

OFFICE OF THE CITY CLERK

CITY OF OAKLAND



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Office of the City Administrator  
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January 9, 2007

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Finance and Management Committee  
Oakland City Council  
Oakland, California

**RE: Information Report on the Status of Implementing State Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA)**

Dear Chairperson Quan and Members of the Committee:

Assembly Bill 2987 (Nunez) was approved by Governor Arnold Schwarzenegger, and chaptered by the Secretary of state on September 29, 2006. In its effort to implement the legislation by the effective date of January 1, 2007, the California Public Utilities Commission (PUC) established the following timeline for their proceedings:

Date	Event
October 5, 2006	Order Instituting Rulemaking (OIR) approved at Commission meeting.
October 25, 2006	Opening comments due
November 1, 2006	Reply comments due
November 14, 2006	Mail draft decision
December 4, 2006	Opening comments on draft decision
December 11, 2006	Reply comments on draft decision
December 14, 2006	Commission meeting where proposal can be first considered.
January 2, 2007	Applications accepted
February 14, 2007	First state video franchise may be granted if it is filed on January 2, 2007 and deemed complete by the Commission

The Order Instituting Rulemaking (OIR), with a draft of the implementing General Order (GO) and draft application (Attachment A), was completed on October 5, 2006. As of December 26, 2006 the Commissions decision on the proposed GO has not been published.

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Since the publication of the draft documents, the Office of the City Attorney has been reviewing the PUC documents and the final language of the Digital Infrastructure and Video Competition Act of 2006 (AB 2987). The City Attorney is scheduled to submit a confidential memorandum to the members of the City Council by December 29, 2006 outlining the attorney's findings.

According to the proposed PUC General Order (GO), the PUC "shall begin accepting Applications for State Video Franchises on the effective date of the GO. Between the effective date and January 1, 2008, persons/companies wishing to offer Video Service in an area where a franchise has not already been granted may seek a franchise from the Commission or from the local franchising authority. After January 1, 2008, the PUC shall be the sole franchising authority for new Video Service franchises in California.

AB 2987 encourages the entry of new service providers into the video market. New video providers may seek state video franchises for new service territories as soon as the Public Utility Commission's rules are put into effect.<sup>1</sup> Incumbent video service providers operating under local franchises can seek state video franchises only if one of three conditions is fulfilled: (i) the incumbent's local franchise has expired, (ii) the incumbent and the local franchising authority reached an agreement to terminate the local franchise, or (iii) a new video service provider has given notice of its intent to enter into the area served by the incumbent under its local franchise. Note: A state franchised cable company cannot go into effect prior to January 2, 2008, even if the company meets one of the three conditions noted above for seeking the state video franchise prior to that date.

Local franchising entities may extend the franchise of an incumbent cable provider to January 2, 2008 if the franchise expires prior to that date or an incumbent cable provider opting to seek a state franchise shall have their existing local franchises extended until January 2, 2008.

The application process for an applicant seeking a state video franchise is a five-step process, with an anticipated application fee of \$2,000. After receipt of the application, the PUC must notify the applicant of their application's completeness or incompleteness before the 44<sup>th</sup> calendar day after receipt of the application. Should the Commission fail to notify the applicant, then the Commission will issue the actual certificate of franchise before the 14<sup>th</sup> calendar day after the 44<sup>th</sup> day; unless the applicant is found statutorily ineligible for a franchise. The Commission's draft General Order also concludes that "no person or entity may file a protest to a state video franchise application" as the Commission is the sole granting authority.

The draft General Order states the Commission's tentative conclusion that franchises will be prohibited from holding multiple franchises through separate subsidiaries or affiliates of a single enterprise; and that franchise certificates will be issued in the name of the parent company, or if none, the applicant. The Commission also concluded that statutory obligations imposed on a

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<sup>1</sup> See CAL. PUB. UTIL. CODE §§ 5840(g) ("The commission shall commence accepting applications for a state franchise no later than April 1, 2007.") The Commission seeks to accelerate the application acceptance date to a date closer to the effective date of AB 2987 on January 1, 2007.

“holder” will apply not only to the successful applicant, but also to its parent company (if any), and any and all subsidiaries or affiliates of the applicant or its parent company that are offering services in California.

AB 2987 gives the Commission authority to establish procedures for state video franchise amendments, including procedures for renewing, transferring, terminating, or making miscellaneous changes. At this time, no such procedures are listed in the proposed General Order.

Under the proposed General Order, the Commission sets forth four different types of reporting requirements on the franchise holder:

- 1) Review of reports used for the collection of user fees
- 2) Annual employment reports (ordered by PUC § 5920)
- 3) Annual broadband and video service reports mandated by PUC § 5960 (as these are commonly rendered by different subsidiaries of a holding company, these reporting requirements will only be effective if the proposal to prohibit multiple franchises through separate subsidiaries and affiliates is upheld)
- 4) Reporting requirements for (free) service provided to community service centers in underserved areas at a ratio of one community center for every 10,000 video customers [PUC § 5890(b)(3)]

The draft General Order also provides a process to address complaints by local entities and/or the authority of the Commission to conduct investigations on its own motion, should there be allegations that a state franchise holder has failed to provide service as required by the provision of PUC § 5890. The Commission is further required to hold public hearings on the matter(s) prior to issuing a decision and gives the Commission the ability to impose fines on a state video franchise holder found to be in violations. The fines may not “exceed one percent (1%) of the holder’s total monthly gross revenue received from provision of video service in the state each month from the date of the decision until the date that compliance is achieved.” [PUC § 5890(h)]

The final section of the draft General Order governing the implementation of the Digital Infrastructure and Video Competition Act of 2006, discusses their proposed procedure and methodology for developing and assessing user fees, which is to be established “in a manner that it produces a total amount of funding equal to the ‘amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increase appropriated by the Legislature, and an appropriate reserve . . . , less the amount to be paid from reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.’”

Payment of user fees will require state video franchise holders, on the 10<sup>th</sup> day of the first month of the fiscal quarter, will provide the Commission the number of video subscribers within the state video franchise holder’s state video franchise service areas of the last day of the previous

quarter, beginning October 10, 2007 [for the July 1 0 September 30, 2007 (1<sup>st</sup> quarter)] and continue to provide this information for all subsequent quarters. The information will be used to accurately determine each holder's user fee, as determined on a pro rata subscriber basis.

AB 2987 further stipulates that this user fee shall be determined and imposed consistent with Section 542 of the federal Communications Act, which established the terms under which a cable operator may be required to pay a "franchise fee," as defined for the purposed of Section 542.<sup>2</sup> The DIVCA adopted a state franchise fee, established at 5% of gross revenues, payable as rent or a toll for use of the public right-of-way by state franchise holders. The DIVCA also authorizes local entities to establish a fee to support the costs of Public, Educational, and Government (PEG) channel facilities, in the amount of 1% of gross revenues, or in more specified circumstances.

Until the details of the Public Utility Commission's General Order are approved, published, and implemented, the City Administrator cannot provide the Council with any assurances that pursuit of a new local franchise agreement, even on an interim basis, with AT&T would be in the best interests of the City and its residents.

Respectfully submitted,



Deborah A. Edgerly  
City Administrator

Prepared by: Wm. R. Uber  
Assistant to the City Administrator  
Office of the City Administrator

Attachment A: Proposed PUC General Order and Application

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<sup>2</sup> A franchise fee, for the purposes of Section 542 of Title 47, is "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. 542(g)(1). Section 542(g)(2) declares that this definition of "franchise fee" does not include many government-imposed charges, including the following:

(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); . . .

(C) in the case of any franchise granted after such date of enactment [enacted Oct. 30, 1984], capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(E) any fee imposed under title 17, United States Code.

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**I. Definitions**

- A. "AB 2987" means Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).<sup>1</sup>
- B. "Applicant" means any person or entity that seeks to provide Video Service in the state pursuant to a State Video Franchise.
- C. "Application" means the form prescribed by the Commission for seeking a grant, change, or renewal of a State Video Franchise.
- D. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.<sup>2</sup>
- E. "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).<sup>3</sup>

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<sup>1</sup> In this General Order, all further references to Public Utilities Code sections adopted or amended in AB 2987 track the statutory language effected by AB 2987.

<sup>2</sup> CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

<sup>3</sup> 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. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9,

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- F. "Census Tract" has the same meaning as used by the U.S. Census Bureau.<sup>4</sup>
- G. "Commission" means the Public Utilities Commission.
- H. "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.<sup>5</sup>
- I. "Effective Date of this General Order" means January 2, 2007 or the date when this Order is adopted, whichever is later.
- J. "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.<sup>6</sup>
- K. "Incumbent Cable Operator" means a cable operator or open-video system serving subscribers under a franchise in

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2004). This definition, however, is under review by the Commission, and it may evolve in response to rapid technological changes in the marketplace. Id.

<sup>4</sup> CAL. PUB. UTIL. CODE at § 5960(a).

<sup>5</sup> Id. at § 5890(b)(3).

<sup>6</sup> Id. at § 5890(j)(1). 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. Id.

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a particular city, county, or city and county franchise area on January 1, 2007.<sup>7</sup>

- L. "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.<sup>8</sup>
- M. "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.<sup>9</sup>
- N. "State Video Franchise" means a franchise issued pursuant to AB 2987.<sup>10</sup>
- O. "State Video Franchise Holder" means a successful Applicant's parent company, or if none, the successful Applicant itself.<sup>11</sup> Accordingly, for the purposes of imposing statutory obligations, a "holder" is deemed to be a successful Applicant, its parent company (if any), and any and all subsidiaries or affiliates of the Applicant or its

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<sup>7</sup> Id. at § 5830(j).

<sup>8</sup> Id. at § 5830(k).

<sup>9</sup> Id. at § 5890(j)(2) (defining "low-income households" for the purposes of imposing build-out requirements).

<sup>10</sup> Id. at § 5830(p).

<sup>11</sup> Pursuant to Public Utilities Code § 5840(e)(D)(5), an Applicant must submit information on the applicant's parent company, if any exists.

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parent company that are offering services in California that are implicated by AB 2987 requirements.<sup>12</sup>

- P. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.
- Q. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § 234.
- R. "User Fee" means the fee paid to the Commission quarterly by each Holder pursuant to Public Utilities Code § 442(a).
- S. "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.<sup>13</sup>

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<sup>12</sup> This tentative conclusion follows from how we propose to issue state video franchises. See CAL. PUB. UTIL. CODE § 5830(i) ("Holder" means a person or group of persons that has been issued a state franchise from the commission pursuant to this division.').

<sup>13</sup> Id. at § 5830(s).

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- T. "Video Service Area" means the area proposed to be served under a State Video Franchise.
- U. "Video Service Provider" means any entity providing Video Service.<sup>14</sup>

**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:

- A. Create a fair and level playing field for all market participants that does not disadvantage or advantage one service provider or technology over another;
- B. 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;
- C. Protect local government revenues and control of public rights-of-way;
- D. Require video service providers to comply with all applicable consumer protection laws;
- E. Complement efforts to increase investment in Broadband infrastructure investment and close the digital divide;

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<sup>14</sup> Id. at § 5830(t).

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- F. Continue access to and maintenance of public, education, and government (PEG) channels; and
- G. Maintain all existing authority of the California Public Utilities Commission as established by state and federal statutes.<sup>15</sup>

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 by a Commission that is appropriately funded and staffed, and therefore able to give timely and well-considered action on matters before it.<sup>16</sup> 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.<sup>17</sup> Between the Effective Date of this General Order and January 1, 2008, persons wishing to offer Video Service in an area where a franchise has not already been granted may seek a franchise from the Commission or from the local franchising authority.

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<sup>15</sup> CAL. PUB. UTIL. CODE §§ 5810(2)(A)-(G).

<sup>16</sup> Id. at § 401(a).

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

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After January 1, 2008, the Commission shall be the sole franchising authority for new Video Service franchises in the state of California.<sup>18</sup> "Any person or corporation who seeks to provide Video Service in the state" and does not already have a video franchise shall apply for a State Video Franchise with the Commission.<sup>19</sup>

**B. Applications for New Franchises**

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

**C. Applicants with Existing Franchises**

**1. Eligibility Conditions**

Applicants providing Video Service under an existing local franchise are not eligible to apply for a State Video Franchise for the same service area covered by the local franchise unless at least one of the following three conditions applies: (i) the local franchise expires prior to 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 a Local Entity of its intent to begin offering Video Service in all or part of the service area included in an Incumbent Cable Operator's local franchise.<sup>21</sup>

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<sup>18</sup> Id. at §§ 5840(c),(g).

<sup>19</sup> Id. at § 5840(c).

<sup>20</sup> Id. at § 5840(g).

<sup>21</sup> Id. at § 5840(o).



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**2. Franchise Effectiveness Date**

In no case shall a State Video Franchise issued to an Incumbent Cable Operator become effective prior to January 2, 2008.<sup>22</sup> 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 a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the state franchise is effective.<sup>23</sup>

**3. Terms of Service Offered**

If one or more of the above conditions applies and an Incumbent Cable Operator chooses to replace its local franchise with a State Video Franchise, the Incumbent Cable Operator must continue providing Video Service to the entire service area covered by the local franchise being replaced as it existed on January 1, 2007 until the local franchise would, under its terms, have expired.<sup>24</sup>

An Incumbent Cable Operator that is also a telephone service provider with fewer than 1,000,000 telephone customers in California shall be required to continue providing Video Service only in the areas in which it provided Video Service as of January 1, 2007.<sup>25</sup>

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

Local franchising entities have the authority to require Incumbent Cable Operators to seek State Video Franchises if and when a State Video Franchise

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<sup>22</sup> Id. at § 5930(b).

<sup>23</sup> Id. at § 5930(b).

<sup>24</sup> Id. at § 5840(p).

<sup>25</sup> Id. at § 5840(p).

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Holder provides notice of its intent to offer service within the Local Entity's jurisdiction.<sup>26</sup> In that circumstance, once 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 franchise authority that it will begin providing service under that State Video Franchise, the local franchise authority shall terminate the franchise issued by the local franchise authority.

**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 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 subdivision shall not be deemed to extend any existing franchise beyond its term.<sup>27</sup>

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<sup>26</sup> *Id.* at § 5930(c).

<sup>27</sup> *Id.* at § 5930(a).

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**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 Franchise<sup>28</sup> (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), 5890(b), 5890(c), 5890(d), 5930(a), 5930(b), and 5930(c).

**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."<sup>29</sup> To meet this requirement, the Applicant must submit a description of its qualifications pursuant to § 5840(e)(9) and a copy of Applicant's most current audited financial statement, with an unqualified opinion, for a twelve-month reporting period ending no earlier than the prior calendar year. The financial statement must demonstrate that Applicant possesses a minimum of \$100,000 of unencumbered cash that is reasonably liquid and readily available to meet expenses. Alternatively, the Commission will accept a bond in the amount of \$100,000.

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<sup>28</sup> Id. at § 5840(e).

<sup>29</sup> Id. at § 5840(e)(9).

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**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.<sup>30</sup>

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<sup>30</sup> Id. at § 5840(c).

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**2. Step 2: Application Submission Requirements**

**a) Submit Completed Application to the Commission<sup>31</sup>**

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 original and one copy to the Commission.

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

An Applicant also shall submit a copy of its Application to the appropriate contact person for each Local Entity where the Applicant will provide service.<sup>32</sup>

**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 Commission receives the Application.<sup>33</sup>

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<sup>31</sup> Id. at § 5840(a).

<sup>32</sup> Id. at § 5840(e)(1)(D).

<sup>33</sup> Id. at § 5840(h)(1).

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**4. Step 4: Notification of Application**  
**Completeness or Incompleteness**

The Commission, acting through the Executive Director, shall notify the Applicant and affected Local Entities<sup>34</sup> as to whether the Application is complete or incomplete before the thirtieth calendar day after the Commission receives the Application.<sup>35</sup>

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.<sup>36</sup>

The Commission's notice of an incomplete Application will include a statement specifying which items are incomplete and a statement permitting the Applicant to amend the Application.<sup>37</sup>

The Commission shall have 30 calendar days from the date an incomplete Application is amended and received by the Commission to determine its completeness.<sup>38</sup>

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.

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<sup>34</sup> The Commission will use the local authority contact information provided by the Applicant in the Application.

<sup>35</sup> CAL. PUB. UTIL. CODE § 5840(h)(1).

<sup>36</sup> *Id.* at § 5840(h)(2) ("If the commission finds the Application is complete, it shall issue a state franchise before the 14<sup>th</sup> calendar day after that finding.").

<sup>37</sup> *Id.* at § 5840(h)(3).

<sup>38</sup> *Id.*

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**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 of Application completeness.<sup>39</sup> 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 will be interpreted to constitute issuance of the State Video Franchise, with no further action required on behalf of the Applicant.<sup>40</sup>

A California 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 §§ 5840 (d), 5840(c), 5840(d), 5840(o), 5930(a), 5930(b), and 5930(p).

**C. Protests to State Video Franchise**  
**Applications Disallowed**

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

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<sup>39</sup> Id. at § 5840(h)(2).

<sup>40</sup> Id. at § 5840(h)(4).

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**V. The State Video Franchise Holder**

**A. Prohibition on Awarding Multiple Franchises  
to Subsidiaries or Affiliates of a Single  
Enterprise**

The Commission prohibits the holding of multiple State Video Franchises through separate subsidiaries or affiliates of a single enterprise.<sup>41</sup> Any company with subsidiaries or affiliates may only receive a single State Video Franchise.<sup>42</sup>

**B. Ineligibility of Entities in Violation of the Cable  
Television and Video Providers Service and  
Information Act or the Video Customer Service Act**

No person or corporation shall be eligible for a State Video Franchise if that person or corporation is in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act<sup>43</sup> or the Video Customer Service Act<sup>44,45</sup>. This provision applies to State Video Franchises sought through renewal or transfer of an existing State Video Franchise.<sup>46</sup>

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<sup>41</sup> See *id.* at § 5840(f) (explicitly granting the Commission the authority to effect this provision).

<sup>42</sup> See *id.* at § 5840(f) (specifically providing that the Commission may adopt this provision).

<sup>43</sup> CAL. GOVT. CODE §§ 53054 et seq.

<sup>44</sup> CAL. GOVT. CODE §§ 53088 et seq.

<sup>45</sup> CAL. PUB. UTIL. CODE § 5840(d).

<sup>46</sup> *Id.*



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**VI. The State Video Franchise – Authorization to Offer Service, Obligations, Amendment, Renewal, 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.<sup>47</sup> The issuance of a State Video Franchise represents the Commission’s determination that an Applicant has satisfied the statutory requirements pursuant to AB 2987 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 set forth in Public Utilities Code Section 5840(q), to use the public rights-of-way for the delivery of Video Service in the Video Service Area specified in the Application and any subsequent amendments to such Video Service Area approved by the Commission; 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.<sup>48</sup>

**2. Duration of a State Video Franchise**

A State Video Franchise is effective for ten years after the date of its issuance.<sup>49</sup>

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<sup>47</sup> Id. at § 5840(k).

<sup>48</sup> Id. at § 5840(i).

<sup>49</sup> Id. at § 5850(a).

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**B. State Video Franchise Obligations**

**1. Obligations Imposed by Statute**

State Video Franchise Holders are required to comply with all applicable requirements of the Public Utilities Code.

**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 of the Public Utilities Code.<sup>50</sup> In addition, the Commission shall not renew a State Video Franchise if the State Video Franchise Holder is in violation of any final nonappealable court order issued pursuant to Division 2.5 of the Public Utilities Code.<sup>51</sup>

**C. Amending a State Video Franchise**

A State Video Franchise Holder may amend a State Video Franchise in order to reflect changes to its service territory.<sup>52</sup>

**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 supplemental Application process tracks the State Video Franchise Application process as set forth below.<sup>53</sup>

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<sup>50</sup> Id. at § 5890(g).

<sup>51</sup> Id. at § 5850 (d).

<sup>52</sup> Id. at § 5840(f).

<sup>53</sup> See id. at § 5840.

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**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,<sup>54</sup> 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. This supplemental Application shall be numbered sequentially in the document title, starting with the first supplemental Application filed by a State Video Franchise Holder.

One original and one copy of the supplemental Application shall be filed with the Commission 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

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<sup>54</sup> *Id.* at § 5840(m)(6).

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Video Franchise Holder is not statutorily ineligible for a new, renewed, or transferred State Video Franchise pursuant to AB 2987.

**D. Renewal of a State Video Franchise**

**1. Eligibility to Seek Renewal of a State Video Franchise**

A State Video Franchise expires absent any renewal effort on the last day of its ten-year term. A State Video Franchise Holder in good standing may file a renewal Application with the Commission to renew its State Video Franchise for an additional ten-year term.<sup>55</sup> There are no limits on the number of times a State Video Franchise Holder may renew its State Video Franchise.

**2. Procedures for Filing a State Video Franchise Renewal**

State Video Franchise renewals shall be submitted and evaluated by the Commission according to the same criteria and processes applicable to initial State Video Franchise Applications and pursuant to this General Order.<sup>56</sup> The Commission shall not impose any additional or different criteria.<sup>57</sup>

**3. Commission Review and Issuance of a State Video Franchise Renewal**

If a State Video Franchise Holder is statutorily ineligible for a new, renewed, or transferred State Video Franchise, the failure of the Commission to notify the State Video Franchise Holder of the renewal Application's completeness or incompleteness before the forty-fourth calendar day after receipt

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<sup>55</sup> Id. at § 5850(a).

<sup>56</sup> Id. at § 5850(c).

<sup>57</sup> Id. at § 5850(b).

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shall not be deemed to constitute issuance of the renewed State Video Franchise.<sup>58</sup>

The Commission shall not renew a State Video Franchise if the State Video Franchise Holder is in violation of any final nonappealable court order issued pursuant to AB 2987.<sup>59</sup> The Commission shall not renew any State Video Franchise that is inconsistent with federal law and regulations.<sup>60</sup>

**E. 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 the Application for transfer is granted; and

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<sup>58</sup> Id. at §§ 5840(d), 5850(d).

<sup>59</sup> Id. at § 5850(d).

<sup>60</sup> Id. at § 5850(c).

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- (2) As a condition of approval of the transfer, any collective bargaining agreement entered into by the predecessor-in-interest State Video Franchise Holder shall continue to be honored, paid, or performed as 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.<sup>61</sup>

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

The Commission will process the Application for transfer of the State Video Franchise pursuant to the same time frame as if such Application was a new State Video Franchise Application.

**F. 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.<sup>62</sup>

Within 14 business days of a decision to terminate a State Video Franchise, the State Video Franchise Holder shall inform the Commission and the affected Local Entities of the number of customers in the service area of the State Video

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<sup>61</sup> Id. at §§ 5840(1), 5970.

<sup>62</sup> Id. at § 5840(j).

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Franchise being terminated; and the method by which customers were notified of the termination, including a copy of such customer notice.<sup>63</sup>

**G. 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 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) an Application to amend 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 business address of the State Video Franchise Holder's registered service agent.<sup>64</sup>

**VII. Reporting Requirements**

**A. Reports for Collection of the User Fee**

The Commission may require a State Video Franchise Holder to furnish information and reports to the Commission, at the time or times the Commission

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<sup>63</sup> *Id.* at § 5840(m)(5).

<sup>64</sup> *Id.* at § 5840(m).

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specifies, to enable the Commission to determine the User Fee pursuant to Public Utilities Code § 441.<sup>65</sup>

Any Video Service Provider required to submit information and reports for determination of the User Fee may, in lieu thereof, 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.<sup>66</sup>

**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 information, as of January 1 of the year in which it first was issued a State Video Franchise and each year thereafter, on the extent to which it provides Video and Broadband Service in California. 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.
- (2) The percentage of the State Video Franchise Holder's total domestic workforce, calculated on a full-time or full-time equivalent basis.

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<sup>65</sup> Id. at § 443(a).

<sup>66</sup> Id. at § 443(b).



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- (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.<sup>67</sup>
- (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.<sup>68</sup>

These reports shall be filed with the Commission no later than three months after the conclusion of each annual reporting period.

**2. Commission Reports to  
Legislative Committees**

The Commission will annually report the employment information required to be reported by State Video Franchise Holders to the Assembly

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<sup>67</sup> 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.

<sup>68</sup> *Id.* at § 5920(a).

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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.<sup>69</sup>

**C. Annual Reports on Broadband and Video Services**

**1. Reporting Obligations Imposed on State Video Franchise Holders**

Commencing on April 1, 2008 and annually no later than April 1 each year thereafter, a State Video Franchise Holder shall report to the Commission annual information as of January 1, 2008 and each year thereafter on the extent to which it provides Video and Broadband Service in the state. These reports shall include the following information, as designated by individual Census Tracts:<sup>70</sup>

(1) Broadband Information:<sup>71</sup>

- (a) The number of Households in each Census Tract to which the State Video Franchise Holder makes Broadband available in this state. Alternatively, the State Video Franchise Holder may submit a reasonable approximation of the number of Households in each Census Tract if the State Video Franchise Holder is able to produce information that successfully demonstrates to the Commission (i) that the State Video Franchise Holder does not maintain this information on a

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<sup>69</sup> Id. at § 5920(b).

<sup>70</sup> For example, the first report filed April 1, 2008 would be for calendar year 2007 (January to December 2007).

<sup>71</sup> CAL. PUB. UTIL. CODE § 5960(b)(1).

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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.<sup>72</sup>

- (b) The number of Households in each Census Tract that subscribe to Broadband that the State Video Franchise Holder makes available in this state.
  - (c) The extent to which the Broadband provided by the State Video Franchise Holder to individual Households in each Census Tract utilizes wireline-based facilities or another technology. If another technology is used by the State Franchise Holder, it shall specify the technology.
- (2) Video Information<sup>73</sup>
- (a) If the State Video Franchise Holder is a Telephone Corporation:
    - (i) the number of Households in each Census Tract of the State Video Franchise Holder's Telephone Service Area; and
    - (ii) the number of Households in each Census Tract of the State Video Franchise Holder's Telephone

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<sup>72</sup> We note that Public Utilities Code § 5960(b)(1)(B) requires State Video Franchise Holders to report Broadband customer subscribership on a Census Tract basis (without any approximation), and since State Video Franchise Holders will have to record this Broadband information by Census Tract, we expect that it will be difficult for a State Video Franchise Holder to successfully demonstrate that it does not maintain other forms of Broadband information on a Census Tract basis.

<sup>73</sup> *Id.* at § 5960(b)(2).

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Service Area that are offered Video Service by the State Video Franchise Holder.

- (b) If the State Video Franchise Holder is not a Telephone Corporation:
  - (i) the number of Households in each Census Tract of the State Video Franchise Holder's Video Service Area; and
  - (ii) the number of Households in each Census Tract of the State Video Franchise Holder's Video Service Area that are offered Video Service by the State Video Franchise Holder.
- (3) Low-Income Household Information<sup>74</sup>
  - (a) The number of Low-Income Households in each Census Tract of the State Video Franchise Holder's Video Service Area.
  - (b) The number of Low-Income Households in the State Video Franchise Holder's Video Service Area that are offered Video Service by the State Video Franchise Holder.

State Video Franchise Holders shall utilize the most recent publicly available U.S. Census information to determine the number of Households and Low-Income Households.

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

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<sup>74</sup> Id. at § 5960(b)(3).

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transferee shall submit to the Commission of the information required by Public Utilities Code Section 5960.<sup>75</sup>

**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 data, aggregated according to technology used in service provision.<sup>76</sup>

With transmittal of a report, the Commission will reach the finding that, pursuant to Public Utilities Code § 583, the report shall be made publicly available.<sup>77</sup> No individually identifiable customer information shall be made available in these reports.<sup>78</sup>

**D. Information on Service to Community Centers**

A State Video Franchise Holder 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

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<sup>75</sup> Id. at § 5970(a).

<sup>76</sup> Id. at § 5960(c).

<sup>77</sup> Id. at § 5960(d) (requiring that all information submitted to and reported by the Commission be disclosed to the public as provide pursuant to Public Utilities Code § 583).

<sup>78</sup> Id.

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underserved areas, as determined by the State Video Franchise Holder. The reports shall include the following information:

- (1) The number of 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.<sup>79</sup>

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. Additional Information**

The Commission has broad authority to require additional reports consistent with AB 2987. If a legitimate need arises, the Commission will request additional data from State Video Franchise Holders.

**F. Enforcement of Reporting Requirements**

The State Video Franchise Holder has the obligation to comply with all regulations adopted in this General Order. Failure to comply with a reporting requirement may trigger an investigation by the Commission and could subject the State Video Franchise Holder to either a suspension or revocation of the State Video Franchise.<sup>80</sup>

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<sup>79</sup> Id. at § 5890(b)(3). A State Video Franchise Holder determines whether a specific area qualifies as an underserved area for the purposes of this reporting requirement. Id.

<sup>80</sup> Id. at § 5890(g).

## APPENDIX A



### APPLICATION FOR A NEW OR AMENDED CALIFORNIA STATE VIDEO FRANCHISE CALIFORNIA PUBLIC UTILITIES COMMISSION

#### Definitions for the purposes of this Application:

- A. "AB 2987" means Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).<sup>1</sup>
- B. "Applicant" means any person or entity that seeks to provide Video Service in the state pursuant to a State Video Franchise.
- C. "Application" means the form prescribed by the Commission through which an Applicant may apply for a State Video Franchise or change its Video Service Area.
- D. "Application Fee" means any fee that the Commission imposes to recover its actual and reasonable costs of processing an Application.<sup>2</sup>
- E. "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).<sup>3</sup>
- F. "Census Block" has the same meaning as used by the U.S. Census Bureau.
- G. "Census Tract" has the same meaning as used by the U.S. Census Bureau.<sup>4</sup>

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<sup>1</sup> In this Application, all further references to Public Utilities Code sections adopted or amended in AB 2987 track the statutory language effected by AB 2987.

<sup>2</sup> CAL. PUB. UTIL. CODE § 5840(c). This fee is not levied for general revenue purposes, consistent with Public Utilities Code § 5840(c).

<sup>3</sup> 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. 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.

<sup>4</sup> CAL. PUB. UTIL. CODE at § 5960(a).

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- H. "Commission" means the Public Utilities Commission.
- I. "Company" means the Applicant, its parent company (if any), and any and all subsidiaries or affiliates of the Applicant or its parent company.
- J. "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.<sup>5</sup>
- K. "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.<sup>6</sup>
- L. "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.<sup>7</sup>
- M. "State Video Franchise" means a franchise issued pursuant to AB 2987.<sup>8</sup>
- N. "State Video Franchise Holder" means a successful Applicant's parent company, or if none, the successful Applicant itself.<sup>9</sup> Accordingly, for the purposes of imposing statutory obligations, a "holder" is deemed to be a successful Applicant, its parent company (if any), and any and all subsidiaries or affiliates of the Applicant or its parent company that are offering services in California that are implicated by AB 2987 requirements.<sup>10</sup>
- O. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.

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<sup>5</sup> Id. at § 5890(j)(1). 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. Id.

<sup>6</sup> Id. at § 5830(k).

<sup>7</sup> Id. at § 5890(j)(2) (defining "low-income households" for the purposes of imposing build-out requirements).

<sup>8</sup> Id. at § 5830(p).

<sup>9</sup> Pursuant to Public Utilities Code § 5840(e)(D)(5), an Applicant must submit information on the applicant's parent company, if any exists.

<sup>10</sup> This tentative conclusion follows from how we propose to issue state video franchises. See CAL. PUB. UTIL. CODE § 5830(i) ("Holder" means a person or group of persons that has been issued a state franchise from the commission pursuant to this division.').



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- P. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § Section 234.
- Q. "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.<sup>11</sup>
- R. "Video Service Area" means the area proposed to be served under a State Video Franchise.
- S. "Video Service Provider" means any entity providing Video Service.<sup>12</sup>

**PLEASE TYPE ALL INFORMATION UNLESS INSTRUCTED OTHERWISE.**

### Type of Application

1. Check as appropriate:
- New Franchise     Amended Franchise

### Applicant Information

2. Applicant's State Video Franchise number (if seeking an amended Franchise):

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3. Applicant's full legal name:

---

4. Name under which the Applicant does or will do business in California:

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<sup>11</sup> Id. at § 5830(s).

<sup>12</sup> Id. at § 5830(t).

**APPENDIX A**

5. Parent company's legal name and contact information:

Parent's Full Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

6. Applicant's principal place of business:

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

7. Contact information for the person responsible for ongoing communication with the Commission about Video Service business:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone (Business and mobile if any): \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

8. Attach as Appendix A the names and titles of the Applicant's principal officers.

## APPENDIX A

### Build-Out Information

9. Is the Applicant or is an affiliate of the Applicant a Telephone Corporation?  
 Yes  No

*Answer questions 10 through 12 only if the answer to question 9 is yes, otherwise skip to Question 13.*

10. Does the Applicant alone or together with its affiliates have more than 1,000,000 telephone customers in California?  
 Yes  No
11. Is the Video Service Area outside of the Company's Telephone Service Area?  
 Yes  No  Video Service Area both inside and outside Telephone Service Area
12. Excluding direct-to-home satellite, is Video Service currently offered in the Company's Video Service Area?  
 Yes  No

### Existing Local Cable or Video Franchise Holder Information

*If Applicant is not an existing local cable or video franchise holder, skip to Question 14:*

13. Does the Company currently hold a local franchise, or has the Company held a local franchise in the last six months, in the Video Service Area?  
 Yes  No

*If "Yes," then download and complete the electronic template available at <http://www.cpuc.ca.gov/video/application>.*

### Video Service Area Information

14. Provide a geographic description of the Video Service Area that is to be served pursuant to this Application under the State Video Franchise.

The description shall be as detailed below:

- a. A collection of U.S. Census Bureau Block numbers (13 digits), or
- b. A geographic information system digital boundary meeting or exceeding national map accuracy standards.
  - o *If Applicant chooses "a," then download and complete the electronic template available at <http://www.cpuc.ca.gov/video/application>.*
  - o *If Applicant chooses "b," then submit the geographic information system digital boundary in digital format and on a CD to the Commission.*

## APPENDIX A

15. Provide, as detailed below, a description of the socioeconomic status information of residents within the Video Service Area served pursuant to this Application.
- *The Applicant shall provide this description utilizing the template available at <http://www.cpuc.ca.gov/video/application>.*

### Information requirements:

- a. Unless directed otherwise below, Applicant shall submit socioeconomic status information as of January 1 of the year in which the Applicant or State Video Franchise Holder applies for a State Video Franchise or an amendment to a State Video Franchise.
  - b. This socioeconomic status information shall include at a minimum the following information, as designated by individual Census Tract included in the Video Service Area
    - i. Broadband (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
      - 1. The number of Households in each Census Tract to which the Company makes Broadband available.
      - 2. The number of Households in each Census Tract that subscribe to Broadband that the Company makes available.
      - 3. Whether the Broadband Services provided by the Company to individual Households in each Census Tract utilize wireline-based facilities or another technology. If another technology is used, Applicant shall specify the technology.
    - ii. Video service (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
      - 1. The number of Households in each Census Tract.
      - 2. The number of Households in each Census Tract that are offered Video Service by the Company.
    - iii. Low-Income (Utilize the most recent publicly available U.S. Census information to determine the number of Low-Income Households):
      - 1. The number of Low-Income Households in each Census Tract.
      - 2. The number of Low-Income Households that are offered Video Service by the Company.
16. If the Applicant or any of its affiliates or subsidiaries is a Telephone Corporation, the Applicant shall provide a description of the socioeconomic status information of all residents within its Telephone Service Area.
- *The Applicant shall provide this description utilizing the template available at <http://www.cpuc.ca.gov/video/application>.*

## APPENDIX A

### Information requirements:

- a. Unless directed otherwise below, Applicant shall submit socioeconomic status information as of January 1 of the year in which the Applicant or State Video Franchise Holder applies for a State Video Franchise or an amendment to a State Video Franchise.
  - b. This socioeconomic status information shall include at a minimum the following information, as designated by individual Census Tract included in the Telephone Service Area:
    - i. Broadband (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
      1. The number of Households in each Census Tract to which the Company makes Broadband available.
      2. The number of Households in each Census Tract that subscribe to Broadband that the Company makes available.
      3. Whether the Broadband Services provided by the Company to individual Households in each Census Tract utilize wireline-based facilities or another technology. If another technology is used, Applicant shall specify the technology.
    - ii. Video service (Utilize the most recent publicly available U.S. Census information to determine the number of Households):
      1. The number of Households in each Census Tract.
      2. The number of Households in each Census Tract that are offered Video Service by the Company.
    - iii. Low-Income (Utilize the most recent publicly available U.S. Census information to determine the number of Low-Income Households):
      1. The number of Low-Income Households in each Census Tract.
      2. The number of Low-Income Households that are offered Video Service by the Company.
17. Utilizing the template provided at <http://www.cpuc.ca.gov/video/application>, the Applicant shall input the expected date for the deployment of Video Service for each Census Block in the Video Service Area.

## APPENDIX A

### Financial, Legal, and Technical Qualifications

18. Attach to this Application, as Appendix B, a description of the Applicant's financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by the Applicant.
19. Attach to this Application, as Appendix C, either:
  - a. A bond in the amount of \$100,000; or
  - b. A copy of Applicant's most current audited financial statement, with an unqualified opinion, for a twelve-month reporting period ending no earlier than the prior calendar year. The financial statement must demonstrate that Applicant possesses a minimum of \$100,000 of unencumbered cash that is reasonably liquid and readily available to meet expenses.

### Local Entity Contact Information

20. Utilizing the template provided at <http://www.cpuc.ca.gov/video/application>, the Applicant shall provide the contact name and information for a representative from each Local Entity within the Video Service Area.

### Application Fee

21. Attach to this Application a check in the amount of \$2,000 made payable to the "California Public Utilities Commission."

### Affidavit

22. Complete and submit the affidavit attached to this Application.

#### A COMPLETE APPLICATION MUST INCLUDE:

- |  |   |
|--|---|
| <input type="checkbox"/> Completed Application form  | <input type="checkbox"/> Appendix B                     |
| <input type="checkbox"/> CD(s) containing template(s) and data from the Commission website | <input type="checkbox"/> Appendix C                     |
| <input type="checkbox"/> Appendix A  | <input type="checkbox"/> Check in the amount of \$2,000 |
|  | <input type="checkbox"/> Completed Affidavit            |

**APPENDIX A**

**AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

My name is \_\_\_\_\_ . I am \_\_\_\_\_ (Title) of \_\_\_\_\_ (Company). My personal knowledge of the facts stated herein has been derived from my employment with \_\_\_\_\_ (Company).

I swear or affirm that I have personal knowledge of the facts stated in this Application for a California State Video Franchise to provide Video Service, that I am competent to testify to them, and that I have the authority to make this Application on behalf of and to bind the Company. I further swear or affirm that \_\_\_\_\_ [Name of Applicant]:

1. Has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering Video Service in this state.
2. Agrees to comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees.
3. Will concurrently deliver a copy of this Application to any Local Entity where the Applicant will provide service.
4. Possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public rights-of-way caused by the Applicant.
5. Is not in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (California Public Utilities Code Article 3.5 (commencing with § 53054) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (California Public Utilities Code Article 4.5 (commencing with § 53088) of Chapter 1 or Part 1 of Division 2 of Title 5 of the Government Code).

I further swear or affirm that \_\_\_\_\_ [Name of Company] agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

1. As provided in Public Utilities Code § 5890, Applicant will not discriminate in the provision of Video Service.
2. Applicant will abide by all applicable consumer protection laws and rules as provided in Public Utilities Code § 5900.
3. Applicant will remit the fee required by subdivision California Public Utilities Code § 5860(a) to the Local Entity.
4. The Applicant will provide public, educational, and governmental access channels and the required funding as required by Public Utilities Code § 5870.

**APPENDIX A**

I swear or affirm that all of the statements and representations made in this Application are true and correct.

\_\_\_\_\_  
Signature and title

\_\_\_\_\_  
Typed or printed name and title

SUBSCRIBED AND SWORN to before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public In and For the State of \_\_\_\_\_.

My Commission expires: \_\_\_\_\_



**APPENDIX B**



STATE OF CALIFORNIA  
PUBLIC UTILITIES COMMISSION  
505 Van Ness Avenue San Francisco, CA 94102  
www.cpuc.ca.gov

**CALIFORNIA VIDEO FRANCHISE CERTIFICATE**

- 1) Franchise Holder:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_
- 2) Application Date: \_\_\_\_\_
- 3) Effective Date: \_\_\_\_\_
- 4) Expiration Date: \_\_\_\_\_
- 5) Affected Local Entities<sup>1</sup> \_\_\_\_\_  
(attach additional sheets if necessary)

Issued at San Francisco this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Signed

<sup>1</sup> The franchise granted herein may include all or part of the Affected Local Entities' territory. For more information on the service area covered by this franchise, contact the Public Utilities Commission.

**(END OF ATTACHMENT B)**