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Decision 08-07-007 July 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006.	Rulemaking 06-10-005 (Filed October 5, 2006)

DECISION AMENDING GENERAL ORDER 169

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DECISION AMENDING GENERAL ORDER 169

1. Summary

This decision amends General Order (GO) 169 to require that franchisees requesting extensions of build-out deadlines follow the Commission's general procedures for making an application, not the specific application procedures and forms pertaining to the grant of a video franchise.

In addition, the decision amends GO 169 to cap the cumulative bonding requirement for franchisees holding multiple franchises at $500,000.

The decision also amends GO 169 to require that franchise holders submit to this Commission the information that the Federal Communications Commission (FCC) requires concerning subscribership to broadband services, including information on speed by tiers. The decision finds that the existing statutes and regulatory procedures provide adequate protection for this confidential and market sensitive data, particularly when combined with the Commission's policy of not disclosing any information at the single firm level. The decision defers amending the current requirements of GO 169 concerning reporting on the availability of broadband in light of the FCC's continuing consideration of the best method for obtaining detailed data on this matter. The decision finds that arguments that the FCC has pre-empted state action in this area lack legal merit.

2. Background and Procedural History

On March 27, 2008, an Assigned Commissioner's Ruling and Scoping Memo for Phase III identified three issues for resolution in this phase of the proceeding: (1) what rules are needed to help "ensure that franchisees' extension

requests are timely made and decided;" [1] (2) what changes in rules are needed to "eliminate an unintended and unfair asymmetry in the bond requirement under GO 169;"[2] and (3) should the rules be changed to "require reporting of broadband speed 'tiers' that state video franchise holders make available."[3]

Opening Comments were due on April 16, 2008. AT&T California (AT&T), California Cable and Telecommunications Association (CCTA), Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Global Valley Networks, Inc., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company (Small LECs), the SureWest Televideo (SureWest), The Utility Reform Network (TURN), and Verizon California Inc. (Verizon) filed opening comments.

Reply Comments were filed on April 21, 2008, by AT&T, CCTA, DRA, Latino Issues Forum and California Community Technology Policy Group (LIF/CCTPG), the Small LECs, TURN, Verizon.

3. What Rules Will Ensure Timely Consideration of Requests for Extensions of Deadlines?

The ACR initiating this phase of this rulemaking reviews the statutory provisions concerning requests for extensions. It notes that:

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[1] Assigned Commissioner's Ruling and Scoping Memo for Phase III (ACR of March 27, 2008), Rulemaking (R.) 06-10-005 (March 27, 2008) at 2.

[2] *Id.*

[3] *Id.*

> … [u]pon filing of an application for extension, the Commission must hold a hearing in the holder's service area (Pub. Util. Code § 5890(f)(2)), determine whether the holder "made substantial and continuous effort to meet the [build-out] requirements" (Pub. Util. Code § 5890(f)(4)), and, if so, "establish a new compliance deadline." (*Id*.) Regarding the timing of an application for extension, Pub. Util. Code § 5890(f)(1) states: "After two years of providing service under [DIVCA], the holder may apply to the [Commission] for an extension to meet the requirements of subdivision (b), (c), or (e)."[4]

The ACR further notes that "Upon review of the Phase II comments and these statutory provisions, it appears that the Commission should implement the provisions by further specifying the timing and processing of applications for an extension."[5] The ruling then proposes to add a rule requiring the filing of an extension application "as soon as practicable, once the holder determines that it cannot meet one or more of the build-out deadlines."[6] In no event can an application for an extension be filed "later than the deadline for which an extension is sought."[7] The application for an extension should state a "good cause" for granting the extension, and contain a new schedule with reasonable "compliance deadlines."[8] Finally, the ruling proposes that the "Commission's Rules of Practice and Procedure will govern participation in extension applications."[9]

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[4] Id. at 3. DIVCA is the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), Assembly Bill 2987 (Ch. 700, Stats. 2006).

[5] *Id.* at 4.

[6] *Id.*

[7] *Id*.

[8] *Id.*

[9] *Id.*

3.1. Position of Parties Concerning Proposed Rule for Extensions

Concerning the proposed rule for extensions, Verizon notes an ambiguity in the proposed rules regarding extension applications, namely that proposed Rule I.D [GO 169] could be read as requiring the extension applicant to use the same form as prescribed for requests seeking grant or amendment of a state video franchise. Verizon argues that the "application form is extremely precise and contains questions tailored to DIVCA's requirements for granting a franchise."[10] Verizon suggests that requests for extension "be handled according to Commission Rule 2.1 regarding applications in general."[11]

AT&T "supports the Scoping Memo's proposals regarding extension applications … "[12] Similarly, CCTA states that the proposed extension provisions "mirror the requirements imposed by DIVCA, and thus appear noncontroversial."[13]

The Small LECs object to the Commission's imposition of a requirement that applications for extensions be filed "as soon as practicable after determining

[10] Comments of Verizon California Inc. (U1002) on Assigned Commissioner's Ruling and Scoping Memo for Phase III (Verizon Opening Comments), April 16, 2007, at 2.

[11] *Id*.

[12] Opening Comments of AT&T on Assigned Commissioner's Ruling and Scoping Memo for Phase III, Issued March 27, 2008 (AT&T Opening Comments), April 16, 2008, at 1.

[13] Comments of the California Cable and Telecommunications Association on the Assigned Commissioner's Ruling and Scoping Memo for Phase III (CCTA Opening Comments), April 16, 2008, at 1.)

that it is unlikely to meet a particular deadline."[14] The Small LECs argue that this requirement is inappropriate for two reasons:

> First, it ignores Section 5890(f)(l)'s standard that an extension application may not be filed prior to two years after commencing service. Second, the Commission should not memorialize in its rules highly subjective standards that will be difficult to enforce and which place franchise holders in a position where determining compliance is ambiguous at best.[15]

They recommend that as an alternative the Commission offer "to freeze the compliance period pending a determination of the application's merits."[16] Under this proposal an applicant who applies for an extension "four months prior to a build-out deadline would have at least four months to satisfy that deadline if its application were denied."[17]

3.2. Discussion

In response to Verizon, we agree that there is no reason to adapt our current video franchise application form to address extensions, a purpose for which it was not intended. As a result, we elect to resolve the ambiguities identified by Verizon by revising GO 169 Rule I.D to read as follows:

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[14] Opening Comments of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Foresthill Telephone Co. (U1009C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U1011 C), Kerman Telephone Co. (U1012C), Pinnacles Telephone Co. (U1013C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), Winterhaven Telephone Company (U1021C) on Phase III Issues (Opening Comments of Small LECs) April 16, 2008, at 1.

[15] *Id.* at 2.

[16] *Id.*

[17] *Id.*

> "Application" means, as appropriate, either (1) an Application in the form prescribed in this General Order 169 if the Applicant seeks grant or amendment of a State Video Franchise, or (2) an Application in the form prescribed by Rule 2.1 of the Commission's Rules of Practice and Procedure if the Applicant seeks an extension of time to meet the requirements of subdivision (b), (c), or (e) of Public Utilities Code Section 5890.

The result of this amendment is to enable applicants for extensions to follow Rule 2.1 of the Commission's Rules of Practice and Procedure as Verizon suggests.

In response to the Small LECs, we do not see a conflict between our proposed rule and the statutory provision of § 5890(f)(1), which states that a request for extension cannot be filed prior to two years after commencing service. The first deadline imposed by the statute is two years after service commences, and a request for extension that is filed on that day would both be consistent with the law and our proposed rule. To clarify, we will amend the wording of Section VI.G as follows:

> The Application for extension must be filed as soon as practicable after the State Video Franchise Holder determines that it likely will not be able to meet one or more requirements of subdivision (b), (c), or (e), as applicable, *but no sooner than two years from the commencement of service*. In no event should the Application for extension be filed later than the earliest deadline under any of the requirements for which an extension is sought. (Italics indicate changes from the language proposed in Appendix A of the ACR of March 27, 2008.)

The modified language makes it clear that requests for modification will not be accepted until after two years of service.

Concerning the Small LECs suggestion that we "freeze the compliance period pending a determination of the application's merits,"[18] we decline to adopt such a procedure. To some extent, "freezing the compliance period" grants an automatic extension of the statutory deadlines triggered by the request for an extension. Section 5890(f)(3) clearly contemplates that the grant of an extension follows the review of factors that the franchise holder alleges have caused the delay. As a result, we find the procedure we adopt herein, which grants an extension only following the review of an application by the Commission, more consistent with the statutory language and statutory intent than the procedure proposed by the Small LECs.

We also do not find the language "as soon as practicable" to be "highly subjective standards that will be difficult to enforce."[19] The goal of the language is to encourage early applications for extensions when a franchise holder realizes that it cannot meet a statutory deadline. Also, the Commission's chief goal will be enforcing the statutory deadlines and standards for build-out, not enforcing a filing deadline, which, even if stated as a specific number of days, would be somewhat arbitrary. Within this context, we believe the guidance of "as soon as practicable" offers a reasonable guideline to filings.

In summary, based on these considerations, we find the revised rule contained in Appendix A to be reasonable. Moreover, it is in the public interest to establish a process that permits the timely and expeditious review of requests

[18] *Id.*

[19] *Id.*

for extensions. Finally, the proposed rules are consistent with the statutory provisions and intent of DIVCA.

4. What Changes in Rules Are Needed to Eliminate Unfair and Asymmetric Bonding Requirements?

Current rules require that for each state video franchise granted, the holder must post a bond of no "less than $100,000 or more than $500,000."[20] The ACR of March 27, 2008 notes that because of wording of the current requirement, a person or entity applying for several franchises could experience a cumulative bonding requirement that "may exceed $500,000."[21] On the other hand, a person or entity with only one franchise would be subject to the "$500,000 limit, even though the one franchise area by itself might contain more households than all of the franchise areas to be served by the applicant for multiple franchises."[22] The ACR posed that this "disparate treatment of state video franchise holders … may have an anti-competitive impact, contrary to the intent of DIVCA."[23]

The ACR of March 27, 2008 proposed to amend GO 169 "to provide that a person or entity applying for more than one state video franchise, directly or through its affiliates, will not be required to execute bonds whose cumulative amount exceeds $500,000, regardless of the number of state video franchises sought or already held."[24]

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[20] GO 169 Section IV.A.1.a.

[21] ACR of March 27, 2008 at 6.

[22] *Id.*

[23] *Id.*

[24] *Id.*

AT&T,[25] CCTA,[26] DRA,[27] and the Small LECs[28] support the modification of the proposed changes in the bonding requirement. No party expressed opposition to the proposed changes in either opening or reply comments.

Based on the considerations detailed above and the considerations that led to the setting of the original $500,000 standard in Decision (D.) 07-03-014, we find that the revised rule contained in Appendix B, which limits the cumulative bonding requirement to any one holder of multiple video franchises to $500,000, is sufficient to provide adequate assurance of the financial qualifications of the franchise holder. Moreover, the revised rule avoids the potential disparate treatment of video franchise holders who elect to serve California through several different video franchises rather than through one single franchise. As such, the revised rule is more consistent with the statutory intent of DIVCA to encourage video competition. We therefore find that the revised rule is reasonable, in the public interest, and consistent with DIVCA.

5. Should Reporting Rules Be Changed to Require the Reporting of Broadband Speeds by Tiers?

The ACR of March 27, 2008 sought comments on "whether the Commission should require franchise holders to report on a census tract basis information regarding (i) the number of households to which the holder makes certain broadband speed tiers available in this state; and (ii) the number of

[25] AT&T Opening Comments at 1.

[26] CCTA Opening Comments at 1.

[27] DRA Opening Comments at 1.

[28] Small LECs at 2.

households that subscribe to certain broadband speed tiers that the holder makes available in this state."[29]

In addition, the Commission invited comments on which broadband speed tiers franchise holders should report information on availability and subscribership. Specifically, the ACR of March 27, 2008 stated:

> We believe that at a minimum, the speed tiers on which the California Broadband Task Force collected data (less than 1 megabyte per second [mbps]; 1-5 mbps; 5-10 mbps), or comparable to the new Federal Communications Commission (FCC) broadband mapping speeds in its recent decision in Docket 07-38.[30]

In inviting comments on this proposed modification to General Order 169, the ACR of March 27 cited three new developments that warrant a re-examination of D.07-10-013, where the Commission declined to require franchise holders to submit data concerning broadband speeds:

> First, we issued D.07-12-054 in R.06-06-028, in which we established the California Advanced Services Fund (CASF) to encourage the deployment of broadband facilities for providing advanced telecommunications and voice services in unserved and underserved areas of the state.
>
> Second, since our issuance of the Phase II DIVCA decision, the FCC has indicated that it will expand its collection of broadband subscriber data at the federal level …
>
> Third, we note that the Governor's Broadband Task Force collected data regarding broadband availability and broadband speed tiers as of 2007 … identifying at least 4% of the state, representing just under

[29] ACR of March 27, 2008 at 6.

[30] *Id.* at 7.

> 2000 communities and approximately 1.4 million people, who do not have access to broadband at this time.[31]

Further, the ACR of March 27, 2008 proposed confidentiality protections, promising that the Commission "will not use or make public any of this data on a carrier-specific basis,"[32] but also seeking comment "on whether current confidentiality requirements are adequate, or whether the Commission should order more protection (or request additional confidential protection from the Legislature for this data)."[33]

On June 12, 2008, the FCC issued its Form 477 Order.[34] The Form 477 Order requires that each company report the speed of service purchased by customers in a matrix format that includes 64 variations of upstream and downstream speeds.[35] It also requires the provision of this information by Census Tracts.[36] In those rare instances in which the provision of data at the Census Tract level proves "overly burdensome," the FCC permits the acceptance of "service addresses or GIS coordinates of service" and explicitly cites the California proposals pertaining to matter.[37]

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[31] *Id.* at 8-10.

[32] *Id.* at 12.

[33] *Id.*

[34] *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (rel. June 12, 2008) (Form 477 Order).

[35] *Id.* at ¶ 20.

[36] *Id.* at ¶14.

[37] *Id.* at ¶ 15 at fn. 50.

On the issue of whether a provider offers service and the development of availability maps, the Form 477 Order tentatively concludes "that the Commission [FCC] should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available."[38] In addition, the FCC seeks comment "on whether and how a nationwide broadband mapping program can incorporate the data collected on Form 477, including information on broadband service subscriptions by Census tract and speed tier."[39]

5.1. Positions of Parties

Concerning reporting requirements, AT&T states that "it cannot support additional broadband reporting requirements proposed in the Scoping Memo"[40] and instead "proposes that it voluntarily provide the California Public Utilities Commission with the California broadband data AT&T is required to report to the FCC."[41] AT&T offers three arguments to support its position. First, AT&T argues that the reporting requirements outlined in the ACR of March 27, 2008 are pre-empted "most plainly because the FCC has acted within the scope of its congressionally delegated authority to pre-empt state regulation of broadband."[42] Second, AT&T argues that no section "of DIVCA requires each franchise holder to report the additional broadband data proposed in the Scoping Memo. Thus, the imposition of such a requirement would be

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[38] *Id.* at ¶35.

[39] *Id.*

[40] AT&T Opening Comments at 2.

[41] AT&T Opening Comments at 3.

[42] *Id.*

unlawful."[43] Third, AT&T argues that broadband reporting requirements imposed on video franchise holders "would be ineffective and discriminatory"[44] because many "of the providers offering this wide range of broadband technologies are not video franchise holders or affiliates of video franchise holders."[45] As a result, AT&T argues that the information will not be a "reliable indicator that no broadband service is available in that area from some other provider" and would be discriminatory because it would impose "significant costs and potential penalties on only one segment of a very competitive industry" and therefore "would distort the market and result in bad public policy."[46]

Verizon "strongly urges the Commission to adopt speed tiers and reporting requirements that are consistent with those adopted by the FCC."[47] Verizon advances several arguments supporting this position. First, Verizon notes that once the FCC acts, "carriers will be obligated to track data in that format, and use of a different format for California will only create duplicate tracking and reporting efforts, leading to additional costs and administrative confusion."[48] Verizon argues that such action "would reverse course on a form of regulation that has proven so successful."[49]

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[43] *Id.* at 5.

[44] *Id.* at 6.

[45] *Id.*

[46] *Id.*

[47] Verizon Opening Comments at 3.

[48] *Id.*

[49] *Id.*

Further, Verizon points out that "different reporting formats will mean that California will be unable to benchmark itself against other states or against national data compiled by the FCC."[50] Verizon also argues that implementation issues will need to "be indentified and addressed" and notes that since annual reports are not due until next April, there is "more than sufficient time to review any rules established by the FCC and implement them as needed in California."[51] Verizon concludes that "the Commission should defer to the FCC and state its intent to conform its requirements to any standards adopted by the FCC.[52]

CCTA argues "that rather than imposing new, burdensome requirements, particularly state-specific requirements, on state franchise holders, the Commission adopt the speed tiers used by the FCC and access the FCC reports."[53] Also, despite the fact the FCC reports indicate that it will require the reporting of the number of subscribers by broadband speed, CCTA states "there is no justification to require reports as to the number of households that subscribe to the specific broadband tiers, and the Ruling offers none."[54] Thus, CCTA appears to both endorse and oppose the adoption of the FCC reporting requirements.

The Small LECs argue for reporting requirements that track those of the FCC. The Small LECs state "[b]ecause of the impact on competition that regulatory costs can have, particularly by favoring large competitors over

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[50] *Id.*

[51] *Id.* at 4.

[52] *Id.*

[53] CCTA Opening Comments at 4.

[54] *Id.* at 3.

smaller competitors, the Small LECs urge the Commission to parallel the FCC's broadband reporting requirements to the fullest extent possible."[55] The Small LECs also join CCTA in opposing "a data collection requirement that mandates reporting the number of homes that subscribe to a particular broadband data speed tier"[56] especially because "such information is particularly sensitive in what is a very competitive environment and should not be collected."[57]

DRA supports "the collection of data on broadband speed tiers from video service providers" "[f]or all the reasons set forth in the ACR."[58] DRA supports requiring the "reporting of speed tiers of less than 1 mbps, 1-3 mbps, 3-5 mbps, 5-10 mbps, and greater than 10 mbps"[59] In its Reply Comments, DRA states that it

> … is also not opposed to adopting the speed tiers proposed by the FCC because the breakdown of tiers in all of these proposals is very similar for the most part. However, the breakdown of tiers should definitely include one cut-off at 3 mbps (which the current proposed FCC tier structure includes, pending issue of the order) and another in excess of 10 mbps (which would be an addition for California state franchisees). … Collecting data in excess of 10 mbps is also necessary, because, according to the Broadband Task Report, over 50% of California households already have access to broadband speeds that are greater than 10 mbps.[60]

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55 Small LECs Opening Comments at 3.

56 Small LECs Reply Comments at 2.

57 *Id.*

58 DRA Opening Comments at 1.

59 DRA Opening Comments at 2, footnote 8.

60 DRA Reply Comments at 2.

In addition, DRA supports "performing a periodic review and possible adjustment because technological advances could render the speed tiers that the Commission now adopts obsolete in the future."[61] Finally, concerning the issue of confidentiality, "DRA sees no reason to provide additional disclosure restrictions" beyond the protection of GO 66-C, Pub. Util. Code § 583 and the ACR's promise that the Commission "will not use or publicly disclose any of this data on a carrier specific basis."[62]

TURN states that it "wholeheartedly endorses the requirement for granular reporting of broadband information" arguing that "only through such reporting that the Commission will be able to assess the degree of success … with increased broadband deployment and competition for video services."[63]

LIF/CCTP did not file opening comments, but used Reply Comments to support the proposed reporting requirements concerning broadband speed and to urge the collection of even more detailed information. LIF/CCTP notes that it "has continually argued throughout this proceeding that reporting on the specific broadband technology – or as an alternate, on the broadband speed – offered to various communities is necessary for proper monitoring of the non-discriminatory build-out provisions of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA)."[64] In addition, LIF/CCTPG argues that "Census Block data is more appropriate [than Census Tract data]"[65] and that

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[61] *Id.* at 3.

[62] DRA Opening Comments at 3.

[63] TURN Opening Comments at 3.

[64] LIF/CCTPG Reply Comments at 1, footnote omitted.

[65] *Id.* at 3.

"reporting on both broadband availability and subscribers is needed."[66] Finally, LIF/CCTPG argues that "no additional confidentiality protections are required for broadband speed data."[67]

5.2. Discussion

We will begin by describing the reporting requirement that we adopt, and then proceed to discuss why this reporting requirement is reasonable, produces benefits at low costs, and is consistent with state law.

We find that it is reasonable to leave unchanged the current GO 169 reporting requirement concerning the availability of broadband service, but that it is reasonable to require that holders of state video franchises report by census tract the number of households that subscribe to broadband speed tiers that the holder makes available in this state. In particular, we find that it is reasonable to require service providers to report on the services to which customers subscribe in exactly the same way that the FCC requires providers to report on the number of subscribers in each Census Tract in each of the broadband tiers and reporting requirements imposed by the FCC.

With the release of the FCC's Form 477 Order, we know that the FCC has announced its intention of developing a "responsive Order within 4 months"[68] to develop information on broadband service that is "a rich resource for use by other federal agencies, states, localities, and public private partnerships in focusing on expanding broadband availability in a manner similar to the

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66 *Id.*

67 *Id.* at 4.

68 Form 477 Order at ¶ 35.

focusing of resources enabled by the Connect Kentucky project."[69] Because of this ongoing investigation by the FCC, we decline to change GO 169 at this time.

Concerning reporting on broadband subscribership, we note that the FCC requires broadband providers to furnish information on the number of subscribers by Census Tract, broken down into 64 speed tiers and by technology. This provides information at a level of detail that meets California's policy needs and enables us to compare California's broadband infrastructure with those of other states and indeed other nations.

The FCC requires the submission of information at much greater detail than the reports developed by the California Broadband Task Force. This information will be especially useful in the implementation of the CASF, adopted in D.07-12-054. We see no reason to depart in any way from the FCC's approach.

We note that since the FCC is collecting this information by census tract, the same collection unit that California is using in its DIVCA reports, the information will be readily useable by the DIVCA program.[70] Moreover, the Form 477 Order makes clear that there is no difference between the California and FCC policy goals for understanding and advancing the development of broadband infrastructure.

In particular, this information that the FCC and we are requiring is consistent with Pub. Util. Code § 5960(b)(1), which requires information on broadband subscribership. Furthermore, this FCC reporting requirement is consistent with the stated intent of the DIVCA statute, which seeks to promote

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[69] *Id.*

[70] We may, however, require that the franchise holders submit the report in a particular data format.

"the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status"[71] and will "[c]omplement efforts to increase investment in broadband infrastructure and close the digital divide."[72]

We also note that the FCC requirement to collect this detailed information on broadband deployment and speeds makes this information available to California at very low incremental cost; all that a video franchise holder needs to do is transmit this information to the CPUC.

Furthermore, by adopting the reporting requirements of the FCC, California not only avoids imposing regulatory costs on state video franchise holders, but also reaps substantial benefits. In particular, by adopting the reporting requirements of the FCC, California will be able to compare itself with other states. As a result, California will not only be able to track the advances of its digital infrastructure, but compare California's broadband infrastructure with that available in other states and nations. This information, in particular, will provide the best opportunity of ascertaining the effectiveness of DIVCA and enabling California to determine whether additional programs are needed.

We note that we can maintain the ability to compare California data with that of others to the extent that we adopt a procedure for assigning customers to a census tract that is identical to that adopted by the FCC. Therefore, in the case of any conflict, we will defer to the FCC's procedures for assigning customers to census tracts.

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[71] Section 5818(a)(2)(B).

[72] Section 5818(a)(2)(E).

In addition, as noted in the ACR dated March 27, 2008, information collected on subscribership to different data speeds will assist the Commission in the implementation of the CASF and collecting this information advances the public interest.

Moreover, since the FCC is requiring the reporting of information on speed and subscribership, the FCC has removed the cost obstacle to collecting the data. Thus, the benefits of requiring that franchise holders submit this information clearly exceed the costs and make it reasonable to modify GO 169 to include such information.

Since the costs of requiring video franchise holders to submit this information that they have collected for the FCC are *de minimis,* there is little chance that imposing this reporting requirement on video franchise holders will result in the asymmetric and adverse impacts that AT&T posits.

We note that in the Form 477 Order, the FCC requires broadband providers to report separately on speeds greater than 10 mbps, 25 mbps and 100 mps, in substantially greater detail than DRA requests. Since our reporting requirements track those of the FCC, they meet DRA's request.

In summary, we adopt the reporting requirements outlined above and codified in Appendix C as a cost-effective and reasonable method of obtaining information needed to assist in the implementation of DIVCA and CASF.

We decline to adopt TURN's and LIF/CCTPG's proposal to require the collection of data at the census block level, rather than the census tract level. We note that census tract reporting is the current requirement for both the DIVCA program and the FCC. A requirement of reporting data at the census block level of detail would surely increase costs to California broadband companies and at this time we do not see a need for such a detailed requirement. In particular, to

compare California to other states would require the aggregation of data into units that make the data comparable to that reported in other states. Additionally, most census information which the Commission may use to analyze broadband deployment is available at the census tract but not the census block level. Thus, imposing a requirement to report a census block benefit is unlikely to produce significant benefits while imposing real costs.

Concerning the question of whether the collection of information on speeds and subscribers should be offered special confidentiality protections, we note that § 5960(d) of the California Public Utilities Code extends the protections of § 583 to all data provided to the Commission annually in the reporting requirements imposed by DIVCA. In addition, General Order 66-C excludes from disclosure confidential information obtained by the Commission which, "if revealed, would place the regulated company at an unfair business disadvantage."[73] Since the disclosure of the data concerning a company's data service offerings and subscribership at the census tract level is competitively sensitive information that, if revealed, would place a company at a serious competitive disadvantage, the information collected pursuant to the annual reporting requirements as to a particular company, qualifies for confidential treatment. We therefore amend GO 169 as set forth in Appendix C to clarify that the protections of § 583 and GO 66-C apply to the data submitted.

In addition, the Commission's announced policy of not using or publicly disclosing any of the data on a carrier-specific basis is a reasonable and necessary

[73] GO 66-C.

precaution. We direct the Executive Director and Director of Communications Division to ensure precautions are taken to protect carrier-specific data.

We further note that although parties pointed out the market sensitivity of the data that the Commission plans to gather, no party recommended that the Commission either provide special confidentiality protections for this data or seek additional legislative authority to provide additional confidentiality protections for this data. We note that the Commission routinely collects extremely market-sensitive information in the energy field and in other market areas. To date, the protections of data provided by Pub. Util. Code § 583 and GO 66-C have proved adequate in protecting competitively sensitive energy data, and we do not anticipate that our experience with broadband speeds and subscribership data will be different.

Finally, we find AT&T's argument that federal law pre-empts this Commission from requiring franchise holders to report on subscribership and speed of data connection unconvincing. AT&T's legal arguments that federal law has pre-empted the Commission's requirement that video franchise holders provide information on data services and subscribership depend on *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 and *Vonage Holdings Corp. v. Minnesota PUC*, 290 F. Supp.2d 993. Yet when one examines these cases closely, one does not find support for federal pre-emption.

Indeed, a close reading of *Louisiana Pub. Serv. Comm'n v. FCC* shows that its reasoning supports the conclusion that this Commission has authority to impose the reporting requirements adopted herein. We note that the effect of *Louisiana Pub. Serv. Comm'n v. FCC* was to permit the regulation of depreciation schedules for intrastate telecommunications services and overturned as unlawful an FCC action to pre-empt the states from regulation of depreciation rates.

Nevertheless, as AT&T notes, *Louisiana Pub. Serv. Comm'n v. FCC* did set out a clear discussion of when state regulatory actions can be pre-empted:

> The Supremacy Clause of Art. VI of the Constitution provides Congress with the power to pre-empt state law. Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, *Jones v. Rath Packing Co*., 430 U.S. 519 (1977), when there is outright or actual conflict between federal and state law, *e.g*., *Free v. Bland*, 369 U.S. 663 (1962), where compliance with both federal and state law is in effect physically impossible; *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963), where there is implicit in federal law a barrier to state regulation; *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law; *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218 (1947), or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. *Hines v. Davidowitz*, 312 U.S. 52 (1941). Pre-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation. *Fidelity Federal Savings & Loan Assn. v. De la Cuesta*, 458 U.S. 141 (1982); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984).[74]

Applying these criteria to the extant case shows that there is no pre-emption of the proposed reporting requirement. First, the federal statute in question is the same one, albeit modified, as that discussed in this decision – Telecommunications Act – and it remains committed to the principle of shared federal/state jurisdiction. In fact, § 706(a) of the Telecommunications Act of 1996 provides that the FCC "*and each State commission* … shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans … by utilizing … price cap regulation, regulatory

[74] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368-369 (U.S. 1986).

forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." (*Emphasis added.)* Thus, there is no clear intent to pre-empt state law or state efforts to promote investment in the information infrastructure.

Second, there is no outright or actual conflict between federal and state law nor is it physically impossible to comply with federal and state law. Both federal and state laws seek to promote digital infrastructure. Moreover, there is no conflict between the federal and state reporting requirements adopted in this decision – they are identical.

Third, the Federal government has not acted to occupy the entire field of government action. We note that the Supreme Court in *Louisiana Pub. Serv. Comm'n v. FCC* noted:

> However, while the Act would seem to divide the world of domestic telephone service neatly into two hemispheres – one comprised of interstate service, over which the FCC would have plenary authority, and the other made up of intrastate service, over which the States would retain exclusive jurisdiction – in practice, the realities of technology and economics belie such a clean parceling of responsibility. This is so because virtually all telephone plant that is used to provide intrastate service is also used to provide interstate service, and is thus conceivably within the jurisdiction of both state and federal authorities. Moreover, because the same carriers provide both interstate and intrastate service, actions taken by federal and state regulators within their respective domains necessarily affect the general financial health of those carriers, and hence their ability to provide service, in the other "hemisphere."[75]

We note that the situation that we have today is very similar to that addressed by the court in 1986. Where in 1986 "the realities of technology and

[75] *Id.* at 360.

economics belie such a clean parceling of responsibility" between federal and interstate jurisdiction, today, technology and economics belie the clean parceling of responsibility between voice, data, and video. Indeed, the same wire is used to transmit voice, data, and video. In addition, voice, data and video are now simply packets of digits.

Fourth, we note that the FCC has not pre-empted states from imposing reporting requirements concerning the deployment and subscribership to digital technologies. This is not surprising, because there is no conflict between federal and state policy – each seeks to promote the digital infrastructure within the economy and to overcome digital divides. Moreover, the very information useful to the FCC that is critical for determining the effectiveness of its programs is also critical to California in determining the effectiveness of its programs, particularly those used to encourage the deployment of broadband technologies in underserved communities and areas of the state.

Similarly, a close reading of *Vonage Holdings Corp. v. Minnesota PUC*[76] finds a factual situation readily distinguishable from that under consideration here. In *Vonage Holdings*, the Minnesota PUC was attempting to impose an entire telecommunications regulatory regime developed for analog voice on a digital information service, VoIP. Here California is obtaining information, already required by the FCC, on the use and technological capabilities of the local connection to a home or place of business. This local connection, which supplies voice, video and data service, is subject to shared state and federal jurisdiction. Finally, as we noted above, DIVCA has given this Commission the authority to

[76] *Vonage Holdings Corp. v. Minnesota PUC*, 290 F. Supp.2d 993.

require and the responsibility to assess information on California's information infrastructure.[77]

In summary, we find AT&T's arguments that federal action prohibits California from requiring cable franchisees to submit information on subscription to high-speed data technologies unconvincing. Neither *Louisiana Pub. Serv. Comm'n v. FCC* nor *Vonage Holdings Corp. v. Minnesota PUC* support the proposition that the federal government has pre-empted California from requiring the submission of federal data on the capabilities and use of telecommunications infrastructure. Finally, DIVCA gives the Commission both responsibility and authority to act in the area of infrastructure policy.

6. Comments on Proposed Decision

The proposed decision (PD) of the assigned Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure.

On June 12, 2008, AT&T and the Small LECs filed Opening Comments. On June 17, 2008, AT&T and Verizon filed Reply Comments.

AT&T's Opening Comments reargue that "federal law preempts the California Commission from regulating broadband services."[78] In addition, AT&T argues that "imposition of additional broadband reporting requirements is contrary to DIVCA."[79]

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[77] Section 5960.

[78] Opening Comments of AT&T California on Proposed Decision of Commissioner Chong Mailed May 23, 2008 (Opening Comments) at 2.

[79] *Id*. at 6.

Finally, AT&T anticipates potential discrepancies between FCC requirements and those adopted by this Commission, arguing that "even if the Commission did have jurisdiction, which it does not, the proposed decision would not implement its intent to require only the submission of FCC data."[80] On this matter, AT&T speculates that there will be conflicts between "the Commission's methodology for making a reasonable approximation using alternate geospatial areas"[81] and the methodology adopted by the FCC.

The Small LECs state that although the "appreciate the clarifications made to the draft rules pertaining to extension applications,"[82] they continue to assert "that there is an apparent conflict"[83] between two sections of the DIVCA statute. The Small LECs state that they support the modifications to the bond requirements and the confidentiality protections for reported data, but that they "are concerned that the PD would implement modifications to reporting related to broadband tiers in a way that might not be fully consistent with FCC requirements."[84]

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[80] *Id*. at 7.

[81] *Id*. at 8

[82] Opening Comments of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Foresthill Telephone Co. (U1009C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U1011 C), Kerman Telephone Co. (U1012C), Pinnacles Telephone Co. (U1013C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), Winterhaven Telephone Company (U1021C) on Proposed Decision Mailed May 23, 2008, June 12, 2008

[83] *Id*.

[84] *Id*.

In its Reply Comments on the PD,[85] AT&T identifies potential discrepancies between the PD's proposal for reporting on the availability of broadband service and the FCC's plan to adopt an order addressing this matter in four months.

Verizon's Reply Comments on the PD generally support AT&T's concerns over a conflict between state and federal reporting requirements. Verizon states:

> Now that the FCC order is out, the Commission should reevaluate its own data filing requirements and templates to conform to the FCC's requirements. … Verizon concurs with AT&T's assessment that the proposed amendments to General Order 169 would "overlay" the speed tier reporting requirement in such a way as to require franchises to "correlate speed tier data to the Commission's existing reporting structure" and "perform unique and significant analysis to fit the speed data into the Commission's existing structure."[86]

In response to the comments, we have re-evaluated the reporting requirements that are under consideration in this phase of the DIVCA proceeding. We have removed any inconsistencies between our reporting requirements and those adopted in the FCC's Form 477 Order.

In particular, to insure that there is no conflict, we have deferred any changes to the existing requirements concerning reporting on the availability of broadband services. We anticipate that the FCC data on availability will also serve the goals the DIVCA has set for the Commission. As a result, we will order the Communications Division of the Commission to prepare a resolution

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[85] Reply Comments of AT&T California on Proposed Decision of Commissioner Chong Mailed May 23, 2008 (Reply Comments on PD of AT&T), June 17, 2008.

amending GO 169 after the FCC adopts requirements concerning the reporting on the availability of broadband services.

In addition, we have conformed the reporting requirements concerning broadband subscribership by speed tier and by census tract to those adopted by the FCC. Moreover, although we note that the Form 477 Order has cited this Commission's work favorably, we have taken the extra step to ensure that should a conflict arise between the processes for assigning a customer address to a census tract, we will defer to the federal methodology in order to ensure comparability of California's broadband statistics with those of other states.

Concerning AT&T's arguments that this Commission lacks jurisdiction to require the filing of reports on broadband, we find them unpersuasive.

AT&T states "As the FCC and the federal courts have recognized, 'Congress intended to keep the Internet and information services unregulated.'"[87] AT&T then argues that the federal intention to avoid regulation of the Internet preempts the state reporting requirement that we adopt.

AT&T's argument goes too far. AT&T's argument would appear to require us to conclude that the FCC's reporting requirement does not constitute regulation of the Internet and information services, but the identical reporting requirement adopted by the Commission is intrusive regulation inconsistent with national policy. Logically, the reporting requirement cannot both "not be" and "be" regulation.

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[86] Reply Comments of Verizon California Inc. (U1002C) to Comments on the Proposed Decision, June 17, 2008 at 1-2 (footnotes omitted).

[87] Comments of AT&T on PD at 2 (footnote omitted).

More importantly, as discussed above, the broadband reporting requirements do not conflict with the federal requirements. We have authority under DIVCA to collect data regarding broadband subscribership and availability. Moreover, the Commission is merely seeking the same data that the FCC is requiring franchise holders to provide to the Commission. Therefore, there is no validity to AT&T's argument of preemption as there is no conflict between federal and state requirements.

7. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Timothy J. Sullivan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. It is reasonable to establish a procedure to ensure timely consideration of requests for extensions from the statutory deadlines in DIVCA at this time.
2. An application for an extension in the form prescribed by Rule 2.1 of the Commission's Rules of Practice and Procedures will enable the presentation of relevant facts to the Commission.
3. The use of the application form prescribed in GO 169 is not appropriate for the presentation of relevant facts to the Commission concerning requests for extensions because that form contains highly specific information geared to the statutory requirements for granting a video franchise application.
4. A requirement that applicants file requests for extensions "as soon as practicable" provides adequate guidance to those seeking extensions from build-out deadlines and is not unreasonable.
5. The modifications to GO 169 contained in Appendix A to establish an expeditious process for considering requests for extensions for build-out deadlines by video franchise holders are reasonable and in the public interest.

6. Currently, GO 169 requires that for each video franchise granted, the holder must post a bond of not less than $100,000 but no more than $500,000.

7. A holder of one video franchise that covered the entire state would be liable for a bond of $500,000.

8. Under GO 169, a video service provider who elects to provide service through multiple franchises would be required to post a bond for each franchise. As a result, a holder of multiple franchises could face bonding requirements in excess of $500,000.

9. GO 169 creates disparate bonding requirements depending on whether the video service provider elects to provide service through one franchise or through multiple franchises. As a result, the bonding requirements can be unfair and asymmetric.

10. The proposed modifications to GO 169 contained in Appendix B, which cap the total bonding requirement for any single person or entity holding video franchises in California at $500,000, avoid asymmetric and unfair impacts that could result from the current bonding.

11. Since the adoption of GO 169, the Commission has established the CASF, the Governor's Broadband Task Force collected data regarding broadband availability and broadband speed tiers, and the FCC has indicated that it will expand its collection of broadband data at the federal level to cover availability and subscribership by multiple speed tiers and by census tracts.

12. The FCC is investigating the best ways to obtain information on the availability of broadband service and proposes to adopt an order within four months.

13. Requiring video franchise holders to submit to the Commission the data submitted to the FCC pursuant to its reporting requirements imposes few additional reporting costs.

14. Requiring video franchise holders to report on broadband subscribership by speed tier and by census tract will provide data that will enable the Commission to determine whether DIVCA is meeting its goals of encouraging the development of California's broadband infrastructure.

15. The information reported to the FCC, which shares a common format across all states, will facilitate comparisons of California's broadband infrastructure with that of other states.

16. Requiring the submission of information on broadband subscribership that does not conform to the FCC requirements imposes additional costs on California video franchise holders and provides data that will not be useful in comparing California's broadband infrastructure with that available in other states.

17. At this time, there is no demonstrated need for the reporting of broadband data in tiers beyond those adopted by the FCC and it is therefore unreasonable to require additional reporting.

18. The FCC's adopted speed tiers and reporting requirements by census tract follow closely the approach that was taken and useful to the California Broadband Taskforce and the implementation of the CASF.

19. Requiring California video franchise holders to report data on broadband subscribership at the census block level will impose substantial costs on reporting parties and is not needed for the implementation of DIVCA or the CASF.

20. The FCC's investigation into the best way of obtaining information on the availability of broadband service to each customer address make the modification of the reporting requirements contained in GO 169 inappropriate at this time.

21. Current Commission confidentiality protections included in GO 66-C and Pub. Util. Code § 583 have proved adequate for protection of confidential information across a wide variety of utility settings.

22. No party filing comments requested additional confidentiality protections beyond those included in GO 66-C and Pub. Util. Code § 583.

23. It is reasonable to expect that the confidentiality protections included in GO 66-C and Pub. Util. Code § 583 will adequately protect the sensitive information submitted on broadband subscribership.

24. Technology and economics belie the clean parceling of responsibility between voice, data, and video. Indeed, the same wire is used to transmit voice, data, and video. In addition, voice (with the increasing of VoIP services), data and video are now simply packets of digits.

Conclusions of Law

1. Pursuant to Pub. Util. Code § 5890(f)(1), no request for the extension of a build-out deadline may be filed before two years have lapsed since the granting of a video franchise.

2. There is no conflict between the modifications to GO 169 that require applicants for extensions of build-out deadlines to file "as soon and practicable" and the provisions of Pub. Util. Code § 5890(f)(1) as long as the first request for an extension is not filed until two years have passed from the initial granting of a video franchise.

3. Freezing the compliance period for the build-out of a video franchise pending a determination of the merits of an application for and extension of build-out deadlines is not consistent with DIVCA which, pursuant to § 5890(f)(3), contemplates that the granting of an extension by the Commission follows a review of the facts that the franchise holder alleges have caused the delay.

4. The modifications to GO 169 contained in Appendix A create a reasonable process for reviewing the requests of video franchise holders for extensions of statutory build-out deadlines that is consistent with the statutory provisions of DIVCA.

5. The modification to GO 169 contained in Appendix A of this decision creates a reasonable process that will ensure the timely review of requests for extensions by video franchise holders.

6. The modifications to GO contained in Appendix B, which cap the bonding requirement for a single person or entity holding multiple video franchises at $500,000, are reasonable and consistent with the provisions of DIVCA.

7. The modifications to GO 169 contained in Appendix C, which provide for the submission to the Commission of the broadband subscribership data collected pursuant to FCC requirements, are consistent with DIVCA and needed to assist in the implementation of both DIVCA and CASF.

8. The requirements concerning the reporting of subscribership information by speed tier adopted herein, which are contained in Appendix C and that follow the reporting requirements adopted by the FCC, are reasonable and in the public interest.

9. Based on the four criteria set out in *Louisiana Pub. Serv. Comm'n v. FCC*, and our consideration of *Vonage Holdings Corp. v. Minnesota PUC,* we conclude that there is no pre-emption of the reporting requirements adopted herein.

10. There is no conflict between federal and California law. Both aim to promote the development of a digital infrastructure.

O R D E R

IT IS ORDERED that:

1. The modifications to General Order (GO) 169 attached to this decision as Appendices A, B and C are hereby adopted and GO 169 is accordingly modified.
2. Applicants and state video franchise holders shall follow the procedures and comply with the requirements of GO 169 as amended herein.
3. Following the Federal Communications Commission's adoption of requirements to report on the availability of broadband services as discussed in the Form 477 Order, the Communications Division shall prepare a resolution that amends GO 169 to ensure that California has access to this data.
4. Rulemaking 06-10-005 is closed.

This order is effective today.

Dated July 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX A
APPLICATION FOR EXTENSION

Amend General Order (GO) 169 as follows:

1. Add new section VI.G:

VI.G Extension of Deadlines

Pursuant to Public Utilities Code section 5890(f)(1), a State Video Franchise Holder may apply to the Commission for an extension of time to meet the requirements of subdivision (b), (c), or (e) of section 5890. The Application for extension must be filed as soon as practicable after the State Video Franchise Holder determines that it likely will not be able to meet one or more requirements of subdivision (b), (c), or (e), as applicable, but no sooner than two years from the commencement of service. In no event should the Application for extension be filed later than the earliest deadline under any of the requirements for which an extension is sought.

An Application for extension must state good cause for the Commission to grant the extension. "Good Cause" may include, without limitation, factors beyond the control of the State Video Franchise Holder set forth in section 5890(f)(3). The Application for extension must also state the basis on which the State Video Franchise Holder contends that it has made substantial and continuous efforts to meet the requirements of subdivision (b), (c), or (e) of section 5890, as applicable. The Application for extension must also propose a new schedule for offering service under section 5890, and must support the reasonableness of the compliance deadlines under the proposed schedule.

The Commission will hold a public hearing on any Application for extension. The Commission's Rules of Practice and Procedure will govern participation in the Application for extension.

2. Amend Section I.D (new language underlined):

"Application" means, <u>as appropriate</u>, <u>either (1) an Application</u> in the form prescribed by the Commission for seeking a grant or amendment of a State Video Franchise, <u>or (2) an Application in the form prescribed by Rule 2.1 of the Commission's Rules of Practice and Procedure if the Applicant seeks an</u>

extension of time to meet the requirements of subdivision (b), (c), or (e) of Public Utilities Code section 5890.

3. Amend Section I.C (deleted language struck through):

"Applicant" means any person or entity that files an Application ~~seeking to provide Video Service in the state pursuant to a State Video Franchise~~.

(END OF APPENDIX A)

APPENDIX B
BOND REQUIREMENTS

Amend Section IV.A.1.a of GO 169 to read as follows:

Section IV.A.1.a.

An Applicant is required to provide adequate assurance that it possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the Applicant. To meet this requirement, the Applicant shall submit a copy of a fully executed bond in the amount of $100,000 per 20,000 households in its Video Service Area 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 amount of the bond under any circumstances shall not be less than $100,000 nor more than $500,000 per State Video Franchise Holder, except that a person or entity holding more than one State Video Franchise, directly or through its Affiliate, will not be required to execute bonds in a cumulative amount exceeding $500,000. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California. A State Video Franchise Holder shall not allow its bond to lapse during any period of its operation pursuant to a State Video Franchise.

Note 1: Footnote omitted.

Note 2: The capitalization of the last sentence in the section above is corrected to conform with the convention in GO 169 that defined terms are capitalized. The correction is non-substantive.

(END OF APPENDIX B)

APPENDIX C
REPORTING REQUIREMENTS

Amend Section VII.C.1. of GO 169 following subtitle VII.C.1. through subsection VII.C.1.(2). replacing with the language below:

Commencing on April 1, 2008 and annually no later than April 1 each year thereafter, a State Video Franchise Holder or the parent company of the State Video Franchise Holder shall report to the Commission annual information on a Census Tract basis as of January 1, 2008 and each year thereafter on the extent to which the State Video Franchise Holder and any and all of its Affiliates that operate in California provide Video and Broadband Service in the state. The Commission will afford this information confidential treatment pursuant to § 5960(d) and § 583 of the CAL. PUB. UTIL. CODE and General Order 66-C because disclosure would put a franchisee at an unfair business disadvantage. These reports shall include the following information, pursuant to the guidelines established in Appendix D and Appendix E of D.07-03-014:[56]

(1) Wireline Broadband Information:[57]

(a) The number of Households in each census tract to which the State Video Franchise Holder and/or any of its Affiliates makes wireline Broadband available in this state. Alternatively, a reasonable approximation of the number of Households in each census tract may be submitted if the State Video Franchise Holder or its parent company is able to produce information that successfully demonstrates to the Commission (i) that the State Video Franchise Holder and/or its Affiliates do not maintain this information on a census tract basis in the normal course of business and (ii) the State Video Franchise Holder's alternate reporting methodology produces a reasonable approximation of data reported by census tract.

(b) The number of Households in each census tract that subscribe to wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state. The information should also indicate the speed of service that the subscriber obtains, based on the speed tiers adopted in

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[56] For example, the first report filed April 1, 2008 would be for calendar year 2007 (January to December 2007).

[57] CAL. PUB. UTIL. CODE § 5960(b)(1).

Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38 and Re*: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, March 19, 2008 and any successor decisions.

(2) Non-Wireline Broadband Information

(a) If a State Video Franchise Holder and/or any of its Affiliates uses nonwireline technology to provide Broadband, a list of the type(s) of technology used in each census tract.

(b) Non-wireline Broadband availability information in each census tract, in one of three forms:

i. A list of the number of Households in each census tract to which the State Video Franchise Holder and/or any of its Affiliates makes non-wireline Broadband available in this state.

ii. Using geographic information system digital boundaries that meet or exceed national map accuracy standards, maps that delineate (i) census tract boundaries and (ii) where the State Video Franchise Holder and/or any of its Affiliates typically makes non-wireline Broadband available.

iii. Another type of reasonable approximation of the number of Households in each census tract to which the State Video Franchise Holder and/or any of its Affiliates makes non-wireline Broadband available in this state. This approach may be used only if the State Video Franchise Holder or its parent company is able to produce information that successfully demonstrates to the Commission (i) that the State Video Franchise Holder and/or its Affiliates do not maintain this information on a census tract basis in the normal course of business and (ii) the State Video Franchise Holder's alternate reporting methodology produces a reasonable approximation of data reported by census tract.

(c) A State Video Franchise Holder shall report upon the number of Households in each census tract that subscribe to non-wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state. If the State Video Franchise Holder and/or its Affiliates do not collect information by Households, then the State Video Franchise Holder shall report upon the number of total customers in each census tract that subscribe to non-

wireline Broadband that the State Video Franchise Holder and/or any of its Affiliates makes available in this state. The information should also indicate the speed of service that the subscriber obtains, based on the speed tiers adopted in *Re: Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38 and Re*: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 07-45, March 19, 2008, or as modified by the FCC in successor decisions.

(END OF APPENDIX C)