

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband Policy and Analysis Branch**

**RESOLUTION T-17387
March 21, 2013**

R E S O L U T I O N

Resolution T-17387. ADOPTING ANNUAL FEE TO IMPLEMENT THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT (DIVCA) FOR FISCAL YEAR 2012-13.

Summary

This Resolution sets the annual fee for the fiscal year 2012-2013 to be paid by each video franchise holder at \$0.0373822 (3.73822 cents) per household in its video franchise territory. This is a 12% decrease from 4.23 cents per household last year. This fee will generate revenue equal to the Commission's authorized budget for implementation of AB 2987, the Digital Infrastructure and Video Competition Act.

Background

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) was signed into law on September 29, 2006, creating for the first time a process for the issuance of state video franchises in California.¹ On March 1, 2007, the Commission issued D. 07-03-014 (DIVCA Decision)², implementing DIVCA, and began accepting video franchising applications immediately thereafter. At the end of 2012, the Commission had issued 174 video franchises and amendments.

¹ AB 2987, 2005-2006 Session (Ca. 2006); Cal. Pub. Util. Code, Division 2.5, The Digital Infrastructure and Video Competition Act of 2006 (DIVCA).

² *Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Decision 07-03-014, *Rulemaking for Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006* (Cal. P.U.C. March 3, 2007) (D. 07-03-014).

DIVCA requires the Commission to collect annual fees from all state-issued video franchise holders.³ The total amount of fees collected is to equal the amount authorized in the Commission budget for DIVCA implementation. For the 2012-2013 fiscal year, \$950,000 was authorized to implement the state video franchise program.⁴ The DIVCA Decision provided that the annual fee for each video franchisee, after the initial year, was to be calculated based on the percentage of all state video franchise holders' gross state video franchise revenues that is attributable to an individual state video franchise holder.⁵ The fee was to be calculated based on the revenue reported for the prior calendar year.

It became apparent that allocating the annual fee based on holders' revenues was not an equitable approach, given the allocation of revenues among holders during the early phases of DIVCA implementation. Accordingly, the CPUC adopted D. 09-04-011, modifying D. 07-03-014, to provide for setting the annual fee based on a pro-rata allocation of households in holders' video service territories, rather than according to revenues, through the 2012-2013 fiscal year.⁶

Discussion

This Resolution sets the annual fee due per household in a video franchise holder's service area for FY 2012-2013 consistent with the D. 09-04-011.

The total number of households that existed in the franchise territories of all franchise holders as of December 31, 2011 was 25,413, 155. This number increased by 2,971, 537 or about 13% from last year's total.

³ Cal. Pub. Util. Code § 441, as added by AB 2987, reads, in part, as follows:

441. The commission shall annually determine a fee to be paid by an applicant or holder of a state franchise pursuant to Division 2.5 (commencing with Section 5800). The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year to carry out the provisions of Division 2.5 (commencing with Section 5800)....

⁴ Decision 07-03-014, p. 115.

⁵ Decision 07-03-014, pp. 122-123

⁶ *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, Decision 09-04-011, *Decision Modifying Decision 07-03-014* (Cal. P.U.C. April 16, 2009), Ordering Paragraph 1, pp. 7. ("1. Decision 07-03-014 and General Order 169 are modified to adopt a user fee process for Fiscal Year 2008-2009 to Fiscal Year 2012-2013 to allocate the Digital Infrastructure and Video Competition Act of 2006 implementation costs based on a pro-rata share of the number of households in each state franchise holder's video service territory.")

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In order to generate the \$950,000 authorized for the Commission's Fiscal Year 2011-2012 DIVCA-related budget, the amount due per household is \$0.0373822. This is an 12% decrease from \$0.0423 per household last year and a 10% decrease from \$0.0417 the year before last.

Appendix A lists each of the franchise holders as of December 31, 2011, the number of households in their service area, and their total annual fee for the 2012-2013 fiscal year.

The Commission will send all video franchise holders fee statements after adoption of this Resolution. Video franchise holders with franchises issued any time on or prior to June 30, 2013 are required to pay the annual fee for the full Fiscal Year 2012-13. Video franchise holders with franchises issued on or before the date of this Resolution must pay their annual fees for Fiscal Year 2012-13 before April 30, 2013. Holders of franchises granted after the date of the Resolution shall pay the fee amount to the Commission within 60 days after the issuance of their franchise or by June 30, 2013, whichever is earlier.

Safety Considerations

Given that this resolution is focused on the amount of the annual fee for video franchise holders, Staff does not anticipate that any safety issues will be directly impacted by this action.

Comments

The Communications Division did not receive comments from parties of record in R06-10-005.

Notice

In compliance with PU Code Section 311(g), a copy of this proposed Resolution was either mailed or e-mailed to all parties of record in R. 06-10-005 on January 25, 2012.

Findings:

1. AB 2987, the Digital Infrastructure and Video Competition Act requires the Commission to calculate, and holders of state-issued video franchises to pay, an annual fee.
2. The annual fee for fiscal year 2012-2013 is to be calculated based on each holder's pro-rata share of households in franchised video territories, in accordance with D. 09-04-011.
3. Fees in the aggregate are to equal the Commission's authorized budget for implementation of DIVCA requirements.
4. The total number of households in all Holders' video franchise territories as of December 31, 2011 was 25,413,155. This is a 13% (2,971,537) increase from 22,441,618 last year.
5. The Commission's authorized DIVCA-related budget for the fiscal year 2012-2013 is \$950,000.
6. A fee of \$0.0373822 per household is reasonably calculated to collect an amount equal to its DIVCA-related budget for the 2012-2013 fiscal year.
7. A schedule of fees based on franchises issued by December 31, 2011 is attached as Appendix A.
8. The Commission will send fee statements to existing holders of state video franchisees upon approval of this Resolution.
9. Parties of Record in R. 06-10-005 were provided with notice of this Resolution in accordance with PU Code Section 311(g).

THEREFORE, IT IS ORDERED that:

1. Holders of state video franchises granted on or before the date of this Resolution shall remit to the Commission the amount indicated in their fee statements by April 30, 2013.
2. Holders of state video franchises granted after the date of this Resolution shall remit their fee payment to the Commission within 60 days after the issuance of their franchise, or June 30, 2013, whichever is earlier.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on March 21, 2013. The following Commissioners approved it:

/s/ Paul Clanon

PAUL CLANON

Executive Director

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

CARLA J. PETERMAN

Commissioners

Appendix A– Fiscal Year 2012-2013 Annual Fee Assessment Based on the Number of Households in Video Franchise Area

	Company Name	Households in Service Area	Fee Assessment
1	AT&T CA	10,089,239	\$377,158
2	Access Cable Corporation	10,780	\$403
3	Astound Broadband LLC	419,422	\$15,679
4	Audeamus, LLC (Sebastian)	6,860	\$256
5	Baldwin County Internet / DSSI Service, LLC	2,015	\$75
6	Bright House Networks, LLC	2,243	\$84
7	Cable USA (Antilles Wireless, LLC)	3,182	\$119
8	Cableview	3,832	\$143
9	Calaveras Cablevision (Cal Tel Connections)	3,248	\$121
10	CalNeva Broadband, LLC	3,485	\$130
11	Champion (CBC Broadband Holdings)	46,981	\$1,756
12	Charter Communications, Inc.	1,731,828	\$64,740
13	Comcast Cable Communications Management, LLC	3,392,890	\$126,834
14	CoxCom, Inc.	1,350,896	\$50,499
15	Google fiber California, LLC	6,284	\$235
16	Greenfield Communications, Inc.	2,961	\$111
17	Horizon Cable TV, Inc.	7,665	\$287
18	Lone Pine	1,055	\$39
19	Media 3	11,313	\$423
20	Mediacom California, LLC	110,966	\$4,148
21	Northland Cable Television, Inc.	13,585	\$508
22	Redwood IPTV	117,817	\$4,404
23	Sonic	30,324	\$1,134
24	Suddenlink Communications (NPG Cable, LLC)	21,004	\$785
25	Surewest	316,772	\$11,842
26	Time Warner Pacific West, LLC	4,898,317	\$183,110
27	Verizon	2,759,340	\$103,150
28	Volcano Vision, Inc.	27,557	\$1,030
29	Wave Division VI, LLC	21,294	\$796