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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Policy & Decision Analysis Branch**

**RESOLUTION T-17260
February 25, 2010**

R E S O L U T I O N

Resolution T-17260. ADOPTING ANNUAL FEE TO IMPLEMENT
DIVCA FOR FISCAL YEAR 2009-10.

Summary

This Resolution sets the annual fee for the fiscal year 2009-2010 to be paid by each video franchise holder at \$0.0434 per household in its video franchise territory. 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

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*

began accepting video franchising applications immediately thereafter. To date, the Commission has issued eighty-six video franchises, including amendments.

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 2009-2010 fiscal year, \$950,000 was authorized to implement the state video franchise program.⁴ The DIVCA Decision provided that the annual fee for each video franchisee, after the initial year, was to be calculated based on the percentage of all state video franchise holders' gross state video franchise revenues that is attributable to an individual state video franchise holder.⁵ The fee was to be calculated based on the revenue reported for the prior calendar year.

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

Discussion

Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 (Cal. P.U.C. March 3, 2007) (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.”)

This Resolution sets the annual fee due per household in a video franchise holder's service area for FY 2009-2010 consistent with the D. 09-04-011.

The Commission will send all video franchise holders fee statements after adoption of this Resolution. Video franchise holders with franchises issued any time on or prior to June 30, 2010 are required to pay the annual fee for the full Fiscal Year 2009-10. Video franchise holders with franchises issued on or before the date of this Resolution must pay their annual fees for Fiscal Year 2009-10 before April 30, 2010. 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, 2010, whichever is earlier.

The total number of households that exist in the franchise territories of all franchise holders as of November 30, 2009 is 21,849,660. In order to generate the \$950,000 authorized for the Commission's Fiscal Year 2009-2010 DIVCA-related budget, the amount due per household is \$0.0434.⁷

Appendix A lists each of the franchise holders as of November 30, 2009, the number of households in their service area, and their total annual fee for the 2009-2010 fiscal year.

Notice

In compliance with PU Code Section 311(g), a copy of this proposed Resolution was either mailed or e-mailed to all parties of record in R. 06-10-005 on January 26, 2010.

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 2009-2010 is to be calculated based on each holder's pro-rata share of households in franchised video territories, in accordance with D. 09-04-011.

⁷ The per-household fee for FY 2008-09 was 0.0448.

Resolution T-17260
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3. Fees in the aggregate are to equal the Commission's authorized budget for implementation of DIVCA requirements.
4. The total number of households in video franchise territories as of November 30, 2009 is 21,849,660.
5. The Commission's authorized DIVCA-related budget for the fiscal year 2009-2010 is \$950,000.
6. A fee of .0434 per household is reasonably calculated to collect an amount equal to its DIVCA-related budget for the 2009-2010 fiscal year.
7. A schedule of fees for franchises issued by November 30, 2009 is attached as Appendix A.
8. The Commission will send fee statements to existing holders of state video franchisees upon approval of this Resolution.
9. Parties of Record in R. 06-10-005 were provided with notice of this Resolution in accordance with PU Code Section 311(g).
10. The Communications Division did not receive comments from parties of record in R06-10-005.

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, 2010.
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, 2010, whichever is earlier.

Resolution T-17260

Appendix A– Fiscal Year 2009-2010 User Fee Assessment Based on the Number of Households in Video Franchise Area

Video Franchise Holders with Franchises Issued as of November 30, 2009	Franchise ID	Franchise Issue Date	Total Number of Households in Video Service Area	User Fee Assessment
Verizon California Subtotal			1,992,151	\$86,459.35
Verizon California	0001	March 8, 2007		
Verizon California 1st Amended	0001	December 19, 2007		
Verizon California 2nd Amended	0001	April 1, 2009		
AT&T California Subtotal			9,587,723	\$416,107.18
AT&T California	0002	March 30, 2007		
AT&T California 1st Amended	0002	July 29, 2009		
AT&T California 2nd Amended	0002	September 21, 2009		
Cox Communications Subtotal			377,857	\$16,398.99
Cox Communications	0003	April 27, 2007		
Cox Communications 1st Amended	0003	January 2, 2008		
Cox Communications 2nd Amended	0003	May 2, 2008		
Cox Communications 3rd Amended	0003	May 29, 2009		
Cox Communications 4th Amended	0003	June 23, 2009		
Wave Broadband	0004	December 7, 2007	25,053	\$1,087.30
Cableview Communications	0006	December 6, 2007	3,832	\$166.31
Charter - American Cable Entertainment Company Subtotal			161,808	\$7,022.47
American Cable Entertainment Company	0007	December 13, 2007		
American Cable Entertainment Company 1st Amended	0007	January 16, 2009		
American Cable Entertainment Company 2nd Amended	0007	April 7, 2009		
Charter - Charter Communications Entertainment II Subtotal			552,164	\$23,963.92
Charter Communications Entertainment II	0008	December 13, 2007		
CCE II 1st Amended	0008	June 27, 2008		
CCE II 2nd Amended	0008	August 11, 2008		
CCE II 3rd Amended	0008	November 10, 2008		
CCE II 4th Amended	0008	March 12, 2009		
CCE II 5th Amended	0008	March 23, 2009		
CCE II 6th Amended	0008	April 7, 2009		
Charter - Charter Communications Properties II LLC Subtotal			115,936	\$5,031.62
Charter Communications Properties II LLC	0009	December 13, 2007		
Charter Communications Properties 1st Amended	0009	November 10, 2008		
Charter Communications Properties 2nd Amended	0009	March 23, 2009		
Charter - Falcon Cable Systems Company II Subtotal			366,454	\$15,904.10

Resolution T-17260

Falcon Cable Systems Company II	0010	December 13, 2007		
Falcon Cable Systems 1st Amended	0010	February 25, 2008		
Falcon Cable Systems 2nd Amended	0010	June 27, 2008		
Falcon Cable Systems 3rd Amended	0010	November 10, 2008		
Falcon Cable Systems 4th Amended	0010	February 6, 2009		
Falcon Cable Systems 5th Amended	0010	October 30, 2009		
Charter - Falcon Cablevision Subtotal			235,637	\$10,226.65
Falcon Cablevision	0011	December 13, 2007		
Falcon Cablevision 1st Amended	0011	February 25, 2008		
Falcon Cablevision 2nd Amended	0011	August 11, 2008		
Falcon Cablevision 3rd Amended	0011	September 2, 2008		
Charter - Falcon Telecable	0012	December 13, 2007	7,987	\$346.64
Charter - Long Beach Subtotal			163,057	\$7,076.67
Long Beach	0013	December 13, 2007		
Long Beach 1st Amended	0013	August 11, 2008		
Charter - Marcus Cable Subtotal			232,401	\$10,086.20
Marcus Cable	0014	December 13, 2007		
Marcus Cable 1st Amended	0014	June 27, 2008		
Marcus Cable 2nd Amended	0014	July 21, 2008		
Marcus Cable 3rd Amended	0014	October 6, 2008		
Charter - Dalton Cablevision	0027	August 11, 2008	50,726	\$2,201.51
TWC - Time Warner NY Cable LLC Subtotal*			3,678,778	\$159,658.97
Time Warner NY Cable LLC	0005	November 15, 2007		
Time Warner NY Cable 1st Amended	0005	July 7, 2008		
Time Warner NY Cable 2nd Amended	0005	August 4, 2008		
Time Warner NY Cable 3rd Amended	0005	March 12, 2009		
Time Warner NY Cable 4th Amended	0005	March 23, 2009	3,582,075	
Time Warner NY Cable 5th Amended	0005	June 18, 2009	46,716	
Time Warner NY Cable 6th Amended	0005	July 16, 2009	33,970	
Time Warner NY Cable 7th Amended	0005	September 1, 2009	16,017	
TWC - Time Warner Cable LLC Subtotal			355,942	\$15,447.88
Time Warner Cable LLC	0018	December 19, 2007		
Time Warner Cable 1st Amended	0018	July 7, 2008		
TWC - TWEAN Subtotal			307,996	\$13,367.03
Time Warner Entertainment-Advance/Newhouse Partnership	0019	December 19, 2007		
TWEAN 1st Amended	0019	July 11, 2008		
TWEAN 2nd Amended	0019	August 6, 2008		
TWEAN 3rd Amended	0019	December 19, 2008		

Resolution T-17260

TWC - Time Warner Entertainment Properties Subtotal			13,464	\$584.34
Time Warner Entertainment Properties	0020	December 19, 2007		
Time Warner Entertainment Properties 1st Amended	0020	August 6, 2008		
Northland Cable TV Inc. Subtotal			13,620	\$591.11
Northland Cable TV Inc.	0015	December 14, 2007		
Northland Cable TV 1st Amended	0015	July 7, 2008		
Northland Cable TV 2nd Amended	0015	July 7, 2008		
Comcast Subtotal			2,586,259	\$112,243.64
Comcast	0021	January 2, 2008		
Comcast 1st Amended	0021	March 14, 2008		
Comcast 2nd Amended	0021	April 25, 2008		
Comcast 3rd Amended	0021	June 6, 2008		
Comcast 4th Amended	0021	July 28, 2008		
Comcast 5th Amended	0021	August 11, 2008		
Comcast 6th Amended	0021	October 16, 2008		
Comcast 7th Amended	0021	March 23, 2009		
Comcast 8th Amended	0021	July 29, 2009		
Baldwin County Internet/DSSI Service, LLC	0022	March 3, 2008	2,015	\$87.45
Audeamus, LLC dba Sebastian	0023	April 4, 2008	7,615	\$330.49
CalTel Connections dba Calaveras Cablevision	0025	May 16, 2008	3,294	\$142.96
Antilles Wireless LLC dba Cable USA	0026	June 9, 2008	3,182	\$138.10
Astound Broadband Subtotal			324,150	\$14,068.11
Astound Broadband	0028	October 16, 2008		
Astound Broadband 1st Amended	0028	November 9, 2009		
Surewest Broadband Subtotal			385,760	\$16,741.98
Surewest Broadband	0029	December 10, 2008		
Surewest Broadband 1st Amended	0029	April 29, 2009		
Champion Broadband	0030	December 22, 2008	46,514	\$2,018.71
Capp's TV Electronics Inc	0031	February 17, 2009	2,538	\$110.15
Redwood IPTV, LLC	0032	August 31, 2009	117,817	\$5,113.26
Mediacom	0033	September 23, 2009	114,995	\$4,990.78
Suddenlink Communications	0034	November 4, 2009	10,584	\$459.35
Volcano Vision, Inc.	0035	November 19, 2009	2,351	\$102.03
Total			21,849,660	\$948,275.24

* Note: Time Warner transferred CAC Exchange I, CAC Exchange II, and C Native Exchange I to Time Warner NY Cable in its 4th amendment
(END OF APPENDIX A)