

**STAFF REPORT PROPOSING RULES TO AMEND GENERAL ORDER 169
TO IMPLEMENT THE FRANCHISE RENEWAL PROVISIONS OF THE
DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006**

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December 13, 2013

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1. Introduction

The purpose of this Staff Report, prepared by the Commission's Communications and Legal Division Staff, is to propose rules to implement the franchise renewal provisions of the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). In this report, Staff sets forth its conclusions which form the basis for proposed rules to implement the renewal provisions of DIVCA. Attached to this report are proposed revisions to General Order 169 and a draft application form, including an affidavit, reflecting these proposed rules.

2. Summary

The Order Instituting Rulemaking (OIR) 13-05-007 is intended to implement a renewal process for state video franchises which is consistent with both DIVCA and federal law. The renewal process identified in Cal. Pub. Util. Code § 5850(b)³ should largely mirror the initial application process identified in § 5840, but requires some modification to ensure consistency with federal law. The renewal process identified in § 5850(b) is consistent with the federal informal process identified in 47 U.S.C. § 546(h) as long as it is modified to provide adequate opportunity for notice and comment. In addition, the requirement for an adequate notice and opportunity for comment will be met if comments are permitted solely on the issue of whether a video service provider seeking to renew its existing franchise is in violation of a final nonappealable court order of any provision of DIVCA. The proposed rules accommodate this opportunity for notice and comment.

In addition, because DIVCA cannot foreclose a cable operator from invoking the formal federal process identified in 47 U.S.C. § 546(a)-(g), Staff

³ Unless otherwise noted, statutory references are to the Cal. Pub. Util. Code.

proposes rules requiring a cable operator that invokes the formal process to provide notice to the Commission, local entities within its franchise area, and the Office of Ratepayer Advocates (ORA) of its decision within the time specified by federal law.

Cable operators invoking the formal renewal process should provide notice by filing a formal application pursuant to Article 2 of the Commission's Rules of Practice and Procedure (Rules). While the Commission cannot preclude a cable operator from invoking the federal formal process, both the language and intent of DIVCA constrain the Commission's ability to exercise this option. Accordingly, the Commission should not invoke the formal process.

Finally, some modifications to the renewal process identified in § 5850(b) are necessary to accommodate DIVCA's prohibition against renewing the franchise of a video service provider that is in violation of a final nonappealable court order. The proposed rules and attached affidavit reflect this modification.

3. The Commission's Role as State Franchise Authority

In contrast to local franchise authorities, which previously had the authority to negotiate individual franchise agreements, language in DIVCA governs the Commission's authority to issue franchises.⁴ With the enactment of DIVCA, the Legislature designated the Commission as the sole franchise authority empowered to issue and renew state franchises. Despite the Commission's designation as the sole franchise authority, the Legislature also significantly limited the scope of the Commission's authority to issue and renew franchises relative to the authority previously delegated to local entities. 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. The Legislature established the expedited process and imposed a set of uniform obligations on video service providers in

⁴ The decision to vest franchising authority at the local level or the state level rests exclusively with the state Legislature. For all intents and purposes, the Legislature is the ultimate franchise authority and has the power to define the limits of the authority it delegates to entities it designates as franchise authorities as long as the scope of that authority does not conflict with any provision of the Cable Act. See 47 U.S.C. § 556.

order to promote competition for video and broadband services, which it determined to be a matter of statewide concern.⁵

The process for issuing an initial franchise is set forth in § 5840(a)-(q). An applicant seeking a video service franchise is required, under this section, to submit an application in which it provides certain information about itself and the franchise area it seeks to serve. In addition, it must submit a signed affidavit agreeing to comply with DIVCA's requirements and obligations concerning: the issuance and renewal of franchises (§§ 5840 and 5850) franchise fees (§ 5860); public, education and government channels (§ 5870); emergency alert systems (§ 5880); encroachment permits (§ 5885); consumer protection (§ 5900) reporting obligations (§§ 5920 and 5960); regulatory or user fees (§§ 401, 440-444, and 5840); build out and anti-discrimination requirements (§ 5890); and the prohibition against using telephone revenues for the cross subsidization of networks used to provide video services (§ 5940). If the application is complete, the Commission must issue a video franchise to the applicant within 44 days.

Section 5840(a) states that the Commission may not impose obligations on the holder of a state issued franchise "...except as expressly provided for in this division." Thus, DIVCA explicitly requires that the process and requirements used by the Commission to issue an initial franchise are not to differ from those set forth in DIVCA. In addition, § 5840(b) prohibits the Commission from deviating from the process used for the initial issuance of a franchise set forth in § 5840(a)-(q) by stating that "[t]he application process described in this section and the authority granted to the Commission under this section shall not exceed the provisions of this section."

4. DIVCA Provisions for Renewal of State Issued Video Franchises

DIVCA establishes the procedures and criteria for renewing a state-issued video franchise in § 5850(a)-(d). Section 5850(b) states that "[e]xcept 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." In other words, notwithstanding the phrase "except as provided in this section," DIVCA envisions a renewal process

⁵ Cal. Pub. Util. Code § 5810.

identical to the process required for the initial grant of a state-issued franchise under § 5840.

The exceptions which § 5850(b) refers to are § 5850(c) and (d). Section 5850(c) states that the process for the renewal of state franchises must be consistent with federal laws and regulations. Staff interprets this to mean that the process for renewing existing franchises must be consistent with renewal provisions of the federal Cable Act of 1984 (Cable Act) which govern the renewal of cable television franchises. This interpretation is based on the fact that the reference to federal law occurs in the section of DIVCA specifically addressing the renewal of state issued franchises and because the vast majority of video service providers in California are cable operators which would be subject to the renewal provisions of the Cable Act even if § 5850(c) was omitted altogether.⁶ Additionally, § 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 with respect to any provision of DIVCA.

When read together, the most reasonable interpretation of § 5850(b) is as follows: the process for renewing state issued franchises should be identical to the process set forth in § 5840(a)-(q) for the issuance of initial franchises unless the requirements of § 5850(c) and (d) necessitate that this process be modified. Moreover, to the extent the Commission is required to modify this process, § 5850(b) instructs the Commission to make only the minimum modifications necessary to make the process consistent with § 5850(c) and (d). This is indicated by the following statutory language: “*except* as provided by [§ 5850] the criteria

⁶ Staff recognizes that some video service providers dispute that they are cable operator as defined by federal law. However, to the extent § 5850(c) refers to federal renewal law governing cable television providers, the plain language of § 5850(b) requires that all video service providers be subject to the same renewal rules. This requirement does not prejudice a video service provider whose status as a cable operator is in dispute as long as the video service provider is not compelled to become a cable television operator in seeking to renew its existing franchise under our proposed rules. Thus, from Staff’s perspective, there is no need to address the issues related to the regulatory classification of certain video service providers in the current rulemaking.

and process described in [the section pertaining to initial franchises] shall apply to a renewal registration.” (Emphasis added). Additionally, the clause at the end of § 5850(b) states that “... the commission shall not impose any different or additional criteria.” This last clause emphasizes that the phrase “except as require by this section” should not be construed as an invitation to modify the renewal process referenced in § 5850(b) any more than is necessary to meet the requirements § 5850(c) and (d).

This construction of § 5850(b) is particularly relevant with respect to the implementation of § 5850(c) because when read together it necessitates that minimal changes be made to the renewal process to accommodate federal law so that as much of the process identified in §5850(b) is left intact. Moreover, even if it was the case that federal law required material modifications to the process identified in § 5850(b), such changes could not be implemented without § 5850(b) being rendered meaningless. In others words, § 5850(b) envisions that some changes to the process for issuance of an initial franchise may be necessary in light of federal law governing the renewal process. However, this subsection should not be read as permitting the transformation of the renewal process into something fundamentally different from the initial process for issuance of a franchise. Accordingly, with the modifications discussed below, the proposed rules largely mirror the initial application process. (See Appendix A, Proposed Amendments to GO 169, Section V.)

5. Consistency of § 5850(b) With Federal Law Regarding the Renewal of Cable Television Franchises

5.1. Summary of Federal Law Regarding the Renewal of Cable Television Franchises

The Cable Act established a federal, uniform process to assist franchise authorities and cable operators in reaching an agreement on renewals.⁷ The Cable Act contains what is commonly referred to as a formal and informal process to renew cable television franchises. The formal process is set forth in 47 U.S.C. § 546(a)-(g) while the informal process is set forth in subsection (h) under the heading “Alternative Renewal Procedures.”

⁷ 47 U.S.C. § 546(a)-(h).

Under the Cable Act, the formal process is not mandatory, but may be invoked by either the franchise authority or the cable operator.⁸ Once the process is invoked, the franchise authority must commence a proceeding to identify the future cable related needs of the community and review the cable operator's performance under the existing franchise.⁹ As discussed in the OIR, a number of detailed procedural requirements are set forth for the federal formal process in 47 U.S.C. § 546(a)-(g).

In contrast, the federal informal process is set forth in 47 U.S.C. § 546(h) and permits a cable operator to submit a proposal for renewal to the franchise authority "at any time," and a franchise authority "may, after providing public notice and opportunity to comment, grant or deny such proposal at any time."¹⁰ In practice, the federal informal process accommodates the negotiation process which, historically, has been the principle means by which cable operators have renewed cable franchises with local franchise authorities.

However, while the informal process accommodates the negotiation process, the minimal requirements in 47 U.S.C. § 546(h) do not require it. Indeed, a franchise authority has considerable discretion in determining the form and content of the federal informal process. This conclusion is supported by the fact that the informal process does not define what must be in a proposal for renewal nor does it identify the scope of issues to be considered in that process or the structure of the process beyond the minimum requirements established by 47 U.S.C. § 546(h). This conclusion is further supported by 47 U.S.C. § 546(h) which states that "[t]he provisions of subsection (a)-(g) of this section [governing the formal process] shall not apply to a decision to grant or deny a proposal under this subsection." While the provisions of subsections (a)-(g) require an intensive review of past performance and the future cable-related needs of the community, subsection (h) does not.

⁸ 47 U.S.C. § 546(a).

⁹ *Id.*

¹⁰ *Id.*, at § 546(h).

Finally, the Cable Act does not mandate that a franchise authority or cable operator use the formal process instead of the informal process or vice versa. Legislative history suggests that the formal process is available for the cable operator or franchise authority to initiate “if necessary.”¹¹ Indeed, in many situations both processes are utilized simultaneously. This is because historically franchises were renewed via a negotiation process between the cable operator and the franchise authority. Thus, legislative history indicates that the formal process was established primarily as protection for the cable operator against a franchise authority’s unfair denial of renewal in the informal process.¹²

5.2. Consistency of the Renewal Process Set Forth in Cal. Pub. Util. Code § 5850(b) with the Federal Informal Process in 47 U.S.C. § 546(h)

The renewal process set forth in § 5850(b) is consistent with the informal process identified in 47 U.S.C. § 546(h), as long as it is modified to provide adequate notice and opportunity for comment on whether or not a video service provider is in violation of a nonappealable court order. As noted above, the informal process permits a cable operator to submit a proposal for renewal to the franchise authority at any time and permits a franchise authority to accept or reject it for any reason, subject to providing the public with adequate notice and opportunity to comment on the proposal. As also noted above, a franchise authority or state has considerable discretion in determining the form and content of this process subject to meeting the minimal requirements set forth in 47 U.S.C. § 546(h).

5.2.1 Staff’s Renewal Proposal is Consistent with the Federal Informal Process

Section 5850(b) requires that the Commission use the same process and criteria for the issuance of an initial franchise and for the renewal process except, pursuant to § 5850(c), that process must be consistent with federal law. DIVCA has codified all the obligations a video service operator must meet as condition of obtaining a franchise and has effectively defined the cable related needs of all communities in the state. This is reflected in the process for issuance of an initial franchise, set forth in § 5840, which requires that the applicant submit an application in which it discloses information about itself and the franchise areas

¹¹ H.R. Rep. No. 98-934, at 72 (1984).

¹² *Ibid.*

it proposes to serve. In addition, the applicant is required to submit an affidavit in which it agrees to be bound by the obligations identified in DIVCA. For the reasons discussed in Section 5.1 above describing the federal informal process, the application and affidavit required by § 5850(b) are consistent with a proposal under 47 U.S.C. § 546(h) and, further, the minimal requirements associated with the informal process do not require the Commission to reexamine, interpret, or augment the obligations codified by DIVCA in renewing a state issued franchise under the informal process.

Similarly, on the issue of past performance, § 5850(b) requires the Commission to deny franchise renewal if the applicant is in violation of a final nonappealable court order. This is consistent with the requirements of the federal informal process which do not define the scope of a past performance review a franchise authority might undertake in connection with renewals under the federal informal process. While § 5850(b) limits review of past performance in this manner, ostensibly to avoid the protracted and resource intensive renewal proceedings that historically existed under the previous local franchise regime, this does not mean that the Legislature chose to ignore the enforcement of DIVCA's requirements. Rather, DIVCA created a variety of enforcement mechanisms available to the Commission and local entities to ensure that a video service provider complies with DIVCA. However, DIVCA envisions that the appropriate entity will address any alleged failure to comply with DIVCA's requirements by a video service provider during the term of its existing franchise, rather than in the context of a renewal proceeding.¹³

¹³ DIVCA divides enforcement authority over DIVCA obligations between the Commission and local entities. The Commission may initiate investigations at any time if it has cause to believe that a video service provider is in violation of DIVCA's franchising, build-out, antidiscrimination, reporting, and user fee requirements and also its prohibition against cross subsidization. It can impose penalties for violations of DIVCA's anti-discrimination provisions and can suspend or revoke a video service provider's franchise for any violation of any provision of DIVCA. This includes violations by a video service provider of local entities' consumer protection rules if the Commission determines that there is a pattern of material breaches of those rules that has been established by a local entity or the courts. Local entities have enforcement authority over setting and collecting franchise fees, issuing encroachment permits, Public Education and Government channel requirements and fees, and enforcement of consumer protection rules. DIVCA instructs local entities to seek ultimate resolution of

Footnote continued on next page

5.2.2. Adequate Notice and Opportunity for Comment

47 U.S.C. § 546(h) permits a franchise authority to grant or deny a renewal proposal at any time, but also requires that it provide the public with adequate notice and an opportunity to comment on the proposal prior to making its decision. The renewal process set forth in § 5850(b) is consistent with 47 U.S.C. § 546(h) if the public is provided with adequate notice and opportunity to comment on a video service provider's renewal proposal. However, Staff recommends the scope of comments be limited to whether the video service provider is in violation of a final, nonappealable court order. This is because under DIVCA, a violation of a final, nonappealable court order is the only basis for denying an application for renewal. Therefore, providing the opportunity for comment on this issue alone is adequate.

In Staff's opinion, the adequacy of the opportunity to comment should be assessed in terms of whether the public has the opportunity to provide input on those issues that are material to whether or not an application for renewal is granted or denied. Permitting the public to comment on issues that go beyond those which are material to this decision would be extraneous and unnecessary, as the Commission does not have discretion under DIVCA to impose additional criteria on a video service provider in the context of a renewal application.

Allowing parties 15 days from the date an application for renewal is posted on the Commission's website is a sufficient amount of time for parties to submit comments on whether a video service provider seeking renewal is in violation of a final, nonappealable court order. Fifteen days is reasonable

disputes regarding these requirements through the courts. In addition, local entities may bring complaints before the Commission concerning violations of DIVCA's antidiscrimination requirements. Finally, DIVCA gives ORA a limited advocacy role with respect to DIVCA's anti-discrimination and build out requirements and DIVCA's prohibition against cross subsidization. In addition, ORA is also charged with advocating on behalf of consumers with respect to consumer protection issues before local entities and the courts. See D. 07-03-014 at 169-201 for a detailed discussion of these enforcement provisions.

because of the narrow scope of comments appropriate for an application for renewal and the strict deadlines imposed for the renewal application process under § 5850(b). Furthermore, 15 days is a sufficient period of time for the Commission to take these comments into account before acting on the video service provider's application for renewal. Staff proposes that the public submit its comments to the Communications Division's Video Franchise Group. (See Proposed Amendments to GO 169, Section V.B.)

Staff also proposes that the final renewal process permit a video service provider to submit an application for renewal no later than three months from the date its current franchise is due to expire. In addition, Staff proposes that a video service provider seeking renewal serve a copy of its application on all local entities within the franchise area in which it proposes to provide service and also on ORA to ensure that adequate notice of the application is provided to the public. The attached proposed rules capture these conclusions.

5.2.3. Section 5850(d) and the Prohibition against Renewing a Franchise of a Video Service Provider Which is in Violation of a Final Nonappealable Court Order

Section 5850(d) states that the Commission "shall not renew the franchise if the video service provider is in violation of any final nonappealable court order issued pursuant to this section." The Commission, however, is not the proper arbiter of whether a video service provider is in violation of a final nonappealable court order. The court issuing such an order would have primary jurisdiction to enforce that order and determine whether its order has been violated. Moreover, having the Commission engage in the legal or factual analysis required to determine whether a video service provider is in violation is not compatible with the expedited renewal process envisioned by DIVCA in § 5850(b). Determining whether a video service provider is in violation of a court order could prove to be a very fact-intensive undertaking. There may be disputes over what obligations the court order actually required. In other instances, determining whether a violation exists could be difficult because the order required a video service provider to make complex changes to its network or operating practices, and disputes may arise as to whether those changes have been completed. Staff would expect that any party seeking to enforce a court order would necessarily need to return to that court for a determination that the video service provider is in fact in violation. Accordingly, in order to find that a video service provider "is in violation of a final nonappealable court order," Staff proposes that the Commission require a showing that a court of competent

jurisdiction has found the video service provider to be in violation of a previous court order.

Consistent with the requirements of DIVCA, the Commission should ensure that it does not renew a franchise under the renewal process proposed in Section 5.2.1 and 5.2.2 above because it was unaware that a video service provider was in violation of a nonappealable court order. At the same time, the Commission should do so in a way that relies upon objective and readily verifiable facts to ensure the renewal process remains expedited. Staff accordingly proposes that the applicant must disclose in its affidavit in support of its application for renewal (1) whether or not a nonappealable court order has been issued against it during the term of its existing franchise; (2) whether a court of competent jurisdiction has found that it has violated that order; and (3) whether it has received formal notice from a court of competent jurisdiction containing allegations that it is in violation of that order. If the answers to the first two questions are in the affirmative, the entity must further demonstrate that the violation has been cured. Again, the Commission should not be the arbiter of this question. Staff recommends that the entity provide a further court order or ruling demonstrating that the violation has been cured. If the entity cannot demonstrate that the violation has been cured to the court's satisfaction, then by the terms of § 5850(d) the Commission must deny the application for renewal.

There may be cases where a court has not found the entity to be in violation of a final nonappealable court order, but there is an ongoing dispute before a court of competent jurisdiction as to whether the entity is in violation of such order at the time the franchise renewal application is submitted. In that case, under Staff's proposal, the Commission would expect the entity to answer yes to question three. If there is an ongoing dispute at the time of renewal, Staff proposes that the Commission grant the franchise renewal application with the condition that the franchise may be revoked if the entity is later found to have been in violation of a final nonappealable court order.

The approach Staff proposes is appropriate for several reasons. First, it is consistent with the expedited process DIVCA envisions because it relies on objective and readily verifiable criteria. Second, it ensures that an applicant is not denied access to the expedited renewal process based on merely anecdotal allegations of a violation of a nonappealable order. Third, the Commission has the authority under § 5890(g) to suspend or revoke the franchise

of a video service provider at any time if it finds that provider was in violation of a nonappealable court order at the time its franchise renewal application was granted, particularly if it finds that the applicant was granted renewal by relying on a misstatement or omission.¹⁴

The opportunity to comment on whether a video service provider is in violation of a nonappealable court order discussed in Section 5.2.2 above should be consistent with the kind of verifiable evidence the Commission will rely on to make a determination of a video service provider's eligibility for franchise renewal. Thus, Staff proposes that comments should be limited to the provision of court documents, which would demonstrate that 1) a nonappealable order has been issued against a video service provider during the term of its existing franchise and/or 2) a court of competent jurisdiction has found that the video service provider is in violation of that order.

This type of input would be useful to the Commission in the renewal process because it will serve as a check against the claims made by a video service provider in its affidavit. The attached proposed rules capture these conclusions. (See Appendix A, Proposed Amendments to GO 169, Section VI; Appendix B, Proposed Application)

5.3. Consistency of the Renewal Process Set Forth in Cal. Pub. Util. Code § 5850(b) With the Federal Formal Process in 47 U.S.C. § 546(a)-(g)

The renewal process DIVCA contemplates is distinctly different from the formal federal process outlined in 47 U.S.C. § 546(a)-(g). In contrast to the renewal process envisioned by DIVCA, the federal formal process conditions renewal of an existing franchise on a procedurally intensive review of a video service provider's past performance under its existing franchise as well as an assessment of the video service provider's plans to meet the future cable related needs of the communities. However, DIVCA does not condition renewal on such a review. Nor does DIVCA condition renewal on the identification of the future cable related needs and interests of the community because the Legislature, itself, through DIVCA, has already defined them. In addition, the federal formal process lends itself to the imposition of requirements, which differ among franchisees, whereas DIVCA requires that all video service providers be

¹⁴ D.07-13-014, *mimeo*, at 177-178.

subject to uniform rules and regulation in the interest of promoting a level playing field. Finally, the use of the formal process could require that the Commission make findings on provisions of DIVCA over which local entities have been granted exclusive enforcement authority.

However, the formal process is not mandatory, and as explained below, 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. Further, for the Commission to invoke the formal process would not be consistent with DIVCA.¹⁵ For these reasons, Staff does not propose developing a complex set of rules to accommodate the formal process. Nonetheless, since cable operators have a right to invoke the formal process, Staff accordingly proposes that any cable operator wishing to invoke the formal process should be required to submit a formal application pursuant to Article 2 of the Commission's Rules.

5.3.1. Cable Operators Are Not Foreclosed From Invoking the Federal Formal Process

Neither DIVCA nor the Commission can foreclose a cable operator from exercising its right under federal law to request such a process. However, the

¹⁵ Although a franchise authority may invoke the formal process, we conclude that it would appear to be inconsistent with the provisions of DIVCA for the Commission to do so. Section 5850(b) states that [except as provided in § 5850(c) and (d)] the process for renewing a state franchise shall be the same as the process for the issuance of an initial franchise. As we concluded in Section 4, DIVCA's requirement that the process in § 5850(b) be consistent with federal law should not be interpreted as a license to transform DIVCA's renewal process into something that is entirely different. However, that is exactly what would result if the Commission elected to invoke the formal process. The procedurally intensive nature of the formal process alone would swallow the process identified in § 5850(b) thus rendering § 5850(b) meaningless. In addition, because we have concluded that the process set forth in § 5850(b) is generally consistent with the federal informal process, invoking the formal process would result in the Commission imposing additional "process and criteria" for renewal not required by federal law and, therefore, would be inconsistent with § 5850(b). Accordingly, in order to give effect to the statute, the Commission should not be permitted to exercise this option.

federal formal process encompasses a much more intensive review of a video service provider's performance than that contemplated by DIVCA. Given that the renewal process Staff envisions, a video service provider that is a cable operator would have very little incentive to invoke the formal process, because under DIVCA the Commission can only deny renewal to a video service provider if it is in violation of a final non-appealable court order.

Nonetheless, there is always the remote possibility that a cable operator might choose to exercise its federal right to invoke the formal process. However, given that the possibility is remote, and given the complexity of reconciling that process with key features of DIVCA, Staff sees no reason for the Commission to spend considerable resources to develop a set of complicated rules to accommodate the formal process at this time.

Under federal law a cable operator is required to provide notice to the Commission that it is invoking the formal process between 36 and 30 months before its franchise expires. In the unlikely event that a cable operator were to invoke this process, Staff proposes that the Commission adopt rules in this proceeding regarding the notice requirement so that the Commission is in a position to act. Specifically, Staff proposes that cable operators provide notice in the form of a formal application in accordance with Article 2 of the Commission's Rules in which the cable operator is required to state its reasons for invoking the process, the relief sought, and the legal and factual basis for invoking the process. Cable operators should file the application with the Commission and serve it on all parties listed in the service list for the current proceeding, all local entities within the video service provider's franchise area, and ORA. Once a formal application has been filed pursuant to Article 2 of the Commission's Rules, the assigned Administrative Law Judge can determine how to conduct the proceeding in a manner that is consistent with DIVCA and federal law.

Under federal law, the Commission has six months to take action after the cable operator provides notice to the Commission that it has invoked the formal process. Requiring a cable operator to file an application pursuant to Article 2 of the Commission's Rules would provide the Commission with adequate time and information to respond in a manner that is consistent with the procedural requirements of the federal formal process. The attached proposed rules reflect these conclusions. (See Proposed Amendments to General Order 169, Section V.A.)