

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband Policy and Analysis Branch**

**RESOLUTION T-17438
March 13, 2014**

R E S O L U T I O N

Resolution T-17438. ADOPTING ANNUAL FEE TO IMPLEMENT THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT (DIVCA) FOR FISCAL YEAR 2013-14.

Summary

This Resolution sets the annual fee for the fiscal year 2013-2014 to be paid by each video franchise holder. 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 2013, the Commission had issued 47 video franchises and 128 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 2013-2014 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. The fees for the 2013-2014 fiscal year are based on the video revenue reported by each franchise holder for calendar year 2012.

In 2007, it became apparent that allocating the annual fee based on holders' video revenues was not an equitable approach to determining proportionate annual fees, 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 video revenues, through the 2012-2013 fiscal year.⁶ This year we begin allocating the annual fee based on each franchise holder's pro-rata share of total video revenues for the calendar year 2012, in accordance with D.07-03-014.

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.") By comparison, for FY12-13, the annual fee was \$0.0374 (3.74 cents) per household in the holders' video franchise territories.

Discussion

This Resolution sets the annual fee for FY 2013-2014 consistent with the D.07-03-014.

In order to generate the \$950,000 authorized for the Commission's Fiscal Year 2013-2014 DIVCA-related budget, the amount due from each franchise holder is based on a pro-rata share of gross video revenues from state-issued franchises, in accordance with D. 07-03-014. For calendar year 2012, the time period used to apportion fees, total gross video revenues were approximately \$5.5 billion (\$5,492,310,300). Consequently, the total DIVCA-related budget, amounts to 0.0173% of the total video revenues in the state. In other words, each holder pays the CPUC ⁷ 0.01729 cents per dollar of gross video revenue.

Since an individual franchise holder's fee will be directly related to their gross video revenue, we cannot disclose the annual fee of any individual video franchise holder.

The Commission will send all video franchise holders a confidential fee statement after adoption of this Resolution. Video franchise holders with franchises issued any time on or prior to June 30, 2014 are required to pay the annual fee for the full Fiscal Year 2013-14. Video franchise holders with franchises issued on or before the date of this Resolution must pay their annual fees for Fiscal Year 2013-14 before April 30, 2014. 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, 2014, whichever is earlier.

Safety Considerations

The fees received pursuant to this Resolution funds the cost of the DIVCA program. DIVCA intended to allow easier entry into the video market and deployment of more advanced technology in the State. Video providers play an important role in public safety by disseminating emergency information to viewers, by providing IP-based services that will accommodate enhanced 911 services, by supporting telehealth capabilities, and by providing diverse facilities to improve survivability of the State's communications capability.

⁷ Calculated by dividing \$950,000 by \$5,492,310,300

Comments

In compliance with PU Code § 311(g), a notice letter was e-mailed on February 10, 2014, to holders of State Video Franchises and other interested parties informing these parties that this draft Resolution is available at the Commission's website at <http://www.cpuc.ca.gov/PUC/documents/> and is available for public comments.

This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at this same website.

No opening or reply public comments were submitted on this Resolution. **Notice**

In compliance with PU Code Section 311(g), a copy of this proposed Resolution was either mailed or e-mailed to all holders of State Video Franchises and other interested parties on February 10, 2014.

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 2013-2014 is to be calculated based on each state-issued video franchise holder's pro-rata share of total gross video revenues for the calendar year 2012, in accordance with D.07-03-014.
3. Total gross video revenue in calendar year 2012 was \$5.5 billion (\$5,492,310,300).
4. Fees in the aggregate are to equal the Commission's authorized budget for implementation of DIVCA requirements.
5. The Commission's authorized DIVCA-related budget for the fiscal year 2013-2014 is \$950,000.
6. This year's annual fee amounts to 0.0173% of each provider's gross California video revenues, or 0.01729 cents per dollar of gross video revenues.
7. A fee for each video franchise holder is reasonably calculated to collect an amount that in aggregate is equal to the DIVCA-related budget for the 2013-2014 fiscal year.
8. Due to the confidentiality of individual holder's video revenues, this Resolution does not disclose individual companies' fees.
9. The Commission will send confidential fee statements to existing holders of state video franchisees, upon approval of this Resolution.
10. 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, 2014.
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, 2014, 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 13, 2014. The following Commissioners approved it:

PAUL CLANON
Executive Director