

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
APRIL 6, 2023
SAN FRANCISCO, CALIFORNIA
RULEMAKING 23-04-006

**ORDER INSTITUTING RULEMAKING PROCEEDING
TO CONSIDER CHANGES TO REQUIREMENTS
ON VIDEO FRANCHISEES UNDER THE DIGITAL
INFRASTRUCTURE AND VIDEO COMPETITION ACT**

Summary

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

1. Background

In 2006, the Legislature passed, and the Governor signed into law, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), establishing a state cable franchise process administered by the California Public Utilities

Commission (Commission).¹ Prior to the passage of DIVCA, cable television franchises were issued by cities and counties. DIVCA replaced that system with one in which video franchises are now issued by the state, instead of those local entities. The Commission opened Rulemaking (R.) 06-10-005 to implement DIVCA, including the development and adoption of General Order (GO) 169 in Decision (D.) 07-03-014² and D.07-10-013. The Commission opened R.13-05-007 to address the franchise renewal process, adopting D.14-08-057.

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

¹ A franchise is a government authorization to construct and operate a cable video system.

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

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

on franchisees⁴ and prohibits the Commission from imposing additional obligations on video service franchisees.⁵

The enactment of SB 28 imposes new requirements on franchisees, including, among other items, that this Commission establishes video and broadband consumer service rules and adjudicates complaints brought by consumers regarding their service. This is currently permitted under federal law.⁶ Additionally, more than a decade has passed since the Commission adopted GO 169. This proceeding will enable the Commission to determine whether, and to what extent, it can facilitate improvements in the implementation of DIVCA.

2. Preliminary Scoping Memo

The preliminary scope of issues in the proceeding is set forth below, in accordance with Rule 7.1(d) of the Commission's Rules of Practice and Procedure (Rules).⁷ In general, the purpose of this proceeding is two-fold: (1) consider potential ways to modernize and make the implementation of DIVCA more efficient and effective; and (2) develop procedures, rules, and orders necessary to fulfilling the duties and responsibilities assigned to the Commission, including on the following issues:

1. Does the enactment of SB 28 require revisions to existing rules contained in GO 169? If yes, which rules should be revised? How should those rules be revised? Are there

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

⁵ Pub. Util. Code Section 5840(a)-(b)

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

⁷ All references to "Rules" are to the Commission's Rules of Practice and Procedure unless otherwise indicated.

- rules in GO 169 that should no longer be in effect? Parties are asked to identify the specific rules.
2. What customer service requirements should the Commission adopt?
 3. What types of complaints from consumers should the Commission adjudicate? Are there complaints that are more appropriate for the Commission to use an informal consumer complaint process? Which criteria should the Commission use to decide which types of complaints to adjudicate?
 4. How should the Commission adjudicate complaints from consumers? For example, should the Commission allow consumers to file both expedited and formal complaints with the Commission?
 5. What enforcement actions should the Commission consider for violations of regulatory requirements and franchise agreements? For example, should the Commission utilize the Order Instituting Investigation or establish a citation program setting out reasonable penalties for identified violations?
 6. What are appropriate penalties for video franchisees that do not meet the terms of their franchise agreements or the customer service requirements the Commission adopts in compliance with SB 28? For example, should consumers receive credits in addition to penalty amounts that go to the general fund as a part of the penalty structure? How should these credits be determined? How should these credits be calculated? (*e.g.*, per day basis, percentage basis, or fixed dollar amount) Under which circumstances should consumers receive credits?
 7. Should the Commission adopt reporting requirements for video franchisees? What type of reporting requirements should the Commission adopt?
 8. Should the Commission modernize and revise the application processes described in GO 169 Sections IV-V and Section VII? How can the Commission implement

DIVCA more efficiently and effectively to accomplish the policy objectives of DIVCA?

As an initial matter, the Commission invites comments on this Order Instituting Rulemaking (OIR). Pursuant to Rule 6.2, comments on an OIR shall state any objections to the preliminary scoping memo regarding the category, issues to be considered, or schedule. The precise issues to be addressed and the process for addressing those issues will be set forth in an assigned Commissioner's Scoping Memo.

3. Categorization; *Ex Parte* Communications; Need for Hearing

The Commission's Rules require that an OIR preliminarily determine the category of the proceeding and the need for a hearing. As a preliminary matter, we determine that this proceeding is quasi-legislative because our consideration and approval of this matter would establish policy or rules affecting a class of regulated entities. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

We preliminarily determine that evidentiary hearings are not necessary. However, the assigned Commissioner may re-evaluate the need for evidentiary hearings when issuing the scoping memo for this proceeding.

4. Preliminary Schedule

The preliminary schedule is set forth below. The assigned Commissioner and Administrative Law Judge (ALJ) have the authority to set other dates in the proceeding or modify those below as necessary.

EVENT	DATE
OIR issued	Day 1
Deadline for requests to be on service list	Day 20

EVENT	DATE
Initial Comments on OIR filed and served	Day 46
Reply Comments on OIR filed and served	Day 61

The determination on the need for further procedural measures, including the scheduling of a prehearing conference (PHC), discovery, technical workshops, public participation hearings and/or evidentiary hearings will be made in one or more rulings issued by the assigned Commissioner. Any party that believes an evidentiary hearing is required may address such need for hearing in comments and reply comments on this OIR.

The assigned Commissioner or the assigned ALJ may change the schedule to promote the efficient and fair administration of this proceeding. Today's decision sets a due date for comments and reply comments on the OIR. The schedule for the remainder of the proceeding will be adopted in the assigned Commissioner's Scoping Memo.

It is the Commission's intent to complete this proceeding within 18 months of the date this decision is adopted. (Pub. Util. Code § 1701.5(b).)

If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

5. Service of OIR

We provide service to the Service Lists of R.06-10-005, R.13-05-007, R.18-07-006, R.20-02-008, R.20-08-021, R.20-09-001, R.20-10-002, R.21-03-002, and R.22-03-016. Additionally, we provide notice to all holders of state-issued franchises, local entities located in the service areas of existing franchise holders, a list of California cable television companies provided by the California Cable

Television and Telecommunications Association, the California League of Cities, the California State Association of Counties, and a list of city attorneys for each California city provided by the California League of Cities. Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding. Instructions for obtaining party status or being placed on the official service list are given below.

6. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules. Parties are instructed to only serve documents on the assigned Commissioner, advisors to the assigned Commissioner, and the assigned ALJ(s) by electronic copy and not by paper copy, unless specifically instructed to do otherwise.

7. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f).

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (See Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file responsive comments thereby become parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the "Parties" category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status,

persons should promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.

8. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

9. Intervenor Compensation

Pub. Util. Code Section 1801.3(a) restricts intervenor compensation to formal proceedings involving electrical, gas, water, and telephone utilities. Franchisees under DIVCA do not qualify as any of these utilities.⁸ Accordingly, intervenor compensation is not permitted in this proceeding.

10. Public Advisor

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

11. Public Outreach

Pub. Util. Code Section 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the

⁸ See D.10-07-050 at 6: “DIVCA classified video services as a separate service, to be distinguished from public utility service...” and “This question has now been conclusively resolved. Modifying D.07-03-014 [D.07-11-049], *supra*, denied TURN’s application for rehearing of the Phase I Decision and the Court of Appeal summarily denied TURN’s petition for writ of review on this question. (*TURN v. Public Utilities Com.* (May 8, 2008, A120066) [nonpub. order].)”

commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

Public outreach will be described in the scoping memo of the assigned Commissioner.

O R D E R

IT IS ORDERED that:

1. This Order Instituting Rulemaking is adopted pursuant to Rule 6 of the California Public Utilities Commission's Rules of Practice and Procedure.
2. The preliminary categorization is quasi-legislative.
3. The preliminary determination is that an evidentiary hearing is not needed.
4. The preliminary scope of issues is as stated above in Section 2.
5. The Executive Director will cause this Order Instituting Rulemaking to be served on the service lists for the Commission proceedings, R.06-10-005, R.13-05-007, R.18-07-006, R.20-02-008, R.20-08-021, R.20-09-001, R.20-10-002, R.21-03-002, and R.22-03-016, as well as on the agencies and individuals listed in Appendix A.
6. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation in accordance with Public Utilities Code Section 1804(a)(1) and

Rule 17.1(a)(2) of the California Public Utilities Commission's Rules of Practice and Procedure.

This order is effective today.

Dated April 6, 2023, at San Francisco, California.

ALICE REYNOLDS

President

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

APPENDIX A

APPENDIX A

List of specific entities this Order will be served on, in addition to the Service Lists discussed in Section 5.

- **League of California Cities (Cal Cities)**
ccoleman@cacities.org, ddolfie@cacities.org,
canderson@calcities.org, bismarck@cacities.org,
dconklin@calcities.org, cmanning@calcities.org
- **California State Association of Counties (CSAC)**
awaelder@counties.org, jwong-hernandez@counties.org,
fmcting@counties.org, gknaus@counties.org
- **Rural County Representatives of California (RCRC)**
bhayes@rcrcnet.org, lkammerich@rcrcnet.org,
pblacklock@rcrcnet.org, sheaton@rcrcnet.org, trhine@rcrcnet.org
- **County Counsels' Association of California**
jhenning@counties.org
- **Association of California Community College Administrators (ACCA)**
director@accga.org, admin@accga.org
- **California Association of Councils of Government (CALCOG)**
bhiggins@calcog.org, nzoma@calcog.org
- **California Association of Joint Powers Authorities (CAJPA)**
casmith@cajpa.org
- **California Advanced Services Fund (CASF) Rural and Urban Regional Broadband Consortia**
bruce@edcollaborative.com, agarcia@mbep.biz,
alan.lange@valleyvision.org, ksinoff@sierrabusiness.org,
martha@iecbroadband.com, bill.allen@laedc.org, tyrrell@mcn.org,
jschwenkler@csuchico.edu, ces54@humboldt.edu,
edgonzalez@csufresno.edu, tim@ivedc.com,
heidi@tahoeprosperity.org
- **County Counsels**
donna.ziegler@acgov.org, charlesmckee@gmail.com,
ggillott@amadorgov.org, bstephens@buttecounty.net,
thomas.geiger@cc.cccounty.us, joelcampbell@co.del-norte.ca.us,
david.livingston@edcgov.us, dcederborg@fresnocountyca.gov,
erichavens@co.imperial.ca.us, jcvallejo@inyocounty.us,

mraison@kerncounty.com, diane.freeman@co.kings.ca.us,
dharrison@counsel.lacounty.gov, regina.garza@co.madera.ca.gov,
bwashington@marincounty.org, sdahlem@mariposacounty.org,
forrest.hansen@countyofmerced.com,
margaret@prenticelongpc.com, ssimon@mono.ca.gov,
girardlj@co.monterey.ca.us, sedwards@co.calaveras.ca.us,
rstout@countyofcolusa.com, wvanasek@countyofglenn.net,
smiles@co.humboldt.ca.us, anita.grant@lakecountycal.gov,
Amanda@prenticelongpc.com, curtisc@mendocinocounty.org,
fhsen@countyofmerced.com, thomas.zeleny@countyofnapa.org,
kit.elliott@co.nevada.ca.us, leon.page@coco.ocgov.com,
kschwab@placer.ca.gov, GretchenStuhr@countyofplumas.com,
mintran@rivco.org, tom.bunton@cc.sbcounty.gov,
Claudia.silva@sdcounty.ca.gov, paul.zarefsky@sfcityattys.org,
kijohnson@sjgov.org, rvmull@co.santa-barbara.ca.us,
james.williams@cco.sccgov.org, Jason.Heath@santacruzcounty.us,
rcruse@co.shasta.ca.us, travisl@saccounty.net,
bthompson@cosb.us, rneal@co.slo.ca.us, jnibbelin@smcgov.org,
David@prenticelongpc.com, ekiernan@co.siskiyous.ca.us

- **Franchise Holder Contacts**

david.vonmoritz@astound.com, rose.cullen@caltel.com,
lisa.ludovici@charter.com, john_gutierrez@cable.comcast.com,
Scott.kitchen@consolidated.com, Kristen.Camuglia@cox.com,
br363m@att.com, jenny.smith@ftr.com, herbert@gigglefiber.com,
smdaniel@horizoncable.net, jonathan@hotwiremail.com,
nkeeler@inyonetworks.com, nathan@stimulustech.com,
jgn@atmedia3.com, sswatosh@mediacomcc.com,
edward.bennett@vyvebb.com, Robert.Hoch@AlticeUSA.com,
jsanthoff@orioncable.com, carlos@race.com, kg6pts@yahoo.com,
holden@gosnc.com, bfrankiewich@phillipslytle.com,
tf@velotech.net, johnl@volcanotel.com, jlong@midatlanticbb.com,
colin.higgin@zitomedia.com; tterral@rt66bb.com

(END OF APPENDIX A)