

Decision 14-08-057 August 28, 2014

**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.

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

**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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Attachment A: Revisions to General Order 169

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**DECISION AMENDING GENERAL ORDER 169  
TO IMPLEMENT THE FRANCHISE RENEWAL  
PROVISIONS OF THE DIGITAL INFRASTRUCTURE  
AND VIDEO COMPETITION ACT OF 2006**

**1. Summary**

This decision amends General Order 169 and adopts procedures for implementing the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006, Assembly Bill 2987 (DIVCA) (Ch. 700, Stats. 2006).<sup>1</sup> This proceeding is closed.

**2. Legislative Background and Procedural History**

To promote video service competition in California, the Legislature created a new state video franchising process under the Digital Infrastructure and Video Competition Act (DIVCA) of 2006. In so doing, the Legislature found that “increasing competition for video and broadband services is a matter of statewide concern.”<sup>2</sup> The Legislature noted that video providers offer “numerous benefits to all Californians including access to a variety of news, public information, education, and entertainment programming.”<sup>3</sup> According to the Legislature, “competition for video service should increase opportunities for programming that appeal to California’s diverse population and many cultural communities.”<sup>4</sup> The Legislature added that increased video service competition

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<sup>1</sup> DIVCA is codified at Cal. Pub. Util. Code §§ 5800 *et seq.*

<sup>2</sup> Cal. Pub. Util. Code § 5810(a)(1).

<sup>3</sup> *Id.* at § 5810(a)(1)(A).

<sup>4</sup> *Id.* at § 5810(a)(1)(D).

“lowers prices, speeds the deployment of new communication and broadband technologies, creates jobs, and benefits the California economy.”<sup>5</sup>

On October 5, 2006, the Commission initiated Rulemaking (R.) 06-10-005 to adopt a general order and establish procedures for implementing DIVCA.<sup>6</sup> However, after three phases of the proceeding, the Commission had not implemented rules for the renewal process.<sup>7</sup> Because Public Utilities Code Section 1701.5 requires the Commission to conclude a rulemaking within 18 months, R.06-10-005 was closed before this final implementation task could be accomplished. This rulemaking was initiated to establish video franchise renewal procedures on May 23, 2013.

In its order initiating this rulemaking, the Commission summarized the issues to be resolved:

- establishing procedures for implementing the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006;
- establishing renewal procedures to reflect DIVCA’s requirement that a video service provider’s franchise shall not be renewed if it is in violation of a final nonappealable court order, as discussed in section 3.1.3.1 of this Order Instituting Rulemaking (OIR);
- establishing procedures for a notice and comment period on franchise renewal applications, as discussed in section 3.1.3.2 of this OIR;

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<sup>5</sup> *Id.* at § 5810(a)(1)(B).

<sup>6</sup> *Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006* (2007) Cal. P.U.C. Dec. No. 07-03-014 (Decision (D.) 07-03-014).

<sup>7</sup> *See*, D.07-03-014; *Opinion Resolving Issues in Phase II* (2006) Cal. P.U.C. Dec. No. 07-10-013 (D.07-10-013); *Decision Amending General Order 169* (2008) Cal. P.U.C. Dec. No. 08-07-007 (D.08-07-007).

- the timing of franchise renewal application submissions as discussed in section 3.1.3.3 of this OIR;
- whether establishing formal franchise renewal procedures consistent with 47 U.S.C. § 546(a)-(g) is necessary, as discussed in section 3.1.4 of this OIR; and
- if a formal franchise renewal procedure consistent with 47 U.S.C. § 546(a)-(g) is necessary, the specific requirements and procedures that should be adopted, including how DIVCA's division of regulatory authority between the Commission and local entities would be preserved in the context of a formal proceeding (section 3.1.4.1); the timing of franchise renewal applications (section 3.1.4.2); the reimbursement for Commission resources spent on formal proceedings (section 3.1.4.3); how the commencement of the ascertainment phase described in 47 U.S.C. § 546(a) would be initiated and carried out (section 3.1.4.4); how "future cable related needs" and "past performance review" should be defined (section 3.1.4.5); what procedures should be established for the submission of renewal proposals and preliminary assessment of nonrenewal (section 3.1.4.6); how the administrative proceeding described in 47 U.S.C. § 546(c)-(d) should be implemented, including whether the Commission's formal application procedure prescribed by Article 2 of the Commission's Rules of Practice and Procedure should be used and participation limited (section 3.1.4.7); and how the adverse findings and notice procedures in 47 U.S.C. § 546(d) should be implemented (section 3.1.4.8).

Initial comments were filed on July 22, 2013, by the League of California Cities and the California State Association of Counties, California Cable and Telecommunications Association (CCTA), Verizon California, AT&T California,

Office of Ratepayer Advocates (ORA),<sup>8</sup> and the City of Palm Desert. Reply comments were filed on August 12, 2013, by Verizon, AT&T, The Utility Reform Network, Division of Ratepayer Advocates, CCTA and, jointly, by The California State Association of Counties, The City of Mountain View, The City of Long Beach, Sacramento Metropolitan Cable Television Commission, The City of Palm Desert, The County of Los Angeles, and the League of California Cities.

On December 24, 2013, the assigned Commissioner issued his scoping memo, which found that evidentiary hearings were not required. The scoping memo explained that in response to the comments on the issues Commission staff prepared a Staff Report, with proposed amendments to General Order (GO) 169. The scoping memo set a schedule for comments on the Staff Report.

### **3. Summary of the Staff Report**

The Staff Report specified that the renewal process for state video franchises must be consistent with both DIVCA and federal law, and as identified in Cal. Pub. Util. Code § 5850(b)<sup>9</sup> should largely mirror the initial application process identified in § 5840.<sup>10</sup> As discussed in the Staff Report, DIVCA establishes a highly expedited process for the issuance of franchises and defines all of the obligations and requirements a video service provider must meet as a condition of being granted a franchise. DIVCA envisions a renewal process identical to the process required for the initial grant of a state-issued franchise under § 5840, except that it must be consistent with federal law and the

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<sup>8</sup> Since the filing of comments, the Division of Ratepayer Advocates has changed its name to the Office of Ratepayer Advocates (ORA).

<sup>9</sup> Unless otherwise noted, statutory references are to the Cal. Pub. Util. Code.

<sup>10</sup> Staff Report at 4-6.

Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order with respect to any provision of DIVCA.<sup>11</sup>

Federal law contains what is commonly referred to as a formal and informal process to renew cable television franchises.<sup>12</sup> The Staff Report concluded that the California renewal process in § 5850(b) is consistent with the federal informal process set out in 47 U.S.C. § 546(h) as long as it is modified to provide adequate opportunity for notice and comment.<sup>13</sup> The proposed rules set forth in the Staff Report accommodated this opportunity for notice and comment by providing for limited comment on the issue of whether a video service provider seeking renewal is in violation of a nonappealable court order of any section of DIVCA.

However, the Staff Report did not propose developing a complex set of rules to accommodate the federal formal process. As explained in the Staff Report, the renewal process DIVCA contemplates is distinctly different from the formal federal process outlined in 47 U.S.C. § 546(a)-(g).<sup>14</sup> The federal formal process is not mandatory, and as discussed in the Staff Report, it is not likely that a cable operator would choose to invoke such a process in lieu of the expedited renewal process envisioned by DIVCA.<sup>15</sup> Further, the Staff Report reasoned that the language and intent of DIVCA constrain the Commission's ability to invoke

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<sup>11</sup> Staff Report at 5; *see also*, Cal. Pub. Util. Code § 5850.

<sup>12</sup> *See*, 47 U.S.C. § 546.

<sup>13</sup> Staff Report at 8.

<sup>14</sup> *Id.* at 13.

<sup>15</sup> *Id.* at 14-15.

the formal process, and concluded that the Commission should not exercise this option.<sup>16</sup> Nonetheless, since cable operators have a right to invoke the formal process, the Staff Report proposed revisions to GO 169, to specify that where a cable operator seeks to invoke the formal federal process identified in 47 U.S.C. § 546(a)-(g), that cable operator must file a formal application pursuant to Article 2 of the Commission's Rules of Practice and Procedure, and provide notice to the Commission, local entities within its franchise area, and ORA of its decision within the time specified by federal law.<sup>17</sup>

Finally, the Staff Report proposed modifications to the renewal process identified in § 5850(b) to accommodate DIVCA's prohibition against renewing the franchise of a video service provider that is in violation of a final nonappealable court order.<sup>18</sup> The Staff Report proposed revisions to the rules in GO 169 and the attached application and affidavit to reflect this requirement.

#### **4. Positions of the Parties**

Pursuant to the December 24, 2013 scoping memo, further comments on the Staff Report were filed on January 24, 2014, by AT&T California, CCTA, Verizon California, ORA, and jointly by the League of California Cities, the California State Association of Counties, the Cities of Long Beach, and Palm Desert, California, the County of Los Angeles, California and the Sacramento Metropolitan Cable Television Commission (Local Entities Group). Reply comments were filed on February 18, 2014, by ORA, Verizon California, CCTA, AT&T California, and The Media Alliance. We briefly summarize the positions

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<sup>16</sup> *Id.* at 14.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> *Id.* at 11-13.



of the parties taken in these comments below, and where appropriate also include positions taken in comments on the OIR.

**Local Entities Group**<sup>19</sup>

The Local Entities oppose the proposed procedural schedule for the renewal application and argue that 15 days for comments on a renewal application is inadequate if those comments are to be meaningful. The Local Entities also oppose limiting the scope of comments on the renewal application to whether a video service provider is in violation of a nonappealable court order.

The Local Entities recommend that the Commission limit renewal applications to a defined time period prior to expiration to prevent a video service provider from gaming the informal renewal process by, for example, applying early for renewal while a court proceeding is pending.

Finally, the Local Entities contend that the proposal to not develop detailed rules for the formal renewal process at this time but to defer the task to an administrative law judge during the six month period following a provider's notice of intent to invoke is likely legally permissible but inadvisable due to the time limits imposed on such a process.

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<sup>19</sup> The "Local Entities Group" is comprised of the League of California Cities, the California State Association of Counties, the Cities of Long Beach, and Palm Desert, California, the County of Los Angeles, California and the Sacramento Metropolitan Cable Television Commission, and states that Group members represent the vast majority of the cities and counties in the State of California and collectively have extensive familiarity with cable and video franchising requirements and processes under state and federal law, garnered through decades serving as local franchising authorities prior to the enactment DIVCA and now serving as co-regulators of state franchise holders with this Commission under DIVCA.

CCTA

CCTA supports the proposed renewal process because it fits squarely with the federal informal process by limiting the scope of notice and comment to whether a cable operator is in violation of a nonappealable court order regarding DIVCA.

CCTA opposes the Local Entities and ORA efforts to impose expansive notice and comment procedures because such procedures would render § 5850(b) meaningless. CCTA explains that § 5850(b) requires that the Commission apply to the franchise renewal registration the same “criteria and process” as used for the issuance of the franchise. Two exceptions are also set forth in § 5850 in subsections (c) and (d), for consistency with federal law and regulations, and the directive that the Commission may not renew the franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to DIVCA.

Moreover, CCTA concludes, these proposals are contrary to the purpose of DIVCA because they would return the franchising process to the prior local franchising system that DIVCA was meant to replace.

In response to the Staff Report’s proposal regarding violations of nonappealable court orders, CCTA suggests that if the answer to the first two questions is affirmative, then the applicant may also submit a declaration, if it does not have an order or ruling, attesting that it has cured the violation of the nonappealable court order. CCTA makes this suggestion because courts do not typically issue orders or rulings showing that a violation has been cured. If a declaration is used, the renewal should be granted with the condition that the franchise may be revoked if anyone disputes the applicant’s declaration and

obtains a court order finding a continuing violation of the nonappealable court order.

CCTA also suggests adding language to the rules to reflect the statutory language of DIVCA. DIVCA states that the Commission cannot renew the franchise of an applicant that is “in violation of any final nonappealable court order *issued pursuant to this division.*” [Emphasis added.] Thus, CCTA recommends that the Commission add the language “issued pursuant to this division” to prevent the use of this rule to reach orders that have nothing to do with DIVCA. CCTA claims that such an overreach would also exceed § 5850(b) which requires the Commission to follow the initial franchise criteria and process. These changes should also be made to the affidavit and application.

**Office of Ratepayer Advocates**

ORA argues that the Commission made a legal mistake and promulgated bad policy in D.07-03-014, the Phase 1 DIVCA Decision, by determining that § 5840 does not permit any parties to file protests or comments to DIVCA applications, and that the Commission is making the same legal and policy mistakes with the proposed renewal process. In addition, ORA argues that the only way to reconcile the renewal provisions of DIVCA set forth in § 5850 with ORA’s right to advocate on behalf of consumers in a renewal proceeding, as set forth in § 5900(k), is to allow it to file protests or substantive comments on renewal applications on the DIVCA obligations relating to cross-subsidization, build out/discrimination, consumer protection, and Public Education and Government channels.

ORA also claims the term “complete” as applied to the franchise application process should be interpreted to mean complete from a substantive perspective. In other words, the Commission should interpret the criteria for

determining whether an application is complete as used in § 5840 for processing initial applications, which is the process § 5850 requires, to permit ORA to submit comments or protests of a substantive nature. Furthermore, ORA argues that if the Commission interprets the term “complete” as used in § 5840(h) to mean substantively complete, the Commission can delay approving or denying an application for renewal indefinitely, beyond the prescribed 44 days under § 5840(h), if it determines that an application for renewal is substantively incomplete.

ORA recommends that the Commission give ORA the opportunity to file substantive comments on renewal applications, and all parties the opportunity to comment on the completeness and veracity of renewal applications without restriction. ORA also contends that the Commission erred in D.07-03-014 when it concluded that ORA may not file complaints against video service providers under DIVCA.

Like the Local Entities, ORA supports setting the earliest date upon which a renewal application may be received. ORA explains that allowing video service providers to submit applications at any time could impose scheduling burdens on the Commission and its staff with renewal applications being submitted on unexpected schedules, and that state video franchises are valid for 10 years and it is clear that the Legislature did not intend for franchises to be renewed on some other timetable. Additionally, ORA contends there may be a DIVCA proceeding that is underway and a final resolution may not yet have occurred. Although DIVCA does not statutorily require a specific timeframe for when applications must be received, the Commission has authority under § 701 to set a reasonable timeframe for receipt of applications. Therefore, ORA

recommends a deadline of six months before expiration of the existing franchise as the point at which the Commission will begin accepting applications.

ORA also agrees with the Local Entities that the 15 days for comment on a renewal application is insufficient, particularly if the Commission seeks meaningful comments on renewal applications. ORA further agrees with Local Entities that the scope of the comments should include substantive issues such as whether the applicant carried out its various responsibilities as attested to in the application, and a review for discrimination and cross subsidization.

**AT&T**

AT&T states that any rules in implementing DIVCA must be guided by the Legislature's intent to streamline the video franchising process in order to promote competition and pass along the benefits of competition to consumers, and that the proposed renewal process meets the intent of DIVCA except for the provision of notice and opportunity to comment. AT&T argues that this is a violation of Public Utilities Code Section 5850 which states "except as provided in this section, the criteria and process described in § 5840 [governing initial applications] shall apply to a renewal registration, and the commission shall not impose any additional or different criteria."

AT&T opposes ORA's improper collateral attack of the first DIVCA decision which is a final decision. AT&T also disagrees with ORA's procedural requests as being at odds with DIVCA's mandate that the Commission regulate video service providers only as expressly provided in DIVCA, not as public utilities.

**Media Alliance**<sup>20</sup>

Media Alliance believes that 15 days for notice and comment is extremely short and does not provide enough time to gather local input, do statistical research, or access internal records. In support of this, Media Alliance argues that “there is a significant body of public proceedings in California and data reveals an average public comment period of not less than 30 days and frequently 60-90 day periods being a matter of course.”

Media Alliance also opposes the proposed limited scope of the franchise renewal process, and argues that Federal law requires the Commission to consider more of the operator’s past performance than merely whether the applicant is in violation of a non-appealable court order.

**Verizon California**

Verizon supports the proposals in the Staff Report as reflecting the law and legislative policy. Verizon opposes ORA’s attempt to re-litigate D.07-13-014, and the Local Entities’ argument that past performance should be considered in the renewal process because DIVCA makes clear that the renewal process should be ministerial and that performance issues must be addressed in other forums.

**5. Discussion**

The procedures and criteria for renewing a state-issued video franchise are set forth in Pub. Util. Code § 5850(a)-(d). Section 5850(b) sets forth the general rule that “except as provided in this section, the criteria and process described in

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<sup>20</sup> Media Alliance states that it is a community-based organization that represents both professional and amateur media-makers and citizens interested in free speech rights and democratic expressions.

§ 5840<sup>21</sup> shall apply to a renewal registration, and the commission shall not impose any additional or different criteria.”

Two exceptions are set forth in sections (c) and (d). Section 5850(c) states that the renewal process must be consistent with federal laws and regulations, and § 5850(d) states that the Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this division.

We conclude that § 5850(b) requires that the process for renewing state-issued franchises be identical to the process set forth in § 5840(a)-(q) unless the requirements set forth in §§ 5850(c) and (d) necessitate that this process be modified. Although for the reasons discussed below we allow for the filing of comments, this process does not encompass the filing of protests to renewal applications.<sup>22</sup>

### **5.1. Consistency with the Federal Informal Process**

As analyzed in detail in the Staff Report, the California initial application process set out in § 5840, and thus the renewal process required by § 5850, is

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<sup>21</sup> See generally, Pub. Util. Code § 5840(a)-(q) and General Order (GO) 169. The process requires an application, an affidavit of compliance with federal, state and local law, posting a bond as demonstration that it possesses the legal, financial, and technical capabilities to construct and operate a system capable of providing video services, paying a \$2,000. If the application is complete and the applicant found eligible, the Executive Director of the Commission will issue state video franchise to the applicant.

<sup>22</sup> ORA reargues its claim of broader procedural and substantive rights in initial franchise applications, and extends these arguments to renewal applications. As to the initial applications, ORA’s arguments were disposed of in D.07-11-014, again on rehearing in D.07-11-049, and summarily rejected by the Court of Appeals. For renewal applications, ORA contends that § 5850(b) allows the Commission to use a different process, including allowing ORA to file protests. We find that ORA’s argument contradicts the plain language in § 5850(b) which requires the same process for both initial and renewal applications.

consistent with the federal informal process as specified in 47 U.S.C. § 546(h), but requires modification to include the opportunity for notice and comment.<sup>23</sup>

Accordingly, the modifications to GO 169 attached to today's decision as Attachment A include the requirement that all franchise renewal applications provide a copy of the application to each local entity where service will be provided, as well as ORA, and these entities may file and serve comments on the application in accordance with the scope discussed below. As so modified, we find that the California video franchise renewal process is consistent with the federal informal process.

We also adopt ORA's proposed requirement that an expedited renewal application may not be submitted more than six months before the existing franchise expires, to prevent early applications in anticipation of violating a nonappealable court order. This change is reflected in the attached rules amending GO 169.<sup>24</sup>

#### **5.1.1. Scope of Comments on Renewal Applications**

Consistent with D.07-11-014, we find that substantive issues raised in comments on a franchise renewal application would be outside the scope of the

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<sup>23</sup> *Id.* at 8.

<sup>24</sup> We recognize that 47 U.S.C. § 546(h) permits a cable operator to "submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may...grant or deny such proposal at any time." However, Cal. Pub. Util. Code § 5840(h) requires the Commission to act on a franchise application within 44 days or else it is deemed an issuance of the franchise certificate. Therefore, if a video service provider chose to submit an application in advance to game the application process as discussed above, the Commission would be required to act on that application within 44 days or else the franchise certificate is issued by default. Creating a six-month window during which a video service provider may seek a renewal reduces the risk of such a scenario occurring.



Commission's review. As noted in the Staff Report, however, § 5850(d) states that we shall not renew the franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to DIVCA.

Accordingly, to reconcile our limited role and discretion in approving franchise applications under DIVCA with the requirement in 47 U.S.C. § 546(h) for adequate notice and comment, we will provide opportunity for comment on the issue of whether a video service provider is in violation of a final nonappealable court order. This interpretation is reasonable as it is consistent with the language and purpose of DIVCA, which limits franchise renewal determinations to the existence of a final nonappealable court order issued pursuant to DIVCA.<sup>25</sup>

We reject the Local Entities' claim that federal law requires comment on the entire renewal application because 47 U.S.C. § 546(h) does not provide for such broad comment, and the California statute limits this Commission's renewal inquiry to whether a video service provider is in violation of a final non-appealable court order issued pursuant to DIVCA.

## **5.2. Consistency with the Federal Formal Process**

For the California franchise renewal applicants that wish to invoke the federal formal application process set out in 47 U.S.C. § 546(a)-(g), such applicants must file and serve an application as provided in Article 2 of the Commission's Rules of Practice and Procedure. This will lead to an

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<sup>25</sup> Further, we agree with the Staff Report that affording the public 15 days, notice from the date an application for renewal is posted on the Commission's website is sufficient time for parties to submit comments on this limited issue, and is consistent with the strict deadlines imposed for the renewal application process under § 5850(b).

Administrative Law Judge being assigned to the proceeding and a specific procedural schedule adopted for the issues that are presented in that specific renewal application. We find that this portion of the California video franchise renewal process is consistent with the federal formal process. We caution cable operators that invoking the formal process merely for the purpose of preserving their due process rights will trigger the initiation of a proceeding in which the Commission undertakes the difficult task of reconciling the rules and procedures of the formal process with DIVCA. However, even if cable operators elect to forego invoking the formal process, the rules we adopt today ensure that a video service provider has a right of appeal under state law in the event the application is denied.

For the reasons set forth in the Staff Report, we conclude that although a franchise authority may invoke the formal process, the Commission may not because it would expand the renewal process beyond the process for the issuance of an initial franchise in violation of § 5850(b). Taken together, we conclude that the modifications we have adopted today to the process for the issuance of a franchise set forth in § 5840 result in a renewal process that is consistent with federal law as required by § 5850(c).

### **5.3. Violation of Final Nonappealable Court Order Issued Pursuant to DIVCA**

As directed by § 5850(d), this Commission shall not renew a video franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to California video franchise law. To implement this provision, the revised GO in Attachment A requires video franchise renewal applicants to attest that no such violations are occurring or are alleged to be occurring. If such violations have been found, the Applicant must submit an

order or ruling showing that the violations have been cured. We find reasonable CCTA's recommendation that the Commission should also permit an Applicant to attest that it has cured the violation because courts do not typically issue orders or rulings showing that a violation has been cured. The rules have been amended to this effect.

We also find reasonable CCTA's recommendation to add language to the rules regarding violations of nonappealable court orders to reflect the statutory language of DIVCA. Therefore, after the phrase "in violation of any final nonappealable court order" we add the language "issued pursuant to the Digital Information and Video Competition Act (Cal. Pub. Util. Code §§ 5800 *et seq.*)" because we wish to clarify that these rules only apply to court orders issued pursuant to DIVCA. However, in order to capture the requirements of § 5840(d), we have added language to make explicit that no person or corporation shall be eligible for the renewal of a state video franchise, if that person or corporation is in violation of any final nonappealable court order relating to either 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.*).

Lastly, we add that if an Applicant is ineligible to have its franchise renewed, the Commission's Executive Director will send a letter to the Applicant within 30 days from the date its Application was submitted as required by existing rule IV.A.4 stating that the Applicant is ineligible for the renewal of its video franchise. The effect of this letter will be to stop the 44 day clock on the

application.<sup>26</sup> Following the issuance of this letter, the Commission will issue a decision or resolution denying the application. The purpose of this addition is to provide an Applicant with a vehicle with which it may seek appeal of a decision denying its renewal application.

We find that these provisions are consistent with § 5850(d) and we adopt the revised GO 169 attached to today's decision as Attachment A.

We have reviewed the remaining recommendations from the parties seeking a broader scope and expansive procedural steps for the franchise renewal process. As analyzed in the Staff Report and in D.07-03-014, the Legislature adopted a streamlined franchise authority process with limited substantive requirements and continued that narrow scope and process through the franchise renewal process in § 5850. To the extent not discussed herein, we find that the proposals put forward by the parties are not consistent with California video franchise law and we decline to adopt them.

## **6. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on June 16, 2014, by AT& T, Verizon, CCTA and ORA. Verizon and CCTA supported the proposed decision. AT&T contended that the proposed decision of Commissioner Peevey went too far by allowing public comment on renewal applications at all, and ORA argued that the proposed decision did not go far enough by limiting the scope of the public

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<sup>26</sup> See Cal. Pub. Util. Code § 5840(h).

comment to violations of a final nonappealable court order. As analyzed below, we find that the proposed decision of Commissioner Peevey strikes the right balance between these extremes and we adopt Commissioner Peevey's proposed decision.

AT&T is correct that the no such public comment is provided for initial applications.<sup>27</sup> However, the renewal process statute, § 5850(c) and (d), requires consistency with the federal law and regulation and no on-going violations of a final nonappealable court order. These two requirements are met with the public comment opportunity on the only new substantive standard - violation of a final nonappealable court.

As required by § 5850(b), GO 169, in Subsection V., provides that the requirements and the process for renewing a state video franchise is the same as issuing the initial franchise, with narrow exceptions. ORA misread the proposed decision as "finding that the sole inquiry in the renewal application is whether there is a violation by the cable operator of a violation of a final non-appealable court order." As stated in Subsection V: "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." This statement is reflected in Attachment B to the proposed decision where the application form is modified to indicate that the same form is used for both initial applications and renewal applications. Thus, in reviewing the renewal applications, the Commission will go beyond violations of a final nonappealable order, and include a review of completeness, as specified in § 5840(h)(2).

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<sup>27</sup> AT&T Opening Comments at 2.

Accordingly to give greater effect to §5900(k) and allow ORA to “advocate on behalf of video subscribers regarding renewal of a state-issued franchise,” we will modify the proposed decision to expand the scope of ORA’s comments on a renewal application to be consistent with the Commission’s review and allow it to provide comments not only on the existence of violations of nonappealable court orders, as discussed in Section 5.3 of this Decision, but also on whether a renewal application meets the requirements of § 5840(h)(2). We will also allow ORA to include additional information regarding the applicant’s compliance with the obligations referenced in § 5840(e), which the Commission will not consider as part of the franchise renewal process but may lead to further action outside the renewal process.

We clarify that in granting ORA the ability to comment on compliance with § 5840(e), such comments must be filed according to the schedule for comments set forth in Section (V)(B) of GO 169 as adopted in today’s decision and will not interfere with the schedule for approving renewal applications established in § 5840(h). As set forth in § 5840(b), the Commission’s authority is limited to that set out in DIVCA and the Commission may not expand the application process beyond that contemplated by the statute. Further, allowing ORA to offer additional information for the Commission’s consideration and potential use outside the franchise renewal process will have no bearing on the process for renewal required by § 5850(b).

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. On December 24, 2013, the assigned Commissioner filed and served the Commission Staff Report Proposing Rules to Amend GO 169 to Implement the Franchise Renewal Provisions of the DIVCA of 2006.

2. With the modifications to GO 169 as set forth in Attachment A, the California video franchise renewal process is consistent with federal laws and regulations.

3. With the modifications to GO 169 as set forth in Attachment A, the California video franchise renewal process is consistent with the requirement that the Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this division.

4. No hearing is required.

### **Conclusions of Law**

1. Section 5850(b) sets forth the general rule that except as provided in this section, the criteria and process described in § 5840 shall apply to a renewal registration, and the Commission shall not impose any additional or different criteria.

2. Section 5850 has two exceptions to the general rule: the renewal process must be consistent with federal laws and regulations, and the Commission shall not renew a franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this division.

3. The process for renewing state-issued franchises must be identical to the process for issuing initial franchises unless modifications are necessary to be consistent with federal regulations or to prohibit renewal where a video service provider is in violation of a final nonappealable court order.

4. Pursuant to § 5840 (h)(2), the Commission may not approve an incomplete renewal application.

5. As provided in § 5850(d), the Commission must formally deny a renewal application if the applicant is in violation of any final nonappealable court order of any provision of DIVCA.

6. Permitting ORA to submit comments on compliance with § 5840(h)(2) of DIVCA in addition to the existence of violations of nonappealable court orders as discussed in Section 5.3 of this Decision is not only consistent with the Commission's review of renewal applications but will give greater effect to § 5900(k) which permits ORA to "advocate on behalf of video subscribers regarding renewal of a state-issued franchise." In addition, allowing ORA to provide the Commission with information regarding the applicant's compliance with the obligations referenced in §5840(e) when subject to the limitations discussed in this decision will have no bearing on the process for renewal of franchises set forth in § 5840.

7. The Commission lacks authority to expand the video franchise renewal process beyond that set forth in §§ 5840 and 5850.

8. The proposals put forward by the parties to broaden the scope and expand the procedural steps for video franchise renewals are not consistent with California video franchise law and should not be adopted except as noted herein.

9. The proposals put forward by the parties to broaden the scope and expand the procedural steps for video franchise renewals are not consistent with California video franchise law and should not be adopted.

10. The modifications to GO 169 set forth in Attachment A to today's decision should be adopted.



11. The modifications to application forms set forth in Attachment B to today's decision should be adopted.
12. This proceeding should be closed.
13. This decision should be effective immediately.

**O R D E R**

Therefore, **IT IS ORDERED** that the revised General Order 169 attached to today's decision as Attachment A and the revised application forms in Attachment B are adopted and this proceeding is closed.

This order is effective today.

Dated August 28, 2014, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
CARLA J. PETERMAN  
MICHAEL PICKER  
Commissioners

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