BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

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

1. Summary

The California Public Utilities Commission (Commission) initiates this rulemaking to amend General Order 169 and to establish procedures for implementing the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), Assembly Bill 2987 (Ch. 700, Stats. 2006).[1] In this rulemaking, we identify a number of issues pertaining to the process for renewal of DIVCA franchises, and we ask how we might resolve them. In their comments, parties may raise objections, seek clarification, or offer their own proposals. Parties need not limit their comments to the issues identified here; parties also may identify issues we may have overlooked, but which the commenting party considers essential with respect to the establishment of a video franchise renewal process.

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 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,

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

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

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 "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 is initiated to establish video franchise renewal procedures.

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[3] *Id.* at § 5810(a)(1)(A).

[4] *Id.* at § 5810(a)(1)(D).

[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).

3. DIVCA Provisions for Renewal of State-Issued Video Franchises

The procedures and criteria for renewing a state-issued video franchise are set forth in Pub. Util. Code § 5850(a)-(d).[8]

Section 5850(b) states 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." In other words, notwithstanding the phrase "except as provided in this section," DIVCA envisions a streamlined renewal process analogous to the initial authorization for a state-issued franchise under § 5840.[9]

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

[9] The process for obtaining a state-issued franchise is set forth in DIVCA § 5840(a)-(q). The specific rules implementing this section of DIVCA are included in the Commission's General Order (GO) 169. An applicant may request a state-issued franchise by completing an application form that requires it to list its name, address, and telephone number of its principle place of business; the names and titles of the applicant's principle officers; the legal name, address, and telephone number of the applicant's parent company; a description of its video service area footprint; its expected date of deployment; information regarding the socioeconomic status of the residents within its video or telephone service area footprint; and if it is a telephone company, a description of the territory in which it provides telephone service.

In addition to completing the application form, the applicant is also required to submit an affidavit signed under penalty of perjury attesting to the following: that it has or will file all forms required by the Federal Communications Commission (FCC) before offering video service; that it agrees to comply with all federal and state statutes, rules, and regulations, and that it agrees to comply with county or city regulations regarding time, place and manner of use of the public right-of-way. It is also required to agree to specific DIVCA requirements. Furthermore, the applicant is required to post a bond as demonstration that it possesses the legal, financial, and technical capabilities to construct and operate a system capable of providing video services. Upon filing the application, the applicant is required to pay a fee of $2,000. If the application is complete and the applicant is deemed eligible to apply for state video franchise, the Executive Director of the Commission will issue state video franchise to the applicant.

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Section 5850(c) states that the renewal process must be consistent with federal laws and regulations, which we interpret to mean that the process we adopt in the course of this proceeding for renewing existing franchises must be consistent with federal laws governing the renewal of cable television franchises. Additionally, § 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 ask whether §§ 5850(b) and (c) could be interpreted as requiring that the process for renewing state-issued franchises should 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. Furthermore, to the extent it is necessary to modify our procedures, does DIVCA require us to make only the minimum modifications necessary to make the process consistent with §§ 5850(b) and (c)?

In the sections of this rulemaking that follow, we provide an analysis of federal law governing the renewal of existing cable television franchises and DIVCA's renewal provisions. As part of this analysis we also consider DIVCA's prohibition against renewing the state-issued franchise of any video service provider which is in violation of a final nonappealable court order and ask whether any modifications to the streamlined renewal process, identified in § 5850(b), are necessary to comply with of §§ 5850(c) and (d).

We recognize that our effort to reconcile DIVCA with the federal laws governing cable franchise renewals may cause some video service providers to claim that they are not cable operators and, therefore, neither federal law nor the

rules we will propose in the course of this proceeding to reconcile DIVCA's renewal process with federal law apply to them. Do DIVCA and/or Commission precedent require us to apply our rules uniformly to all video service providers, irrespective of whether a video service provider is or is not a cable operator?[10] Could the Legislature's assertion that the video franchising process should "create a fair and level playing field for all market competitors that does not disadvantage or advantage any one service provider or technology over another" mean that the rules implementing DIVCA should be applied equally to all video service providers?[11] We seek comment in response to these questions.

3.1. Consistency of the streamlined renewal process identified in § 5850(b) with federal law governing cable television franchises

3.1.1. Summary of the federal formal and informal renewal processes

The federal Cable Communications Policy Act of 1984 (Cable Act) establishes federal video franchise renewal standards.[12] The Cable Act contains what is commonly referred to as a formal and informal process. The formal process is set forth in 47 U.S.C. § 546(a)-(g) while the informal process is set forth in subsection (h).

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[10] In other words, if under DIVCA, we must apply our rules equally to all video service providers, the issue of whether or not a video service provider is a "cable operator" is not relevant to this proceeding. Therefore, it would be unnecessary for the Commission to take a position on this issue in the current proceeding.

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

[12] 47 U.S.C. § 546(a)-(h).

The formal process is not mandatory, but may be invoked by either the franchise authority or the cable operator.[13] Once the process is invoked, the franchise authority must commence a proceeding to identify the future cable related needs of the community and review the cable operator's performance under the existing franchise.[14] For ease of reference, and to distinguish this proceeding from that prescribed by 47 U.S.C. § 546(c) (described below), we shall call this the "ascertainment phase." During this phase, the franchise authority must provide the public with notice of the proceeding and an adequate opportunity to participate.[15] After this phase, the franchise authority can require the cable operator to submit a renewal proposal and can specify its contents.[16] In the alternative, the cable operator may submit a proposal on its own initiative.[17] Within four months from the date the proposal is submitted, the franchising authority may grant renewal or decide on a preliminary basis not to renew the franchise.[18]

If it denies renewal, the franchise authority is required to conduct an administrative proceeding to consider whether: 1) the cable operator has substantially complied with the terms of the existing franchise and applicable law; 2) the quality of the operators service, including signal quality, response to consumer complaints, and billing practices, have been reasonable in light of

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[13] 47 U.S.C. § 546(a).

[14] Id.

[15] Id.

[16] *Id.* at § 546(b).

[17] Id.

[18] *Id.* at § 546(c).

community needs; 3) the operator has the financial, legal and technical ability to provide the services, facilities and equipment set forth in its proposal and; 4) the operator's proposal is reasonable to meet the future cable related needs of the community.[19] The cable operator must receive adequate notice of the proceeding and both it and the franchise authority must be given a fair opportunity to fully participate, including the right to request the holding of evidentiary hearings.[20]

Following the proceeding, the franchise authority must issue a written decision granting or denying renewal.[21] The decision must be based on the record.[22] A failure to meet any of the four criteria mentioned above is a sufficient basis for denying renewal; however, the franchise authority cannot deny renewal based upon a failure to perform under the existing franchise unless it has provided the cable operator with notice and the opportunity to cure.[23] The cable operator may appeal a decision to deny renewal, either on procedural grounds or by claiming that the franchise authority's findings are not supported by a preponderance of the evidence.[24]

In contrast, the informal process permits a cable operator to submit a proposal for renewal to the franchise authority at any time, and a franchise authority may, after providing public notice and opportunity to comment, accept

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[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] *Id. at* § 546(d).

[24] Id.

or reject it.[25] In practice, the informal process accommodates the negotiating process which historically has been the principle means by which cable operators have renewed their franchises. While the vast majority of franchises have been renewed informally, cable operators have historically invoked the formal process routinely to preserve their due process rights in the event a cable operator fails to reach an agreement with its franchise authority before its existing franchise expires.

The Cable Act does not mandate that a franchise authority or cable operator use the formal process instead of the informal process or vice versa. Legislative history suggests that the formal process standards and procedures are available for the cable operator or franchise authority to initiate "if necessary."[26] Indeed, in many situations both processes are utilized simultaneously. However, as noted above, this is because historically franchises have been renewed via a negotiating process between the cable operator and the franchise authority, and legislative history indicates that the formal process was established as protection to the cable operator against unfair denial of renewal by the franchise authority.[27]

Should DIVCA, be read to include a negotiation process for renewals, similar to the local franchising regime? Or would it be more proper to determine that the Legislature has replaced that regime with a new state video franchising process in which the statute identifies all the video-related obligations that video service providers must fulfill in relationship to the communities included within a video service provider's franchise. Is the streamlined process envisioned by

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[25] *Id. at* § 546(h).

[26] H.R. Rep. No. 98-934, at 72 (1984).

[27] *Ibid.*

Pub. Util. Code § 5850(b) consistent with the informal process outlined in 47 U.S.C. § 546(h)? If not, what modifications would make it consistent with federal law? Lastly, is a formal renewal process necessary? If so, how should it be reconciled, not only with DIVCA, but also with the Commission's procedures? We ask parties to comment on these questions.

3.1.2. The Commission's authority under 47 U.S.C. § 546 to renew franchises

Under federal law, the power to renew a franchise vests with the franchising authority.[28] However, nothing requires that the authority be a local authority. Section 522(10) of the Cable Act defines a franchise authority as a governmental authority empowered by Federal, State, or local law to grant a franchise. Moreover, 47 U.S.C. § 522(9) defines the term franchise as "an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to § 546 of this title), issued by a franchise authority whether that authority is designated as a franchise permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system." Thus, DIVCA's designation of the Commission as the sole franchising authority in the state and, therefore, as the sole entity authorized to issue and renew state-issued franchises, is consistent with 47 U.S.C. § 546.

[28] 47 U.S.C. § 546.

3.1.3. Consistency of the renewal process set forth in Cal. Pub. Util. Code § 5850(b) with the federal informal process in 47 U.S.C. § 546(h)

We ask whether the streamlined renewal process set forth in Cal. Pub. Util. Code § 5850(b) is generally consistent with the informal process identified in 47 U.S.C. § 546(h), with the exception of the notice and comment requirement. Or does 47 U.S.C. § 546(h) identify other criteria that a franchise authority must take into account in making this decision? Could section 546(h) be read as not specifying either the form or content of a renewal proposal? Does the federal statute give any specifications for franchise renewal procedures under the informal process that contradicts the renewal process outlined in Pub. Util. Code § 5850(b)? What other modifications could be included to make the streamlined renewal process consistent with federal law? If parties do not believe that these two processes can be reconciled, we ask for alternatives that would ensure consistency with federal law.

We realize that the affidavit and application form[29] DIVCA requires for the renewal of a video service franchise is different from the kind of proposal that cable operators historically have submitted during renewal negotiations. Such proposals are often detailed plans covering all aspects of cable television franchise aimed at meeting the cable related needs of the community as defined by the franchise authority. Those proposals served as the starting point for

[29] In today's decision, we propose to revise the current definition of "application" in GO 169 to be limited to a request to the Commission for a grant, amendment, or renewal of a State Video Franchise. Thus, the term "application" as used in this decision and GO 169 means a State Video Franchise Application, and not a formal application to the Commission as provided in Article 2 of the Commission's Rules of Practice and Procedure.

negotiations which, if successful, would lead to an agreement resulting in the renewal of the franchise.

In contrast, under DIVCA there are no negotiated agreements.[30] Is this the case because DIVCA, rather than a franchising authority, has identified all the video-related obligations that video service providers must fulfill in relationship to the communities encompassed within a video service provider's franchise, both with respect to an initial franchise and one subject to renewal?[31] Did the legislature codify these obligations in order to further its goal of promoting competition for video and broadband services which it determined to be a matter of statewide concern?[32] If so, would it be proper to determine that proposals submitted under DIVCA are, for the most part, limited to an agreement by a video service provider to be bound by the terms of a renewed franchise defined by DIVCA? We seek further comment on what kind of proposal would be consistent with both DIVCA and federal law.

We note that when the Cable Act was enacted in 1984, Congress acknowledged that some states had elected to define certain terms of cable television franchises in statute. For example, the House of Representatives Report states that, "some states have also acted to regulate the cable television franchise process… -indirectly through state statutes specifying the terms on which a municipality may grant and enforce a franchise."[33] In these states, it is likely that the renewal proposals a cable operator submitted to a franchise

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[30] Cal. Pub. Util. Code §§ 5800 *et seq*.

[31] *Id.*

[32] Cal. Pub. Util. Code § 5810.

[33] H.R. Rep. No. 98-934 at 23 (1984).

authority reflected the franchise terms that were defined in statute. Is there a difference in principle between these proposals and the application and affidavit required under DIVCA's streamlined renewal process in which the video service provider agrees to be bound by the franchise terms defined by DIVCA?

Further, is the criteria for approval of a video service provider's franchise renewal application under DIVCA consistent with 47 U.S.C. § 546(h), which permits a franchising authority to accept or reject a renewal proposal "at any time?" DIVCA mandates that we grant a video service provider's proposal or request so as long as the franchise renewal application is complete and the video service provider is not in violation of a final nonappealable court order issued pursuant to DIVCA.[34] Is this provision consistent with 47 U.S.C. § 546(h)? If not, what changes could we make to ensure consistency with both 47 U.S.C. § 546(h) and DIVCA?

3.1.3.1. Final Nonappealable Court Order

Section 5850(d) states that the Commission "shall not renew the franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this section." Is the Commission the proper arbiter of whether a video service provider is in violation of a final nonappealable court order? Or does the court issuing such an order have primary jurisdiction to enforce that order and determine whether its order has been violated? Is it compatible with the streamlined renewal process envisioned by DIVCA in § 5850(b) to have the Commission engage in the legal or factual analysis required to determine whether a video service provider is in violation of a final nonappealable court order? Determining whether a video service provider is in violation of a final

nonoappealable court order could prove to be a very fact-intensive undertaking. Disputes may arise over what obligations the court order actually required. In other instances, determining whether a violation exists could be difficult because the order required a video service provider to make complex changes to its network or operating practices, and parties may dispute whether those changes have been completed. Would a party seeking to enforce a court order necessarily need to return to that court for a determination that the video service provider is in fact in violation? Should we require a showing that a court of competent jurisdiction has found the video service provider to be in violation of a previous court order in order to find that a video service provider "is in violation of a final nonappealable court order"?

Consistent with the requirements of DIVCA, we must ensure that we do not renew a franchise under our streamlined process because we were unaware of a violation of a nonappealable court order. At the same time, we must do so in a way that relies upon objective and readily verifiable facts to ensure the renewal process remains streamlined. Accordingly, would an acceptable method of enforcing § 5850(d) be to require that the applicant must disclose in its affidavit in support of its application for renewal (1) whether or not a nonappealable court order has been has been issued against it during the term of its existing franchise; (2) whether a court of competent jurisdiction has found that it has violated that order; and (3) whether it has received formal notice from a court of competent jurisdiction containing allegations that it is in violation of that order? If we were to do so and if the answer to the first two questions is yes, should the entity be required to further demonstrate that the violation has been cured? Should the

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[34] Cal. Pub. Util. Code § 5850 (b).

Commission be the arbiter of this question? Or should the entity provide a further court order or ruling demonstrating that the violation has been cured? If the entity cannot demonstrate that the violation has been cured to the court's satisfaction, does § 5850(d) require us to deny the application for renewal?

In some cases a court may not have found the entity to be in violation of a final nonappealable court order, but a dispute may be active before a court of competent jurisdiction. In those cases, would the entity seeking renewal be in violation of such order at the time the franchise renewal application is submitted? If there is an ongoing dispute at the time of renewal, should we grant the franchise renewal application with the condition that the franchise may later be revoked if a court later finds the entity to have been in violation of a final nonappealable court order.

Would this is approach which relies on objective and readily verifiable criteria be consistent with the streamlined process DIVCA envisiones? Does the approach ensure that an applicant is not denied access to the informal renewal process based on merely anecdotal allegations of a violation of a nonappealable order? What other methods could be used to determine whether a video service provider is in violation of a final nonappealable court order? Do we have the authority under § 5890(g) to suspend or revoke the franchise of a video service provider at any time if we find that provider was in violation of a nonappealable court order at the time its franchise renewal application was granted, particularly if we find that it was granted renewal by relying on a misstatement or omission?[35] We seek comment on how to modify the streamlined renewal

[35] D.07-13-014, *mimeo* at 177-178.

process to address the requirement that a video service provider's franchise shall not be renewed if it is in violation of a final nonappealable court order.

3.1.3.2. Public Notice and Opportunity for Comment

While 47 U.S.C. § 546(h) permits a franchising authority to grant or deny a proposal "at any time," it requires that before making this decision, the public be provided with notice of the proposal and the opportunity for comment. Even though the streamlined process referenced in Pub. Util. Code § 5850(b) does not contemplate a notice and comment period, DIVCA instructs us to make the renewal process consistent with federal law.[36] Must our rules be supplemented to allow for notice and comment in order to make this process consistent with 47 U.S.C. § 546(h)? Has DIVCA, as opposed to the Commission, already defined the obligations of video service providers to the communities included within each franchise? If so, does DIVCA require that the scope of these comments be limited to the completeness of the video service provider's franchise renewal application? While there is scant legislative history concerning 47 U.S.C. § 546(h), is it reasonable to conclude that the notice and comment provisions included in this section were intended as a check against potential abuse of discretion by a franchise authority which might otherwise accept or reject a negotiated agreement that was not in the interest of the community? If DIVCA, rather than a franchise authority, intended to establish the terms of franchises and the needs of the public, would comments which go beyond the completeness of an application comport with this intent?

[36] Cal. Pub. Util. Code § 5850(c).

If a notice and a comment period is required, what kind of notice requirement should be implemented? Would it be sufficient for an applicant to serve a copy of the franchise renewal application upon the service list for this docket as well as the appropriate contact person for each local entity where the applicant provides service? Should the franchise renewal application also be posted on the Commission's web page, along with instructions for the submission of comments? Pub. Util. Code Section 5850(b) states, "[e]xcept as otherwise 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." Applications for the issuance of an initial franchise are to be processed within 44 days. Considering this, would 15 days after the date the franchise renewal application is served upon the appropriate parties be an appropriate deadline for parties to submit comments to the Commission? If more than 15 days are required, how should the timeframe for processing and approving applications for the issuance of franchises be modified to accommodate the comment process? Is extending the timeframe for processing and approving applications to accommodate the comment process consistent with § 5850(b)? If not, how could the process be modified to reconcile DIVCA with federal law? Does § 5850(b) also require comments to be submitted to the Commission's Video Franchise Group instead of the Commission since applications for the issuance of initial franchise are submitted to that group? We seek comment on these questions.

3.1.3.3. Timing of Renewal Submission

Finally, 47 U.S.C. § 546(h) states that a cable operator may submit a proposal for renewal at any time. Can this be interpreted to mean that a cable operator can submit a proposal for renewal within any reasonable time before its

existing franchise expires and that a franchise authority must act on the proposal? Would accepting proposals for renewal under our streamlined process no later than three months prior to the date a video service provider's existing franchise expires be reasonable? How should this timeline be adjusted to accommodate the possibility that a video service provider might invoke the formal process?

3.1.4. Consistency of the renewal process set forth in § 5850(b) with the federal formal process set forth in 47 U.S.C. § 546(a) - (g)

As noted above, historically, the vast majority of franchise renewals have been the product of informal negotiations between a franchise authority and a cable operator. Despite the fact that cable operators historically have used the informal process to renew the vast majority of existing franchises, they have often simultaneously invoked the formal process under 47 U.S.C. § 546(a)-(g) to preserve their due process rights in the event that negotiations fail to achieve an agreement before their existing franchise expires. This is because under the federal formal process, a franchise renewal cannot be denied unless certain conditions are met and because the process guarantees cable operators the right to appeal a decision to deny renewal.[37]

However, the federal formal process represents a substantial departure from the renewal process DIVCA explicitly contemplates. In contrast to the renewal process DIVCA envisions, the federal formal process conditions renewal of an existing franchise on a procedurally-intensive review of a video service provider's past performance under its existing franchise as well as an assessment

[37] 47 U.S.C. § 546.

of the video service provider's plans to meet the future cable related needs of the communities the video service provider serves.[38] Moreover, because the formal process would potentially require the Commission to make findings regarding all aspects of a video service provider's franchise operations under DIVCA, it is a challenge to implement in a manner that preserves DIVCA's division of regulatory authority between the Commission and local entities.[39]

Would a video service provider choose the formal process over the renewal process contemplated by DIVCA even though the DIVCA renewal process does not require any assessment of the future cable related needs of the community or any review of past performance, other than in cases of violations of final nonappealable court orders? Would a violation of a nonappealable court order, still be sufficient grounds for Commission to deny renewal where the formal process requires the consideration of past performance? If so, would a video service provider find value in invoking the formal process? Or would conducting a procedurally intensive formal process be a superfluous exercise?

Federal law does not *mandate* the use of the formal process. Given the difficulties and considerable demands that would be placed upon the Commission's resources in establishing such a procedure, if video service providers do not envision invoking the formal process, is it necessary at this time to establish rules for such a process?[40]

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[38] 47 U.S.C. § 546; Cal. Pub. Util. Code § 5850.

[39] 47 U.S.C. § 546(d).

[40] Although the Commission has the discretion under 47 U.S.C. § 546(a)(1) to invoke the formal process, to do so would result in a departure from the streamlined renewal process which Pub. Util. Code § 5850(b) envisions as the exclusive means for renewing a state issued franchise. In addition, since the formal process requires a review of the

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We seek comment on these questions. In addition, if parties recommend the establishment of a formal process, they should include supporting practical and legal rationales and procedural details describing how such a process would be implemented in a manner that is consistent with our rules and orders, the requirements of DIVCA, and 47 U.S.C. § 546(a)-(g). In addition, parties should address the issues listed below.

3.1.4.1. Division of Regulatory Authority Between the Commission and Local Entities

Under the formal process, would the Commission be required to issue a written decision on potentially every aspect of the video service provider's performance under DIVCA, including those which DIVCA grants local entities exclusive authority to regulate?[41] Parties should therefore comment on how

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video service provider's performance of the franchise terms, the Commission would be voluntarily injecting itself into a potential conflict between video service providers and local entities on issues over which it has no regulatory authority under DIVCA, such as franchise fees and PEG requirements. Finally, a video service provider is entitled to renewal under DIVCA's streamlined process if the video service provider's franchise renewal application is complete and it is not in violation of a final nonappealable court order. How then would it be appropriate for the Commission to invoke the formal process outlined in federal law even though the Commission is not precluded from doing so?

[41] Under DIVCA, the Commission is responsible for enforcing requirements with respect to anti-discrimination (Cal. Pub. Util. Code § 5890), reporting (§§ 5920 and 5960) cross subsidization prohibitions (§§ 5940 and 5950) and regulatory fees (§ 401, §§ 440-444, § 5840). Local entities, on the other hand, have exclusive regulatory authority to enforce franchise fee provisions (§ 5860), PEG channel requirements (§ 5870), Emergency Alert System requirements imposed by the FCC (§ 5880), and state and federal customer service and protection standards (§ 5900). In addition, local entities are designated by DIVCA as the lead agencies for any environmental review with respect to network construction, installation, and maintenance in public rights-of-way (§§ 5820 and 5885).

DIVCA's division of regulatory authority between the Commission and local entities would be preserved in the context of a formal proceeding.

3.1.4.2. Timing of the Filing of Franchise Renewal Applications

As discussed above, if parties believe that establishing a formal process is necessary, then the renewal timeline should be adjusted to accommodate the possibility that a video service provider might invoke such a process. Under federal law, the formal process must be invoked between 30 and 36 months before the expiration of the existing franchise. In light of this timeline, would it be reasonable to accept proposals for renewal under our streamlined process beginning 36 months prior to the date a video service provider's existing franchise expires, but no later than three months before the franchise expires?

3.1.4.3. Reimbursement for Commission Resources Spent on Formal Proceedings

Section 5850(b) of DIVCA states that the process and criteria for renewal of state franchises shall be the same as that described in § 5840 which permits the Commission to levy a fee for processing applications for state franchises. While it is unclear whether the Legislature envisioned that some video service providers might request a formal process through § 5840(c), should we infer that the Legislature intended for costs incurred by the state in granting state franchises should be borne by the video service provider seeking a franchise renewal under the formal process? Does this mean that DIVCA permits us to seek reimbursement for committing Commission staff resources to conduct the formal process, if invoked? Depending on the size of the video service provider's franchise, the cost to the state in terms of Commission staff resources could be quite substantial. The bulk of these costs would be incurred through expenditure of staff time to conduct the administrative proceeding that might be necessary

under the formal process. If a video service provider elects to invoke the formal process, should we require that it obtain a bond payable to the Commission upon completion of the formal proceeding? Should this bond be required at the time the video service provider submits written notice of its intent to invoke the process? Would $200,000 per 20,000 households in the holder's video franchise area, up to maximum amount of $1 million, be a proper amount? If such a bond were required, and a video service provider's franchise renewal application is approved under a streamlined process prior to any action by the Commission on the formal process, should we not call the bond? We seek comment on this and other proposals to fund a formal process.

3.1.4.4. How the Commencement of Proceedings Described in 47 U.S.C. § 546(a) would be Initiated and Carried Out

Under 47 U.S.C. § 546(a)(1)-(2), no later than six months following the date a cable operator submits its written request to invoke the formal process, the franchise authority must commence a proceeding for the purpose of identifying the future cable-related needs of the community and reviewing the performance of the cable operator under its existing franchise. As discussed above, we call this the "ascertainment phase." The franchise authority is required to provide public notice of the proceeding and afford the public with adequate opportunity to participate.[42]

How should the public, interested third parties, affected local entities, and DRA be provided an opportunity to participate in the ascertainment phase? In particular, we seek comment on the role of local entities in the ascertainment

[42] 47 U.S.C. § 546(a).

phase since they have exclusive enforcement authority over many provisions of DIVCA and have unique access to data relevant to assessing a video service provider's performance with respect to the obligations imposed by DIVCA. Parties should also comment on how the results of the ascertainment phase are to be reflected in the subsequent phase of the formal process, and to what extent the Commission is bound by the results of the ascertainment phase in that next phase where the Commission requests a renewal proposal from the video service provider. Parties should also address whether, at the close of the ascertainment phase, the franchise authority is obligated to issue a report or decision identifying the issues to be considered as part of the next phase of the formal process, and whether parties should have the opportunity to comment on the issues the franchise authority identifies at the conclusion of the ascertainment phase.

3.1.4.5. Definitions of "Future Cable Related Needs" and "Past Performance Review"

As indicated above, many of the difficulties associated with incorporating the formal process into our rules for a renewal are a function of how the terms "future cable needs" and "past performance review" are defined.

A central element of the formal process is the identification of the future cable-related needs of the community served under a video service provider's existing franchise. The issue arises within the formal process in the ascertainment phase in which the public and the franchise authority identify these needs.[43] The ascertainment phase also requires the franchise authority to determine that the cable operator has complied with all the material terms of its

[43] 47 U.S.C. § 546(a).

existing franchise and with applicable law.[44] These issues arise again after the ascertainment phase when the video service provider is required to submit a renewal proposal to the franchise authority addressing how it will meet the needs identified in the ascertainment phase.[45] Finally, if the franchise authority issues a preliminary assessment that the cable operator's proposal should be denied these issues come up again in the administrative proceeding that is subsequently required.[46]

We seek comment on whether there is a way to define these terms so that a determination made with respect to them is consistent with the requirements of DIVCA, and still provides a meaningful process under federal law. Could these two statutes be reconciled by interpreting DIVCA as defining the future cable related needs of all communities by establishing a minimum set of requirements sufficient to meet the needs of all communities?[47] In enacting DIVCA, did the Legislature intend to place limits on the demands that individual communities might make on video service providers in the franchising process in order to promote competition for video and broadband services?[48]

Should the identification of future cable related needs and the subsequent consideration of a video service provider's plans to meet these needs in the context of 47 U.S.C. § 546(a) - (g) be limited to the video service provider's future

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[44] 47 U.S.C. § 546(a)-(g).

[45] 47 U.S.C. § 546(b).

[49] 47 U.S.C. § 546(c).

[47] Cal. Pub. Util. Code § 5810.

plans to comply with its obligations under DIVCA? We seek comment on how a definition of future cable related needs could be crafted to be consistent with 47 U.S.C. § 546(a) - (g) and whether our analysis of DIVCA supports this conclusion. If it is not, we ask for comments on how to reconcile these two statutes.

Does 47 U.S.C. § 546(a) - (g) mandate a review of the performance of the video service provider with respect to all the terms of its existing franchise? Does DIVCA envision a review of past performance in the context of the Commission's renewal process beyond the fact that the Commission may not renew a franchise if the video service provider is in violation of a final nonappealable court order?[49] Did the Legislature intend to limit the scope of the review of past performance in order to balance its goal of promoting competition for video and broadband services with the need to hold video service providers accountable for their performance under their existing franchises?[50] Would it be sufficient to use violations of a final nonappealable court order as a proxy for a provider's past performance? Would this be consistent with 47 U.S.C. § 546(a) - (g)? If not, parties should provide alternative definitions of these terms and explain how they would be incorporated into the formal process in a manner that would be consistent with federal law and DIVCA.

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[48] *Id.*

[49] Cal. Pub. Util. Code § 5840(b).

[50] Cal. Pub. Util. Code § 5810.

3.1.4.6. Submission of Renewal Proposals, Renewal, and Preliminary Assessment of Nonrenewal

Under 47 U.S.C. § 546(b)-(c), at any point following the completion of the proceeding ascertainment phase described in subsection (a), a cable operator may submit a renewal proposal on its own initiative or in response to a request for renewal proposal by the franchising authority. If the franchise authority requests the proposal, it can specify what must be included in it and when it must be submitted.[51] Once the proposal has been submitted, the franchise authority must provide "prompt" public notice.[52] Within four months after submission of the proposal, the franchise authority must either renew the cable operator's franchise or issue a preliminary assessment that the franchise should not be renewed.[53] Proposals should describe in detail how to initiate and carry out the proceedings described in 47 U.S.C. §§ 546(b) and (c).

We note that historically, a franchise authority and a cable operator have often used the four-month period following the submission of the renewal proposal to reach a negotiated agreement on disputed issues. If a formal process is established, we seek comment on whether we should do the same. Parties should provide details on how this negotiation process would work and which parties should participate, particularly given the division of regulatory authority between the Commission and local entities.[54] Parties should also comment on whether the same the rules for approving a settlement agreement between

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[51] 47 U.S.C. § 546(b).

[52] 47 U.S.C. § 546(c).

[53] *Id.*

[54] *See* Cal. Pub. Util. Code §§ 5800 *et. seq.*

parties in a Commission proceeding should apply to the approval of renewal agreements between the Commission and a video service provider.[55] For instance, should negotiations between the Commission, local entities, and the video service provider be subject to the same confidentiality rules applicable to Commission settlement negotiations? Should the provisions of any agreement reached between the Commission and a video service provider be non-binding in other Commission renewal proceedings?[56]

3.1.4.7. Administrative Proceeding

Section 546(c)-(d) of the Cable Act sets forth the requirements for the administrative proceeding which must be conducted by a franchise authority in the event it issues a preliminary assessment denying a cable operator's request for renewal. The purpose of the proceeding is to consider whether: 1) the cable operator has substantially complied with the material terms of the existing franchise and applicable law; 2) the quality of the operator's service has been reasonable to meet community needs; 3) the cable operator has the financial, legal and technical ability to provide the services, facilities and equipment set forth in the operator's proposal; and 4) the operator's proposal is reasonable to meet future cable related needs and interests of the community taking into account the cost of meeting such needs and interests.[57] An adverse finding with respect to any of the four factors is sufficient grounds for denying the video service provider's request for renewal.[58] How should the Commission implement this

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[57] 47 U.S.C. § 546(c).

[58] 47 U.S.C. § 546(d).

section? In particular, we seek comment on whether to use the Commission's formal application procedure prescribed by Article 2 of the Commission's Rules of Practice and Procedure for these purposes, and whether the opportunity for protest should be eliminated for applications for renewal of an existing franchise, given that the earlier phases of the formal renewal process may have already defined the issues for the administrative proceeding.

We also seek comment on whether participation in the administrative proceeding should be limited to the video service provider, local entities within the video service provider's franchise service territory, and DRA.[59] On the one hand, while DIVCA designates the Commission as sole franchising authority, it divides regulatory authority over DIVCA requirements between the Commission and local entities. DIVCA also authorizes DRA to advocate on behalf of video subscribers in renewal proceedings.[60] On the other hand, though the Legislature may not have envisioned that a video service provider would invoke the federal formal renewal process, it is clear that DIVCA intended that the process be as streamlined as possible. Given the size of some state issued franchises and the large number of local entities located within them that may elect to participate, the scope of the proceeding could become unmanageable. What legitimate steps might the Commission take to manage such potentially expansive proceedings?

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[59] Historically, the franchise authority and the cable operator were the only parties that participated in the administrative proceeding. Indeed, neither 47 U.S.C. § 546(c)-(d) nor the associated legislative history make reference to participation in the administrative proceeding by any other parties. On the other hand, neither 47 U.S.C. § 546(c) or (d) expressly limit who can participate in the proceeding.

[60] Cal. Pub. Util. Code § 5900(k).

3.1.4.8. Adverse Findings With Respect to 47 U.S.C. § 546(d)

Under 47 U.S.C. § 546(d), the Commission can deny a franchise renewal application if it makes an adverse finding with respect to any of the four criteria set forth in 47 U.S.C. § 546(c)(1)(A)-(D). However, a franchise authority may not base its denial on an adverse finding with respect to the criteria set forth in § 546(c)(1)(A) or (B) unless the franchise authority has provided the video service provider notice and opportunity to cure, or where the franchise authority has waived its right to object, or the franchise authority fails to object within a reasonable timeframe after receiving written notice from the video service provider of a failure or inability to cure.[61] How should this provision be implemented? How should notice be provided and what should be included in the notice?

We also note that 47 U.S.C. § 546(d) states that it is the franchise authority that must provide notice. Under DIVCA, the Commission is the "sole franchising authority for state franchises to provide video service."[62] We interpret this to mean that Commission is the sole franchising authority with respect to the issuance and renewal of state-issued franchises. However, it is not the sole authority with respect to the enforcement of DIVCA's franchise requirements. While local entities are not recognized as franchising authorities, DIVCA nonetheless vests them with some of the powers that were historically only granted to franchising authorities under traditional franchising regimes. To the extent that a local entity has authority to enforce specific DIVCA requirements,

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[61] 47 U.S.C. § 546(d).

[62] Cal. Pub. Util. Code § 5840(a).

such as those related to consumer protection, franchise fees, and PEG access, can the notice requirement set forth in 47 U.S.C. § 546(d) be met if such notice has been provided by local entities?

4. Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure.[63] As required by Rule 7.3, this order includes a Preliminary Scoping Memo as set forth below.

4.1. Issues

The issue to be considered in this proceeding, as discussed above in this Order Instituting Rulemaking (OIR), is the modification of GO 169 in order to establish procedures for implementing the franchise renewal provision of the Digital Infrastructure and Video Competition Act of 2006. In sections 1-3 above, we discussed the subject matter of this rulemaking, which we briefly summarize below:

- 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 OIR;
- establishing procedures for a notice and comment period on franchise renewal applications, as discussed in section 3.1.3.2 of this OIR;
- the timing of franchise renewal application submissions as discussed in section 3.1.3.3 of this OIR;

[63] All references to Rules are to the Commission's Rules of Practice and Procedure.

- 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).

In addition to responding to the specific questions and proposals raised herein, parties may offer suggestions of their own or modifications to our tentative proposals. The assigned Commissioner has discretion to add the suggestions or modifications in finalizing the Scoping Memo and may provide for further comment, as appropriate.

4.2. Category of Proceeding and Need for Hearing

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is a "quasi-legislative" proceeding, as that term is defined in Rule 1.3(d). It is contemplated that this proceeding shall be conducted through written comments without the need for evidentiary hearings.

Anyone who objects to the preliminary categorization of this Rulemaking as "quasi-legislative," or to the preliminary hearing determination, must state the objections in opening comments to this Rulemaking. If the person believes hearings are necessary, the comments must state:

- The specific disputed fact for which hearing is sought;
- Justification for the hearing (e.g., why the fact is material);
- What the party would seek to demonstrate through a hearing; and
- Anything else necessary for the purpose of making an informed ruling on the request for hearing.

After considering any comments on the Preliminary Scoping Memo, the assigned Commissioner may issue a final Scoping Memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a).

4.3. Schedule

For purposes of meeting the scoping memo requirements, and to expedite the proceeding, we establish the following preliminary schedule:

DATE	EVENT
June 18, 2013	Deadline for requests to be on service list
June 18, 2013	Initial Comments filed and served
July 15, 2013	Reply Comments filed and served
TBD	Prehearing Conference
TBD	Scoping Memo

The assigned Commissioner through his/her ruling on the scoping memo and subsequent rulings, and the assigned Administrative Law Judge (ALJ) by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding. The assigned Commissioner or assigned ALJ may, if it appears useful, convene a prehearing conference following the opening and reply comments.

We anticipate this proceeding will be resolved within 18 months from the issuance of the scoping memo.

5. Service List and Subscription Service

The temporary service list for this proceeding shall be the service list from R.06-10-005, the last proceeding that adopted rules and procedures for DIVCA. In addition, this OIR shall be served on all holders of state-issued franchises, local entities located in the service areas of existing franchise holders, a list of California cable television companies provided by the California Cable Television and Telecommunications Association, the California League of Cities, the California State Association of Counties, and a list of city attorneys for each California city provided by the California League of Cities.

On or before June 18, 2013, any person or representative of an entity seeking to become a party to this Rulemaking (i.e., actively participate in the

proceeding by filing comments or appearing at workshops) should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list. Individuals seeking only to monitor the proceeding (i.e., but not participate as an active party) may request to be added to the service list as "Information Only." Requests to be added to the service list should include the following information:

- Docket Number of the OIR;
- Name and Party Represented, if Applicable;
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party or "Information Only").

The service list will be posted on the Commission's website, www.cpuc.ca.gov soon thereafter.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Rule 1.10, available on our website at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required,

including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this OIR proceeding should include, at a minimum, the following information on the subject line of the e-mail: R. [xx xx xxx] – OIR on Digital Infrastructure and Video Competition Act. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "Comments." Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

This Rulemaking can also be monitored through the Commission's document subscription service; subscribers will receive electronic copies of documents in this Rulemaking that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at http://subscribecpuc.cpuc.ca.gov/.

6. Public Advisor

Any person or entity interested in participating in this OIR who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

7. Intervenor Compensation

Pursuant to D.07-03-014, Conclusion of Law 147, DIVCA does not allow the Commission to order a grant of intervenor compensation in this proceeding.

8. *Ex Parte* Communications

Ex parte communications are defined in Rule 8.1. In quasi-legislative proceedings such as this one, *ex parte* communications are allowed without restriction or reporting requirement, as set forth in Rule 8.3.

Therefore **IT IS ORDERED** that:

1. An Order Instituting Rulemaking is instituted on the Commission's own motion for the purpose of amending General Order 169 and establishing procedures for implementing the franchise renewal provision of the Digital Infrastructure and Video Competition Act of 2006.

2. This Rulemaking is preliminarily determined to be a quasi-legislative proceeding, as that term is defined in Rule 1.3(d), and it is preliminarily determined that no hearings are necessary.

3. The temporary service list for this proceeding shall be the service list from R.06-10-005, the last proceeding that adopted rules and procedures for the Digital Infrastructure and Video Competition Act of 2006. In addition, this Order Instituting Rulemaking shall be served on all holders of state issued franchises, cable television companies operating under local franchises identified from the membership list included in the directory published by the California Cable Television and Telecommunications Association, the California Cable and Telecommunications Association, a list of city attorneys for each California city that was provided by the California League of Cities, the California League of Cities, a list of county counsels for each California county that was provided by the California State Association of Counties, and the California State Association of Counties.

4. The preliminary schedule for this proceeding is as set forth in the body of this Order Instituting Rulemaking. The assigned Commissioner through his/her

scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary.

5. The issues to be considered in this Order Instituting Rulemaking (OIR) are:

   (a) establishing procedures for implementing the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA);

   (b) 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 OIR;

   (c) establishing procedures for a notice and comment period on franchise renewal applications, as discussed in section 3.1.3.2 of this OIR;

   (d) the timing of franchise renewal application submissions as discussed in section 3.1.3.3 of this OIR;

   (e) whether establishing formal franchise renewal procedures consistent with 47 U.S.C. § 546 is necessary, as discussed in section 3.1.4 of this OIR; and

   (f) if a formal franchise renewal procedure consistent with 47 U.S.C. § 546 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 proceedings described in 47 U.S.C. § 546(a) (ascertainment phase) 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 (section 3.1.4.7) should be used; and how the adverse findings and notice procedures in 47 U.S.C. § 546(d) should be implemented (section 3.1.4.8).

6. Comments and reply comments must be filed on or before June 28, 2013 and July 15, 2013, respectively, unless the assigned Commissioner or Administrative Law Judge modifies the schedule. Comments and reply comments shall conform to the requirements of the Commission's Rules of Practice and Procedure.

7. Any persons objecting to the preliminary categorization of this Order Instituting Rulemaking (OIR) as "quasi-legislative," or to the preliminary determination on the need for hearings, issues to be considered, or schedule shall state their objections in their opening comments of this OIR.

8. On or before June 18, 2013, any person or representative of an entity seeking to become a party to this Order Instituting Rulemaking must send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only."

9. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) as soon as practical. The assigned Commissioner, and the assigned Administrative Law Judge, acting with the assigned Commissioner's

concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

This order is effective today.

Dated _____, at San Francisco, California.