

Decision 09-04-011 April 16, 2009

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 MODIFYING DECISION 07-03-014

We modify Decision 07-03-014 to extend through Fiscal Year 2012-2013 the current funding mechanism for the regulatory costs associated with the Digital Infrastructure and Video Competition Act of 2006 (AB 2987, Ch. 700, Stats. 2006).

This change is necessitated to ensure reasonable stability in the fees assessed on franchise holders in the face of transitional issues.

This order is brought on the Commission's own motion.

This proceeding is closed.

Background

Decision (D.) 07-03-014 adopted a General Order and Procedures to implement the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). D.07-03-014 imposed user fees on franchise holders to recover the Commission's cost of fulfilling its duties under DIVCA. In D.07-03-014, the user fee process for Fiscal Year 2007-2008 was based on the state video franchise holders' pro-rata share of households in each franchise holder's video service area. D.07-03-014 took this approach because the Commission recognized that state video franchise holders would have little or no revenue from their video services during the first year. Therefore, a fee structure was adopted based on

the pro-rata number of total households in each franchise holder's video service area.¹

D.07-03-014 anticipated that this revenue issue would be transitional, and that apportioning fees among the franchise holders based on the franchise holder's revenue would be a reasonable approach beginning in the 2008-2009 fiscal year.

D.07-03-014, therefore, adopted a plan to assess fees for Fiscal Year 2008-2009 on franchise holders based on revenues similar to the way the Commission calculated user fees for utilities under its jurisdiction.² Under this process, the user fee on franchise holders was to be collected based on the pro-rata share of all gross state video franchise revenue that is attributable to each state video franchise holder in the prior calendar year. The state video revenues reported for the prior calendar year were to be used to calculate a user fee per dollar of revenue collected for the next fiscal year.³ The user fee for Fiscal Year 2008-2009, for example, would be based on the franchise holders' revenues in calendar year 2007 and would be used to recover the projected expenditure authorized in the state budget for the Fiscal Year 2008-2009 program.

It has become apparent, however, that this approach raises both timing and transitional issues.

¹ D.07-03-014, pp. 124-125, Findings of Fact 95, 96, 97, 98.

² D.07-03-014, pp. 122-123, Findings of Fact 87, 89.

³ D.07-03-014, pp. 122-123, Findings of Fact 88, 91.

On March 3, 2009, an Assigned Commissioner's Ruling requested comments on a proposal to extend the interim fee structure through Fiscal Year 2012-2013.⁴

Opening Comments were filed by the California Cable and Telecommunications Association (CCTA) on March 13, 2009.⁵ Verizon California, Inc. (Verizon) filed Reply Comments on March 16, 2009.⁶

Discussion

Because the incumbent cable operators were not eligible for state franchises until January 2, 2008, they correctly reported no state video revenue for calendar year 2007. Since the fees for the 2008-2009 would be based on revenues booked in calendar year 2007, the entire burden of the user fee would be borne by the new entrants, in this case principally Verizon and AT&T, in the 2008-2009 fiscal year. Clearly, basing fees for the 2008-2009 fiscal year on revenues accrued in 2007 would not result in a reasonable allocation of the DIVCA-related costs between the new entrants and the incumbent video service providers, who are making a transition to a state franchise during this year and thereby triggering costs in the Commission's franchising program.

Nor is the revenue-based approach a good one to use in Fiscal Year 2009-2010, as basing the user fees on reported revenue for calendar year 2008

⁴ Assigned Commissioner's Ruling Requesting Comments on Extending the Interim Process for Setting User Fees on Video Franchises, March 3, 2009.

⁵ Comments of the California Cable and Television Association on Assigned Commissioner's Ruling Requesting Comments on Extending the Interim Process for Setting User Fees on Video Franchises, March 13, 2009 (CCTA Opening Comments).

⁶ Reply Comments of Verizon California, Inc. (U 1002 C) on Assigned Commissioner's Ruling Requesting Comments on Extending the Interim Process for Setting User Fees on Video Franchises, March 16, 2009 (Verizon Reply Comments).

would impose almost all costs on the incumbent video service providers. This result would arise because of the very low video penetration by the new entrants in 2008. As a result, the revenue-based financing scheme would result in a very large percentage of the Commission's DIVCA costs being borne by the incumbent cable operators because of their legacy customer bases. Thus, even though the costs of the franchising program arise from both the new entrants and incumbents, the revenue-based approach in this year would impose most of the costs on the incumbents. Moreover, the fees imposed on the companies would be highly unstable.

CCTA "supports the proposal to extend the" the interim fee methodology.⁷ Verizon "agrees that the continued calculation of the Commission's user fee based on the number of households, rather than revenues, through the 2012-2013 fiscal year is a sound proposal for the reasons set forth in the ACR."⁸

Thus, for the reasons cited above, we decide to continue basing user fees for video franchise holders on a pro-rata apportionment of our budgeted costs based on households in each franchise holder's video service territory through the 2012-2013 fiscal year. For Fiscal Year 2008-2009, for example, we will apportion user fee based on the total households at the end of 2008.

After the 2012-2013 fiscal year, it is likely that revenues earned by the incumbents and new entrants will have stabilized enough to result in a reasonable apportionment of the cost burden if determined on a pro-rata revenue basis. The methodology was adopted in D.07-03-014.

⁷ CCTA Opening Comments at 1.

⁸ Verizon Reply Comments at 1.

Therefore, we modify the adopted user fee procedures for Fiscal Year 2008-2009 through Fiscal Year 2012-2013 to be based on a pro-rata share of households in each state video franchise holder's video service territory.

In addition to commenting on the proposal to extend the interim methodology for calculating franchise fees, CCTA requested "that the requirement to report those revenues be eliminated until the year prior to assessment of the User Fee" but, if the Commission does not agree to the waiver of this requirement, CCTA "requests that the revenues of each provider be filed under seal and kept confidential, similar to the remaining data filed by state video franchise holders."⁹

In response, Verizon "agrees that unnecessary data should not be required, and believes CCTA's suggestion has merit. However, the Commission has already determined that revenue data submitted for purposes of its user fee calculation is subject to confidential treatment under Public Utilities Code § 583, and no further order on this point is required."¹⁰

We decline to exempt the franchise holders from the reporting of revenues on the basis of this abbreviated record. We see no need to act on CCTA's request for confidential treatment of this data because we have already ordered such treatment in D.07-03-014.¹¹

Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed

⁹ CCTA Opening Comments.

¹⁰ Verizon Reply Comments at 1.

¹¹ D.07-03-014 at

under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

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. D.07-03-014 dated March 1, 2007 adopted a user fee process for Fiscal Year 2007-2008 based on a pro-rata share of households in each franchise holder's video service area. For Fiscal Year 2008-2009 and all future years, the user fee is calculated based upon the percentage of all state video franchise holders' gross state video franchise revenues that is attributable to an individual state video franchise holder.

2. Incumbent cable operators were not eligible for a state franchise until January 2, 2008. They reported no gross state video franchise revenue for calendar year 2007. As a result, the entire burden of user fee, if it were to be based on a pro-rata share of revenue received in 2007, would be borne by the new entrants.

3. The incumbent cable operators will earn the vast majority of video revenue in 2008 and would bear the burden of the majority of user fee for Fiscal Year 2009-2010.

4. By Fiscal Year 2012-2013, it is likely that revenues earned by the incumbents and new entrants will have stabilized enough to result in a reasonable apportionment of the cost burden if determined on a pro-rata revenue basis.

Conclusion of Law

Assessing user fees on state video franchisees based on their pro-rata share of households in the holder's video franchise territory is the most reasonable approach through the 2012-2013 fiscal year.

O R D E R

IT IS ORDERED that:

1. Decision 07-03-014 and General Order 169 are modified to adopt a user fee process for Fiscal Year 2008-2009 to Fiscal Year 2012-2013 to allocate the Digital Infrastructure and Video Competition Act of 2006 implementation costs based on a pro-rata share of the number of households in each state franchise holder's video service territory.
2. A copy of this order shall be served on all those who have already received video franchises, so that they are aware of the obligations upon them.
3. Rulemaking 06-10-005 is closed.

This order is effective today.

Dated April 16, 2009, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners