

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband Policy and Analysis Branch**

**RESOLUTION T- 17412
October 3, 2013**

R E S O L U T I O N

Resolution T-17412 Granting Lone Pine Television, Inc. a Partial Waiver to the Bond Requirement Established in General Order 169

SUMMARY

General Order (GO) 169 requires state-issued video service franchise holders to post a bond in the amount of \$100,000 up to a maximum amount of \$500,000 for every 20,000 households in its service territory, and to submit a copy of that executed bond to the California Public Utilities Commission (Commission).¹ This bond is used to establish that an applicant for a franchise has “the financial, legal, and technical qualifications necessary to construct and operate the proposed system.”²

Lone Pine Television, Inc. (LPTV) currently holds a state-issued video franchise and must post a bond of \$100,000. It submitted an Advice Letter to the Commission’s Communications Division (CD) requesting a partial waiver of the bond requirement. This Resolution grants LPTV a partial waiver because of the financial burden it would suffer otherwise, and because of the small number of households in its video service territory. Further, as defined by the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), LPTV is the sole provider of video services in a remote and rural area of the state and therefore, it would be in the public interest for it to continue to serve these customers.³ Additionally, it has paid required fees and filed annual reports, and staff

¹ General Order 169 Implementing the Digital Infrastructure and Video Competition Act of 2006 (DIVCA).

² Cal. Pub. Util. Code § 5840(e)(9); “The Commission’s bond requirement only demonstrates that an applicant possesses the “qualifications” necessary to offer video service.” *Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006* (2007) Cal. P.U.C. Dec. No. 07-03-014 (D.07-03-014) at 75.

³ In other words, Lone Pine is the sole provider of video other than satellite. DIVCA defines video service as “video programming services, cable service, or OVS 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 332(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that

found no outstanding customer service issues. Within two weeks from the effective date of this Resolution, LPTV must submit a copy of a fully-executed bond to the Commission in the amount of \$10,000.

BACKGROUND

The Digital Infrastructure and Video Competition Act of 2006, signed into law on September 29, 2006, created a process for the Commission to issue state video franchises in California.⁴ As part of that process, DIVCA §5840(e)(9) requires that a video franchise applicant provide "[a]dequate assurance that the applicant possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system."⁵ To accomplish this, the statute provides that "the [CPUC] may require a bond."⁶

In D. 07-03-014 the Commission implemented most of the provisions of DIVCA, including §5840(e)(9), through adoption of GO 169.⁷ General Order 169 (IV)(A)(1) requires applicants for a state-issued video franchise to submit a copy of a fully-executed bond in the amount of \$100,000 for every 20,000 households in its video service territory, up to a maximum amount of \$500,000. The GO requires that the bond be submitted to the CPUC's Executive Director prior to initiating video service, and no later than five business days after the date of the Commission's issuance of a video franchise to the applicant.⁸

Lone Pine Television, Inc. is a small video service provider with approximately 1,000 households in its video service territory. It is the sole provider of video services, as defined by DIVCA, in Lone Pine, an unincorporated rural area of Inyo County located at the base of Mt. Whitney. Lone Pine has a population of approximately 2,035, according to the 2010 U.S. Census.

Based on the number of households in its video service territory, GO 169 required LPTV, to obtain and maintain a bond in the amount of \$100,000 following Commission issuance of its franchise on April 19, 2012. However, LPTV failed to do so. On October 10, 2012, CD

enables users to access content, information, electronic mail, or other services offered over the public Internet." Cal. Pub.Util. Code § 5830 (s).

⁴ AB 2987, 2005-2006 Session (Ca. 2006); Cal. Pub. Util. Code, Division 2.5, The Digital Infrastructure and Video Competition Act of 2006 (DIVCA).

⁵ Cal. Pub. Util. Code § 5840(e)(9);

⁶ *Id.*

⁷ D.07-03-014 at 75, ordering paragraph 1.

⁸ General Order 169 Implementing the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) at 7; D.07-03-014 at 78. In that decision, the Commission clarified that the purpose of the bond was limited to providing assurance of financial, technical, and legal qualifications.

notified LPTV that it had failed to submit a copy of the required bond and requested it do so immediately.

On October 26, 2012, LPTV responded to CD's notice, requesting that CD waive the bond requirement. LPTV claimed that meeting the bond requirement would be a "severe financial hardship" because it had so few subscribers and that this could potentially force it to cease providing video services or operate at a loss.

On December 6, 2012, CD replied to LPTV, notifying it that, pursuant to GO 169, CD staff was required to enforce the bond requirement. However, staff also informed LPTV that the company could make a formal request to the Commission for a partial waiver of the bond requirement.

On January 14, 2013, following discussions between LPTV and the Commission's Legal Division, LPTV submitted an Advice Letter to CD requesting a partial waiver of the bond requirement. LPTV requested that the Commission reduce the bond requirement from \$100,000, as required by GO169, to \$10,000. In support of this request, LPTV argued that its customer base was limited to approximately 300 subscribers. Furthermore, LPTV claimed that it is the sole video provider, as defined by DIVCA, in its video service territory, with the next nearest service provider located over 60 miles away in Bishop. Additionally, it claimed that posting a bond in the amount required by GO 169 would be a financial burden based on the quotes it had obtained from surety companies.

On February 4, 2013, CD asked LPTV to provide quotes it had obtained from surety companies in its effort to secure a bond that met the requirements of GO 169 as well as the contact information for those companies.⁹ Additionally, CD asked for LPTV's most recent financial statements in order to substantiate its claims of financial hardship. CD determined that at the high end of the spectrum of quotes, LPTV could be forced to operate at a loss and at the low end, the cost of the bond would significantly diminish LPTV's profitability.

NOTICE/PROTESTS

Communications Division served a copy of LPTV's Advice Letter on all parties to Rulemaking (R.) 06-10-005, which implemented DIVCA and resulted in issuance of D.07-03-014. In addition, CD provided a copy of the Advice Letter to Inyo County. Communications Division received no protests to the Advice Letter.

⁹ CD correspondence with www.suretybonds.com, July 19, 2013; CD correspondence with Walter Mortensen Insurance, July 18, 2013.

DISCUSSION

In R. 06-10-055, the Commission initially proposed to implement §5840(e)(9) of DIVCA by requiring all state franchisee to maintain bond in the amount of \$100,000.¹⁰ However, after taking comments on this proposal, the Commission abandoned its proposed one-size fits all approach and instead opted to base the amount of the bond on the number of potential customers in a video service provider's service territory.¹¹ Thus, the Decision determined that a bond in the amount of \$100,000 would be required for every 20,000 households in a provider's video service area. The Commission stated that it was creating a tiered bond requirement in order to be "sensitive to SureWest's concern that imposing a significant bond requirement 'might impede small providers . . . from bringing video service to small areas of the state.'"¹² Additionally, the Commission stated that the tiered bond requirement "ensures that the bond is sufficient to establish a state video franchise holder's qualifications, but does not place a significant barrier to entry on applicants that are qualified to provide video service."¹³

As stated above, the Commission sought to establish a bond requirement that was sufficient to establish franchise holder's qualifications, but was not so onerous as to pose a significant barrier to entry on small providers that are qualified to provide service. However, it is unclear whether the Commission considered the circumstances of very small providers, like LPTV, and the unique role that such providers play in in the communities they serve when it established the bond requirement. Indeed, the smallest video service provider who offered comments on the bond issue in R. 06-10-005 was SureWest, which has hundreds of thousands of households within its video service territory.

In contrast to SureWest, LPTV only has approximately 1,000 households in its service territory. Also, it is the sole provider of video services, as defined by DIVCA, in a remote rural area of the state, which has a population of 2,035 people.¹⁴ Moreover, LPTV has provided financial data to CD that substantiates its claim that maintaining a \$100,000 bond would be a significant financial hardship. Finally, LPTV has been in business for 50

¹⁰ D.07-03-014 at 77.

¹¹ *Id.* at 78.

¹² *Id.* at 79.

¹³ *Id.* at 78-79.

¹⁴ In other words, Lone Pine is the sole provider of video other than satellite. DIVCA defines video service as "video programming services, cable service, or OVS 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 332(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." Cal. Pub.Util. Code § 5830 (s).

years and has reportedly provided service to its customers without major incident.¹⁵ It has also filed annual reports as required by the Commission and has paid all of its regulatory fees. For all these reasons we conclude that granting LPTV's request for a waiver is consistent with the Commission's underlying rationale for adopting the original tiered bond requirement. Communications Division recommends that LPTV's request for a partial waiver be granted. However, this partial waiver may be subject to review by the Commission if and when the number of households in LPTV's service territory increases.¹⁶

Safety Impact

Lone Pine Television, Inc. is a part of the Emergency Alert System (EAS). The EAS is used for national, state or local emergency warnings, which are transmitted through radio stations, television stations and national entities. Lone Pine Television, Inc.'s continued existence as a cable television provider in this area facilitates this area's ability to quickly distribute emergency warnings.

Lone Pine Television, Inc. is also a provider of broadband internet services. As the Governor's Broadband Task Force stated in its 2007 report, ubiquitous broadband will play a key role in enhancing public safety operations and applications in law enforcement, disaster relief, traffic management, and virtually every other aspect of public safety.

Comments on Draft Resolution

In compliance with PU Code §311(g), a notice letter was emailed on September 3, 2013, informing all applicants filing for CASF funding and parties on the service list of R.06-10-005 of the availability of the draft of this Resolution for Public Comments at the Commission's website <http://www.cpuc.ca.gov/PUC/documents/>.

No comments were received in response to this Resolution.

¹⁵ Lone Pine Television, Inc. Letter Re: Lone Pine Television, Inc. – Waiver of Bond, Dec. 20, 2012; CD discussion with Lone Pine Chamber of Commerce, June 13, 2013; CD discussion with Inyo County, June 13, 2013.

¹⁶ State-issued video service providers annually report the number of households in their service territory to the Commission.

FINDINGS

1. D.07-03-014 determined that a state franchise holder must obtain a bond in the amount of \$100,000 for every 20,000 households in a video service provider's territory, with a maximum of \$500,000.
2. D.07-03-014 established a tiered bonding requirement in order to be "sensitive to SureWest's concern that imposing a significant bond requirement 'might impede small providers . . . from bringing video service to small areas of the state.'" This bonding requirement was meant to ensure "that a bond is sufficient to establish a state video franchise holder's qualifications, but does not place a significant barrier to entry on applicants that are qualified to provide video service."
3. General Order 169 implemented the bonding requirement and stipulated that the bond must be submitted to the Executive Director prior to initiating video service and no later than five business days after the date of the Commission's issuance of a state video franchise. The state video franchise holder shall not allow its bond to lapse during any period of its operation pursuant to a state video franchise.
4. Lone Pine Television, Inc. is a video service provider with approximately 1,000 households in its service territory and was required to submit a bond in the amount of \$100,000 pursuant to D. 07-03-014 and GO 169.
5. In December 2012, LPTV filed an Advice Letter and requesting that the Commission grant a partial waiver of the \$100,000 bond requirement and permit it to submit a bond in the amount of \$10,000.
6. Lone Pine Television, Inc. is the sole provider in Lone Pine, an unincorporated area in Inyo County with a population of approximately 2,035 people. It has shown that posting a bond of \$100,000 would be a significant financial hardship. It has been in business for 50 years and has apparently provided service to its customers without major incident. Lastly, LPTV has filed annual report as required by the commission and has paid all of its regulatory fees.
7. Lone Pine Television, Inc. is granted a partial waiver and shall submit a copy of a fully executed bond to the Commission in the amount of \$10,000 within two weeks from the effective date of this Resolution.

8. Parties of Record in R. 06-10-005 were provided with notice of this Resolution in accordance with PU Code Section 311(g).

9. No comments were received in response to this Resolution.

THEREFORE, IT IS ORDERED that:

1. The Commission shall grant a partial waiver to LPTV.
2. Lone Pine Television, Inc. shall submit a copy of a fully executed bond to the Commission in the amount of \$10,000 within two weeks from the effective date of this Resolution.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 3, 2010. The following Commissioners approved it:

PAUL CLANON
Executive Director