

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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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.

Rulemaking 13-05-007  
(Filed May 23, 2013)

**REPLY COMMENTS  
OF THE OFFICE OF RATEPAYER ADVOCATES  
ON THE ASSIGNED COMMISSIONER'S PROPOSED DECISION**

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June 23, 2014

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**I. INTRODUCTION**

Pursuant to the Commission's Rules of Practice and Procedure Rule 14.3, the Office of Ratepayer Advocates (ORA) submits these reply comments on the Proposed Decision (PD) of Assigned Commissioner Michael R. Peevey, in order to address the comments by Pacific Bell Telephone Company d/b/a AT&T California (AT&T). AT&T incorrectly argues that the PD should not allow any comments whatsoever on Digital Infrastructure and Video Competition Act of 2006 (DIVCA) franchise renewal applications, because federal law is not mandatory and need not be followed.

**II. DISCUSSION**

The PD, issued on May 27, 2014, adopts the staff report and modifies General Order 169 to allow for public comment on DIVCA franchise renewal applications, restricted to the sole issue of whether the applicant cable operator is in violation of a nonappealable court order relating to DIVCA. In its opening comments, ORA disagrees with this conclusion, because: 1) Nothing in DIVCA prohibits public protests or comments in the franchise renewal process; 2) Public Utilities Code Section 5850(c) requires renewal applications to be consistent with federal law, which requires public

notice and comment<sup>1</sup>; and 3) The PD renders Section 5900(k) meaningless, which authorizes ORA to “advocate” on behalf of video subscribers “regarding renewal of a state-issued franchise”.

AT&T, Verizon, and the California Cable & Telecommunications Association (CCTA) submitted comments in favor of the PD. Verizon and CCTA supported the conclusions in the PD for the reasons stated in the PD. AT&T’s comments partially support and partially disagree with the PD.

AT&T’s disagreement with the PD arises from its view that “the initial application process does not include formal notice and opportunity for comment”.<sup>2</sup> AT&T disagrees with the PD, because “such a requirement has been grafted onto the renewal process.”<sup>3</sup>

However, AT&T does not explain why DIVCA prohibits public notice and comment. Nothing in DIVCA supports this conclusion. DIVCA is silent on the issue of whether protests or comments may be accepted by the Commission. Moreover, Section 5900(k) and Section 309.5 authorize ORA to advocate in the renewal process, and providing for public notice and comment is the appropriate vehicle.

Furthermore, Section 5850(c) requires the renewal process to be consistent with federal law.<sup>4</sup> 47 U.S.C. Section 546 applies to the renewal of cable television franchises. It states that franchising authorities must follow one of two possible renewal processes: the formal one, or the informal one.<sup>5</sup> The informal process is described in 47 U.S.C. Section 546(h), which includes a requirement that the public be afforded

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<sup>1</sup> See 47 U.S.C. Section 546.

<sup>2</sup> AT&T Opening Comments, p. 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> Section 5850(c) states: “Renewal of a state franchise shall be consistent with federal law and regulations.”

<sup>5</sup> “Staff Report Proposing Rules To Amend General Order 169 To Implement The Franchise Renewal Provisions Of The Digital Infrastructure And Video Competition Act Of 2006”, issued December 13, 2013, at p. 6.

adequate notice and comment on the franchise renewal applications. The informal process is the one typically used by cable operators.

The PD correctly finds that the requirement for public notice and comment is a mandatory requirement under 47 U.S.C. Section 546.<sup>6</sup> (ORA's disagreement with the PD focuses on the limitations placed on public comments, which is fully described in ORA's opening comments.<sup>7</sup>) However, AT&T disagrees with the PD because comments are permitted at all. Inexplicably, AT&T's reason is that "the federal renewal provisions cited by the Proposed Decision are not mandatory."<sup>8</sup> AT&T provides no explanation why federal renewal provisions are not mandatory.

Federal law requires cable operators to afford "the public adequate notice and opportunity for comment". This is true whether the cable operator chooses the formal process (47 U.S.C. 546(a)(1)<sup>9</sup>) or the informal process (47 U.S.C. 546(h)). With no explanation, AT&T concludes that prohibiting all public notice and comment is consistent with federal law.<sup>10</sup> Under federal law public notice and comment is required, regardless of whether the informal or the formal process is chosen by the cable operator.

AT&T's interpretation of Section 5850(c) would render it meaningless, in that state or local franchising authorities would not be required to follow clear direction from federal law to provide a public notice and comment period.

### **III. CONCLUSION**

For the reasons stated herein, ORA opposes the comments submitted by AT&T, Verizon, and the CCTA. Federal law and Section 5900(k) require that the Commission

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<sup>6</sup> PD, p. 16.

<sup>7</sup> <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=94270058>

<sup>8</sup> AT&T comments, p. 2.

<sup>9</sup> 47 U.S.C. 546(a)(1) states that in a renewal proceeding, the franchising authority must afford "the public in the franchise area appropriate notice and participation for the purpose of" reviewing the performance of the cable operator under the franchise, among other things.

<sup>10</sup> AT&T comments, p. 3.

provide sufficient process for ORA and the public to engage in meaningful comment and review of franchise renewal applications, which would assist the Commission in its oversight of DIVCA.

Respectfully submitted,

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