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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This Scoping Memo and Ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the California Public Utilities Commission's Rules of Practice and Procedure (Rules).

1. Background

On April 17, 2023, the California Public Utilities Commission (Commission) issued its Order Instituting Rulemaking (OIR) initiating this proceeding. The purpose of the OIR is 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) 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.

Before the passage of DIVCA, cable television franchises were issued by cities and counties. Enacted in 2006, DIVCA transferred that authority to the Commission.¹ The Commission opened Rulemaking (R.) 06-10-005 to implement DIVCA, resulting in the development and adoption of General Order (GO) 169 in Decision (D.) 07-03-014² 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 the Commission as the sole franchise authority, it also limits 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 Pub. Util. Code Section 5840(a)-(q) is highly expedited, whereby if an applicant seeking a video service franchise submits a complete application,³ the Commission must issue a video franchise within 44 days. The DIVCA statute defines all the obligations and requirements

¹ A franchise is a government authorization to a company or individual to carry out specified commercial activities which, in this case, is to construct and operate a cable video system.

² 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.

³ 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).

placed on franchisees⁴ and prohibits the Commission from imposing additional obligations on those franchisees.⁵

The enactment of SB 28 imposes new requirements on franchisees including, among other items, that the Commission “adopt customer service requirements of a holder of a state franchise and adjudicate any customer complaints.” (Pub. Util. Code § 5895(b).) The establishment and enforcement of customer service requirements for cable franchises is currently permitted under federal law.⁶ 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.

Parties filed timely comments on the OIR by June 1, 2023, and reply comments by June 16, 2023. On October 31, 2023, a Ruling by the assigned Administrative Law Judge (ALJ) granted motions to late-file comments and for party status. On November 3, 2023, an assigned ALJ Ruling granted a motion by other parties to late-file comments. On November 29, 2023, the assigned ALJ issued a ruling setting the prehearing conference (PHC) for December 13, 2023. On December 1, 2023, an assigned ALJ Ruling provided notice of the PHC to all video service franchisees.

At the December 13, 2023, PHC, the assigned ALJ granted oral motions made by several entities for party status. Further, parties discussed the

⁴ Various sections in DIVCA refer to an entity granted a franchise as a “holder” of a state franchise. The terms “holder of a state franchise” and “franchisee” are used interchangeably herein.

⁵ Pub. Util. Code § 5840(a)-(b).

⁶ 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.

categorization of the proceeding, the scope of issues, the need for evidentiary hearings, the need for party workshops and public participation hearings, and the schedule.

On January 11, 2024, the assigned ALJ issued a ruling directing video service franchisees to file and serve responses to a data request, with the data request attached to the ruling. The request seeks data on customer service standards, copies of notices sent to new and existing customers, copies of annual performance reports, and information on local entity enforcement of customer service standards and penalties. On January 17, 2024, the assigned ALJ issued a ruling clarifying the format for the data responses. On February 1, 2024, the ALJ issued a ruling noticing the service list of the Commission's YouTube video, wherein the video seeks input from the public on the OIR.

In terms of process, this rulemaking will include public engagement workshops, a party workshop, and a Staff Report and Recommendations (Staff Report) prepared by the Communications Division (CD).⁷ The Staff Report will provide the public, parties, and the Commission with more information about the issues framed herein along with staff recommendations. The Staff Report will be followed by an opportunity for parties to file and serve written comments and briefs, as set forth in the schedule below.

As further background, the current practice for three of the issues scoped below is briefly described here. For the complaint issue (scoped below as Issue 2.1), customers can use informal processes (*e.g.*, file a complaint with the

⁷ In quasi-legislative proceedings, the Commission's Rules of Practice and Procedure require an assigned Commissioner's ruling or staff report setting forth recommendations to resolve issues identified in the scoping memo, along with at least one party workshop (for parties to have an interactive discussion on issues), and at least one public engagement workshop (to present issues to members of the public who are not parties and obtain their input). (Rule 7.5(a).)

Commission that is addressed by (a) the Consumer Affairs Branch, or (b) via pre-filing mediation), and formal processes (*e.g.*, either expedited or regular complaint procedures for adjudicating complaints against regulated entities⁸). For the enforcement issue (scoped below as Issue 5.1), the Commission may use informal action (*e.g.*, Commission staff communication with the regulated entity via data requests, inspections, warning letters, notices of violations, letters directing corrective action) and formal action (*e.g.*, Administrative Enforcement Orders, citations in an adopted Citation Program, Orders Instituting Investigation, Orders to Show Cause, Stop-Work Orders, Orders for Corrective Action, Orders Revoking Authority, referral to other agencies, and filing for remedies in court). For the penalty issue (scoped below as Issue 5.2), monetary penalties that result from enforcement actions are paid by a regulated entity to the Commission for deposit in the state's General Fund; in some cases, however, the entity may be ordered to enter the penalty amount into a special account or fund for payment of compensation to customers.

All the information provided to the Commission through the process established herein will be considered in preparing a proposed decision for consideration and possible adoption by the Commission. After considering party comments and reply comments on the OIR, and the discussion at the PHC, I have determined the issues that will be within the scope of the proceeding as set forth below.

⁸ See Article 4 of the Commission's Rules of Practice and Procedure. In its current form, Rule 4.1 allows persons, local governments, and others to file complaints against public utilities; and local governments to file complaints against franchisees for certain failures (*e.g.*, not offering required video services). (Regarding failure to offer video services, *see* Pub. Util. Code Section 5890(g).)

2. Issues

The issues to be determined or otherwise considered in this proceeding are stated below. These issues include all those identified in the OIR⁹ plus items raised at the PHC and are organized by subject.

1. CUSTOMER SERVICE REQUIREMENTS

- 1.1. What customer service requirements currently exist for holders of a state video franchise?
- 1.2. What deficiencies, if any, are there in the customer service provided by holders of a state video franchise?
- 1.3. What customer service requirements should the Commission adopt for holders of a state video franchise?

2. COMPLAINTS

- 2.1. In addition to the existing informal and formal Commission complaint processes available for use by customers, are there any other complaint processes, procedures, and methods that the parties recommend?

3. REPORTING STANDARDS

- 3.1. Should the Commission adopt any new reporting requirements for video franchisees?¹⁰
- 3.2. What type of new reporting requirements should the Commission adopt, if any?

4. ENVIRONMENTAL AND SOCIAL JUSTICE

- 4.1. Does the Commission's current regulation of video service franchisees align with or impact achieving any of the nine goals of the Commission's Environmental

⁹ [Order Instituting Rulemaking 23-04-006 at 3-5.](#)

¹⁰ For reference, current Commission annual reports can be found via this link: <https://www.cpuc.ca.gov/regulatory-services/licensing/video-franchising/annual-reports-to-the-legislature>.

and Social Justice (ESJ) Action Plan?¹¹ Does the adoption of video customer service requirements, the adjudication of customer complaints, and adoption of any new reporting requirements align with or impact achieving any of the goals Commission's ESJ Action Plan? If so, which element or elements align with or impact which of the nine ESJ goals? Should the implementation of any element be modified to improve achieving the ESJ Action Plan goals?

5. ENFORCEMENT AND PENALTIES

- 5.1. ENFORCEMENT: In addition to current enforcement actions that can be initiated by the Commission for violations by regulated entities, are there any other enforcement actions the parties recommend for video franchisee violations of Commission orders, rules, regulations, regulatory requirements, or franchise agreements? Should the Commission adopt a specific Citation Program for its regulation of video service franchisees?
- 5.2. PENALTIES: In addition to the Commission's current penalty structure for violations by regulated entities are there any other penalties the parties recommend for video franchisees that do not meet the terms of their franchise agreements, the customer service requirements the Commission adopts in compliance with SB 28, or any other provision of law, Commission order, regulatory requirements, or other rules or regulations? Should a proposed penalty structure include bill credits to consumers? If so, how should these credits be determined? How should these credits be calculated (*e.g.*, per day basis, percentage basis, or fixed dollar amount)? Under

¹¹ The Commission's ESJ Action Plan can be found via this link: <https://www.cpuc.ca.gov/news-and-updates/newsroom/environmental-and-social-justice-action-plan>.

which circumstances should consumers receive credits, if any?

- 5.3. LOCAL GOVERNMENT: What enforcement actions relevant to DIVCA are currently available for use by local governments? How should the Commission work with local governments in the Commission's enforcement of DIVCA? How can local and state government enforcement actions be coordinated to be the most efficient and effective?
6. REVISIONS TO GENERAL ORDERS
 - 6.1. GENERAL ORDER 169: Does the enactment of SB 28 or any other changed or current condition in this market 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?
 - 6.2. APPLICATION PROCESS AND OTHER EFFICIENCIES: Should the Commission modernize and revise the application processes described in GO 169 Sections IV, V, and VII? How can the Commission implement DIVCA more efficiently and effectively to accomplish the policy objectives of DIVCA?
 - 6.3. OTHER GENERAL ORDERS: In addition to other possible revisions to GO 169, identified above, does the enactment of SB 28 or any other changed or current condition in this market require additional changes to GO 169 taking into consideration other Commission general orders (*e.g.*, should CAB's role as specified in GO 168 be refined specifically with respect to holders of state video franchises and considered as part of any recommended changes to GO 169)? How should the rules be revised?

3. Need for Evidentiary Hearing

In the preliminary OIR, the Commission determined that evidentiary hearings are not needed.¹² Likewise, I find that no evidentiary hearings are needed. A party may later file a motion to reverse this finding and ask for an evidentiary hearing if that party seeks to cross-examine another party regarding relevant and material issues of fact. The motion must identify the specific document (*e.g.*, comment, reply comment) filed by a party that another party seeks to examine at the hearing, the subject matter and factual issues that are in dispute for which cross-examination will be pursued, and why the subject matter and factual issues are relevant and material. Motions must be filed within 10 days of the date reply comments are due. Responses to such motion, if any, shall be filed within five days.

The formal record will be established through the filed Staff Report, filed written comments and reply comments by parties, evidence and testimony at the evidentiary hearing (if held), plus filed opening and reply briefs.

Parties shall agree to use a common outline for comments and reply to comments, which the assigned ALJ shall provide in a ruling. Disagreements, if any, shall be brought to the ALJ no less than 15 days before opening comments are due. Comments and reply comments shall be verified. (Rule 1.11 and Rule 18.1.) The person(s) executing the verification(s) shall be the person(s) who sponsors the material and the person(s) the party will present, if necessary, as a witness at a hearing.

Parties shall use a common outline for the briefs. Disagreements, if any, shall be brought to the ALJ no less than 15 days before opening briefs are due.

¹² R.23-04-006 at Ordering Paragraph (OP) 3.

Motions for oral argument, if any, shall be filed by separate motion due at the same time as opening briefs. (Rule 14.13.)

4. Schedule

The following schedule is adopted but may be modified by the assigned Commissioner or ALJ as required to promote the efficient and fair resolution of the rulemaking:

EVENT	DATE
Scoping Memo and Ruling, Issued	April 3, 2024
Public engagement workshops and party workshop, Held	Q2 2024 and Q3 2024
Staff Report (filed and served by ALJ Ruling), Issued	Q4 2024
Party Comments on Staff Report, Filed and Served	Q1 2025
Party Reply Comments on Staff Report, Filed and Served	Q1 2025
Motions for EH ¹³ , Filed and Served	Within 10 days of filing reply comments
Responses to motions for EH, Filed and Served	Within five days of motion for EH
Opening Briefs, Filed and Served	Q1 2025
Motions for Oral Argument, Filed and Served	Q1 2025 (same date as Opening Briefs)
Reply Briefs, Filed and Served	Q1 2025
Submission	Upon receipt of Reply briefs
Proposed Decision, Issued	Within 90 days of submission
Final Decision on Commission Agenda	No sooner than 30 days after Proposed Decision issued

¹³ Evidentiary hearing.

Public engagement workshops provide an opportunity for individuals who are not parties to present their views to the Commission. At any time, any member of the public may also post a comment on the Docket card for this proceeding.¹⁴ The party workshop before the CD report will provide an opportunity for CD staff to obtain specific input from parties. Directions on the holding of the public engagement workshops and party workshop will be by subsequent Ruling or instructions from CD.

A party workshop after issuance of the CD report may be held, if needed, to provide an opportunity for parties to meet and confer on issues before parties file comments, in order to explore ways to make the comments the most efficient, effective, and useful. For example, parties may consider common positions on issues; ways to narrow and focus disputed issues and recommendations; the filing of joint comments; and anything else to make the record clear, complete, and concise. It is expected that the Staff Report will be put into the record and be issued by an assigned ALJ Ruling for party comments and reply comments. The issuance of the Staff Report will set the dates for the party workshop (if to be held), party comments, and party reply comments. A revised schedule will be issued by ruling if a motion for evidentiary hearing is granted.

The proceeding will stand submitted upon the filing of reply briefs unless the assigned Commissioner or assigned ALJ sets aside submission to require the submission of further evidence or argument. The 18-month period for completing this proceeding is now October 17, 2024. (Pub. Util. Code § 1701.5(a).) Additional time, however, will be needed to provide sufficient

¹⁴ See the “public comments” tab at this link: https://apps.cpuc.ca.gov/apex/f?p=401:56:::RP,57,RIR:P5_PROCEEDING_SELECT:R2304006.

opportunity for public input, receipt of data responses,¹⁵ staff preparation and filing of the Staff Report, parties' input, and Commission deliberations before adopting a decision. Accordingly, the statutory deadline is extended by 12 months to October 17, 2025. (Pub. Util. Code § 1701.5(b).)

5. Category of Proceeding and *Ex Parte* Restrictions

The Commission determined in the OIR that this proceeding be preliminarily categorized as quasi-legislative.¹⁶ This ruling confirms the categorization as quasi-legislative. Pursuant to Rule 8.2(a), *ex parte* communications are allowed without restriction or reporting requirement.

6. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing this rulemaking in the Commission's monthly *Working for California* newsletter published in May 2023 which was both (a) disseminated to communities and business that subscribe to it, and (b) posted on the Commission's website. In addition, the Commission served the rulemaking on the service list for the prior rulemakings on GO 169, R.06-10-005, R.13-05-007, R.18-07-006, R.20-02-008, R.20-08-021, R.20-09-001, R.20-10-002, R.21-03-002, and R.22-03-016, as well as on the agencies and individuals listed in Appendix A of the OIR.¹⁷ Finally, in January 2024 the Commission published a video on YouTube. The video explains how customers can file complaints against their

¹⁵ Over the course of many days, nine franchisees requested and were granted extensions to file their responses to the January 11, 2024 ALJ Ruling. The last extension granted requires the filing by April 8, 2024. Additional staff data requests are expected before the filing of the Staff Report.

¹⁶ R.23-04-006 at OP 2.

¹⁷ R.23-04-006 at OP 5.

television and internet service providers and seeks public comment specifically in this proceeding on those services.

7. Intervenor Compensation

Pub. Util. Code Section 1801.3(a) restricts intervenor compensation to formal proceedings involving electrical, gas, water, and telephone utilities. Franchisees under DIVCA do not qualify as any of these utilities. Accordingly, intervenor compensation is not permitted in this proceeding.

8. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

9. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an email to public.advisor@cpuc.ca.gov.

10. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.¹⁸

¹⁸ The form to request additions and changes to the Service list may be found at: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Notwithstanding Rule 1.10, parties are not required to serve a paper copy of filed or served documents on the ALJ unless specifically instructed to do so.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.¹⁹

¹⁹ Subscription for notices in this proceeding can be made by clicking on the "subscription" button on the docket card page for this proceeding via this link: https://apps.cpub.ca.gov/apex/f?p=401:56:::RP,57,RIR:P5_PROCEEDING_SELECT:R2304006.

11. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add “@cpuc.ca.gov” to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

12. Assignment of Proceeding

Commissioner Karen Douglas is the assigned Commissioner and Margery L. Melvin and Thomas Glegola are the assigned Administrative Law Judges for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above and is adopted.
2. Evidentiary hearings are not needed.
3. The statutory deadline for completion of this proceeding is extended by 12 months to October 17, 2025.
4. The schedule of this proceeding is set forth above and is adopted.
5. The category of the proceeding is quasi-legislative.
6. All other protocols established in this ruling are adopted (*e.g.*, parties use same outline for common pleadings (*i.e.*, comments, reply comments, opening briefs, reply briefs), comments and reply comments verified, electronic service for filing and service, motions for evidentiary hearing, deadline for responses to

motions for evidentiary hearing, no paper copies of pleadings served on the ALJs or Commissioners unless specifically instructed to do so).

Dated April 3, 2024, at San Francisco, California.

/s/ KAREN DOUGLAS

Karen Douglas
Assigned Commissioner