



FILED
6-23-14
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking for Adoption
Of Amendments to a General Order and
Procedures to Implement the Franchise
Renewal Provisions of the Digital
Infrastructure and Video Competition Act
Of 2006

R. 13-05-007

**REPLY COMMENTS OF THE CALIFORNIA CABLE &
TELECOMMUNICATIONS ASSOCIATION ON THE PROPOSED DECISION
AMENDING GENERAL ORDER 169 TO IMPLEMENT THE FRANCHISE RENEWAL
PROVISIONS OF THE DIGITAL INFRASTRUCTURE
AND VIDEO COMPETITION ACT OF 2006**

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Dated: June 23, 2014

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the California Cable & Telecommunications Association (CCTA) submits its Reply Comments in the above-captioned proceeding.

While most parties generally support the Proposed Decision (PD),¹ the Office of Ratepayer Advocates (ORA) recommends a series of modifications that, according to ORA, are necessary to comport with the Public Utilities Code and federal law, and to strengthen the Commission's oversight of video franchise holders. ORA Opening Comments at 13. ORA's proposed modifications are unnecessary and untenable.

¹ The Opening Comments submitted by CCTA, Verizon California Inc. and Pacific Bell Telephone Company d/b/a AT&T California note that the PD is generally consistent with the provisions of DIVCA and the informal renewal process set forth in the Cable Act, except that AT&T argues that the PD's notice and comment provision must be deleted as being inconsistent with DIVCA. AT&T Opening Comments at 4.

The PD is consistent with the Public Utilities Code and federal law. DIVCA unambiguously provides that the video franchise application process and criteria described in Section 5840 shall apply to a renewal registration, and be consistent with federal law. The renewal process outlined in Section 5850(b) mirrors the federal informal renewal process, and is much like the typical informal renewal as practiced in other jurisdictions across the nation. By determining the cable-related needs and interests of California communities, which are set out in various provisions of DIVCA, the legislature has imposed clear limits on the Commission's authority to promulgate new rules regarding the franchise fee, PEG, nondiscrimination and other obligations in a franchise renewal.

DIVCA's renewal process is wholly consistent with the informal renewal process encapsulated in the Cable Act, so long as DIVCA is interpreted to provide an opportunity for notice and comment to address the issue that affects renewal – whether the applicant is in violation of a nonappealable court order arising under DIVCA. *See* Cal. Util. Code § 5850(c)–(d); 47 U.S.C. § 546(h). To the extent that the video franchise holder chooses to accept the obligations set forth in DIVCA regarding the cable-related needs and interests of the community, therefore, and assuming it is not in violation of any nonappealable court order issued under DIVCA, Cal. Util. Code § 5850(d), it may submit a registration under DIVCA that mirrors DIVCA's application process.

While ORA asserts that the PD commits legal error by limiting the ability of interested parties to comment at renewal, ORA misstates the requirements of federal law and conflates the federal formal and informal renewal processes. *See* ORA Opening Comments at 5. Nowhere does federal law *require* a broad right to comment on an informal renewal. Nor do the requirements of the formal process (47 U.S.C. § 546(a)-(g)) have any bearing here. The

Legislature has taken the option to invoke the formal renewal process away from the Commission, and the Cable Act specifically admonishes that “[t]he provisions of subsections (a) through (g) of this section” – listing the federal *formal* requirements – “*shall not apply* to a decision to grant or deny a proposal” under the informal process. 47 U.S.C. § 546(h) (emphasis added). To comply with federal law, all that the Commission must do – and what the PD does – is provide an adequate opportunity for notice and comment.²

ORA’s proposed modifications would flatly contradict DIVCA. ORA’s modifications would convert DIVCA’s franchise renewal registration process into an enforcement proceeding through the filing of protests (disguised as “comments”), including the ability to launch investigations, conduct discovery, and bring alleged violations to the Commission’s attention. ORA Opening Comments at 10. Yet this result is expressly prohibited by DIVCA. Cal. Util. Code §§ 5840(b) & 5850(b).³ And while DIVCA provides enforcement procedures and remedies for violations of its requirements, it does not allow protests nor contemplate an enforcement proceeding at renewal time. ORA’s modifications violate DIVCA and must be rejected.

Nor is ORA correct that the renewal process set forth in the PD would eliminate the Commission’s authority, or the authority of a local entity, to enforce the provisions of DIVCA. DIVCA sets out explicit processes to seek remedies for every potential violation of each obligation it imposes on video franchise holders. As CCTA noted in its Opening Comments,

² The PD thus appropriately gives the public, including ORA and local entities, an opportunity to comment on the only substantive factor that is relevant to the Commission’s review of a renewal registration – whether the franchise holder is in violation of a nonappealable court order arising under DIVCA. Cal. Util. Code § 5850(d).

³ Section 5840(b) provides that the application process and the authority of the commission “shall not exceed the provisions of this section.” Section 5840 then explicitly lists the form and affidavit for the application. Section 5850(b) provides that the “process and criteria described in Section 5840 shall apply to a renewal registration, and the commission shall not impose any additional or different criteria.”

DIVCA provides that disputes concerning franchise fees (Section 5860(i)), PEG (Section 5870(p)), and customer service standards imposed by local governments (Sections 5900(g) & (h)), are to be addressed by the courts.⁴

Additionally, the PD does not limit or otherwise affect ORA's ability to advocate on behalf of video customers regarding enforcement of Sections 5890, 5900 and 5950. DIVCA provides that these provisions may be enforced by the courts, or in a complaint proceeding at the Commission, and not at renewal. *See* CCTA Opening Comments at 5. If ORA is concerned that particular violations of DIVCA have occurred, DIVCA gives it the authority to represent consumers in disputes over those alleged violations in the appropriate complaint or court proceeding.

In DIVCA, the Legislature sought to encourage competition and investment in broadband capable facilities. One of the key mechanisms it removed in order to accomplish this goal was the ability of a local entity to essentially "hold up" an applicant in negotiations for franchise applications, renewals and transfers, thus providing a reasonable regulatory surety for a video service provider's investment in its network. The Legislature did not, however, eliminate the ability of either the Commission or local entities to enforce specific provisions of DIVCA. The ability to enforce DIVCA is clearly and specifically provided outside of the renewal process, in

⁴ Rather than bolstering its arguments, ORA's reference to a lawsuit between Time Warner Cable the City of Los Angeles proves the efficacy of DIVCA's dispute resolution procedures, and the soundness of the PD's renewal process. That a city and cable operator are actively litigating franchise and PEG fee issues under DIVCA demonstrates that DIVCA's dispute and enforcement procedures are working precisely as the legislature intended. Comments or a protest from the City of Los Angeles at renewal that merely echo the allegations it has asserted in court (and which Time Warner Cable has disputed) could have no bearing on the Commission's renewal decision. Only if that litigation resulted in a final, nonappealable court order finding that Time Warner Cable violated DIVCA, and Time Warner Cable failed to comply with that order, would the Commission be able to deny renewal under Section 5850(d). That is why the PD appropriately allows ORA or a local entity to bring such noncompliance to the Commission's attention at renewal time.

complaint proceedings or in the courts. The PD is fully consistent with DIVCA, with federal franchise laws, and with the intent of the Legislature, and should be approved.

Date: June 23, 2014

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