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Draft
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division **RESOLUTION T-17141**
Policy & Decision Analysis Branch **May 15, 2008**

R E S O L U T I O N

Resolution T- 17141, providing for changes to the Commission's video franchise forms to conform to D. 07-03-014 and DIVCA.

Summary

This Resolution makes several changes to the Commission's video franchise forms to allow the Commission to properly implement requirements of DIVCA, D. 07-03-014, and the California Government Code.

Background

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) (AB 2987, Ch. 700, Stats. 2006) was signed into law on September 29, 2006, creating for the first time a process for the issuance of state video franchises in California. On March 1, 2007, the Commission issued D. 07-03-014 (DIVCA Decision)[1], implementing DIVCA, and began accepting video franchising applications immediately thereafter. After receiving an application, Commission staff reviews it for completeness. If deemed complete, a Video Franchise Certificate is issued. To date, the Commission has issued twenty eight video franchises.

On September 6, 2007, the Commission issued Resolution T- 17107, brought on its own motion, to modify the Video Franchise Application and Affidavit in order to

[1] Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006, in Rulemaking for Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 (D. 07-03-014, March 3, 2007).

incorporate language required by the DIVCA that had been inadvertently left out of the Video

Franchise Certificate. Resolution T- 17107 also delegated to the Division Director the authority to make changes to the video franchise forms, consisting of the video franchise application (Application) and affidavit (Affidavit) by resolution. Pursuant to that authority, this Resolution makes further changes to the video franchise forms in order to make these forms consistent with the DIVCA, DIVCA Decision, and the California Government Code.[2]

Discussion

To date, the Commission has issued twenty eight video franchises. As a result of its experience processing the applications and data submissions associated therewith, staff and franchisees have discovered several additional problems with the video franchise forms. Accordingly, the Director proposes to modify the forms as follows.[3]

The Application currently asks state franchise applicants to indicate whether their application is for a new franchise or to amend an existing franchise. However, the Application fails to ask whether applicants seeking to amend their existing franchise wish to increase or decrease their stated Video Service Area, pursuant to DIVCA §5840 (m)(6). In order to facilitate staff's ability to track the changes in a holder's franchise footprint, the Commission will require applicants seeking to amend their Video Service Area to include this information. We amend the Application accordingly.
Certain data submitted with the Application, specifically the number of low income households in each census tract, are derived from projections done by consultants, rather than being available directly from the Census Bureau. Staff may need to confirm these projections, and may need to understand differences in data provided by different applicants for the same census tract. Accordingly, we will amend the Application to require the name and contact information of the consultant used by the applicant as the source of these data.

The Application requires that applicants for a state video franchise provide a geographic description of the requested Video Service Area pursuant to DIVCA § (e)(6). This description must be detailed by either Census Block Group or a geographic information system digital boundary. We have experienced some confusion in certain applications as to which method is being utilized. In order to clarify this issue, the

[2] A copy of the revised Application and Affidavit are attached as Attachment A.
[3] In addition, several clerical errors currently in the Application and Affidavit, not discussed here, have also been corrected.

Commission will include an additional question requiring the applicant to state which way the applicant has chosen to define its video service area.

DIVCA § 5840 (o) gives franchise applicants that currently hold a franchise with a local franchising entity the option to seek a state franchise license under one of the following conditions: (1) the expiration prior to any renewal or extension, of its franchise, (2) a mutually agreed upon date set by both the local franchising entity and video service provider to terminate, or (3) when a video service provider operating under a local franchise agreement receives notice that a video service provider that holds a state franchise intends to initiate service in the same jurisdiction. The Application does ask which provision, if any, applies. However, in the case where a state franchise is being sought because an existing local franchise is expiring, the Application does not currently provide a way for the applicant to let us know the date upon which the local franchise agreement will terminate. This information is essential in order that we make the new state franchise effective concurrent with the expiration of the local franchise. Accordingly, we revise the Application template by adding a question seeking this information. Finally, the Affidavit correctly requires the seal and signature of a notary in order to be considered complete. However, the notary language used on the Affidavit is not correct. Therefore, the Commission will amend the Affidavit to include correct notary language pursuant to California Government Code § 8202.

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 April 15, 2008.

Findings:

1. The Commission has authorized the Director of the Communications Division to obtain approval of modifications to video franchise forms by preparing a resolution for Commission consideration.

2. Certain provisions of the current Application and Affidavit require amendment in order for the Commission to properly implement DIVCA, the DIVCA Decision, or the California Government Code.

3. The Communications Division's modifications are reasonable and should be adopted.

4. 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. The current Video Franchise Application and Affidavit shall be replaced with the documents included in Attachment A, which reflect the modifications contained in this Resolution.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission at its regular meeting on May 15, 2008 adopted this Resolution. The following Commissioners approved it:

_____
PAUL CLANON
Executive Director

Draft

ATTACHMENT A

APPLICATION FOR A NEW OR AMENDED
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.

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]

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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).

ATTACHMENT A

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.

M. "Consultant" means the third party source of 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).

ATTACHMENT A

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

Applicant Information

2. Applicant's State Video Franchise number (if seeking an amended 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:

ATTACHMENT A

Address: _____

_____

Phone: _____

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

Name: _____

Title: _____

Address: _____

_____

Phone (Business and mobile if any): _____

Fax: _____

Email: _____

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

Build-Out Information

Answer questions 9 through 11 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

ATTACHMENT A

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 at http://www.cpuc.ca.gov/video/application.

Video Service Area Information

14.

a. Utilizing the template provided at http://www.cpuc.ca.gov/video/application (as applicable), 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

- *If Applicant chooses "a," then download and complete the electronic template available at http://www.cpuc.ca.gov/video/application*

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

- *If Applicant chooses "b," then submit the geographic information system digital boundary 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

- *If applicable, the Applicant shall provide this information utilizing the templates available at http://www.cpuc.ca.gov/video/application.*

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*:

ATTACHMENT A

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

- *If applicable, the Applicant shall provide this information utilizing the templates available at http://www.cpuc.ca.gov/video/application.*

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.

ATTACHMENT A

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.

Financial, Legal, and Technical Qualifications

17. 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.

Local Entity Contact Information

18. Utilizing the template provided at http://www.cpuc.ca.gov/video/application, the Applicant shall provide the contact name and information for a representative from each Local Entity within the Video Service Area.

Application Fee

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

Affidavit

20. 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**

APPENDIX A

APPLICANT'S PRINCIPAL OFFICERS

NAME	TITLE

APPENDIX A

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.

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. Applicant is not in violation of any final nonappealable 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).
6. If it has not done so in the Application, 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.
7. 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.

APPENDIX A

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

State of California

APPENDIX A

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 _____