



FILED

6-23-14

04:59 PM

Verizon California Inc. (U1002C) (“Verizon”) submits its Reply Comments on the Proposed Decision of President Peevey regarding franchise renewals under the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”) (hereinafter “PD”). These reply comments are filed pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure.

DISCUSSION

The Office of Ratepayer Advocates (“ORA”), in its opening comments, objects to the PD and argues that the franchise renewal process must consider a host of issues for each renewal applicant, including whether the applicant has complied with DIVCA; the applicant’s service quality and billing practices; and the future cable-related needs of each locality. ORA Opening Comments at 5-6.

The ORA is wrong. First, as Verizon and others have explained in previous comments, and as the PD holds, the franchise renewal process in DIVCA is intended to be ministerial. *See, e.g.*, DIVCA § 5850 (criteria and process described in Section 5840 [for initial applications] shall apply to a renewal registration); Senate Floor Analysis of AB 2897 at 3 (Aug. 28, 2006) (“Unlike the local franchising process, the state-franchising process is intended to be largely ministerial.”); Verizon Reply Comments at 1 (filed August 12, 2013). ORA’s proposal would nullify DIVCA by replacing a largely ministerial process with potentially hundreds of administrative hearings that could impose dramatically different obligations upon different providers in different areas of the state. If the Legislature intended to nullify DIVCA in this way during the renewal process, it would have said so.

Second, ORA’s claim that the renewal process should address an applicant’s past performance – including performance relative to PEG access, customer service, DIVCA’s anti-discrimination and build-out requirements, and cross-subsidization – also conflicts with the plain language of DIVCA, which explains when and how an affected party may investigate (and, if necessary, litigate) compliance. For example, DIVCA § 5870(p) provides that a “court of competent jurisdiction” – *not* the Commission – shall have “exclusive jurisdiction” to resolve disputes over PEG channel obligations. Similarly, DIVCA § 5900 explains in detail how local entities address and enforce customer service and protection standards, and provides in subsection (h) that judicial review of any local entity decision shall be held in a “court of

appropriate jurisdiction,” which “shall conduct a de novo review of any issue presented.” Again, this is an issue for a court, not for the Commission in a renewal proceeding.

In short, contrary to ORAs’ claim, DIVCA does not require, nor does it allow, an applicant’s past performance or compliance with DIVCA to be considered during renewal.

Third, ORA’s proposal would unlawfully expand ORA’s authority to advocate on behalf of video subscribers. DIVCA § 5900(k) gives ORA the authority to advocate on behalf of video subscribers for three narrow issues: renewals; the discrimination and build-out requirements in § 5890; and basic rate increases under § 5950. Under ORA’s proposal, the ORA would have the authority to advocate on *any* issue related to *any* requirement of DIVCA during a renewal proceeding, thereby nullifying the express limitations in 5900(k). The Legislature could not have intended this result.

Finally, ORA argues (at pages 10-11) that it has no procedural vehicle for advocating on behalf of video subscribers under § 5900(k) except for the renewal process. Here, too, ORA is wrong. Indeed, the Commission already addressed this issue in its Phase I DIVCA decision, where it explained that ORA (then known as DRA) has a number of ways to act:

Concerning DRA’s ability to fulfill its statutory obligations under DIVCA, we find that DRA possesses ample avenues under DIVCA whereby DRA can fulfill its statutory obligations. First, DRA can always write a letter bringing a matter to the attention of the Commission, which then will be able to determine the appropriate steps to take. If the Commission opens an investigative proceeding, DRA would be able to participate fully in the proceeding. Second, DRA can partner with a local entity to bring a joint complaint before this Commission. Third, under DIVCA, DRA can protect consumers by bringing consumer protection matters before local entities or courts of competent jurisdiction, as DRA deems appropriate. Fourth, DRA can participate fully in any enforcement action or investigation independently initiated by the Commission.

D.07-03-014 at 223.

In sum, the Commission should reject ORA's attempts to rewrite or ignore DIVCA, and should adopt the PD.

June 23, 2014

Respectfully submitted,



Charles H. Carrathers
Registered In-House Counsel
State Bar of California, #801439
2535 W. Hillcrest Drive, CAM21LB
Newbury Park, CA 91320
Telephone: (805) 375-4374
Facsimile: (805) 498-5617
chuck.carrathers@verizon.com

Attorney for Verizon