through the Executive Director, shall issue a State Video Franchise to the Applicant before the fourteenth calendar day after its determination that an Application is complete.[65] The form used to issue a State Video Franchise is found in Appendix B of the General Order.

### B. Failure of Commission to Act on Application

If the Commission fails to notify the Applicant of the completeness or incompleteness of the Applicant's Application before the forty-fourth calendar day after receipt of an Application, the Commission's inaction shall be deemed to constitute issuance of the State Video Franchise, with no further action required on behalf of the Applicant.[66]

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[62] *Id.* at § 5840(h)(2) ("If the commission finds the Application is complete, it shall issue a state franchise before the 14th calendar day after that finding.").

[63] *Id.* at § 5840(h)(3).

[64] *Id.*

[65] *Id.* at § 5840(h)(2).

[66] *Id.* at § 5840(h)(4).

A State Video Franchise, however, is not deemed granted due to Commission failure to act when Applicant is statutorily ineligible for the State Video Franchise, pursuant to the requirements of Public Utilities Code §§ 5840 or 5930.

The Commission will notify an Applicant of any specific ground for ineligibility so that any condition of ineligibility may be remedied.

### C. Protests to State Video Franchise Applications Disallowed

No person or entity may file a protest to an Application.

## V. Application Process for Renewal of State Video Franchise

The Application requirements and process for a renewal of a state franchise shall be the same as those for issuance of an initial state franchise set forth in Section IV of this General Order, with the following exceptions.

### A. Date for Submission of Applications for Renewal

An Application for the renewal of a state video franchise shall be submitted to the Commission's Video Franchise Group no later than 3 months prior to the date the current franchise is due to expire or 3 months prior to the end of the 10th year from the date of its issuance and no earlier than 6 months prior to the date the current franchise is due to expire or 6 months prior to the end of the 10th year from the date of its issuance. If the Applicant elects to invoke the formal process as set forth in 47 U.S.C. §546 (a) – (g), it shall file a formal application to the Commission, as provided in Article 2 of the Commission's Rules of Practice and Procedure, in which it provides notice to the Commission that it is invoking the formal process, its reasons for invoking the process, and the legal and factual basis for invoking that process. The formal application shall be filed within 30 to 36 months before the video service provider's existing franchise expired. The formal application shall be served on all parties on the service list in R.13-05-007, all local entities within the video service area in which the applicant seeks renewal, and ORA.

### B. Public Participation

Once an Applicant submits an Application for renewal to the Commission's Video Franchise Group, it shall concurrently serve a copy of the Application for renewal on the appropriate contact person for each Local Entity where the Applicant will provide service and ORA. The public, including ORA, may submit written comments within 15 days from the date the Application has

been served. Comments must be limited to whether the Applicant is in violation of a non-appealable court order issued pursuant to the Digital Information and Video Competition Act (Cal. Pub. Code §§ 5800 et seq.) and must be accompanied by a court order supporting the existence of such a violation.

ORA's comments may also include whether the renewal Application meets the requirements of §5840(h)(2). The filing of any comments does not alter the time limits set out in §5840(h), or expand the scope of the franchise renewal application beyond §5850. Along with its comments, ORA may also submit additional information regarding the applicant's compliance with the obligations referenced in §5840(e); such information will not be considered as part of the renewal application but it may lead to further action by the Commission apart from the renewal process.

### C. Adequate Assurance of Financial, Legal and Technical Qualifications/ Bond Requirement

To meet this requirement, an Applicant must verify that it has previously submitted a bond which meets the requirements set forth in Section IV.A.1.a of this General Order. If the Applicant has not submitted the required bond to the Commission, the Application for renewal shall be considered incomplete.

### D. Final Non-appealable Court Order

On renewal, the Applicant must also attest in the affidavit found in the Application whether or not a court of competent jurisdiction has issued, pursuant to the Digital Information and Video Competition Act (Cal. Pub. Code §§ 5800 *et seq*.), a final non-appealable court order against it during the term of its franchise, whether or not a court of competent jurisdiction has found it to have violated that order, or whether it has received formal notice from a court of competent jurisdiction containing allegations that it is in violation of that order. If a court has found the Applicant to be in violation of a final non-appealable court order, issued pursuant to the Digital Information and Video Competition Act (Cal. Pub. Code §§ 5800 *et seq*.), it must provide, with this Application, a further court order or ruling demonstrating that the violation has been cured, if one exists. If no such order exists, the Applicant must submit a declaration attesting that the Applicant has cured the violation. The Commission may subsequently revoke a franchise if any other party disputes the Applicant's declaration and obtains a court order finding a continuing violation of a non-appealable court order.

### E. Denials of Renewal Applications on the Grounds of Ineligibility

If the Commission determines that an Applicant is ineligible for renewal of a state franchise, the Commission will notify the applicant of its statutory ineligibility pursuant to Section IV.A.4.. Following the issuance of such notice, the matter will be submitted to the Commission for final resolution via decision or resolution, which shall be subject to appeal pursuant to the Commission's Rules of Practice and Procedure.

## VI. Ineligibility of Entities in Violation of the Cable Television and Video Providers Service and Information Act or the Video Customer Service Act or the Digital Infrastructure and Video Competition Act §§ 5800 et. seq.

No person or corporation shall be eligible for a State Video Franchise, including a State Video Franchise obtained from transfer of an existing State Video Franchise, if that person or corporation is in violation of any final non-appealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (Cal. Govt. Code §§ 53054 *et seq.*) or the Video Customer Service Act (Cal. Govt. Code §§ 53088 *et seq.*), and in the case of renewal any final non-appealable order issued pursuant to the Digital Infrastructure and Video Competition Act (Cal. Pub. Code §§ 5800 *et. seq.*),and in the case of renewal any final nonappealable order issued pursuant to the Digital Infrastructure and Video Competition Act of 2006(Cal Pub. Code §§ 5800 *et.seq*_.

## VII. The State Video Franchise – Authorization to Offer Service, Obligations, Amendment, Transfer, Voluntary Termination, and Miscellaneous Changes

### A. Authorization to Offer Service

#### 1. Grants of Authority

It is unlawful to provide Video Service without a state or locally issued franchise.[67] The issuance of a State Video Franchise represents the Commission's determination that an Applicant has satisfied the statutory requirements pursuant to DIVCA to offer Video Service. The document in which the Commission memorializes

[67] *Id.* at § 5840(k).

the issuance of a State Video Franchise serves as proof of the Commission's grant of authority to provide Video Service, but does not itself constitute authority to offer Video Service.

Each State Video Franchise issued by the Commission includes (1) a grant of authority to provide Video Service in the Video Service Area as requested in the Application; (2) a grant of authority, in exchange for the franchise fee adopted under Public Utilities Code Section 5840(q), to use the public rights-of-way for the delivery of Video Service subject to the laws of California; and (3) a statement that the grant of the authority is subject to the lawful operation of the Video Service by the Applicant or its successor-in-interest.[68]

### 2. Duration of a State Video Franchise

A State Video Franchise is effective for ten years after the date of its issuance.[69]

## B. State Video Franchise Obligations

### 1. Obligations Imposed by Statute

State Video Franchise Holders are required to comply with all federal and state statutes, rules, and regulations. All California operations of a State Video Franchise Holder and its Affiliates shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

With respect to build-out requirements pursuant to Public Utilities Code § 5890(c), a State Video Franchise Holder that alone or in conjunction with its Affiliates has less than 1,000,000 telephone customers in California will be deemed to fulfill build-out obligations imposed by Public Utilities Code § 5890(c) if it meets one of the following three conditions:

(1) Within 30 days of the issuance of its State Video Franchise, the State Video Franchise Holder submits an affidavit to the Commission that establishes that all of the State Video Franchise Holder's telephone customers are offered Video Service by the State Video Franchise Holder.

(2) The State Video Franchise Holder satisfies a safe harbor standard adopted in a Commission rulemaking.

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[68] *Id.* at § 5840(i).

[69] *Id.* at § 5850(a).

(3) The State Video Franchise Holder satisfies company-specific build-out requirements adopted by the Commission. To seek to satisfy this condition, a State Video Franchise Holder shall file an application with the Commission within the calendar year in which it applies for a State Video Franchise. This application shall specify how the State Video Franchise holder plans to offer Video Service to its telephone customers within a reasonable time. The application must contain clearly stated build-out milestones and must demonstrate a serious and realistic planning effort by the State Video Franchise Holder. The application must clearly state the constraints affecting the build-out, with particular attention to the constraints noted in DIVCA itself. To the extent that there are areas within the State Video Franchise Holder's Telephone Service Area that are substantially higher cost than average to provide Video Service, those substantially higher cost areas should be clearly delineated and explained in the application.

### 2. Enforcement of Obligations

A State Video Franchise is subject to suspension or revocation if a Video Service Provider fails to comply with the applicable requirements of Division 2.5 the Public Utilities Code.[70] In addition, the Commission shall not renew a State Video Franchise if the State Video Franchise Holder is in violation of any final non-appealable court order issued pursuant to Division 2.5 of the Public Utilities Code.[71]

### 3. Notice of Imminent Market Entry

A State Video Franchise Holder must concurrently notify each affected local jurisdiction and each affected incumbent cable operator of the holder's imminent market entry. The State Video Franchise Holder must provide the concurrent notice to the incumbent cable operator before initiating Video Service pursuant to a State Video Franchise, and to any local jurisdiction within which, or within any part of which, the holder intends to provide Video Service.

## C. Amending a State Video Franchise

A State Video Franchise Holder may amend a State Video Franchise in order to reflect changes to its Video Service Area.[72]

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[70] *Id.* at § 5890(g).

[71] *Id.* at § 5850(d).

[72] *Id.* at § 5840(f).

### 1. Fee for Amending a State Video Franchise

There is no fee associated with such amendments to reflect changes in service territory, but in general, the Commission's amendment process tracks the State Video Franchise Application process as set forth above.

### 2. Procedures for Filing a Supplemental Application

A State Video Franchise Holder seeking a Video Service Area amendment (whether an increase or decrease) shall file a supplemental Application to its initial Application that clearly shows the new boundaries of the affected service areas,[73] describes any and all Local Entities impacted by the new service area, and further amends all sections of the prior Application affected by the change in service territory or other factors.

One original and one copy of the supplemental Application shall be filed with the Commission's Video Franchise Group and concurrently served on any Local Entities affected by the change in Video Service Area.

### 3. Commission Review and Issuance of a Supplemental Application

The Commission, acting through the Executive Director, will notify the State Video Franchise Holder and any affected Local Entities whether the supplemental Application is complete or incomplete on or before the thirtieth calendar day following the filing date of the supplemental Application. The State Video Franchise Holder will have the opportunity to remedy any incomplete supplemental Application. Once an incomplete Application is refiled with the missing information, the Commission will have 30 days to determine the completeness of a supplemented Application.

The Commission's failure to notify the State Video Franchise Holder of a supplemental Application's completeness or incompleteness before the forty-fourth calendar day after the receipt of a supplemental Application shall be deemed to constitute issuance of the amended franchise, so long as the State Video Franchise Holder is not statutorily ineligible for a new, renewed, or transferred State Video Franchise pursuant to DIVCA.

[73] *Id*. at § 5840(m)(6).

## D. Transfer of a State Video Franchise

### 1. Necessary Conditions for the Transfer of a State Video Franchise

A State Video Franchise may be transferred to a successor-in-interest of the State Video Franchise Holder to which the State Video Franchise was originally granted. This transfer may be as a result of merger, sale, assignment, bankruptcy, restructuring, or any other type of transaction, so long as two conditions are met:

(1) Prior to the transfer, the transferee (successor-in-interest) submits to the Commission and all affected Local Entities all of the information required by this General Order of an initial Applicant for a State Video Franchise; and

(2) The transferee submits an affidavit stating that it agrees that any collective bargaining agreement entered into by the predecessor-in-interest State Video Franchise Holder shall continue to be honored, paid, or performed to the same extent as would be required if the predecessor-in-interest State Video Franchise Holder continued to operate for the duration of the State Video Franchise, unless the duration of the collective bargaining agreement is limited by its own terms or by state or federal law.[74]

### 2. Commission Review of the Transfer of a State Video Franchise

The Commission will process the Application for transfer of a State Video Franchise pursuant to the same standards applicable to an Application for a new State Video Franchise.

## E. Voluntary Termination of a State Video Franchise

A State Video Franchise Holder may terminate its State Video Franchise by submitting at least 90 days' prior written notice to the Commission, affected Local Entities, and all of its customers.[75]

Within 14 business days after termination of a State Video Franchise, the State Video Franchise Holder shall inform the Commission and the affected Local Entities of

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[74] *Id.* at §§ 5840(l), 5970.

[75] *Id.* at § 5840(j).

the number of customers in the service area of the State Video Franchise being terminated; and the method by which customers were notified of the termination, including a copy of such customer notice.[76]

### F. Miscellaneous Changes

As a condition of being issued a State Video Franchise, a State Video Franchise Holder must notify the Commission and affected Local Entities within 14 business days of the following:

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the State Video Franchise Holder, including but not limited to a merger, acquisition, or reorganization;

(2) A change in the State Video Franchise Holder's legal name or the adoption of, or change to, an assumed business name. Notification to the Commission shall consist of a certified copy of either of the following: (a) the proposed amendment to the State Video Franchise, or (b) the certificate of assumed business name; or

(3) A change in the State Video Franchise Holder's principal business address or the name or business address of the person authorized to receive notice on behalf of the State Video Franchise Holder.[77]

### G. Extension of Deadlines

Pursuant to Public Utilities Code section 5890(f)(1), a State Video Franchise Holder may apply to the Commission for an extension of time to meet the requirements of subdivision (b), (c), or (e) of section 5890. An application for extension shall be in the form of a formal application to the Commission, as provided in Article 2 of the Commission's Rules of Practice and Procedure. The formal application for extension must be filed as soon as practicable after the State Video Franchise Holder determines that it likely will not be able to meet one or more requirements of subdivision (b), (c), or (e), as applicable, but no

[76] *Id.* at § 5840(m)(5).

[77] *Id.* at § 5840(m).

sooner than two years from the commencement of service. In no event should the Application for extension be filed later than the earliest deadline under any of the requirements for which an extension is sought.

A formal application for extension must state good cause for the Commission to grant the extension. "Good Cause" may include, without limitation, factors beyond the control of the State Video Franchise Holder set forth in section 5890(f)(3). The formal application for extension must also state the basis on which the State Video Franchise Holder contends that it has made substantial and continuous efforts to meet the requirements of subdivision (b), (c), or (e) of section 5890, as applicable. The formal application for extension must also propose a new schedule for offering service under section 5890, and must support the reasonableness of the compliance deadlines under the proposed schedule.

The Commission will hold a public hearing on any formal application for extension. The Commission's Rules of Practice and Procedure will govern participation.

## VIII. Reporting Requirements

### A. Reports for Collection of the User Fee

Each State Video Franchise Holder shall report to the Commission annual gross revenue received from video service offered pursuant to a State Video Franchise, as of January 1 of the year in which it first was issued a State Video Franchise and each year thereafter. These reports are due to the Commission no later than April 1 of each year following the calendar year upon which the report is based.

Alternatively, any State Video Franchise Holder required to submit information and reports pursuant to Article 4 to Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code, in lieu thereof, may submit information or reports made to any other governmental agency if all of the following conditions are met: (i) the alternate information or reports contain all of the information required by the Commission; (ii) the requirements to which the alternate reports or information are responsive are clearly identified; and (iii) the information or reports are certified by the Video Service Provider to be true and correct.[78]

[78] *Id.* at § 443(b).

## B. Annual Employment Reports

### 1. Reporting Obligations Imposed on State Video Franchise Holders with More than 750 California Employees

A State Video Franchise Holder employing more than 750 total employees in California shall report to the Commission annual employment information, as of January 1 of the year in which it first was issued a State Video Franchise and each year thereafter. These reports shall include the following information:

(1) The number of California residents employed by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis.

(2) The percentage of the State Video Franchise Holder's total domestic workforce that resides in California, calculated on a full-time or full-time equivalent basis.

(3) The types and numbers of jobs by occupational classification held by residents of California employed by State Video Franchise Holders and the average pay and benefits of those jobs and, separately, the number of out-of-state residents employed by independent contractors, companies, and consultants hired by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis, when the State Video Franchise Holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor, company, or consultant that are personally providing services to the State Video Franchise Holder, and does not apply to employees of an independent contractor, company, or consultant not personally performing services for the State Video Franchise Holder.

(4) The number of net new positions proposed to be created directly by the State Video Franchise Holder during the upcoming year by occupational classifications and by

category of full-time, part-time, temporary, and contract employees.[79]

These reports shall be filed with the Commission no later than April 1 for each annual reporting period.

#### 2. Commission Reports to Legislative Committees

The Commission shall annually report the information required to be reported by State Video Franchise Holders pursuant to Rule VII.B.1 to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet website.[80]

### C. Annual Reports on Broadband and Video Services

#### 1. Reporting Obligations Imposed on State Video Franchise Holders and Their California Affiliates

Commencing on April 1, 2008 and annually no later than April 1 each year thereafter, a State Video Franchise Holder or the parent company of the State Video Franchise Holder shall report to the Commission annual information on a Census Tract basis as of January 1, 2008 and each year thereafter on the extent to which the State Video Franchise Holder and any and all of its Affiliates that operate in California provide Video and Broadband Service in the state. The Commission will afford this information confidential treatment pursuant to § 5960(d) and § 583 of the CAL. PUB. UTIL. CODE and General Order 66-C because disclosure would put a franchisee at an unfair business disadvantage. These reports shall include the following information, pursuant to the guidelines established in Appendix D and Appendix E of D.07-03-014:[56]

Wireline Broadband Information:[57]

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[79] *Id.* at § 5920(a).

[80] *Id.* at § 5920(b).

[56] For example, the first report filed April 1, 2008 would be for calendar year 2007 (January to December 2007).

[57] CAL. PUB. UTIL. CODE § 5960(b)(1).

(a) The number of Households in each census tract to which the State Video Franchise Holder and/or any of its Affiliates makes wireline Broadband available in this state. Alternatively, a reasonable approximation of the number of Households in each census tract may be submitted if the State Video Franchise Holder or its parent company is able to produce information that successfully demonstrates to the Commission (i) that the State Video Franchise Holder and/or its Affiliates do not maintain this information on a census tract basis in the normal course of business and (ii) the State Video Franchise Holder's alternate reporting methodology produces a reasonable approximation of data reported by census tract.

(b) The number of Households in each census tract that subscribe to wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state. The information should also indicate the speed of service that the subscriber obtains, based on the speed tiers adopted in *Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38 and Re*: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, March 19, 2008 and any successor decisions.

Non-Wireline Broadband Information:

(c) If a State Video Franchise Holder and/or any of its Affiliates uses nonwireline technology to provide Broadband, a list of the type(s) of technology used in each census tract.

(d) Non-wireline Broadband availability information in each census tract, in one of three forms:

i. A list of the number of Households in each census tract to which the State Video Franchise Holder and/or any of its Affiliates makes non-wireline Broadband available in this state.

ii. Using geographic information system digital boundaries that meet or exceed national map accuracy standards, maps that delineate (i) census tract boundaries and (ii) where the State Video Franchise Holder and/or any of its Affiliates typically makes non-wireline Broadband available.

iii. Another type of reasonable approximation of the number of Households in each census tract to which the State Video Franchise Holder and/or any of its Affiliates makes non-wireline Broadband available in this state. This approach may be used only if the State Video Franchise Holder or its parent company is able to produce information that successfully demonstrates to the Commission (i) that the State Video Franchise Holder and/or its Affiliates do not maintain this information on a census tract basis in the normal course of business and (ii) the State Video Franchise Holder's alternate reporting methodology produces a reasonable approximation of data reported by census tract.

A State Video Franchise Holder shall report upon the number of Households in each census tract that subscribe to non-wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state. If the State Video Franchise Holder and/or its Affiliates do not collect information by Households, then the State Video Franchise Holder shall report upon the number of total customers in each census tract that subscribe to non-wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state. The information should also indicate the speed of service that the subscriber obtains, based on the speed tiers adopted in *Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and*

*Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38 and Re*: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, March 19, 2008, or as modified by the FCC in successor decisions.

Video Information[81]

(e) If the State Video Franchise Holder and/or any of its Affiliates is a Telephone Corporation:

i The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Telephone Service Area; and

ii The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Telephone Service Area that are offered Access pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Telephone Service Area that subscribe to the Video Service offered pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

(f) If neither the State Video Franchise Holder nor any of its Affiliates is a Telephone Corporation:

i The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area; and

ii The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its

[81] *Id.* at § 5960(b)(2).

Affiliates' Video Service Area that are offered Access pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

iii. The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area that subscribe to the Video Service offered pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

Low-Income Household Information[82]

(g) The number of Low-Income Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area.

(h) The number of Low-Income Households in the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area that are offered Access pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

In accordance with Appendix E of D.07-03-014, reports on Households shall utilize the most recent U.S. Census projections available as of January 1 after the conclusion of each annual reporting period.

In accordance with Appendix E of D.07-03-014, reports on Low-Income Households shall utilize the most recent U.S. Census projections available as of January 1, 2007.

If a State Video Franchise is transferred to a successor-in-interest of the State Video Franchise Holder to which the certificate originally is granted, the transferee or its parent company shall submit to the Commission of the information required by Public Utilities Code Section 5960.[83]

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[82] *Id.* at § 5960(b)(3).

[83] *Id.* at § 5970(a).

### 2. Commission Reports to the Legislature and Governor

The Commission, no later than July 1, 2008 and annually no later than July 1 thereafter, shall submit to the Legislature and Governor a report that includes information submitted by State Video Franchise Holders as to Broadband, Video Service, and Low-Income year-end data on an aggregated basis.[84]

All information submitted to the Commission and reported by the Commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.[85] No individually identifiable customer information shall be subject to public disclosure.[86]

## D. Information on Service to Community Centers

A State Video Franchise Holder that alone or in conjunction with its Affiliates has more than 1,000,000 telephone customers in California shall report annual information, as of January 1 of the year in which its State Video Franchise is granted and each year thereafter, on the extent to which the State Video Franchise Holder makes Video and Broadband Service available at no cost to Community Centers in underserved areas, as determined by the State Video Franchise Holder. The reports shall include the following information:

(1) A list of the Community Centers in underserved areas where the State Video Franchise Holder provides Video and Broadband Service without charge.

(2) The number of video customers subscribing to the State Video Franchise Holder's Video Service.[87]

The Community Center reports shall be filed with the Commission on a date no later than April 1 after the conclusion of each annual reporting period.

## E. Annual Reports on Collective Bargaining

A State Video Franchise Holder shall report to the Commission whether its California employees are covered by a collective bargaining agreement. This report

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[84] *Id.* at § 5960(c).

[85] *Id.* at § 5960(d).

[86] *Id.*

[87] *Id.* at § 5890(b)(3).

shall be filed with the Commission on a date no later than April 1 after the conclusion of each annual reporting period.

### F. Workplace Diversity Reports

If it declines to provide workplace diversity data equivalent to that of other California Utilities Diversity Council members, any State Video Franchise Holder required to submit Employment Information Report EEO-1 filings to the federal Department of Labor shall provide the Commission a concurrent copy of all future Employment Information Report EEO-1 filings when it submits these filings to the federal Department of Labor. If they are multi-establishment employers, State Video Franchise Holders subject to this requirement shall provide the Commission EEO-1 reports that describe workplace diversity of both the parent company and its California Affiliates. The EEO-1 reports shall be filed with the Commission no later than April 1 after the conclusion of each annual reporting period.

### G. Additional Information

The Commission reserves the authority to require additional reports that are necessary to the enforcement of specific DIVCA provisions.

# ATTACHMENT B

## PROPOSED AMENDMENTS TO APPLICATIONS FOR A NEW, AMENDED OR RENEWAL CALIFORNIA STATE VIDEO FRANCHISE

**APPLICATION FOR A NEW, AMENDED OR RENEWAL**
**CALIFORNIA STATE VIDEO FRANCHISE**
**CALIFORNIA PUBLIC UTILITIES COMMISSION**

**Definitions for the purposes of this Application:**

A. "Access" means that the holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide similar two-way broad band Internet accessibility and similar video programming.
B. "Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.
C. "Applicant" means any person or entity that files an application seeking to provide Video Service in the state pursuant to a State Video Franchise.
D. "Application" means the form prescribed by the Commission through which an Applicant may apply for a State Video Franchise, ~~or~~ amend its Video Service Area, or apply for a State Video Franchise renewal.
E. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.[1]
F. "Area" means a set of contiguous (i) collections of census block groups or (ii) regions that are mapped using geographic information system technology.
G. "Broadband" or "Broadband Service" means any service defined as Broadband, or having advanced telecommunications capability, in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).[2]
H. "Census Block Group" has the same meaning as used by the U.S. Census Bureau. I. "Census Tract" has the same meaning as used by the U.S. Census Bureau.3
J. "Census Tract Basis" means pursuant to the reporting standards articulated in Appendix D and Appendix E, Section II of D.07-03-014.
K. "Commission" means the Public Utilities Commission.
L. "Company" means the Applicant and its Affiliates.

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[1] CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

[2] Id. at § 5830(a). The Federal Communications Commission currently uses the term "broadband" and "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9, 2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. *Id.*

[3] CAL. PUB. UTIL. CODE at § 5960(a).

M. "Consultant" means the third party source of census household projections including low income household projections.

N. "DIVCA" means Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).

O. "Household" means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.[4] Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.[5]

P. "Local Entity" means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.[6]

Q. "Low-Income Household" means a residential Household where the average annual Household income is less than $35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.[7]

R. "State Video Franchise" means a franchise issued by the Commission pursuant to DIVCA.[8]

S. "State Video Franchise Holder" means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.[9]

T. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.

U. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § 234.

V. "Video Service" means video programming services, cable service, or open-video system 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. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.[10]

W. "Video Service Area" means the area proposed to be served under a State Video Franchise. X.

"Video Service Provider" means any entity providing Video Service.[11]

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[4] *Id*. at § 5890(j)(1).

[5] *Id*.

[6] *Id.* at § 5830(k).

[7] *Id.* at § 5890(j)(2) (defining "low-income households" for the purposes of imposing build-out requirements).

[8] *Id.* at § 5830(p).

[9] *Id*. at § 5830(i).

[10] *Id*. at § 5830(s).

[11] *Id.* at § 5830(t).

**PLEASE TYPE ALL INFORMATION UNLESS INSTRUCTED OTHERWISE.**

**Type of Application**

1. Check as appropriate:

□ New Franchise □ Amended Franchise (Please indicate type of amendment below)
□ Increasing Video Service Area
□ Decreasing Video Service Area

□ Franchise Renewal

**Applicant Information**

2. Applicant's State Video Franchise number (if seeking an amended or renewal Franchise): _____

3. Applicant's full legal name: _____

4. Name under which the Applicant does or will do business in California: _____

5. Legal name and contact information of Applicant's parent companies, including the ultimate parent:

Parent's Full Legal Name: _____

Address: _____

Phone: _____

Parent's Full Legal Name: _____

Address: _____

Phone: _____

Parent's Full Legal Name: _____

Address: _____

Phone: _____

6. Applicant's principal place of business: _____

Address: _____

Phone: _____

7. Contact information for the person responsible for ongoing communication with the Commission about Video Service business:

Name: _____

Title: _____

Address: _____

Phone(s): Business/ Fax: _____ Email: _____ Mobile

8. Attach as Appendix A the names and titles of the Applicant's principal officers.

**Build-Out Information**

*Answer questions 9 through 12 only if the Applicant or one of its Affiliates is a Telephone Corporation. Other Applicants should go to Question 13.*

9. Does the Applicant alone or together with its Affiliates have more than 1,000,000 telephone customers in California?

Yes No

10. Does the Video Service Area include areas outside of the Telephone Service Area of the Applicant and its Affiliates?

Yes No

11. Is the Applicant primarily deploying fiber optic facilities to the customer's premise?

Yes No

12. Excluding direct-to-home satellite, is Video Service currently offered by another Video Service Provider in the Video Service Area proposed in this Application?

Yes No

**Existing Local Cable or Video Franchise Holder Information**

13. Does the Applicant alone or together with its Affiliates currently hold a local franchise, or has the Applicant held a local franchise in the Video Service Area in the last six months?

Yes No

*If "Yes," then download and complete the electronic template available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov.*

**Video Service Area Information**

Renewal Applicants: If the Applicant has already reported socioeconomic data as part of the yearly DIVCA data collection, this data does not need to be submitted again.

14. a. Utilizing the template (as applicable) provided on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov provide a geographic description of the Video Service Area and input the expected date for the deployment of each Area in the Video Service Area. Please select the method by which the geographic description shall be detailed:

A collection of U.S. Census Bureau Census Block Groups, or

o *If Applicant chooses "a," then download and complete the electronic template available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov*

A geographic information system digital boundary meeting or exceeding national map accuracy standards.

o *If Applicant chooses "b," then submit the geographic information system digital boundary as a polygon shapefile (.shp), in State Plane coordinate system in digital format electronically to the Commission*

b. If a consultant was used to compile the geographic description data, please provide the following:

Consultant Company's Full Legal Name: _____

Address: _____

Phone: _____

15. Socioeconomic status information of residents within the Video Service Area

o *If applicable, the Applicant shall provide this information utilizing the templates available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov*

a. Provide the following baseline description of residents in the Video Service Area:

i. *Number of Households*: The number of Households in each Census Tract included in the Video Service Area. Utilize the most recent U.S. Census projections of households available as of January 1 of the year the Application is submitted to determine the number of Households.

ii. *Number of Low-Income Households*: The number of Low-Income Households in each Census Tract included in the Video Service Area. Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households.

b. Provide or attest in the attached Affidavit that Applicant shall provide, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, the following description of residents in the Video Service Area on a Census Tract Basis:

i. *Wireline Broadband*:

1. The number of Households in each Census Tract to which the Company makes wireline Broadband available.

2. The number of Households in each Census Tract that subscribe to wireline Broadband that the Company makes available.

ii. *Non-Wireline Broadband*:

1. If the Company uses non-wireline technology to provide Broadband, specify the type(s) of technology used in each Census Tract.

2. The number of customers in each Census Tract that subscribe to non-wireline Broadband that the Company makes available.

3. Using geographic information system digital boundaries that meet or exceed national map accuracy standards, provide maps that delineate (i) Census Tract boundaries and (ii) where the Company typically makes non-wireline Broadband available.

iii. *Video service*: The number of Households in each Census Tract that are offered Access by the Company.

iv. *Low-Income* (Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households): The number of Low-Income Households that are offered Access by the Company.

16. Socioeconomic status information of residents within the Telephone Service Area

o *If applicable, the Applicant shall provide this information utilizing the templates available on the Communications Division's section of the CPUC's web site at www.cpuc.ca.gov.*

a. If the Applicant or any of its Affiliates is a Telephone Corporation, provide the following baseline description of residents in the Telephone Service Area:

i. *Number of Households*: The number of Households in each Census Tract included in the Telephone Service Area. Utilize the most recent U.S. Census projections of households available as of January 1 of the year the Application is submitted to determine the number of Households.

ii. *Number of Low-Income Households*: The number of Low-Income Households

in each Census Tract included in the Telephone Service Area. Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households.

b. If the Applicant or any of its Affiliates is a Telephone Corporation, provide or attest in the attached Affidavit that Applicant shall provide, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, the following description of residents in the Telephone Service Area:

i. *Wireline Broadband*:

1. The number of Households in each Census Tract to which the Company makes wireline Broadband available.

2. The number of Households in each Census Tract that subscribe to wireline Broadband that the Company makes available.

ii. *Non-Wireline Broadband*:

1. If the Company uses non-wireline technology to provide Broadband, specify the type(s) of technology used in each Census Tract.

2. The number of customers in each Census Tract that subscribe to non-wireline Broadband that the Company makes available.

3. Using geographic information system digital boundaries that meet or exceed national map accuracy standards provide maps that delineate (i) Census Tract
boundaries and (ii) where the Company typically makes non-wireline Broadband available.

iii. *Video service*: The number of Households in each Census Tract that are offered Access by the Company.

iv. *Low-Income* (Utilize the most recent U.S. Census projections of low-income households available as of January 1, 2007 to determine the number of Low-Income Households): The number of Low-Income Households that are offered Access by the Company.

17. If a consultant was used to compile the geographic description data, please provide the following:
Consultant Company's Full Legal Name: _____
Address: _____

Phone: _____

**Financial, Legal, and Technical Qualifications**
18. a. New Applicants must provide or attest in the attached Affidavit that Applicant shall provide a copy of a fully executed bond in the amount of $100,000 per 20,000 households in the Video Service Area, with a $100,000 minimum and a $500,000

maximum per State Video Franchise Holder, to the Executive Director prior to initiating video service and no later than 5 business days after the date of the Commission's issuance of a State Video Franchise to the Applicant. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

b. Renewal Applicants must have already provided to the Commission a copy of a fully executed bond in the required amount or else this Application will be considered incomplete.

**Local Entity Contact Information**

19. Utilizing the template provided on the Video Franchise main page of the CPUC website, the Applicant shall provide the contact name and information for a representative from each Local Entity within the Video Service Area.

**Application Fee**

20. Attach to this Application a check in the amount of $2,000 made payable to the "California Public Utilities Commission."

**Affidavit**

21. Complete and submit the affidavit attached as Appendix B to this Application.

**A COMPLETE APPLICATION MUST INCLUDE:**

| |
|---|
| **Completed Application form** |
| **CD(s) containing completed templates available on the Commission website** |
| **Appendix A: Applicant's Principal Officers** |
| **Appendix B: Affidavit** |
| **Check in the amount of $2,000** |

**APPLICANT'S PRINCIPAL OFFICERS**

**NAME TITLE**

**AFFIDAVIT**

STATE OF _____

COUNTY OF _____

My name is _____. I am_____(Title)

of _____(Company).

My personal knowledge of the facts stated herein has been derived from my employment with_____(Company).

I swear or affirm that I have personal knowledge of the facts stated in this Application for a California State Video Franchise to provide Video Service, I am competent to

testify to them, and I have the authority to make this Application on behalf of and to bind the Company.

New, Transfer and Renewal Applicants:
I further swear or affirm that _____[Name of Applicant] is not in violation of any final non-appealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (California Public Utilities Code Article 3.5 (commencing with § 53054) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (California Public Utilities Code Article 4.5 (commencing with § 53088) of Chapter 1 or Part 1 of Division 2 of Title 5 of the Government Code) or the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code §§ 5800 *et seq*.).

I further swear or affirm that a court of competent jurisdiction has / has not [circle one] found _____[Name of Applicant] in violation of that order.

I further swear or affirm that a court of competent jurisdiction has / has not [circle one] given _____[Name of Applicant] formal notice containing allegations that it is in violation of a final non-appealable court order.

If a court of competent jurisdiction finds that the Applicant is in violation of a non-appealable court order, it must provide, with this Application, a further court order or ruling demonstrating that the violation has been cured, if one exists. If no such order exists, the Applicant must attest to the following:
I further swear or affirm that _____[Name of Applicant] has cured the violation of a non-appealable court order.

All Applicants:
I further swear or affirm that _____
[Name of Applicant] shall fulfill the following requirements:

1. Applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering Video Service in this state.

2. Applicant agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.

3. Applicant will concurrently deliver a copy of this Application to any Local Entity in the Video Service Area.

4. Applicant possesses the financial, legal, and technical qualifications necessary to

construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by Applicant.

5. If it has not done so in the Application, or has not submitted socioeconomic data during this year, Applicant shall provide the Commission, no later than 90 calendar days after the date of the Commission's issuance of a State Video Franchise to the Applicant, a complete description of residents' socioeconomic status information, as required by and detailed in Questions 14 and 15 of the Application.

6. If it has not done so in the Application, Applicant shall provide a copy of a fully executed bond In the amount of _____to the Executive Director prior to initiating video service and no later than 5 business days after the date of Commission issuance of a State Video Franchise to the Applicant,. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

I further swear or affirm that _____
[Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

1. As provided in Public Utilities Code § 5890, Applicant will not discriminate in the provision of Video Service.

2. Applicant will abide by all applicable consumer protection laws and rules as provided in Public Utilities Code § 5900.

3. Applicant will remit the fee required by California Public Utilities Code § 5860(a) to the Local Entity.

4. Applicant will provide public, educational, and governmental access channels and the required funding as required by Public Utilities Code § 5870.

5. Applicant and any and all of its Affiliates' operations in California now and in the future shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940. Applicant specifically attests to the following:

a. Reporting Requirements: Either (i) Applicant or (ii) the parent company of Applicant shall produce Commission-mandated reports for and on behalf of Applicant and any and all of its Affiliates that operate in California. Only one report required pursuant to Public Utilities Code §5960 shall be filed annually, such report to include all pertinent data for the Company.

b. Antidiscrimination:

i. If Applicant and its Affiliates together have more than 1,000,000 telephone customers in California, Applicant shall satisfy the build-out requirements set forth in Public Utilities Code § 5890(b) & (e).

ii. If Applicant and its Affiliates together have less than 1,000,000

telephone customers in California, Applicant shall satisfy any build-out requirements established pursuant in Public Utilities Code § 5890(c).

c. Cross-subsidization: If Applicant or its Affiliates provide stand-alone, residential, primary-line basic telephone service, Applicant shall refrain from using any increase of the rate of this service to finance the cost of deploying a network to provide video service.

d. "Affiliate," as referenced herein, means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

6. Applicant shall fulfill all other requirements imposed by the Digital Infrastructure and Video Competition Act.

7. _____ [Name of Applicant] is a single identifiable entity that is qualified to do business in California and has verifiable assets. This entity shall accept service of process, either directly or through an agent, and submit to the jurisdiction of California courts.

I swear or affirm that all of the statements and representations made in this Application are true and correct.

Signature and title_____

Typed or printed name and title_____

**AFFIDAVIT**

State of California

County of _____

Subscribed and sworn to (or affirmed) before me on this _____day of

_____ 20_____,

by, _____personally known to me or

proved to me on the basis of satisfactory evidence to be the person(s) who appeared

before me.

Seal _____

Signature _____

**(END OF ATTACHMENT B)**