

GENERAL ORDER 169
IMPLEMENTING THE DIGITAL INFRASTRUCTURE
AND VIDEO COMPETITION ACT OF 2006 (DIVCA)

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I. Definitions

- A. "Access" means that the State Video Franchise Holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide similar two-way broad band Internet accessibility and similar video programming.
- B. "Affiliate" means any company 5% or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.
- C. "Applicant" means any person or entity that files an Application
- D. "Application," unless otherwise specified herein, means an Application in the form prescribed by the Commission for seeking a grant, or amendment, or renewal of a State Video Franchise.
- E. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.¹
- F. "Broadband" or "Broadband Service" means any service defined as broadband, or having advanced telecommunications capability, in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).²

¹ CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

² *Id.* at § 5830(a). The Federal Communications Commission currently uses the term "broadband" and "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second.

- G. "Census Tract" has the same meaning as used by the U.S. Census Bureau.³
- H. "Commission" means the Public Utilities Commission.
- I. "Community Center" means any facility run by an organization that has qualified for the California Teleconnect Fund, as established in Public Utilities Code § 280, and that will make the State Video Franchise Holder's service available to the community.⁴
- J. "DIVCA" means the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).⁵
- K. "Effective Date of this General Order" means January 2, 2007 or the date when this Order is adopted, whichever is later.
- L. "Household" means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.⁶ Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.⁷
- M. "Incumbent Cable Operator" means a cable operator or open-video system serving subscribers under a franchise in a particular city, county, or city and county franchise area on January 1, 2007.⁸
- N. "Local Entity" means any city, county, city and county or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.⁹

FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9, 2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. *Id.*

³ CAL. PUB. UTIL. CODE § 5960(a).

⁴ *Id.* at § 5890(b)(3).

⁵ In this General Order, all further references to Public Utilities Code are to those sections adopted or amended in DIVCA.

⁶ CAL. PUB. UTIL. CODE § 5890(j)(1).

⁷ *Id.*

⁸ *Id.* at § 5830(j).

- O. "Low-Income Household" means a residential Household where the average annual Household income is less than \$35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.¹⁰
- P. "State Video Franchise" means a franchise issued by the Commission pursuant to DIVCA.¹¹
- Q. "State Video Franchise Holder" means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.¹²
- R. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.
- S. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § 234.
- T. "User Fee" means the fee paid to the Commission quarterly by each Holder pursuant to Public Utilities Code § 442(a).
- U. "Video Service" means video programming services, cable service, or open-video system service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.¹³
- V. "Video Service Area" means the area proposed to be served under a State Video Franchise.

⁹ *Id.* at § 5830(k).

¹⁰ *Id.* at § 5890(j)(2) (defining "low-income households" for the purposes of imposing build-out requirements).

¹¹ *Id.* at § 5830(p).

¹² *Id.* at § 5830(i).

¹³ *Id.* at § 5830(s).

W. "Video Service Provider" means any entity providing Video Service.¹⁴

II. Purpose of the General Order

The purpose of this General Order is to promulgate the rules necessary to implement Assembly Bill (AB) 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which was signed into law by Governor Arnold Schwarzenegger on September 29, 2006. In enacting this Order, we remain mindful of the fact that the Legislature intends for the state video franchising process to achieve the following objectives:

- Create a fair and level playing field for all market participants that does not disadvantage or advantage one service provider or technology over another;
- Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner, regardless of their socioeconomic status;
- Protect local government revenues and control of public rights-of-way;
- Require Video Service Providers to comply with all applicable consumer protection laws;
- Complement efforts to increase investment in Broadband infrastructure and close the digital divide;
- Continue access to and maintenance of public, education, and government (PEG) channels; and
- Maintain all existing authority of the Commission as established by state and federal statutes.¹⁵

This Commission will act to bring these intended economic and social benefits of Video Service competition to California.

We also recognize that the Legislature found that the public interest is best served when sufficient funds are appropriated to the Commission to provide adequate staff and resources to appropriately and timely process applications of Video Service Providers and to ensure full compliance with the requirements of

¹⁴ *Id.* at § 5830(t).

¹⁵ *Id.* at §§ 5810(2)(A)-(G).

Division 2.5 of the Public Utilities Code.¹⁶ Accordingly, the General Order assesses fees that will ensure that our video franchising operations are adequately funded and staffed.

III. When Various Applicants Can/Must Apply for a State Video Franchise

A. The Commission's Role in Processing Applications

The Commission shall begin accepting Applications for State Video Franchises on the Effective Date of this General Order.¹⁷ Between the Effective Date of this General Order and January 1, 2008, persons wishing to offer Video Service in an area where a local franchise has not already been granted to that person may seek a State Video Franchise from the Commission or a local franchise from the local franchising authority.

After January 1, 2008, the Commission shall be the sole franchising authority for new Video Service franchises in the state of California.¹⁸

After January 1, 2008, any person or corporation that seeks to provide Video Service for which a franchise has not already been issued shall file an Application for a State Video Franchise with the Commission.¹⁹

B. Applications for New Franchises

An Applicant shall not be considered an "Incumbent Cable Operator" for the purpose of an Application if the Application is for an area in which the Applicant did not have a local franchise granted as of January 1, 2007.

Applications for State Video Franchise in areas where a franchise has not already been granted to that Applicant may be submitted on or after the Effective Date of this General Order.²⁰

¹⁶ *Id.* at § 401(a).

¹⁷ *See Id.* at § 5840(g) (ordering the Commission to commence accepting Applications for a State Video Franchise no later than April 1, 2007).

¹⁸ *Id.* at §§ 5840(c),(g).

¹⁹ *Id.* at § 5840(c).

²⁰ *Id.* at § 5840(g).

C. Applicants with Existing Franchises

1. Eligibility Conditions

Incumbent Cable Operators are not eligible to apply for a State Video Franchise for the same service area covered by their local franchise unless at least one of the following three conditions applies: (i) the local franchise expires prior to its renewal or extension; (ii) the Applicant and the local franchising authority mutually agree to terminate the local franchise, and submit their agreement in writing to the Commission; or (iii) a Video Service or cable provider with a State Video Franchise notifies the Local Entity and Incumbent Cable Operators of its intent to begin offering Video Service in all or part of the Local Entity's jurisdiction.²¹

2. Franchise Effectiveness Date

In no case shall a State Video Franchise issued to an Incumbent Cable Operator for a service area in which it has an existing local franchise become effective prior to January 2, 2008.²² Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise may choose to renew the local franchise or seek a State Video Franchise. If an Incumbent Cable Operator's franchise expires before January 2, 2008, it can apply for a State Video Franchise that begins on January 2, 2008. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the State Video Franchise is effective.²³

3. Terms of Service Offered

An Incumbent Cable Operator that chooses to replace its local franchise with a State Video Franchise shall continue to serve all areas as required by its local franchise agreement existing on January 1, 2007, until that local franchise otherwise would, under its terms, have expired.²⁴

An Incumbent Cable Operator that alone or in conjunction with its Affiliates has less than 1,000,000 telephone customers in California and is providing video service in competition with another Incumbent Cable Operator shall be required to continue providing Video Service only in the areas in which it provided Video Service as of January 1, 2007.²⁵

²¹ *Id.* at § 5840(o).

²² *Id.* at § 5930(b).

²³ *Id.* at § 5930(b).

²⁴ *Id.* at § 5840(p).

²⁵ *Id.*

4. Effect of a New Competitor's Entry into a Video Market

When a Video Service Provider that holds a State Video Franchise provides the notice required pursuant to Public Utilities Code § 5840(m) to a Local Entity, the Local Entity may require Incumbent Cable Operators to seek a State Video Franchise.²⁶ The Local Entity shall terminate the local franchise when the Commission issues a State Video Franchise to the Video Service Provider that includes the entire service area served by the Video Service Provider and the Video Service Provider gives notice to the Local Entity that it will begin providing service in that area under a State Video Franchise.

5. Exception for a Party to a Stipulation and Consent Judgment Approved by a Federal District Court

Any Video Service Provider that currently holds a franchise with a local franchising entity in a county that is a party, either alone or in conjunction with any other local franchising entity located in that county, to a stipulation and consent judgment executed by the parties thereto and approved by a federal district court shall neither be entitled to seek a State Video Franchise in any area of that county, including any unincorporated area and any incorporated city of that county, nor abrogate any existing franchise before July 1, 2014. Prior to July 1, 2014, the Video Service Provider shall continue to be exclusively governed by any existing franchise with a local franchising entity for the term of that franchise and any and all issues relating to renewal, transfer, or otherwise in relation to that franchise shall be resolved pursuant to that existing franchise and otherwise applicable federal and local law. This rule shall not be deemed to extend any existing franchise beyond its term.²⁷

IV. Application Process for a State Video Franchise

A. Steps for Obtaining a State Video Franchise

1. Step 1: Complete the Application for a State Video Franchise²⁸ (Appendix A to the General Order)

The Application shall include all information required by Public Utilities Code § 5840(e), as well as information required to ascertain an Applicant's eligibility requirements, as described in Public Utilities Code §§ 5840(c), 5840(d), 5840(f), 5840(o), 5840(p), 5930(a), 5930(b), and 5930(c).

²⁶ *Id.* at § 5930(c).

²⁷ *Id.* at § 5930(a).

²⁸ *Id.* at § 5840(e).

a) Adequate Assurance of Financial, Legal, and Technical Qualifications

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 five 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.

b) Application Fee

Upon filing its initial Application, an Applicant is required to pay an Application Fee in the amount of \$2,000 to the Commission. This fee does not exceed the actual and reasonable costs of processing an Application.²⁹

2. Step 2: Application Submission Requirements

a) Submit Completed Application to the Commission³⁰

The Commission requires all Applicants to submit Applications in the format - paper or electronic - that the Commission directs. In all cases, the Applicant must complete the attached affidavit, submitting one paper original and one paper copy to the Commission's Video Franchise Group.

b) Concurrently Deliver a Copy of the Application to the Affected Local Entity

An Applicant shall concurrently deliver a copy of its Application to the appropriate contact person for each Local Entity where the Applicant will provide service.³¹ Delivery may be accomplished by serving the document as provided in Commission Rules of Practice and Procedure 1.9 or 1.10.

²⁹ *Id.* at § 5840(c).

³⁰ *Id.* at § 5840(a).

³¹ *Id.* at § 5840(e)(1)(D).

3. Step 3: Commission Review of the Application for Completeness

The Commission shall review the Application and determine whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.³²

4. Step 4: Notification Regarding Application Status

The Commission, acting through the Executive Director, shall notify the Applicant and affected Local Entities³³ as to whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.³⁴

The Commission's notice of a complete Application will include notification that the Commission shall issue a State Video Franchise before the fourteenth calendar day after the determination of completeness was made.³⁵

The Commission's notice of an incomplete Application to Applicants and affected Local Entities will include a statement specifying with particularity which items are incomplete and a statement permitting the Applicant to amend the Application.³⁶ There is no fee associated with such amendments.

The Commission shall have 30 calendar days from the date an incomplete Application is amended and submitted to the Commission to determine its completeness.³⁷

Notice of complete and incomplete amended Applications and review of subsequent incomplete amended Applications shall follow the procedures outlined in Steps 3 and 4 above.

If an Applicant is statutorily ineligible for a State Issued Franchise, the Commission will notify the Applicant and any affected Local Entities of the reasons for the Applicant's ineligibility.

³² *Id.* at § 5840(h)(1).

³³ The Commission will use the local authority contact information provided by the Applicant in the Application.

³⁴ Cal. Pub. Util. Code § 5840(h)(1).

³⁵ *Id.* at § 5840(h)(2) ("If the commission finds the Application is complete, it shall issue a state franchise before the 14th calendar day after that finding.").

³⁶ *Id.* at § 5840(h)(3).

³⁷ *Id.*

5. Step 5: State Video Franchise Issued for Complete Applications

The Commission, acting through the Executive Director, shall issue a State Video Franchise to the Applicant before the fourteenth calendar day after its determination that an Application is complete.³⁸ The form used to issue a State Video Franchise is found in Appendix B of the General Order.

B. Failure of Commission to Act on Application

If the Commission fails to notify the Applicant of the completeness or incompleteness of the Applicant's Application before the forty-fourth calendar day after receipt of an Application, the Commission's inaction shall be deemed to constitute issuance of the State Video Franchise, with no further action required on behalf of the Applicant.³⁹

A State Video Franchise, however, is not deemed granted due to Commission failure to act when Applicant is statutorily ineligible for the State Video Franchise, pursuant to the requirements of Public Utilities Code §§ 5840 or 5930.

The Commission will notify an Applicant of any specific ground for ineligibility so that any condition of ineligibility may be remedied.

C. Protests to State Video Franchise Applications Disallowed

No person or entity may file a protest to an Application.

V. Application Process for Renewal of State Video Franchise

The Application requirements and process for a renewal of a state franchise shall be the same as those for issuance of an initial state franchise set forth in Section IV of this General Order, with the following exceptions.

A. Date for Submission of Applications for Renewal

An Application for the renewal of a state video franchise shall be submitted to the Commission's Video Franchise Group no later than 3 months prior to the date the current franchise is due to expire or 3 months prior to the end of the 10th year from the date of its issuance and no earlier than 6 months prior to the date the current franchise is due to expire or 6 months prior to the end of the 10th year from the date of its issuance. If the Applicant elects to

³⁸ *Id.* at § 5840(h)(2).

³⁹ *Id.* at § 5840(h)(4).

invoke the formal process as set forth in 47 U.S.C. §546 (a) – (g), it shall file a formal application to the Commission, as provided in Article 2 of the Commission’s Rules of Practice and Procedure, in which it provides notice to the Commission that it is invoking the formal process, its reasons for invoking the process, and the legal and factual basis for invoking that process. The formal application shall be filed within 30 to 36 months before the video service provider’s existing franchise expired. The formal application shall be served on all parties on the service list in R.13-05-007, all local entities within the video service area in which the applicant seeks renewal, and ORA.

B. Public Participation

Once an Applicant submits an Application for renewal to the Commission’s Video Franchise Group, it shall concurrently serve a copy of the Application for renewal on the appropriate contact person for each Local Entity where the Applicant will provide service and ORA. The public, including ORA, may submit written comments within 15 days from the date the Application has been served. Comments must be limited to whether the Applicant is in violation of a non-appealable court order issued pursuant to the Digital Information and Video Competition Act (Cal. Pub. Code §§ 5800 et seq.) and must be accompanied by a court order supporting the existence of such a violation.

ORA’s comments may also include whether the renewal Application meets the requirements of §5840(h)(2). The filing of any comments does not alter the time limits set out in §5840(h), or expand the scope of the franchise renewal application beyond §5850. Along with its comments, ORA may also submit additional information regarding the applicant’s compliance with the obligations referenced in §5840(e); such information will not be considered as part of the renewal application but it may lead to further action by the Commission apart from the renewal process.

C. Adequate Assurance of Financial, Legal and Technical Qualifications/ Bond Requirement

To meet this requirement, an Applicant must verify that it has previously submitted a bond which meets the requirements set forth in Section IV.A.1.a of this General Order. If the Applicant has not submitted the required bond to the Commission, the Application for renewal shall be considered incomplete.

D. Final Non-appealable Court Order

On renewal, the Applicant must also attest in the affidavit found in the Application whether or not a court of competent jurisdiction has issued, pursuant to the Digital Information and Video Competition Act (Cal. Pub. Util. Code §§ 5800 *et seq.*), a final non-appealable court order against it during the term of its franchise, whether or not a court of competent jurisdiction has found it to have violated that order, or whether it has received formal notice from a court of competent jurisdiction containing allegations that it is in violation of that order. If a court has found the Applicant to be in violation of a final non-appealable court order, issued pursuant to the Digital Information and Video Competition Act (Cal. Pub. Util. Code §§ 5800 *et seq.*), it must provide, with this Application, a further court order or ruling demonstrating that the violation has been cured, if one exists. If no such order exists, the Applicant must submit a declaration attesting that the Applicant has cured the violation. The Commission may subsequently revoke a franchise if any other party disputes the Applicant's declaration and obtains a court order finding a continuing violation of a non-appealable court order.

E. Denials of Renewal Applications on the Grounds of Ineligibility

If the Commission determines that an Applicant is ineligible for renewal of a state franchise, the Commission will notify the applicant of its statutory ineligibility pursuant to Section IV.A.4. Following the issuance of such notice, the matter will be submitted to the Commission for final resolution via decision or resolution, which shall be subject to appeal pursuant to the Commission's Rules of Practice and Procedure.

VI. Ineligibility of Entities in Violation of the Cable Television and Video Providers Service and Information Act or the Video Customer Service Act or the Digital Infrastructure and Video Competition Act §§ 5800 *et. seq.*

No person or corporation shall be eligible for a State Video Franchise, including a State Video Franchise obtained from transfer of an existing State Video Franchise, if that person or corporation is in violation of any final non-appealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (Cal. Govt. Code §§ 53054 *et seq.*) or the Video Customer Service Act (Cal. Govt. Code §§ 53088 *et seq.*), and in the case of renewal any final non-appealable order issued pursuant to the Digital Infrastructure and Video Competition Act (Cal. Pub. Code §§

5800 *et. seq.*), and in the case of renewal any final nonappealable order issued pursuant to the Digital Infrastructure and Video Competition Act of 2006(Cal Pub. Code §§ 5800 *et. seq.*)

VII. The State Video Franchise – Authorization to Offer Service, Obligations, Amendment, Transfer, Voluntary Termination, and Miscellaneous Changes

A. Authorization to Offer Service

1. Grants of Authority

It is unlawful to provide Video Service without a state or locally issued franchise.⁴⁰ The issuance of a State Video Franchise represents the Commission’s determination that an Applicant has satisfied the statutory requirements pursuant to DIVCA to offer Video Service. The document in which the Commission memorializes the issuance of a State Video Franchise serves as proof of the Commission’s grant of authority to provide Video Service, but does not itself constitute authority to offer Video Service.

Each State Video Franchise issued by the Commission includes (1) a grant of authority to provide Video Service in the Video Service Area as requested in the Application; (2) a grant of authority, in exchange for the franchise fee adopted under Public Utilities Code Section 5840(q), to use the public rights-of-way for the delivery of Video Service subject to the laws of California; and (3) a statement that the grant of the authority is subject to the lawful operation of the Video Service by the Applicant or its successor-in-interest.⁴¹

2. Duration of a State Video Franchise

A State Video Franchise is effective for ten years after the date of its issuance.⁴²

B. State Video Franchise Obligations

1. Obligations Imposed by Statute

State Video Franchise Holders are required to comply with all federal and state statutes, rules, and regulations. All California operations of a State Video Franchise Holder and its Affiliates shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

With respect to build-out requirements pursuant to Public Utilities Code § 5890(c), a State Video Franchise Holder that alone or in conjunction with its Affiliates

⁴⁰ *Id.* at § 5840(k).

⁴¹ *Id.* at § 5840(i).

⁴² *Id.* at § 5850(a).

has less than 1,000,000 telephone customers in California will be deemed to fulfill build-out obligations imposed by Public Utilities Code § 5890(c) if it meets one of the following three conditions:

- (1) Within 30 days of the issuance of its State Video Franchise, the State Video Franchise Holder submits an affidavit to the Commission that establishes that all of the State Video Franchise Holder's telephone customers are offered Video Service by the State Video Franchise Holder.
- (2) The State Video Franchise Holder satisfies a safe harbor standard adopted in a Commission rulemaking.
- (3) The State Video Franchise Holder satisfies company-specific build-out requirements adopted by the Commission. To seek to satisfy this condition, a State Video Franchise Holder shall file an application with the Commission within the calendar year in which it applies for a State Video Franchise. This application shall specify how the State Video Franchise holder plans to offer Video Service to its telephone customers within a reasonable time. The application must contain clearly stated build-out milestones and must demonstrate a serious and realistic planning effort by the State Video Franchise Holder. The application must clearly state the constraints affecting the build-out, with particular attention to the constraints noted in DIVCA itself. To the extent that there are areas within the State Video Franchise Holder's Telephone Service Area that are substantially higher cost than average to provide Video Service, those substantially higher cost areas should be clearly delineated and explained in the application.

2. Enforcement of Obligations

A State Video Franchise is subject to suspension or revocation if a Video Service Provider fails to comply with the applicable requirements of Division 2.5 the Public Utilities Code.⁴³ In addition, the Commission shall not renew a State Video Franchise if the State Video Franchise Holder is in violation of any final non-appealable court order issued pursuant to Division 2.5 of the Public Utilities Code.⁴⁴

3. Notice of Imminent Market Entry

A State Video Franchise Holder must concurrently notify each affected local jurisdiction and each affected incumbent cable operator of the holder's imminent market entry. The State Video Franchise Holder must provide the concurrent notice to the incumbent cable operator before initiating Video Service pursuant to a State Video

⁴³ *Id.* at § 5890(g).

⁴⁴ *Id.* at § 5850(d).

Franchise, and to any local jurisdiction within which, or within any part of which, the holder intends to provide Video Service.

C. Amending a State Video Franchise

A State Video Franchise Holder may amend a State Video Franchise in order to reflect changes to its Video Service Area.⁴⁵

1. Fee for Amending a State Video Franchise

There is no fee associated with such amendments to reflect changes in service territory, but in general, the Commission's amendment process tracks the State Video Franchise Application process as set forth above.

2. Procedures for Filing a Supplemental Application

A State Video Franchise Holder seeking a Video Service Area amendment (whether an increase or decrease) shall file a supplemental Application to its initial Application that clearly shows the new boundaries of the affected service areas,⁴⁶ describes any and all Local Entities impacted by the new service area, and further amends all sections of the prior Application affected by the change in service territory or other factors.

One original and one copy of the supplemental Application shall be filed with the Commission's Video Franchise Group and concurrently served on any Local Entities affected by the change in Video Service Area.

3. Commission Review and Issuance of a Supplemental Application

The Commission, acting through the Executive Director, will notify the State Video Franchise Holder and any affected Local Entities whether the supplemental Application is complete or incomplete on or before the thirtieth calendar day following the filing date of the supplemental Application. The State Video Franchise Holder will have the opportunity to remedy any incomplete supplemental Application. Once an incomplete Application is refiled with the missing information, the Commission will have 30 days to determine the completeness of a supplemented Application.

The Commission's failure to notify the State Video Franchise Holder of a supplemental Application's completeness or incompleteness before the forty-fourth calendar day after the receipt of a supplemental Application shall be deemed to constitute issuance of the amended franchise, so long as the State Video Franchise

⁴⁵ *Id.* at § 5840(f).

⁴⁶ *Id.* at § 5840(m)(6).

Holder is not statutorily ineligible for a new, renewed, or transferred State Video Franchise pursuant to DIVCA.

D. Transfer of a State Video Franchise

1. Necessary Conditions for the Transfer of a State Video Franchise

A State Video Franchise may be transferred to a successor-in-interest of the State Video Franchise Holder to which the State Video Franchise was originally granted. This transfer may be as a result of merger, sale, assignment, bankruptcy, restructuring, or any other type of transaction, so long as two conditions are met:

- (1) Prior to the transfer, the transferee (successor-in-interest) submits to the Commission and all affected Local Entities all of the information required by this General Order of an initial Applicant for a State Video Franchise; and
- (2) The transferee submits an affidavit stating that it agrees that any collective bargaining agreement entered into by the predecessor-in-interest State Video Franchise Holder shall continue to be honored, paid, or performed to the same extent as would be required if the predecessor-in-interest State Video Franchise Holder continued to operate for the duration of the State Video Franchise, unless the duration of the collective bargaining agreement is limited by its own terms or by state or federal law.⁴⁷

2. Commission Review of the Transfer of a State Video Franchise

The Commission will process the Application for transfer of a State Video Franchise pursuant to the same standards applicable to an Application for a new State Video Franchise.

E. Voluntary Termination of a State Video Franchise

A State Video Franchise Holder may terminate its State Video Franchise by submitting at least 90 days' prior written notice to the Commission, affected Local Entities, and all of its customers.⁴⁸

Within 14 business days after termination of a State Video Franchise, the State Video Franchise Holder shall inform the Commission and the affected Local Entities of

⁴⁷ *Id.* at §§ 5840(1), 5970.

⁴⁸ *Id.* at § 5840(j).

the number of customers in the service area of the State Video Franchise being terminated; and the method by which customers were notified of the termination, including a copy of such customer notice.⁴⁹

F. Miscellaneous Changes

As a condition of being issued a State Video Franchise, a State Video Franchise Holder must notify the Commission and affected Local Entities within 14 business days of the following:

- (1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the State Video Franchise Holder, including but not limited to a merger, acquisition, or reorganization;
- (2) A change in the State Video Franchise Holder's legal name or the adoption of, or change to, an assumed business name. Notification to the Commission shall consist of a certified copy of either of the following:
 - (a) the proposed amendment to the State Video Franchise,
 - or (b) the certificate of assumed business name; or
- (3) A change in the State Video Franchise Holder's principal business address or the name or business address of the person authorized to receive notice on behalf of the State Video Franchise Holder.⁵⁰

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. An application for extension shall be in the form of a formal application to the Commission, as provided in Article 2 of the Commission's Rules of Practice and Procedure. The formal 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.

A formal 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 formal

⁴⁹ *Id.* at § 5840(m)(5).

⁵⁰ *Id.* at § 5840(m).

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 formal 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 formal application for extension. The Commission's Rules of Practice and Procedure will govern participation.

VIII. Reporting Requirements

A. Reports for Collection of the User Fee

Each State Video Franchise Holder shall report to the Commission annual gross revenue received from video service offered pursuant to a State Video Franchise, as of January 1 of the year in which it first was issued a State Video Franchise and each year thereafter. These reports are due to the Commission no later than April 1 of each year following the calendar year upon which the report is based.

Alternatively, any State Video Franchise Holder required to submit information and reports pursuant to Article 4 to Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code, in lieu thereof, may submit information or reports made to any other governmental agency if all of the following conditions are met: (i) the alternate information or reports contain all of the information required by the Commission; (ii) the requirements to which the alternate reports or information are responsive are clearly identified; and (iii) the information or reports are certified by the Video Service Provider to be true and correct.⁵¹

B. Annual Employment Reports

1. Reporting Obligations Imposed on State Video Franchise Holders with More than 750 California Employees

A State Video Franchise Holder employing more than 750 total employees in California shall report to the Commission annual employment information, as of January 1 of the year in which it first was issued a State Video Franchise and each year thereafter. These reports shall include the following information:

- (1) The number of California residents employed by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis.

⁵¹ *Id.* at § 443(b).

- (2) The percentage of the State Video Franchise Holder's total domestic workforce that resides in California, calculated on a full-time or full-time equivalent basis.
- (3) The types and numbers of jobs by occupational classification held by residents of California employed by State Video Franchise Holders and the average pay and benefits of those jobs and, separately, the number of out-of-state residents employed by independent contractors, companies, and consultants hired by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis, when the State Video Franchise Holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor, company, or consultant that are personally providing services to the State Video Franchise Holder, and does not apply to employees of an independent contractor, company, or consultant not personally performing services for the State Video Franchise Holder.
- (4) The number of net new positions proposed to be created directly by the State Video Franchise Holder during the upcoming year by occupational classifications and by category of full-time, part-time, temporary, and contract employees.⁵²

These reports shall be filed with the Commission no later than April 1 for each annual reporting period.

2. Commission Reports to Legislative Committees

The Commission shall annually report the information required to be reported by State Video Franchise Holders pursuant to Rule VII.B.1 to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet website.⁵³

⁵² *Id.* at § 5920(a).

⁵³ *Id.* at § 5920(b).

C. Annual Reports on Broadband and Video Services

1. Reporting Obligations Imposed on State Video Franchise Holders and Their California Affiliates

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

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,

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).

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 and any successor decisions.

Non-Wireline Broadband Information:

- (c) 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.
- (d) 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.

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.

Video Information⁵⁴

- (e) If the State Video Franchise Holder and/or any of its Affiliates is a Telephone Corporation:
 - i The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Telephone Service Area; and

⁵⁴ *Id.* at § 5960(b)(2).

- ii The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Telephone Service Area that are offered Access pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Telephone Service Area that subscribe to the Video Service offered pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

- (f) If neither the State Video Franchise Holder nor any of its Affiliates is a Telephone Corporation:
 - i The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area; and
 - ii The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area that are offered Access pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.
 - iii. The number of Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area that subscribe to the Video Service offered pursuant to a State Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

Low-Income Household Information⁵⁵

- (g) The number of Low-Income Households in each Census Tract of the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area.
- (h) The number of Low-Income Households in the State Video Franchise Holder's and/or any of its Affiliates' Video Service Area that are offered Access pursuant to a State

⁵⁵ *Id.* at § 5960(b)(3).

Video Franchise by the State Video Franchise Holder and/or any of its Affiliates.

In accordance with Appendix E of D.07-03-014, reports on Households shall utilize the most recent U.S. Census projections available as of January 1 after the conclusion of each annual reporting period.

In accordance with Appendix E of D.07-03-014, reports on Low-Income Households shall utilize the most recent U.S. Census projections available as of January 1, 2007.

If a State Video Franchise is transferred to a successor-in-interest of the State Video Franchise Holder to which the certificate originally is granted, the transferee or its parent company shall submit to the Commission of the information required by Public Utilities Code Section 5960.⁵⁶

2. Commission Reports to the Legislature and Governor

The Commission, no later than July 1, 2008 and annually no later than July 1 thereafter, shall submit to the Legislature and Governor a report that includes information submitted by State Video Franchise Holders as to Broadband, Video Service, and Low-Income year-end data on an aggregated basis.⁵⁷

All information submitted to the Commission and reported by the Commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.⁵⁸ No individually identifiable customer information shall be subject to public disclosure.⁵⁹

D. Information on Service to Community Centers

A State Video Franchise Holder that alone or in conjunction with its Affiliates has more than 1,000,000 telephone customers in California shall report annual information, as of January 1 of the year in which its State Video Franchise is granted and each year thereafter, on the extent to which the State Video Franchise Holder makes Video and Broadband Service available at no cost to Community Centers in underserved areas, as determined by the State Video Franchise Holder. The reports shall include the following information:

⁵⁶ *Id.* at § 5970(a).

⁵⁷ *Id.* at § 5960(c).

⁵⁸ *Id.* at § 5960(d).

⁵⁹ *Id.*

- (1) A list of the Community Centers in underserved areas where the State Video Franchise Holder provides Video and Broadband Service without charge.
- (2) The number of video customers subscribing to the State Video Franchise Holder's Video Service.⁶⁰

The Community Center reports shall be filed with the Commission on a date no later than April 1 after the conclusion of each annual reporting period.

E. Annual Reports on Collective Bargaining

A State Video Franchise Holder shall report to the Commission whether its California employees are covered by a collective bargaining agreement. This report shall be filed with the Commission on a date no later than April 1 after the conclusion of each annual reporting period.

F. Workplace Diversity Reports

If it declines to provide workplace diversity data equivalent to that of other California Utilities Diversity Council members, any State Video Franchise Holder required to submit Employment Information Report EEO-1 filings to the federal Department of Labor shall provide the Commission a concurrent copy of all future Employment Information Report EEO-1 filings when it submits these filings to the federal Department of Labor. If they are multi-establishment employers, State Video Franchise Holders subject to this requirement shall provide the Commission EEO-1 reports that describe workplace diversity of both the parent company and its California Affiliates. The EEO-1 reports shall be filed with the Commission no later than April 1 after the conclusion of each annual reporting period.

G. Additional Information

The Commission reserves the authority to require additional reports that are necessary to the enforcement of specific DIVCA provisions.

⁶⁰ *Id.* at § 5890(b)(3).