



ALJ/MMV/sgu/avs 11/29/2023

**FILED**

11/29/23

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

03:00 PM

R2304006

Order Instituting Rulemaking Proceeding to Consider Changes to Requirements on Video Franchisees Under the Digital Infrastructure and Video Competition Act, and Revisions to General Order 169.

Rulemaking 23-04-006

**ADMINISTRATIVE LAW JUDGE'S RULING SETTING A WEBEX PREHEARING CONFERENCE FOR DECEMBER 13, 2023, AT 10:00 A.M.**

This ruling sets a video prehearing conference via Webex for **December 13, 2023**, commencing at **10:00 a.m.** to determine the scope of issues, schedule of the proceeding, and other procedural matters.

Parties and any interested persons shall appear virtually via Webex by using the following information:

**Join from the meeting link:**

- <https://cpuc.webex.com/cpuc/j.php?MTID=mbbc278f32d6fb6d69c17c73b727ac5db>

- Join by meeting number:

Meeting number (access code): 2495 959 8015

Meeting password: 6032788#

All audio for this proceeding is via separate telephone conference:

Toll Free Number: 1-800-857-1917

Passcode 6032788#

**Parties are directed to adhere to the following ground rules during the Webex prehearing conference (PHC):**

- Mute your phone when not speaking;

- Speak only when addressed by the Administrative Law Judge (ALJ);
- State your name each and every time before you speak;
- Speak slowly and clearly;
- Do not use a speaker phone when speaking; and
- Do not interrupt or speak over one another.

## **1. Background**

On April 17, 2023, the California Public Utilities Commission (Commission) issued its Order Instituting Rulemaking (OIR) to consider changes to the Commission's licensing and oversight of video franchisees under the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). Among other items, Senate Bill (SB) 28 (Stats. 2021, Chap. 673), signed by the Governor on October 8, 2021, revises DIVCA to require the Commission to adopt video and broadband customer service requirements for a holder of a state video franchise and to adjudicate customer complaints regarding these services. The Commission may also consider potential ways to modernize and make the implementation of DIVCA more efficient and effective.

In 2006, the Legislature passed, and the Governor signed into law, the DIVCA, establishing a state cable franchise process administered by the Commission.<sup>1</sup> Prior to the passage of DIVCA, cable television franchises were issued by cities and counties. DIVCA replaced that system with one in which video franchises are now issued by the state, instead of those local entities. The Commission opened Rulemaking (R.) 06-10-005 to implement DIVCA, including the development and adoption of General Order (GO) 169 in Decision

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<sup>1</sup> A franchise is a government authorization to construct and operate a cable video system.

(D.) 07-03-014<sup>2</sup> and D.07-10-013. The Commission opened R.13-05-007 to address the franchise renewal process, adopting D.14-08-057.

Although DIVCA designates this Commission as the sole franchise authority, prior to the enactment of SB 28, it also limited the scope of the Commission's authority to issue and renew franchises relative to the authority previously delegated to local entities. The franchise issuance process set forth in Public Utilities (Pub. Util.) Code Section 5840(a)-(q) is highly expedited, whereby if an applicant seeking a video service franchise submits a complete application,<sup>3</sup> the Commission must issue a video franchise within 44 days. The DIVCA statute defines all the obligations and requirements placed on franchisees<sup>4</sup> and prohibits the Commission from imposing additional obligations on video service franchisees.<sup>5</sup>

The enactment of SB 28 imposes new requirements on franchisees, including, among other items, that this Commission establishes video and broadband consumer service rules and adjudicates complaints brought by consumers regarding their service. This is currently permitted under federal

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<sup>2</sup> Revised by D.07-04-034, D.07-04-054, D.07-11-049, D.08-07-007, D.09-04-011, and D.10-07-050.

<sup>3</sup> An applicant must submit an application in which it provides certain information about itself and the franchise area it seeks to serve and include a signed affidavit agreeing to comply with DIVCA's requirements and obligations concerning: the issuance and renewal of franchises (Pub. Util. Code § 5840 and § 5850) franchise fees (Pub. Util. Code § 5860); public, education and government channels (Pub. Util. Code § 5870); emergency alert systems (Pub. Util. Code § 5880); encroachment permits (Pub. Util. Code § 5885); consumer protection (Pub. Util. Code § 5900) reporting obligations (Pub. Util. Code § 5920 and § 5960); regulatory or user fees (Pub. Util. Code § 401, §§ 440-444, and § 5840); build out and anti-discrimination requirements (Pub. Util. Code § 5890); and the prohibition against using telephone revenues for the cross subsidization of networks used to provide video services (Pub. Util. Code § 5940).

<sup>4</sup> Various sections in DIVCA refer to an entity granted a franchise as a "holder" of a state franchise. For clarity, we refer to the same entity as a "Franchisee."

<sup>5</sup> Pub. Util. Code Section 5840(a)-(b)

law.<sup>6</sup> Additionally, more than a decade has passed since the Commission adopted GO 169. This proceeding will enable the Commission to determine whether, and to what extent, it can facilitate improvements in the implementation of DIVCA.

Public comments were filed in response to the proceeding from April 6, 2023, through July 28, 2023. Party comments and reply comments were filed in response to the proceeding from June 1, 2023, through June 16, 2023. On October 31, 2023, the assigned ALJ issued a ruling granting party status to entities who filed comments and reply comments to the proceeding or filed a motion for party status as of October 31, 2023.<sup>7</sup>

## **2. Prehearing Conference**

During the PHC, parties shall be prepared to address the following: (1) preliminary categorization and need for evidentiary hearings; (2) any disagreement with the preliminary scope of issues; and (3) schedule.

### **a. Preliminary Categorization and Need for Evidentiary Hearings**

On April 6, 2023, pursuant to the Commission's Rules, the Commission preliminarily determined that this proceeding is quasi-legislative because the consideration and approval of the matter would establish policy or rules affecting a class of regulated entities. The Commission preliminarily determined that evidentiary hearings are not necessary with the admonition that the

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<sup>6</sup> United States Code Title 47, Section 552 allows a state or local entity issuing cable franchises to establish and enforce customer service requirements and build out requirements.

<sup>7</sup> The Ruling granted party status to Media Alliance, Alliance for Community Media, Alliance for Communications Democracy, Rural County Representatives of California, California Community Foundation, California Broadband and Video Association, Velocity Communications, Communities in Schools of Los Angeles, NextGen Policy, GPSN, #Oakland Undivided, Common Sense Media and Center for Accessible Technology.

assigned Commissioner may re-evaluate the need for evidentiary hearings when issuing the scoping memo for this proceeding. At the PHC, the parties shall indicate their agreement or disagreement with the preliminary categorization and the need for evidentiary hearings as set forth in the April 6, 2023, OIR.

**b. Scope of Issues**

The preliminary scope of issues in the proceeding is set forth below, in accordance with Rule 7.1(d) of the Commission's Rules of Practice and Procedure (Rules).<sup>8</sup> In general, the purpose of this proceeding is two-fold: (1) consider potential ways to modernize and make the implementation of DIVCA more efficient and effective; and (2) develop procedures, rules, and orders necessary to fulfilling the duties and responsibilities assigned to the Commission, including on the following issues:

1. Does the enactment of SB 28 require revisions to existing rules contained in GO 169? If yes, which rules should be revised? How should those rules be revised? Are there rules in GO 169 that should no longer be in effect? Parties are asked to identify the specific rules.
2. In addition to reviewing revisions to GO 169, does the enactment of SB 28 require revisions to other Commission general orders? If yes, what other general orders should be considered for revision? How should the rules in the other general orders be revised? Are there rules in other general orders that should no longer be in effect? Parties are asked to identify the specific general orders and the specific rules.
3. What customer service requirements should the Commission adopt?
4. What types of complaints from consumers should the Commission adjudicate? Are there complaints that are

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<sup>8</sup> All references to "Rules" are to the Commission's Rules of Practice and Procedure unless otherwise indicated.

more appropriate for the Commission to use an informal consumer complaint process? Which criteria should the Commission use to decide which types of complaints to adjudicate?

5. How should the Commission adjudicate complaints from consumers? For example, should the Commission allow consumers to file both expedited and formal complaints with the Commission?
6. What enforcement actions should the Commission consider for violations of regulatory requirements and franchise agreements? For example, should the Commission utilize the Order Instituting Investigation or establish a citation program setting out reasonable penalties for identified violations?
7. What are appropriate penalties for video franchisees that do not meet the terms of their franchise agreements or the customer service requirements the Commission adopts in compliance with SB 28? For example, should consumers receive credits in addition to penalty amounts that go to the general fund as a part of the penalty structure? How should these credits be determined? How should these credits be calculated? (*e.g.*, per day basis, percentage basis, or fixed dollar amount) Under which circumstances should consumers receive credits?
8. Should the Commission adopt reporting requirements for video franchisees? What type of reporting requirements should the Commission adopt?
9. Should the Commission modernize and revise the application processes described in GO 169 Sections IV-V and Section VII? How can the Commission implement DIVCA more efficiently and effectively to accomplish the policy objectives of DIVCA?
10. Whether the adoption of video and broadband customer service requirements and the adjudication of customer complaints aligns with or impacts the achievement of any

of the nine goals of the Commission’s Environmental and Social Justice Action Plan.

In addition to the preliminary scope of issues noted above, at the PHC the Commission will entertain discussion from parties or interested individuals on whether local government should play a role, if any, in DIVCA enforcement measures. Specifically, the Commission will be reviewing Commission enforcement measures and clarifying its enforcement mechanisms for violations of customer service requirements and franchise agreements. At the PHC, parties or interested individuals should be prepared to discuss the issue of local enforcement of DIVCA.

To the extent that a party disagrees with any of the preliminary scope of issues as presented in section 2, b, directly above, the party shall provide a prehearing conference statement explaining the basis for its disagreement.

**c. Schedule**

The Commission is considering the schedule below. The Commission seeks parties’ proposals on a feasible schedule for this proceeding.

EVENT	DATE
Prehearing Conference (by Webex)	December 13, 2023
Scoping Memo Filed and Served	1 <sup>st</sup> Quarter, 2024
Public Participation Hearings	1 <sup>st</sup> Quarter, 2024
Parties Workshop <sup>9</sup>	1 <sup>st</sup> Quarter, 2024
ALJ Files and Serves Staff Report for comment	2 <sup>nd</sup> Quarter, 2024
Parties Workshop <sup>10</sup>	2 <sup>nd</sup> Quarter, 2024

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<sup>9</sup> This workshop would be held while Commission staff is collecting data and preparing its report.

<sup>10</sup> This workshop would be held after Commission staff report is filed by ALJ Ruling to help parties and staff focus the issues and positions to improve the comments and reply comments.

**IT IS RULED** that:

1. A video PHC shall be held on **December 13, 2023**, commencing at **10:00 a.m.** in Order Instituting Rulemaking 23-04-006 to determine the categorization of the proceeding and need for evidentiary hearings, scope of issues, schedule of the proceeding, and other matters as deemed necessary. Parties shall appear by video via Webex.

2. Parties to this proceeding shall be prepared to discuss the categorization of the proceeding and need for evidentiary hearings, scope of issues, proposed schedule and other matters as deemed necessary.

3. To the extent that a party disagrees with any of the preliminary scope of issues as presented in section 2, b, directly above, the party shall provide a PHC statement explaining the basis for its disagreement to [James.Donovan@cpuc.ca.gov](mailto:James.Donovan@cpuc.ca.gov) with subject line "R.23-04-006 [Party Name] PHC Statement for December 13, 2023 PHC" no later than **5:00 p.m. on December 11, 2023**.

4. Parties who intend to appear at the PHC shall provide the name, affiliation, email address and telephone number of the individual who will be appearing and speaking at the PHC to [James.Donovan@cpuc.ca.gov](mailto:James.Donovan@cpuc.ca.gov) with subject line "R.23-04-006 Parties Appearing for December 13, 2023, PHC" no later than **5:00 p.m. on December 11, 2023**.

Dated November 29, 2023, at San Francisco, California.

/s/ MARGERY L. MELVIN

Margery L. Melvin  
Administrative Law Judge