



DIVCA: Franchise Renewal Process

February 2014

ORA Position

The CPUC should establish a mechanism as part of its DIVCA Renewal process to comply with California and federal law that provides stakeholders – and in particular ORA – with a process to review and provide substantive input on franchise applications.



Background

Prior to 2006: Phone company rules limited to local regulation.

Post 2006: Advances in technology created competition between cable & telephone companies resulting in overlapping regulatory structure.

2006: DIVCA - Digital Infrastructure and Video Competition Act – (PU Code § 5800, et seq) signed into law, making the CPUC the authorized franchise authority.

2007: CPUC adopted GO 169 and procedures to implement DIVCA. [D.07-03-014]

May 2013: CPUC opened proceeding to establish the Renewal provisions of DIVCA. [R.13-05-007]

Dec 2013: Communications Division (CD) issued a Staff Report proposing to amend GO 169 to implement Renewal provisions of DIVCA legislation.

2017: DIVCA Renewal process required at 10 years, with requests for a formal process required 3 years in advance. Therefore, the CPUC must have a Renewal process in place in 2014.



Key California Law Governing DIVCA

- **PU Code § 5900(k) explicitly requires ORA intervention:**

“The Office of Ratepayer Advocates shall have authority to advocate on behalf of video subscribers regarding renewal of a state-issued franchise and enforcement of this section, and Sections 5890 and 5950. For this purpose, the office shall have access to any information in the possession of the commission subject to all restrictions on disclosure of that information that are applicable to the commission.”

PU Code § 5840: Sets explicit criteria, timeline, and requires a signed affidavit for DIVCA operators. Contrary to Staff Report, the law requires:

- Criteria is not limited simply to box-checking and signed affidavit, but affords stakeholders a thorough review via supporting PU Code language.
- CPUC notify DIVCA operators within 30 days whether their application is “complete or incomplete,” *not* to approve applications within 30 days. [PUC § 5840 (h)]

PU Code § 5850: Sets process for DIVCA Renewal; does not limit ORA’s detailed review.

- Staff Report misinterprets that the CPUC “shall not impose any additional or different criteria” to mean that the CPUC may not look at the specified criteria in PUC § 5840 in an in depth manner. [PUC § 5850(b)]
- Requires that Renewal shall be consistent with federal law. [PUC § 5850(c)]



DIVCA Renewal Should Follow Established Law

- **PU Code § 5850:** DIVCA Renewal process, which requires criteria from PU Code § 5840 and to follow Federal Laws and Regulations.
- **47 USC § 546:** Federal law clearly requires a franchising authority to provide public notice and an opportunity to be heard, via both formal and alternative processes.
 - Requires the franchise authority to “commence an administrative proceeding.” [47 USC 546 (c)(1)]
 - Franchise authority may grant or deny a request “after affording the public adequate notice and opportunity for comment.” [47 USC 546 (h)]
- **PU Code § 5900:** Authorizes ORA to advocate on behalf of video subscribers in the Renewal process, and sets forth requirements for holders of a state franchise, including:
 - **Customer Service:** Comply with customer service standards pertaining to the provision of video service. [PUC § 5900(a)]
 - **Cross-subsidization:** Franchise holders that provide both telephone and video service are not permitted to raise telephone rates to finance video network deployment. [PUC § 5940]
 - **Discrimination:** Providers may not discriminate against subscribers based on income or geography. [PUC § 5870(a)]
 - **PEG – Public, Educational, Government – Access Channels:** Providers are required to designate sufficient capacity. [PUC § 5870(a)]
- **PU Code § 710(c):** Addresses VoIP regulation, but clearly states “This section does not affect or supersede any of the following: ... (2) The Digital Infrastructure and Video Competition Act of 2006...”



DIVCA Review Process is Consistent with CPUC Policy

- CPUC acknowledges its right to regulate DIVCA.
 - *“The Commission shall provide for a public hearing in any formal proceeding where franchising; antidiscrimination and build-out; reporting; the prohibition against financing video deployment with rate increases for stand-alone, residential, primary line, basic telephone services; or user fee provisions are at issue.” [D.07-03-014, OP 11]*
 - *“[T]he Commission fully intends to enforce DIVCA provisions and allow significant public participation in its enforcement proceedings.” [D.07-03-014, p. 4]*

- CPUC acknowledges ORA’s right to intervene.
 - *“[O]RA shall have unfettered access to all information provided to the Commission pursuant to DIVCA. [O]RA may copy any such information needed to fulfill its obligations pursuant to DIVCA, i.e., obligations pertaining to state video franchise renewals and enforcement of Public Utilities Code 5890, 5900, and 5950.” [D.07-03-014, OP 23]*
 - *“The user fee should include funding for [O]RA, whose budget is included in the Commission budget.” [D.07-03-014, COL 74]*



Consequences without full CPUC Review

ORA: Public Participation	Staff Report: No Public Participation
<p>PU Code § 5810: Legislative intent is to promote competition which benefits customers. Requires CPUC to be both timely and ensure compliance.</p> <p>PU Code § 5850: Requires Renewal criteria and to follow federal law.</p> <p>47 USC § 546: Federal law requires public notice and opportunity for public input.</p> <p>PU Code § 5840 (h): CPUC has 30 days from when application is amended to determine completeness. Once complete, CPUC has 14 days to issue state franchise.</p> <p>PU Code § 5900: Authorizes ORA to advocate; Prohibits Discrimination and Cross-Subsidization; Requires appropriate levels of customer service and PEG access.</p>	<p>PU Code § 5810: Proposal has no mechanism to demonstrate it is meeting legislative goals.</p> <p>PU Code § 5850: Asserts it only allows the CPUC to check-boxes and collect affidavit signatures.</p> <p>47 USC § 546: Does not comply with federal law.</p> <p>PU Code § 5840: Asserts the transaction must be completed within 30 days.</p> <p>PU Code § 5900: Report does not address this statute and ORA's authorized role, in which the Renewal process is necessarily different.</p>
<ul style="list-style-type: none"> ▪ Complies with the law. ▪ No language in PUC §§ 5840 or 5850 limits stakeholder participation. ▪ Consistent with the CPUC's regulatory authority to protect customers. ▪ Consistent with the CPUC's 2007 DIVCA decision that the CPUC has regulatory authority. ▪ Ensures actual oversight. 	<ul style="list-style-type: none"> ▪ Does not consider federal law requirement of PUC § 5850. ▪ Does not comply with PUC § 5900 and recognize that Renewal process is different. ▪ Is not consistent with the CPUC's regulatory mission. ▪ Misinterprets 30-day deficiency notification for the CPUC's total time for review.
<p>Result: CPUC has an opportunity to develop Renewal rules that follow the law and protect ratepayers, which will not come again for another 10 years.</p>	<p>Result: The CPUC will perform a ministerial activity that does not follow the law, requiring no accountability from franchise holders toward their subscribers or to demonstrate the goals of DIVCA are being met.</p>



ORA Recommendations for DIVCA Renewal Process

The CPUC should...

- Establish a mechanism that provides for public notice and substantive comment.
- Articulate clearly that ORA has discovery rights in order to fulfill its obligation to advocate on behalf of subscribers.
- Establish a process schedule that provides for sufficient time for public notice, review, and comment period.
- Clarify that the process allows for Intervenor Compensation.



DIVCA Renewal Proceeding Status

Assigned Commissioner: President Peevey

ALJ: Maribeth Bushey

- January 24, 2014: Parties filed Comments on the CD Staff Report.
- February 17, 2014: Parties will file Reply Comments on the CD Staff Report.
- A schedule for a Proposed Decision has not yet been determined.

