Appendix A: The Digital Infrastructure and Video Competition Act

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Assembly Bill No. 2987

CHAPTER 700

An act to amend Section 401 of, to add Article 4 (commencing with Section 440) to Chapter 2.5 of Part 1 of Division 1 of, and to add Division 2.5 (commencing with Section 5800) to, the Public Utilities Code, and to amend Section 107.7 of the Revenue and Taxation Code, relating to cable and video service.

[Approved by Governor September 29, 2006. Filed with Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, Nunez. Cable and video service.

(1) Existing law provides that any city, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law requires that cable and video service providers comply with specified customer service standards and performance standards.

This bill would enact the Digital Infrastructure and Video Competition Act of 2006 and would establish a procedure for the issuance of state franchises for the provision of video service, which would be defined to include cable service and open-video systems, that would be administered by the Public Utilities Commission. The commission would be the sole franchising authority for state franchises to provide video services. The bill would require any person or corporation that seeks to provide video service in this state to file an application with the commission for a state franchise with specified information, signed under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would provide that cities, counties, cities and counties, or joint powers authorities would receive state franchise fees in exchange for the use of public rights-of-way for the delivery of video services provided within their jurisdictions, based on gross revenues, pursuant to a specified formula. The bill would prescribe the extent of the obligation of state franchise holders to provide public, educational, and governmental access (PEG) channels. The bill would also authorize local entities to establish a fee to support the costs of PEG channel facilities, in the amount of 1% of gross revenues, or more in specified circumstances.

The bill would also require these local entities to permit the installation of networks by holders of state franchises. The bill would also prohibit a holder of a state franchise from discriminating against or denying access to service to any group of potential residential subscribers because of their

income and would provide that this provision is satisfied if certain conditions are met by holders or their affiliates with 1,000,000 or more telephone customers or if alternative conditions are met by a holder or its affiliates with 1,000,000 or fewer telephone customers in California.

The bill would require the holder of a state franchise to notify a local entity that it will provide video service in the entity's jurisdiction at least 10 days before offering service. The bill would also require the local franchising entity to enforce customer service and protection standards and to enact an ordinance or resolution providing a schedule of penalties for any material breach of those standards by a holder of a state franchise, thereby imposing a state-mandated local program.

The bill would also require that any state franchise holder employing more than 750 employees in California make an annual report of specified information to the commission. The bill would also require that all state franchise holders make an annual report to the commission regarding availability of and subscription to broadband and video service.

The bill would provide that a state franchise is valid for 10 years and would require a provider to apply to the commission for renewal of the franchise for any additional 10-year period.

The bill would authorize the commission's Division of Ratepayer Advocates to advocate on behalf of video service customers in connection with state franchise renewal and enforcement of service standards.

The bill would prohibit the commission from permitting a telephone corporation that is providing video service pursuant to a state franchise to authorize an increase in rates for residential basic service until January 1, 2009, unless that corporation is regulated under rate of return regulation, subject to specified exceptions.

(2) Existing property tax law specifies the manner in which local tax assessors determine the value of cable television possessory interests that are created in a cable television franchise or license that is granted by a local government.

This bill would specify that this valuation method also applies to possessory interests created in a cable franchise or license or a franchise to provide video services that is granted by the state under the bill.

(3) Existing law provides for the Public Utilities Commission Utilities Reimbursement Account. Existing law authorizes the commission to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the commission, except for a railroad corporation. Existing law requires the commission to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized commission budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding.

This bill would establish a Video Franchising Account in the commission's Utilities Reimbursement Account, require the commission to annually determine a fee to be paid by an applicant or holder of a state

franchise, and authorize the commission to take various actions to collect the fees.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 401 of the Public Utilities Code is amended to read:

401. (a) The Legislature finds and declares that the public interest is best served by a commission that is appropriately funded and staffed, that can thoroughly examine the issues before it, and that can take timely and well-considered action on matters before it. The Legislature further finds and declares that funding the commission by means of a reasonable fee imposed upon each common carrier and business related thereto, each public utility that the commission regulates, and each applicant for, or holder of, a state franchise pursuant to Division 2.5 (commencing with Section 5800), helps to achieve those goals and is, therefore, in the public interest.

(b) The Legislature intends, in enacting this chapter, that the fees levied and collected pursuant thereto produce enough, and only enough, revenues to fund the commission with (1) its authorized expenditures for each fiscal year to regulate common carriers and businesses related thereto, public utilities, and applicants and holders of a state franchise to be a video service provider, less the amount to be paid from special accounts except those established by this article, reimbursements, federal funds, and the unencumbered balance from the preceding year; (2) an appropriate reserve; and (3) any adjustment appropriated by the Legislature.

(c) For purposes of this chapter, an “appropriate reserve” means a reserve in addition to the commission’s total authorized annual budget to regulate common carriers and related businesses, public utilities, and applicants and holders of a state franchise to be a video service provider, to be determined by the commission based on its past and projected operating experience.

SEC. 2. Article 4 (commencing with Section 440) is added to Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 4. Video Service Franchises

440. (a) For purposes of this article, “state franchise,” “video service,” and “video service provider” shall have the same meaning as those terms are defined in Section 5830.

(b) The Public Utilities Commission Video Franchising Account is hereby created in the Public Utilities Commission Utilities Reimbursement Account.

441. The commission shall annually determine a fee to be paid by an applicant or holder of a state franchise pursuant to Division 2.5 (commencing with Section 5800). The annual fee shall be established to produce a total amount equal to that amount established in the authorized commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to carry out the provisions of Division 2.5 (commencing with Section 5800), less the amount to be paid from reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

442. (a) The commission shall establish the fee pursuant to Section 441 with the approval of the Department of Finance. The commission shall specify the amount of its budget to be financed by the fee in its annual budget request.

(b) The fee shall be determined and imposed by the commission consistent with the requirements of Section 542 of Title 47 of the United States Code.

(c) All fees collected by the commission pursuant to this section shall be transmitted to the Treasurer at least quarterly for deposit in the Public Utilities Commission Video Franchising Account.

(d) The commission shall maintain those records as are necessary to account separately for all fees and charges, including the fees authorized by Section 441.

(e) The commission shall authorize refunds of the fees provided for in this article when the fees were collected in error.

443. (a) The commission may require a video service provider subject to this article to furnish information and reports to the commission, at the time or times it specifies, to enable it to determine the fee pursuant to Section 441.

(b) Any video service provider required to submit information and reports under this article may, in lieu thereof, submit information or reports made to any other governmental agency if all of the following are met:

(1) The alternate information or reports contain all of the information required by the commission.

(2) The requirements to which the alternate reports or information are responsive are clearly identified.

(3) The information or reports are certified by the video service provider to be true and correct.

444. (a) If a video service provider subject to this article is in default of the payment of any fee required by this article for a period of 30 days or more, the commission may suspend or revoke the state franchise of the video service provider or order the video service provider to cease and desist from conducting all operations subject to the franchising authority of the commission. The commission may estimate from all available information the appropriate fee and may add to the amount of that estimated fee, a penalty not to exceed 25 percent of the amount, on account of the failure, refusal, or neglect to prepare and submit the report or to pay the fee, and the video service provider shall be estopped to complain of the amount of the commission's estimate.

(b) Upon payment of the fee so estimated and penalty, if applicable, the state franchise of the video service provider suspended in accordance with this section shall be reinstated or the order to cease and desist revoked. The commission may grant a reasonable extension of the 30-day period to any video service provider upon written application and a showing of the necessity of the extension.

(c) Upon revocation of any state franchise or issuance of an order to cease and desist pursuant to this section, all fees in default shall become due and payable immediately.

(d) The commission may bring an action, in its own name or in the name of the people of the state, in any court of competent jurisdiction, for the collection of delinquent fees estimated under this article, or for an amount due, owing, and unpaid to it, as shown by report filed by the commission, together with a penalty of 25 percent for the delinquency.

SEC. 3. Division 2.5 (commencing with Section 5800) is added to the Public Utilities Code, to read:

DIVISION 2.5. THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

5800. This act shall be known and may be cited as the Digital Infrastructure and Video Competition Act of 2006.

5810. (a) The Legislature finds and declares all of the following:

(1) Increasing competition for video and broadband services is a matter of statewide concern for all of the following reasons:

(A) Video and cable services provide numerous benefits to all Californians including access to a variety of news, public information, education, and entertainment programming.

(B) Increased competition in the cable and video service sector provides consumers with more choice, lowers prices, speeds the deployment of new communication and broadband technologies, creates jobs, and benefits the California economy.

(C) To promote competition, the state should establish a state-issued franchise authorization process that allows market participants to use their

networks and systems to provide video, voice, and broadband services to all residents of the state.

(D) Competition for video service should increase opportunities for programming that appeals to California's diverse population and many cultural communities.

(2) Legislation to develop this new process should adhere to the following principles:

(A) Create a fair and level playing field for all market competitors 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 socioeconomic status.

(C) Protect local government revenues and control of public rights-of-way.

(D) Require market participants to comply with all applicable consumer protection laws.

(E) Complement efforts to increase investment in broadband infrastructure and close the digital divide.

(F) Continue access to and maintenance of the public, education, and government (PEG) channels.

(G) Maintain all existing authority of the California Public Utilities Commission as established in state and federal statutes.

(3) The public interest is best served when sufficient funds are appropriated to the commission to provide adequate staff and resources to appropriately and timely process applications of video service providers and to ensure full compliance with the requirements of this division. It is the intent of the Legislature that, although video service providers are not public utilities or common carriers, the commission shall collect any fees authorized by this division in the same manner and under the same terms as it collects fees from common carriers, electrical corporations, gas corporations, telephone corporations, telegraph corporations, water corporations, and every other public utility providing service directly to customers or subscribers subject to its jurisdiction such that it does not discriminate against video service providers or their subscribers.

(4) Providing an incumbent cable operator the option to secure a state-issued franchise through the preemption of an existing cable franchise between a cable operator and any political subdivision of the state, including, but not limited to, a charter city, county, or city and county, is an essential element of the new regulatory framework established by this act as a matter of statewide concern to best ensure equal protection and parity among providers and technologies, as well as to achieve the goals stated by the Legislature in enacting this act.

(b) It is the intent of the Legislature that a video service provider shall pay as rent a franchise fee to the local entity in whose jurisdiction service is being provided for the continued use of streets, public facilities, and other rights-of-way of the local entity in order to provide service. The

Legislature recognizes that local entities should be compensated for the use of the public rights-of-way and that the franchise fee is intended to compensate them in the form of rent or a toll, similar to that which the court found to be appropriate in Santa Barbara County Taxpayers Association v. Board of Supervisors for the County of Santa Barbara (1989) 257 Cal. App. 615.

(c) It is the intent of the Legislature that collective bargaining agreements be respected.

(d) It is the intent of the Legislature that the definition of gross revenues in this division shall result in local entities maintaining their existing level of revenue from franchise fees.

5820. (a) Nothing in this division shall be deemed as creating a vested right in a state-issued franchise by the franchise holder or its affiliates that would preclude the state from amending the provisions that establish the terms and conditions of a franchise.

(b) Nothing in this division shall be construed to eliminate or reduce a telephone corporation's or video service provider's obligations under any applicable state or federal environmental protection laws. The local entity shall serve as the lead agency for any environmental review under this division and may impose conditions to mitigate environmental impacts of the applicant's use of the public rights-of-way that may be required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) The holder of a state franchise shall not be deemed a public utility as a result of providing video service under this division. This division shall not be construed as granting authority to the commission to regulate the rates, terms, and conditions of video services, except as explicitly set forth in this division.

5830. For purposes of this division, the following words have the following meanings:

(a) "Broadband" means any service defined as broadband in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).

(b) "Cable operator" means any person or group of persons that either provides cable service over a cable system and directly, or through one or more affiliates, owns a significant interest in a cable system; or that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system, as set forth in Section 522(5) of Title 47 of the United States Code.

(c) "Cable service" is defined as the one-way transmission to subscribers of either video programming, or other programming service, and subscriber interaction, if any, that is required for the selection or use of video programming or other programming service, as set forth in Section 522(6) of Title 47 of the United States Code.

(d) "Cable system" is defined as set forth in Section 522(7) of Title 47 of the United States Code.

(e) "Commission" means the Public Utilities Commission.

(f) "Franchise" means an initial authorization, or renewal of an authorization, issued by a franchising entity, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of any network in the right-of-way capable of providing video service to subscribers.

(g) "Franchise fee" means the fee adopted pursuant to Section 5840.

(h) "Local franchising entity" means the city, county, city and county, or joint powers authority entitled to require franchises and impose fees on cable operators, as set forth in Section 53066 of the Government Code.

(i) "Holder" means a person or group of persons that has been issued a state franchise from the commission pursuant to this division.

(j) "Incumbent cable operator" means a cable operator or OVS serving subscribers under a franchise in a particular city, county, or city and county franchise area on January 1, 2007.

(k) "Local entity" means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a holder of a state franchise under this division may provide cable service or video service.

(*l*) "Network" means a component of a facility that is wholly or partly physically located within a public right-of-way and that is used to provide video service, cable service, voice, or data services.

(m) "Open-video system" or "OVS" means those services set forth in Section 573 of Title 47 of the United States Code.

(n) "OVS operator" means any person or group of persons that either provides cable service over an open-video system directly, or through one or more affiliates, owns a significant interest in an open-video system, or that otherwise controls or is responsible for, through any arrangement, the management of an open-video system.

(o) "Public right-of-way" means the area along and upon any public road or highway, or along or across any of the waters or lands within the state.

(p) "State franchise" means a franchise that is issued pursuant to this division.

(q) "Subscriber" means a person who lawfully receives video service from the holder of a state franchise for a fee.

(r) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in Section 522(20) of Title 47 of the United States Code.

(s) "Video service" means video programming services, cable service, or OVS 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.

(t) "Video service provider" means an entity providing video service.

5840. (a) The commission is the sole franchising authority for a state franchise to provide video service under this division. Neither the commission nor any local franchising entity or other local entity of the state may require the holder of a state franchise to obtain a separate franchise or otherwise impose any requirement on any holder of a state franchise except as expressly provided in this division. Sections 53066, 53066.01, 53066.2, and 53066.3 of the Government Code shall not apply to holders of a state franchise.

(b) The application process described in this section and the authority granted to the commission under this section shall not exceed the provisions set forth in this section.

(c) Any person or corporation who seeks to provide video service in this state for which a franchise has not already been issued, after January 1, 2008, shall file an application for a state franchise with the commission. The commission may impose a fee on the applicant that shall not exceed the actual and reasonable costs of processing the application and shall not be levied for general revenue purposes.

(d) No person or corporation shall be eligible for a state-issued franchise, including a franchise obtained from renewal or transfer of an existing franchise, if that person or corporation is in violation of any final nonappealable order relating to either the Cable Television and Video Provider Customer Service and Information Act (Article 3.5 (commencing with Section 53054) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code) or the Video Customer Service Act (Article 4.5 (commencing with Section 53088) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code).

(e) The application for a state franchise shall be made on a form prescribed by the commission and shall include all of the following:

(1) A sworn affidavit, signed under penalty of perjury by an officer or another person authorized to bind the applicant, that affirms all of the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering cable service or video service in this state.

(B) That the applicant or its affiliates agrees to comply with all federal and state statutes, rules, and regulations, including, but not limited to, the following:

(i) A statement that the applicant will not discriminate in the provision of video or cable services as provided in Section 5890.

(ii) A statement that the applicant will abide by all applicable consumer protection laws and rules as provided in Section 5900.

(iii) A statement that the applicant will remit the fee required by subdivision (a) of Section 5860 to the local entity.

(iv) A statement that the applicant will provide PEG channels and the required funding as required by Section 5870.

(C) That the applicant 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.

(D) That the applicant will concurrently deliver a copy of the application to any local entity where the applicant will provide service.

(2) The applicant's legal name and any name under which the applicant does or will do business in this state.

(3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the department.

(4) The names and titles of the applicant's principal officers.

(5) The legal name, address, and telephone number of the applicant's parent company, if any.

(6) A description of the video service area footprint that is proposed to be served, as identified by a collection of United States Census Bureau Block numbers (13 digit) or a geographic information system digital boundary meeting or exceeding national map accuracy standards. This description shall include the socioeconomic status information of all residents within the service area footprint.

(7) If the applicant is a telephone corporation or an affiliate of a telephone corporation, as defined in Section 234, a description of the territory in which the company provides telephone service. The description shall include socioeconomic status information of all residents within the telephone corporation's service territory.

(8) The expected date for the deployment of video service in each of the areas identified in paragraph (6).

(9) Adequate assurance that the applicant possesses the financial, legal, and technical qualifications necessary to construct and operate the proposed system and promptly repair any damage to the public right-of-way caused by the applicant. To accomplish these requirements, the commission may require a bond.

(f) The commission may require that a corporation with wholly owned subsidiaries or affiliates is eligible only for a single state-issued franchise and prohibit the holding of multiple franchises through separate subsidiaries or affiliates. The commission may establish procedures for a holder of a state-issued franchise to amend its franchise to reflect changes in its service area.

(g) The commission shall commence accepting applications for a state franchise no later than April 1, 2007.

(h) (1) The commission shall notify an applicant for a state franchise and any affected local entities whether the applicant's application is complete or incomplete before the 30th calendar day after the applicant submits the application.

(2) If the commission finds the application is complete, it shall issue a state franchise before the 14th calendar day after that finding.

(3) If the commission finds that the application is incomplete, it shall specify with particularity the items in the application that are incomplete and permit the applicant to amend the application to cure any deficiency. The commission shall have 30 calendar days from the date the application is amended to determine its completeness.

(4) The failure of the commission to notify the applicant of the completeness or incompleteness of the application before the 44th calendar day after receipt of an application shall be deemed to constitute issuance of the certificate applied for without further action on behalf of the applicant.

(i) The state franchise issued by the commission shall contain all of the following:

(1) A grant of authority to provide video service in the service area footprint as requested in the application.

(2) A grant of authority to use the public rights-of-way, in exchange for the franchise fee adopted under subdivision (q), in the delivery of video service, subject to the laws of this state.

(3) A statement that the grant of authority is subject to lawful operation of the cable service or video service by the applicant or its successor in interest.

(j) The state franchise issued by the commission may be terminated by the video service provider by submitting at least 90 days prior written notice to customers, local entities, and the commission.

(k) It is unlawful to provide video service without a state or locally issued franchise.

(*l*) Subject to the notice requirements of this division, a state franchise may be transferred to any successor in interest of the holder to which the certificate is originally granted, provided that the transferee first submits all of the information required of the applicant by this section to the commission.

(m) In connection with, or as a condition of, receiving a state franchise, the commission shall require a holder to notify the commission and any applicable local entity within 14 business days of any of the following changes involving the holder or the state franchise:

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the holder, including a merger, an acquisition, or a reorganization.

(2) A change in the holder's legal name or the adoption of, or change to, an assumed business name. The holder shall submit to the commission a certified copy of either of the following:

(A) The proposed amendment to the state franchise.

(B) The certificate of assumed business name.

(3) A change in the holder's principal business address or in the name of the person authorized to receive notice on behalf of the holder.

(4) Any transfer of the state franchise to a successor in interest of the holder. The holder shall identify the successor in interest to which the transfer is made.

(5) The termination of any state franchise issued under this division. The holder shall identify both of the following:

(A) The number of customers in the service area covered by the state franchise being terminated.

(B) The method by which the holder's customers were notified of the termination.

(6) A change in one or more of the service areas of this division that would increase or decrease the territory within the service area. The holder shall describe the new boundaries of the affected service areas after the proposed change is made.

(n) Prior to offering video service in a local entity's jurisdiction, the holder of a state franchise shall notify the local entity that the video service provider will provide video service in the local entity's jurisdiction. The notice shall be given at least 10 days, but no more than 60 days, before the video service provider begins to offer service.

(o) Any video service provider that currently holds a franchise with a local franchising entity is entitled to seek a state franchise in the area designated in that franchise upon meeting any of the following conditions:

(1) The expiration, prior to any renewal or extension, of its local franchise.

(2) A mutually agreed upon date set by both the local franchising entity and video service provider to terminate the franchise provided in writing by both parties to the commission.

(3) When a video service provider that holds a state franchise provides the notice required pursuant to subdivision (m) to a local jurisdiction that it intends to initiate providing video service in all or part of that jurisdiction, a video service provider operating under a franchise issued by a local franchising authority may elect to obtain a state franchise to replace its locally issued franchise. The franchise issued by the local franchising entity shall terminate and be replaced by a state franchise when the state franchising authority issues a state franchise for the video service provider that includes the entire service area served by the video service provider and the video service provider notifies the local entity that it will begin providing video service in that area under a state franchise.

(p) Notwithstanding any rights to the contrary, an incumbent cable operator opting into a state franchise under this subdivision shall continue to serve all areas as required by its local franchise agreement existing on January 1, 2007, until that local franchise otherwise would have expired. However, an incumbent cable operator that is also a telephone corporation with less than 1,000,000 telephone customers in California and is providing video service in competition with another incumbent cable operator shall not be required to provide service beyond the area in which it is providing video service as of January 1, 2007.

(q) (1) There is hereby adopted a state franchise fee payable as rent or a toll for the use of the public right-of-way by holders of the state franchise issued pursuant to this division. The amount of the state franchise fee shall be 5 percent of gross revenues, as defined in subdivision (d) of Section 5860, or the percentage applied by the local entity to the gross revenue of the incumbent cable operator, whichever is less. If there is no incumbent cable operator or upon the expiration of the incumbent cable operator's franchise, the amount of the state franchise fee shall be 5 percent of gross revenues, as defined in subdivision (d) of Section 5860, unless the local entity adopts an ordinance setting the amount of the franchise fee at less than 5 percent.

(2) (A) The state franchise fee shall apply equally to all video service providers in the local entity's jurisdiction.

(B) Notwithstanding subparagraph (A), if the video service provider is leasing access to a network owned by a local entity, the local entity may set a franchise fee for access to the network different from the franchise fee charged to a video service provider for access to the rights-of-way to install its own network.

5850. (a) A state-issued franchise shall only be valid for 10 years after the date of issuance, and the video service provider shall apply for a renewal of the state franchise for an additional 10-year period if it wishes to continue to provide video services in the area covered by the franchise after the expiration of the franchise.

(b) Except as provided in this section, the criteria and process described in Section 5840 shall apply to a renewal registration, and the commission shall not impose any additional or different criteria.

(c) Renewal of a state franchise shall be consistent with federal law and regulations.

(d) 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 division.

5860. (a) The holder of a state franchise that offers video service within the jurisdiction of the local entity shall calculate and remit to the local entity a state franchise fee, adopted pursuant to subdivision (q) of Section 5840, as provided in this section. The obligation to remit the franchise fee to a local entity begins immediately upon provision of video service within that local entity's jurisdiction. However, the remittance shall not be due until the time of the first quarterly payment required under subdivision (g) that is at least 180 days after the provision of service began. The fee remitted to a city or city and county shall be based on gross revenues, as defined in subdivision (d), derived from the provision of video service within that jurisdiction. The fee remitted to a county shall be based on gross revenues earned within the unincorporated area of the county. No fee under this section shall become due unless the local entity provides documentation to the holder of the state franchise supporting the percentage paid by the incumbent cable operator serving the area within the local entity's jurisdiction, as provided below. The fee shall be

calculated as a percentage of the holder's gross revenues, as defined in subdivision (d). The fee remitted to the local entity pursuant to this section may be used by the local entity for any lawful purpose.

(b) The state franchise fee shall be a percentage of the holder's gross revenues, as defined in subdivision (d).

(c) No local entity or any other political subdivision of this state may demand any additional fees or charges or other remuneration of any kind from the holder of a state franchise based solely on its status as a provider of video or cable services other than as set forth in this division and may not demand the use of any other calculation method or definition of gross revenues. However, nothing in this section shall be construed to limit a local entity's ability to impose utility user taxes and other generally applicable taxes, fees, and charges under other applicable provisions of state law that are applied in a nondiscriminatory and competitively neutral manner.

(d) For purposes of this section, the term "gross revenues" means all revenue actually received by the holder of a state franchise, as determined in accordance with generally accepted accounting principles, that is derived from the operation of the holder's network to provide cable or video service within the jurisdiction of the local entity, including all of the following:

(1) All charges billed to subscribers for any and all cable service or video service provided by the holder of a state franchise, including all revenue related to programming provided to the subscriber, equipment rentals, late fees, and insufficient fund fees.

(2) Franchise fees imposed on the holder of a state franchise by this section that are passed through to, and paid by, the subscribers.

(3) Compensation received by the holder of a state franchise that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are paid to the holder of a state franchise as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to paragraph (4) of subdivision (e).

(4) A pro rata portion of all revenue derived by the holder of a state franchise or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder's network to provide video service within the jurisdiction of the local entity, subject to paragraph (1) of subdivision (e). The allocation shall be based on the number of subscribers in the local entity divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

(e) For purposes of this section, the term "gross revenue" set forth in subdivision (d) does not include any of the following:

(1) Amounts not actually received, even if billed, such as bad debt; refunds, rebates, or discounts to subscribers or other third parties; or revenue imputed from the provision of cable services or video services for free or at reduced rates to any person as required or allowed by law,

including, but not limited to, the provision of these services to public institutions, public schools, governmental agencies, or employees except that forgone revenue chosen not to be received in exchange for trades, barters, services, or other items of value shall be included in gross revenue.

(2) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state franchise to provide cable services or video services. However, revenue received by an affiliate of the holder from the affiliate's provision of cable or video service shall be included in gross revenue as follows:

(A) To the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the local entity.

(B) The revenue is not otherwise subject to fees to be paid to the local entity.

(3) Revenue derived from services classified as noncable services or nonvideo services under federal law, including, but not limited to, revenue derived from telecommunications services and information services, other than cable services or video services, and any other revenues attributed by the holder of a state franchise to noncable services or nonvideo services in accordance with Federal Communications Commission rules, regulations, standards, or orders.

(4) Revenue paid by subscribers to "home shopping" or similar networks directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services. However, commissions or other compensation paid to the holder of a state franchise by "home shopping" or similar networks for the promotion or exhibition products or services shall be included in gross revenue.

(5) Revenue from the sale of cable services or video services for resale in which the reseller is required to collect a fee similar to the franchise fee from the reseller's customers.

(6) Amounts billed to, and collected from, subscribers to recover any tax, fee, or surcharge imposed by any governmental entity on the holder of a state franchise, including, but not limited to, sales and use taxes, gross receipts taxes, excise taxes, utility users taxes, public service taxes, communication taxes, and any other fee not imposed by this section.

(7) Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive cable services or video services from the seller of those assets or surplus equipment.

(8) Revenue from directory or Internet advertising revenue, including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing.

(9) Revenue received as reimbursement by programmers of specific, identifiable marketing costs incurred by the holder of a state franchise for the introduction of new programming.

(10) Security deposits received from subscribers, excluding security deposits applied to the outstanding balance of a subscriber's account and thereby taken into revenue.

(f) For the purposes of this section, in the case of a video service that may be bundled or integrated functionally with other services, capabilities, or applications, the state franchise fee shall be applied only to the gross revenue, as defined in subdivision (d), attributable to video service. Where the holder of a state franchise or any affiliate bundles, integrates, ties, or combines video services with nonvideo services creating a bundled package, so that subscribers pay a single fee for more than one class of service or receive a discount on video services, gross revenues shall be determined based on an equal allocation of the package discount, that is, the total price of the individual classes of service at advertised rates compared to the package price, among all classes of service comprising the package. The fact that the holder of a state franchise offers a bundled package shall not be deemed a promotional activity. If the holder of a state franchise does not offer any component of the bundled package separately, the holder of a state franchise shall declare a stated retail value for each component based on reasonable comparable prices for the product or service for the purpose of determining franchise fees based on the package discount described above.

(g) For the purposes of determining gross revenue under this division, a video service provider shall use the same method of determining revenues under generally accepted accounting principals as that which the video service provider uses in determining revenues for the purpose of reporting to national and state regulatory agencies.

(h) The state franchise fee shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the state franchise fee. If the holder does not pay the franchise fee when due, the holder shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus 1 percent. If the holder has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment.

(i) Not more than once annually, a local entity may examine the business records of a holder of a state franchise to the extent reasonably necessary to ensure compensation in accordance with subdivision (a). The holder shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least four years after those revenues are recognized by the holder on its books and records. If the examination discloses that the holder has underpaid franchise fees by more than 5 percent during the examination period, the holder shall pay all of the reasonable and actual costs of the examination. If the examination discloses that the holder has not underpaid franchise fees, the local entity shall pay all of the reasonable and actual costs of the examination. In every other instance, each party shall bear its own costs of the examination. Any claims by a local entity that compensation is not in accordance with subdivision (a), and any claims for refunds or other corrections to the remittance of the holder of a state franchise, shall be made within three

years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of the remittance, whichever is later. Either a local entity or the holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(j) The holder of a state franchise may identify and collect the amount of the state franchise fee as a separate line item on the regular bill of each subscriber.

5870. (a) The holder of a state franchise shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access (PEG) channels, as are activated and provided by the incumbent cable operator that has simultaneously activated and provided the greatest number of PEG channels within the local entity under the terms of any franchise in effect in the local entity as of January 1, 2007. For the purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality for at least eight hours per day. The holder shall have three months from the date the local entity requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section.

(b) The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities. The PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(c) (1) If less than three PEG channels are activated and provided within the local entity as of January 1, 2007, a local entity whose jurisdiction lies within the authorized service area of the holder of a state franchise may initially request the holder to designate not more than a total of three PEG channels.

(2) The holder shall have three months from the date of the request to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the

incumbent cable operator to make adequate interconnection available, as required by this section.

(d) (1) The holder shall provide an additional PEG channel when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television.

(2) For the purposes of this section, "locally produced video programming" means programming produced or provided by any local resident, the local entity, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

(e) Any PEG channel provided pursuant to this section that is not utilized by the local entity for at least eight hours per day as measured on a quarterly basis may no longer be made available to the local entity, and may be programmed at the holder's discretion. At the time that the local entity can certify to the holder a schedule for at least eight hours of daily programming, the holder of the state franchise shall restore the channel or channels for the use of the local entity.

(f) The content to be provided over the PEG channel capacity provided pursuant to this section shall be the responsibility of the local entity or its designee receiving the benefit of that capacity, and the holder of a state franchise bears only the responsibility for the transmission of that content, subject to technological restraints.

(g) (1) The local entity shall ensure that all transmissions, content, or programming to be transmitted by a holder of a state franchise are provided or submitted in a manner or form that is compatible with the holder's network, if the local entity produces or maintains the PEG programming in that manner or form. If the local entity does not produce or maintain PEG programming in that manner or form, then the local entity may submit or provide PEG programming in a manner or form that is standard in the industry. The holder shall be responsible for any changes in the form of the transmission necessary to make it compatible with the technology or protocol utilized by the holder to deliver services. If the holder is required to change the form of the transmission, the local entity shall permit the holder to do so in a manner that is most economical to the holder.

(2) The provision of those transmissions, content, or programming to the holder of a state franchise shall constitute authorization for the holder to carry those transmissions, content, or programming. The holder may carry the transmission, content, or programming outside of the local entity's jurisdiction if the holder agrees to pay the local entity or its designee any incremental licensing costs incurred by the local entity or its designee associated with that transmission. Local entities shall be prohibited from entering into licensing agreements that impose higher

proportional costs for transmission to subscribers outside the local entity's jurisdiction.

(3) The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

(h) Where technically feasible, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a state franchise and incumbent cable operators shall provide interconnection of the PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a holder of a state franchise and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the local entity may require the incumbent cable operator to allow the holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically feasible point for interconnection is available, the holder of a state franchise shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the holder requesting the interconnection unless otherwise agreed to by the parties.

(i) A holder of a state franchise shall not be required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name, or other identifying marks of another cable operator or video service provider. For purposes of this section, PEG content is not branded if it includes only production credits or other similar information displayed at the conclusion of a program. The local entity may require a cable operator or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available through interconnection to another provider of PEG capacity.

(j) In addition to any provision for the PEG channels required under subdivisions (a) to (i), inclusive, the holder shall reserve, designate, and, upon request, activate a channel for carriage of state public affairs programming administered by the state.

(k) All obligations to provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings contained in a locally issued franchise existing on December 31, 2006, shall continue until the local franchise expires, until the term of the franchise would have expired if it had not been terminated pursuant to subdivision (o) of Section 5840, or until January 1, 2009, whichever is later.

(*l*) After January 1, 2007, and until the expiration of the incumbent cable operator's franchise, if the incumbent cable operator has existing unsatisfied obligations under the franchise to remit to the local entity any cash payments for the ongoing costs of public, educational, and government access channel facilities or institutional networks, the local entity shall divide those cash payments among all cable or video providers as provided in this section. The fee shall be the holder's pro rata per subscriber share of the cash payment required to be paid by the incumbent cable operator to the local entity for the costs of PEG channel facilities. All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities and institutional networks, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

(m) In determining the fee on a pro rata per subscriber basis, all cable and video service providers shall report, for the period in question, to the local entity the total number of subscribers served within the local entity's jurisdiction, which shall be treated as confidential by the local entity and shall be used only to derive the per subscriber fee required by this section. The local entity shall then determine the payment due from each provider based on a per subscriber basis for the period by multiplying the unsatisfied cash payments for the ongoing capital costs of PEG channel facilities by a ratio of the reported subscribers of each provider to the total subscribers within the local entity as of the end of the period. The local entity shall notify the respective providers, in writing, of the resulting pro rata amount. After the notice, any fees required by this section shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for the preceding calendar quarter, and may only be used by the local entity as authorized under federal law.

(n) A local entity may, by ordinance, establish a fee to support PEG channel facilities consistent with federal law that would become effective subsequent to the expiration of any fee imposed pursuant to paragraph (2) of subdivision (*l*). If no such fee exists, the local entity may establish the fee at any time. The fee shall not exceed 1 percent of the holder's gross revenues, as defined in Section 5860. Notwithstanding this limitation, if, on December 31, 2006, a local entity is imposing a separate fee to support PEG channel facilities that is in excess of 1 percent, that entity may, by ordinance, establish a fee no greater than that separate fee, and in no event greater than 3 percent, to support PEG activities. The ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise.

(o) The holder of a state franchise may recover the amount of any fee remitted to a local entity under this section by billing a recovery fee as a separate line item on the regular bill of each subscriber.

(p) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no provider may

by barred from the provision of service or be required to terminate service as a result of that dispute or enforcement action.

5880. Holders of state franchises shall comply with the Emergency Alert System requirements of the Federal Communications Commission in order that emergency messages may be distributed over the holder's network. Any provision in a locally issued franchise authorizing local entities to provide local emergency notifications shall remain in effect, and shall apply to all holders of a state-issued franchise in the same local area, for the duration of the locally issued franchise, until the term of the franchise would have expired were the franchise not terminated pursuant to subdivision (m) of Section 5840, or until January 1, 2009, whichever is later.

5885. (a) The local entity shall allow the holder of a state franchise under this division to install, construct, and maintain a network within public rights-of-way under the same time, place, and manner as the provisions governing telephone corporations under applicable state and federal law, including, but not limited to, the provisions of Section 7901.1.

(b) Nothing in this division shall be construed to change existing law regarding the permitting process or compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for projects by a holder of a state franchise.

(c) (1) For purposes of this section, an "encroachment permit" means any permit issued by a local entity relating to construction or operation of facilities pursuant to this division.

(2) A local entity shall either approve or deny an application from a holder of a state franchise for an encroachment permit within 60 days of receiving a completed application. An application for an encroachment permit is complete when the applicant has complied with all statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) If the local entity denies an application for an encroachment permit, it shall, at the time of notifying the applicant of the denial, furnish to the applicant a detailed explanation of the reason for the denial.

(4) The local entity shall adopt regulations prescribing procedures for an applicant to appeal the denial of an encroachment permit application issued by a department of the local entity to the governing body of the local entity.

(5) Nothing in this section precludes an applicant and a local entity from mutually agreeing to an extension of any time limit provided by this section.

(d) A local entity may not enforce against the holder of a state franchise any rule, regulation, or ordinance that purports to allow the local entity to purchase or force the sale of a network.

5890. (a) A cable operator or video service provider that has been granted a state franchise under this division may not discriminate against

or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides.

(b) Holders or their affiliates with more than 1,000,000 telephone customers in California satisfy subdivision (a) if all of the following conditions are met:

(1) Within three years after it begins providing video service under this division, at least 25 percent of households with access to the holder's video service are low-income households.

(2) Within five years after it begins providing video service under this division and continuing thereafter, at least 30 percent of the households with access to the holder's video service are low-income households.

(3) Holders provide service to community centers in underserved areas, as determined by the holder, without charge, at a ratio of one community center for every 10,000 video customers. The holder shall not be required to take its facilities beyond the appropriate demarcation point outside the community center building or perform any inside wiring. The community center may not receive service from more than one state franchise holder at a time under this section. For purposes of this section, "community center" means any facility ran by an organization that has qualified for the California Teleconnect Fund, as established in Section 280 and that will make the holder's service available to the community.

(c) Holders or their affiliates with fewer than 1,000,000 telephone customers in California satisfy this section if they offer video service to all customers within their telephone service area within a reasonable time, as determined by the commission. However, the commission shall not require the holder to offer video service when the cost to provide video service is substantially above the average cost of providing video service in that telephone service area.

(d) When a holder provides video service outside of its telephone service area, is not a telephone corporation, or offers video service in an area where no other video service is being offered, other than direct-to-home satellite service, there is a rebuttable presumption that discrimination in providing service has not occurred within those areas. The commission may review the holder's proposed video service area to ensure that the area is not drawn in a discriminatory manner.

(e) For holders or their affiliates with more than 1,000,000 telephone customers in California, either of the following shall apply:

(1) If the holder is predominantly deploying fiber optic facilities to the customer's premise, the holder shall provide access to its video service to a number of households at least equal to 25 percent of the customer households in the holder's telephone service area within two years after it begins providing video service under this division, and to a number at least equal to 40 percent of those households within five years.

(2) If the holder is not predominantly deploying fiber optic facilities to the customer's premises, the holder shall provide access to its video service to a number of households at least equal to 35 percent of the

households in the holder's telephone service area within three years after it begins providing video service under this division, and to a number at least equal to 50 percent of these households within five years.

(3) A holder shall not be required to meet the 40-percent requirement in paragraph (1) or the 50-percent requirement in paragraph (2) until two years after at least 30 percent of the households with access to the holder's video service subscribe to it for six consecutive months.

(4) If 30 percent of the households with access to the holder's video service have not subscribed to the holder's video service for six consecutive months within three years after it begins providing video service, the holder may submit validating documentation to the commission. If the commission finds that the documentation validates the holder's claim, then the commission shall permit a delay in meeting the 40-percent requirement in paragraph (1) or the 50-percent requirement in paragraph (2) until the time that the holder does provide service to 30 percent of the households for six consecutive months.

(f) (1) After two years of providing service under this division, the holder may apply to the state franchising authority for an extension to meet the requirements of subdivision (b), (c), or (e). Notice of this application shall also be provided to the telephone customers of the holder, the Secretary of the Senate, and the Chief Clerk of the Assembly.

(2) Upon application, the franchising authority shall hold public hearings in the telephone service area of the applicant.

(3) In reviewing the failure to satisfy the obligations contained in subdivision (b), (c), or (e), the franchising authority shall consider factors that are beyond the control of the holder, including, but not limited to, the following:

(i) The ability of the holder to obtain access to rights-of-way under reasonable terms and conditions.

(ii) The degree to which developments or buildings are not subject to competition because of existing exclusive arrangements.

(iii) The degree to which developments or buildings are inaccessible using reasonable technical solutions under commercially reasonable terms and conditions.

(iv) Natural disasters.

(4) The franchising authority may grant the extension only if the holder has made substantial and continuous effort to meet the requirements of subdivision (b), (c), or (e). If an extension is granted the franchising authority shall establish a new compliance deadline.

(g) Local governments may bring complaints to the state franchising authority that a holder is not offering video service as required by this section, or the state franchising authority may open an investigation on its own motion. The state franchising authority shall hold public hearings before issuing a decision. The commission may suspend or revoke the franchise if the holder fails to comply with the provisions of this division.

(h) If the state franchising authority finds that the holder is in violation of this section, it may, in addition to any other remedies provided by law,

impose a fine not to exceed 1 percent 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.

(i) If a court finds that the holder of the state franchise is in violation of this section, the court may immediately terminate the holder's state franchise, and the court shall, in addition to any other remedies provided by law, impose a fine not to exceed 1 percent of the holder's total gross revenue of its entire cable and service footprint in the state in the full calendar month immediately prior to the decision.

(j) As used in this section, the following definitions shall apply:

(1) "Household" means consistent with the United States Census Bureau, as a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

(2) "Low income household" means those residential households located within the holder's existing telephone service area where the average annual household income is less than $35,000 based on the United States Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.

(3) "Customer's household" means those residential households located within the holder's existing telephone service area that are customers of the service by which that telephone service area is defined.

(4) "Access" means that the holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide similar two-way broadband Internet accessibility and similar video programming.

(k) Nothing in this section shall be construed to require a holder to provide video service outside its wireline footprint or to match the existing cable franchise territory of any cable provider.

5900. (a) The holder of a state franchise shall comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of the Government Code, and any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the Legislature. All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) The holder of a state franchise shall comply with provisions of Section 637.5 of the Penal Code and the privacy standards contained in Section 631 of the federal Cable Act (47 U.S.C. Sec. 551 et. seq.).

(c) The local entity shall enforce all of the customer service and protection standards of this section with respect to complaints received from residents within the local entity's jurisdiction, but it may not adopt or seek to enforce any additional or different customer service or other performance standards under Section 53055.3 or subdivision (q), (r), or (s) of Section 53088.2 of the Government Code, or any other authority or provision of law.

(d) The local entity shall, by ordinance or resolution, provide a schedule of penalties for any material breach by a holder of a state franchise of this section. No monetary penalties shall be assessed for a material breach if it is out of the reasonable control of the holder. Further, no monetary penalties may be imposed prior to January 1, 2007. Any schedule of monetary penalties adopted pursuant to this section shall in no event exceed five hundred dollars ($500) for each day of each material breach, not to exceed one thousand five hundred dollars ($1,500) for each occurrence of a material breach. However, if a material breach of this section has occurred, and the local entity has provided notice and a fine or penalty has been assessed, and if a subsequent material breach of the same nature occurs within 12 months, the penalties may be increased by the local entity to a maximum of one thousand dollars ($1,000) for each day of each material breach, not to exceed three thousand dollars ($3,000) for each occurrence of the material breach. If a third or further material breach of the same nature occurs within those same 12 months, and the local entity has provided notice and a fine or penalty has been assessed, the penalties may be increased to a maximum of two thousand five hundred dollars ($2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars ($7,500) for each occurrence of the material breach. With respect to video providers subject to a franchise or license, any monetary penalties assessed under this section shall be reduced dollar-for-dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures, and no other monetary damages may be assessed.

(e) The local entity shall give the video provider written notice of any alleged material breaches of the consumer service standards of this division and allow the video provider at least 30 days from receipt of the notice to remedy the specified material breach.

(f) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day within the jurisdiction of each local entity, following the expiration of the period specified in subdivision (e), that any material breach has not been remedied by the video provider, irrespective of the number of customers affected.

(g) Any penalty shall be provided to the local entity who shall submit one-half of the penalty to the Digital Divide Account established in Section 280.5.

(h) Any interested person may seek judicial review of a decision of the local entity in a court of appropriate jurisdiction. For this purpose, a court of law shall conduct a de novo review of any issues presented.

(i) This section shall not preclude a party affected by this section from utilizing any judicial remedy available to that party without regard to this section. Actions taken by a local legislative body, including a local franchising authority, pursuant to this section shall not be binding upon a court of law. For this purpose, a court of law shall conduct de novo review of any issues presented.

(j) For purposes of this section, "material breach" means any substantial and repeated failure of a video service provider to comply with service quality and other standards specified in subdivision (a).

(k) The Division of Ratepayer Advocates shall have authority to advocate on behalf of video customers regarding renewal of a state-issued franchise and enforcement of Sections 5890, 5900, and 5950. For this purpose, the division 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.

5910. (a) The holder of a state franchise shall perform background checks of applicants for employment, according to current business practices.

(b) A background check equivalent to that performed by the holder shall also be conducted on all of the following:

(1) Persons hired by a holder under a personal service contract.

(2) Independent contractors and their employees.

(3) Vendors and their employees.

(c) Independent contractors and vendors shall certify that they have obtained the background checks required pursuant to subdivision (f), and shall make the background checks available to the holder upon request.

(d) Except as otherwise provided by contract, the holder of a state franchise shall not be responsible for administering the background checks and shall not assume the costs of the background checks of individuals who are not applicants for employment of the holder.

(e) (1) Subdivision (a) only applies to applicants for employment for positions that would allow the applicant to have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(2) Subdivision (b) only applies to persons that have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(f) This section does not apply to temporary workers performing emergency functions to restore the network of a holder to its normal state in the event of a natural disaster or an emergency that threatens or results in the loss of service.

5920. (a) A holder of a state franchise employing more than 750 total employees in California shall annually report to the commission all of the following:

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

(2) The percentage of the holder's total domestic workforce, calculated on a full-time or full-time equivalent basis.

(3) The types and numbers of jobs by occupational classification held by residents of California employed by holders of state franchises 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 holder, calculated on a full-time or full-time equivalent basis, when the holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor, company, or consultant that are personally providing services to the holder, and does not apply to employees of an independent contractor, company, or consultant not personally performing services for the holder.

(4) The number of net new positions proposed to be created directly by the holder of a state franchise during the upcoming year by occupational classifications and by category of full-time, part-time, temporary, and contract employees.

(b) The commission shall annually report the information required to be reported by holders of state franchises pursuant to subdivision (a), to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet Web site.

5930. (a) Notwithstanding any other provision of this division, 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.

(b) When an incumbent cable operator is providing service under an expired franchise or a franchise that expires before January 2, 2008, the local entity may extend that franchise on the same terms and conditions

through January 2, 2008. A state franchise issued to any incumbent cable operator shall not become operative prior to January 2, 2008.

(c) When a video service provider that holds a state franchise provides the notice required pursuant to subdivision (m) of Section 5840 to a local entity, the local franchising entity may require all incumbent cable operators to seek a state franchise and shall terminate the franchise issued by the local franchising entity when the commission issues a state franchise for the video service provider that includes the entire service area served by the video service provider and the video service provider notifies the local entity that it will begin providing video service in that area under a state franchise.

5940. The holder of a state franchise under this division who also provides stand-alone, residential, primary line, basic telephone service shall not increase this rate to finance the cost of deploying a network to provide video service.

5950. The commission shall not permit a telephone corporation that is providing video service directly or through its affiliates pursuant to a state-issued franchise as an incumbent local exchange carrier to increase rates for residential, primary line, basic telephone service above the rate as of July 1, 2006, until January 1, 2009, unless that telephone corporation is regulated under rate of return regulation. However, the commission may allow rate increases to reflect increases in inflation as shown in the Consumer Price Index published by the Bureau of Labor Statistics. This section does not affect the authority of the commission to authorize an increase in rates for basic telephone service that is bundled with other services and priced as a bundle. Nothing in this section is intended to prohibit implementation of commission decision D. 06-04-071 to the extent it has not been implemented prior to July 1, 2006.

5960. (a) For purposes of this section, “census tract” has the same meaning as used by the United States Census Bureau, and “household” has the same meaning as specified in Section 5890.

(b) Every holder, no later than April 1, 2008, and annually no later than April 1 thereafter, shall report to the commission on a census tract basis the following information:

(1) Broadband Information:

(A) The number of households to which the holder makes broadband available in this state. If the holder does not maintain this information on a census tract basis in its normal course of business, the holder may reasonably approximate the number of households based on information it keeps in the normal course of business.

(B) The number of households that subscribe to broadband that the holder makes available in this state.

(C) Whether the broadband provided by the holder utilizes wireline-based facilities or another technology.

(2) Video Information:

(A) If the holder is a telephone corporation:

(i) The number of households in the holder’s telephone service area.

(ii) The number of households in the holder's telephone service area that are offered video service by the holder.

(B) If the holder is not a telephone corporation:

(i) The number of households in the holder's video service area.

(ii) The number of households in the holder's video service area that are offered video service by the holder.

(3) Low-Income Household Information:

(i) The number of low-income households in the holder's video service area.

(ii) The number of low-income households in the holder's video service area that are offered video service by the holder.

(c) The commission, no later than July 1, 2008, and annually no later than July 1 thereafter, shall submit to the Governor and the Legislature a report that includes based on year-end data, on an aggregated basis, the information submitted by holders pursuant to subdivision (b).

(d) All information submitted to the commission and reported by the commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Section 583. No individually identifiable customer information shall be subject to public disclosure.

5970. Subject to the requirements of this division, a state franchise may be transferred to any successor in interest of the holder to which the certificate originally is granted, whether this transfer is by merger, sale, assignment, bankruptcy, restructuring, or any other type of transaction, provided that the following conditions are met:

(a) The transferee submits to the commission all of the information required by this division of an applicant.

(b) The transferee agrees that any collective bargaining agreement entered into by a video service provider shall continue to be honored, paid, or performed to the same extent as would be required if the video service provider continued to operate under its franchise for the duration of that franchise unless the duration of that agreement is limited by its terms or by federal or state law.

SEC. 4. Section 107.7 of the Revenue and Taxation Code is amended to read:

107.7. (a) When valuing possessory interests in real property created by the right to place wires, conduits, and appurtenances along or across public streets, rights-of-way, or public easements contained in either a cable franchise or license granted pursuant to Section 53066 of the Government Code (a "cable possessory interest") or a state franchise to provide video service pursuant to Section 5840 of the Public Utilities Code (a "video possessory interest"), the assessor shall value these possessory interests consistent with the requirements of Section 401. The methods of valuation shall include, but not be limited to, the comparable sales method, the income method (including, but not limited to, capitalizing rent), or the cost method.

(b) (1) The preferred method of valuation of a cable television possessory interest or video service possessory interest by the assessor is capitalizing the annual rent, using an appropriate capitalization rate.

(2) For purposes of this section, the annual rent shall be that portion of that franchise fee received that is determined to be payment for the cable television possessory interest or video service possessory interest for the actual remaining term or the reasonably anticipated term of the franchise or license or the appropriate economic rent. If the assessor does not use a portion of the franchise fee as the economic rent, the resulting assessments shall not benefit from any presumption of correctness.

(c) If the comparable sales method, which is not the preferred method, is used by the assessor to value a cable possessory interest or video service possessory interest when sold in combination with other property including, but not limited to, intangible assets or rights, the resulting assessments shall not benefit from any presumption of correctness.

(d) Intangible assets or rights of a cable system or the provider of video services are not subject to ad valorem property taxation. These intangible assets or rights, include, but are not limited to: franchises or licenses to construct, operate, and maintain a cable system or video service system for a specified franchise term (excepting therefrom that portion of the franchise or license which grants the possessory interest), subscribers, marketing, and programming contracts, nonreal property lease agreements, management and operating systems, a work force in place, going concern value, deferred, startup, or prematurity costs, covenants not to compete, and goodwill. However, a cable possessory interest or video service possessory interest may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the cable possessory interest or video service possessory interest to beneficial or productive use in an operating cable system or video service system.

(e) Whenever any change in ownership of a cable possessory interest or video service possessory interest occurs, the person or legal entity required to file a statement pursuant to Section 480, 480.1, or 480.2, shall, at the request of the assessor, provide as a part of that statement the following, if applicable: confirmation of the sales price; allocation of the sales price among the counties; and gross revenue and franchise fee expenses of the cable system or video service system by county. Failure to provide this information shall result in a penalty as provided in Section 482, except that the maximum penalty shall be five thousand dollars ($5,000).

SEC. 5. (a) It is the intent of the Legislature that video service providers shall pay as rent a franchise fee to the local entity in which service is being provided for the continued use of streets, public facilities, and other rights-of-way of the local entity in order to provide service.

(b) It is the intent of the Legislature that securing a state franchise by a cable television operator or video service provider pursuant to this act shall not affect the existing requirements governing the valuation of possessory interests as set forth in Section 107.7 of the Revenue and Taxation Code. Furthermore, nothing in this act shall be construed to change the existing

jurisdiction of the State Board of Equalization and county assessors with respect to the assessment of these properties for property tax purposes.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

Appendix B

General Order XXX
Implementing The Digital Infrastructure and
Video Competition Act of 2006 (DIVCA)

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Appendix A Application

Appendix B Video Franchise Certificate

I. Definitions

A. "Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

B. "Applicant" means any person or entity that files an Application seeking 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 or amendment 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.[1]

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).[2]

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

[2] Id. at § 5830(a). The Federal Communications Commission currently uses the term "broadband" and "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9,

F. "Census Tract" has the same meaning as used by the U.S. Census Bureau.[3]

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.[4]

I. "DIVCA" means the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).[5]

J. "DRA" means the Division of Ratepayer Advocates.

K. "Effective Date of this General Order" means January 2, 2007 or the date when this Order is adopted, whichever is later.

L. "Household" means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.[6] Separate living quarters are those in which the occupants live and eat separately from any other persons in building and which have direct access from the outside of the building or through a common hall.[7]

M. "Incumbent Cable Operator" means a cable operator or open-video system serving subscribers under a franchise in

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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.

[3] CAL. PUB. UTIL. CODE at § 5960(a).

[4] Id. at § 5890(b)(3).

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

[6] Id. at § 5890(j)(1).

[7] Id.

a particular city, county, or city and county franchise area on January 1, 2007.[8]

N. "Local Entity" means any city, county, city and county, or joint powers authority within the state within whose jurisdiction a State Video Franchise Holder may provide Video Service.[9]

O. "Low-Income Household" means a residential Household where the average annual Household income is less than $35,000, as based on U.S. Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.[10]

P. "State Video Franchise" means a franchise issued pursuant to DIVCA.[11]

Q. "State Video Franchise Holder" means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.[12]

R. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.

S. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § 234.

T. "User Fee" means the fee paid to the Commission quarterly by each Holder pursuant to Public Utilities Code § 442(a).

U. "Video Service" means video programming services, cable service, or open-video system service provided through facilities located at least in part in public rights-of-way

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[8] Id. at § 5830(j).

[9] Id. at § 5830(k).

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

[11] Id. at § 5830(p).

[12] Id. at § 5830(i).

without regard to delivery technology, including Internet protocol or other technology. This definition does not include (1) any video programming provided by a commercial mobile service provider defined in Section 322(d) of Title 47 of the United States Code, or (2) video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.[13]

V. "Video Service Area" means the area proposed to be served under a State Video Franchise.

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

II. Purpose of the General Order

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

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;

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[13] Id. at § 5830(s).

[14] Id. at § 5830(t).

E. Complement efforts to increase investment in Broadband infrastructure and close the digital divide;

F. Continue access to and maintenance of public, education, and government (PEG) channels; and

G. Maintain all existing authority of the Commission as established by state and federal statutes.[15]

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

We also recognize that the Legislature found that the public interest is best served when sufficient funds are appropriated to the Commission to provide adequate staff and resources to appropriately and timely process applications of Video Service Providers and to ensure full compliance with the requirements of Division 2.5 of the Public Utilities Code.[16] Accordingly, the General Order assesses fees that will ensure that our video franchising operations are adequately funded and staffed.

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

A. The Commission's Role in Processing Applications

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

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

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[15] CAL. PUB. UTIL. CODE §§ 5810(2)(A)-(G).

[16] Id. at § 401(a).

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

[18] Id. at §§ 5840(c),(g).

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

B. Applications for New Franchises

To facilitate Commission design of build-out requirements, any Applicant that alone or together with its Affiliates has fewer than 1,000,000 telephone customers shall provide the Commission written notice of its intent to apply for a State Video Franchise within three months of its expected Application date.

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

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

C. Applicants with Existing Franchises

1. Eligibility Conditions

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

2. Franchise Effectiveness Date

In no case shall a State Video Franchise issued to an Incumbent Cable Operator for a service area in which it has an existing local franchise become

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[19] Id. at § 5840(c).

[20] Id. at § 5840(g).

[21] Id. at § 5840(o).

effective prior to January 2, 2008.[22] Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise may choose to renew the local franchise or seek a State Video Franchise. If an Incumbent Cable Operator's franchise expires before January 2, 2008, it can apply for a State Video Franchise that begins on January 2, 2008. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the State Video Franchise is effective.[23]

3. Terms of Service Offered

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

An Incumbent Cable Operator that is also a Telephone Corporation with less than 1,000,000 telephone customers in California and is providing video service in competition with another Incumbent Cable Operator shall be required to continue providing Video Service only in the areas in which it provided Video Service as of January 1, 2007.[25]

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

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

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[22] Id. at § 5930(b).

[23] Id. at § 5930(b).

[24] Id. at § 5840(p).

[25] Id. at § 5840(p).

[26] Id. at § 5930(c).

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

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

IV. Application Process for a State Video Franchise

A. Steps for Obtaining a State Video Franchise

1. Step 1: Complete the Application for a State Video Franchise[28] (Appendix A to the General Order)

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

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.[29] To meet this requirement, the Applicant shall submit

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[27] Id. at § 5930(a).

[28] Id. at § 5840(e).

[29] Id. at § 5840(e)(9).

a copy of a fully executed bond in the amount of $100,000 per 20,000 households in its proposed video service area. The amount of the bond under any circumstances shall not be less than $100,000 or more than $500,000. The bond shall list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

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.[30]

2. Step 2: Application Submission Requirements

a) Submit Completed Application to the Commission[31]

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

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

An Applicant shall concurrently deliver a copy of its Application to the appropriate contact person for each Local Entity where the Applicant will provide service.[32]

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

The Commission shall review the Application and determine whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.[33]

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[30] Id. at § 5840(c).

[31] Id. at § 5840(a).

[32] Id. at § 5840(e)(1)(D).

[33] Id. at § 5840(h)(1).

4. Step 4: Notification Regarding Application Status

The Commission, acting through the Executive Director, shall notify the Applicant and affected Local Entities[34] as to whether the Application is complete or incomplete before the thirtieth calendar day after the Applicant submits the Application.[35]

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.[36]

The Commission's notice of an incomplete Application to Applicants and affected Local Entities will include a statement specifying with particularity which items are incomplete and a statement permitting the Applicant to amend the Application.[37] There is no fee associated with such amendments.

The Commission shall have 30 calendar days from the date an incomplete Application is amended and submitted to the Commission to determine its completeness.[38]

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

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

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

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[34] The Commission will use the local authority contact information provided by the Applicant in the Application.

[35] CAL. PUB. UTIL. CODE § 5840(h)(1).

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

[37] Id. at § 5840(h)(3).

[38] Id.

determination that an Application is complete.[39] The form used to issue a State Video Franchise is found in Appendix B of the General Order.

B. Failure of Commission to Act on Application

If the Commission fails to notify the Applicant of the completeness or incompleteness of the Applicant's Application before the forty-fourth calendar day after receipt of an Application, the Commission's inaction shall be deemed to constitute issuance of the State Video Franchise, with no further action required on behalf of the Applicant.[40]

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(c), 5840(d), 5840(o), 5930(a), 5930(b), and 5930(c).

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

C. Protests to State Video Franchise Applications Disallowed

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

V. 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, including a State Video Franchise obtained from transfer of an existing State Video Franchise, if that person or corporation is in violation of any final nonappealable order relating to either the Cable Television and Video Providers Customer Service and Information Act (Cal. Govt. Code §§ 53054 et seq.) or the Video Customer Service Act (Cal. Govt. Code §§ 53088 et seq.).[41]

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

A. Authorization to Offer Service

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[39] Id. at § 5840(h)(2).

[40] Id. at § 5840(h)(4).

[41] CAL. PUB. UTIL. CODE § 5840(d).

1. Grants of Authority

It is unlawful to provide Video Service without a state or locally issued franchise.[42] The issuance of a State Video Franchise represents the Commission's determination that an Applicant has satisfied the statutory requirements pursuant to DIVCA to offer Video Service. The document in which the Commission memorializes the issuance of a State Video Franchise serves as proof of the Commission's grant of authority to provide Video Service, but does not itself constitute authority to offer Video Service.

Each State Video Franchise issued by the Commission includes (1) a grant of authority to provide Video Service in the Video Service Area as requested in the Application; (2) a grant of authority, in exchange for the franchise fee adopted under Public Utilities Code Section 5840(q), to use the public rights-of-way for the delivery of Video Service subject to the laws of California; and (3) a statement that the grant of the authority is subject to the lawful operation of the Video Service by the Applicant or its successor-in-interest.[43]

2. Duration of a State Video Franchise

A State Video Franchise is effective for ten years after the date of its issuance.[44]

B. State Video Franchise Obligations

1. Obligations Imposed by Statute

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

2. Enforcement of Obligations

A State Video Franchise is subject to suspension or revocation if a Video Service Provider fails to comply with the applicable requirements of Division 2.5 the Public Utilities Code.[45] In addition, the Commission shall not renew a State

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[42] Id. at § 5840(k).

[43] Id. at § 5840(i).

[44] Id. at § 5850(a).

[45] Id. at § 5890(g).

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.[46]

C. Amending a State Video Franchise

A State Video Franchise Holder may amend a State Video Franchise in order to reflect changes to its Video Service Area.[47]

1. Fee for Amending a State Video Franchise

There is no fee associated with such amendments to reflect changes in service territory, but in general, the Commission's amendment process tracks the State Video Franchise Application process as set forth below.[48]

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,[49] 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's Docket Office 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

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[46] Id. at § 5850 (d).

[47] Id. at § 5840(f).

[48] See id. at § 5840.

[49] Id. at § 5840(m)(6).

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

The Commission's failure to notify the State Video Franchise Holder of a supplemental Application's completeness or incompleteness before the forty-fourth calendar day after the receipt of a supplemental Application shall be deemed to constitute issuance of the amended franchise, so long as the State Video Franchise Holder is not statutorily ineligible for a new, renewed, or transferred State Video Franchise pursuant to DIVCA.

D. Transfer of a State Video Franchise

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

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

(1) Prior to the transfer, the transferee (successor-in-interest) submits to the Commission and all affected Local Entities all of the information required by this General Order of an initial Applicant for a State Video Franchise; and

(2) The transferee submits an affidavit stating that it agrees that any collective bargaining agreement entered into by the predecessor-in-interest State Video Franchise Holder shall continue to be honored, paid, or performed to the same extent as would be required if the predecessor-in-interest State Video Franchise Holder continued to operate for the duration of the State Video Franchise, unless the duration of the collective bargaining agreement is limited by its own terms or by state or federal law.[50]

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

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

E. Voluntary Termination of a State Video Franchise

A State Video Franchise Holder may terminate its State Video Franchise by submitting at least 90 days' prior written notice to the Commission, affected Local Entities, and all of its customers.[51]

Within 14 business days after termination of a State Video Franchise, the State Video Franchise Holder shall inform the Commission and the affected Local Entities of the number of customers in the service area of the State Video Franchise being terminated; and the method by which customers were notified of the termination, including a copy of such customer notice.[52]

F. Miscellaneous Changes

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

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[50] Id. at §§ 5840(l), 5970.

[51] Id. at § 5840(j).

[52] Id. at § 5840(m)(5).

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the State Video Franchise Holder, including but not limited to a merger, acquisition, or reorganization;

(2) A change in the State Video Franchise Holder's legal name or the adoption of, or change to, an assumed business name. Notification to the Commission shall consist of a certified copy of either of the following: (a) the proposed amendment to the State Video Franchise, or (b) the certificate of assumed business name; or

(3) A change in the State Video Franchise Holder's principal business address or the name or business address of the person authorized to receive notice on behalf of the State Video Franchise Holder.[53]

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 specifies, to enable the Commission to determine the User Fee pursuant to Public Utilities Code § 441.[54]

Any Video Service Provider required to submit information and reports pursuant to Article 4 to Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code, in lieu thereof, 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.[55]

B. Annual Employment Reports

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[53] Id. at § 5840(m).

[54] Id. at § 443(a).

[55] Id. at § 443(b).

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

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

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

(2) The percentage of the State Video Franchise Holder's total domestic workforce that resides in California, calculated on a full-time or full-time equivalent basis.

(3) The types and numbers of jobs by occupational classification held by residents of California employed by State Video Franchise Holders and the average pay and benefits of those jobs and, separately, the number of out-of-state residents employed by independent contractors, companies, and consultants hired by the State Video Franchise Holder, calculated on a full-time or full-time equivalent basis, when the State Video Franchise Holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor, company, or consultant that are personally providing services to the State Video Franchise Holder, and does not apply to employees of an independent contractor, company, or consultant not personally performing services for the State Video Franchise Holder.

(4) The number of net new positions proposed to be created directly by the State Video Franchise Holder during the upcoming year by occupational classifications and by category of full-time, part-time, temporary, and contract employees.[56]

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

2. Commission Reports to Legislative Committees

The Commission shall annually report the information required to be reported by State Video Franchise Holders pursuant to Rule VII.B.1 to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet website.[57]

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[56] Id. at § 5920(a).

[57] Id. at § 5920(b).

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 and DRA annual information on a Census Tract basis 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, pursuant to the guidelines established in Appendix D and Appendix E of R.[XX-XX-XX]:[58]

(1) Broadband Information:[59]

(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 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.[60]

(b) The number of Households in each Census Tract that subscribe to Broadband that the State Video Franchise Holder makes available in this state.

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[58] For example, the first report filed April 1, 2008 would be for calendar year 2007 (January to December 2007).

[59] CAL. PUB. UTIL. CODE § 5960(b)(1).

[60] 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.

(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[61]

(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 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[62]

(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

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[61] Id. at § 5960(b)(2).

[62] Id. at § 5960(b)(3).

offered Video Service by the State Video Franchise Holder.

In accordance with Appendix E of R.[XX-XX-XX], State Video Franchise Holders shall utilize data based on U.S. Census Bureau estimates adjusted annually to reflect rates of changes and distribution through January 1, 2007 to determine the number of Low-Income Households.

In accordance with Appendix E of R.[XX-XX-XX], State Video Franchise Holders shall utilize data based on U.S. Census Bureau estimates adjusted annually to reflect rates of changes and distribution through January 1 after the conclusion of each annual reporting period.

If a State Video Franchise is transferred to a successor-in-interest of the State Video Franchise Holder to which the certificate originally is granted, the transferee shall submit to the Commission of the information required by Public Utilities Code Section 5960.[63]

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.[64]

All information submitted to the Commission and reported by the Commission pursuant to this section shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.[65] No individually identifiable customer information shall be subject to public disclosure.[66]

D. Information on Service to Community Centers

A State Video Franchise Holder or its Affiliates with more than 1,000,000 telephone customers in California shall report annual information, as of

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[63] Id. at § 5970(a).

[64] Id. at § 5960(c).

[65] Id. at § 5960(d).

[66] Id.

January 1 of the year in which its State Video Franchise is granted and each year thereafter, on the extent to which the State Video Franchise Holder makes Video and Broadband Service available at no cost to Community Centers in underserved areas, as determined by the State Video Franchise Holder. The reports shall include the following information:

(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.[67]

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

E. Annual Reports on Collective Bargaining

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

G. Workplace Diversity Reports

If a State Video Franchise Holder declines to provide workplace diversity data equivalent to that of other California Utilities Diversity Council members, the State Video Franchise Holder shall provide the Commission a concurrent copy of all future Employment Information Report EEO-1 filings when it submits these filings to the federal Department of Labor. If they are multi-establishment employers, State Video Franchise Holders subject to this requirement shall provide the Commission EEO-1 reports that describe workplace diversity of both the parent company and its California Affiliates.

F. Additional Information

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

(END OF APPENDIX B)

[67] Id. at § 5890(b)(3).

ATTACHMENT A
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General Order XXX
Implementing The Digital Infrastructure and Video Competition Act of 2006 (DIVCA)

ATTACHMENT A

ATTACHMENT A

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

Definitions for the purposes of this Application:

A. "Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

B. "Applicant" means any person or entity that files an application seeking 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 amend 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.[1]

E. "Area" means a set of contiguous (i) collections of census block groups or (ii) regions that are mapped using geographic information system technology.

F. "Broadband" or "Broadband Service" means any service defined as Broadband, or having advanced telecommunications capability, in the most recent Federal Communications Commission inquiry pursuant to Section 706 of the Telecommunications Act of 1996 (P.L. 104-104).[2]

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

[2] Id. at § 5830(a). The Federal Communications Commission currently uses the term "broadband" and "advanced telecommunications capability" to describe services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. FEDERAL COMMUNICATIONS COMMISSION, AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITY IN THE UNITED STATES, FOURTH REPORT TO CONGRESS, FCC 04-208, 10 (Sept. 9,

G. "Census Block Group" has the same meaning as used by the U.S. Census Bureau.

H. "Census Tract" has the same meaning as used by the U.S. Census Bureau.[3]

I. "Commission" means the Public Utilities Commission.

J. "Company" means the Applicant and its Affiliates.

K. "DIVCA" means Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (Ch. 700, Stats. 2006).[4]

L. "Household" means, consistent with the U.S. Census Bureau, a house, apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters.[5] 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.[6]

M. "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.[7]

N. "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.[8]

O. "State Video Franchise" means a franchise issued pursuant to DIVCA.[9]

P. "State Video Franchise Holder" means a person or group of persons that has been issued a State Video Franchise from the Commission pursuant to Division 2.5 of DIVCA.[10]

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

[3] CAL. PUB. UTIL. CODE at § 5960(a).

[4] In this Application, all further references to Public Utilities Code sections are to those sections adopted or amended in DIVCA.

[5] Id. at § 5890(j)(1).

[6] Id.

[7] Id. at § 5830(k).

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

[9] Id. at § 5830(p).

[10] Id. at § 5830(i).

Q. "Telephone Service Area" means the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity to provide telephone service.

R. "Telephone Corporation" means a telephone corporation as defined in Public Utilities Code § Section 234.

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.[11]

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.[12]

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):

_____

3. Applicant's full legal name:

_____

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

_____

[11] Id. at § 5830(s).

[12] Id. at § 5830(t).

5. Legal name and contact information of Applicant's parent companies, including the ultimate parent:

Parent's Full Legal Name: _____

Address: _____

_____

Phone: _____

Parent's Full Legal Name: _____

Address: _____

_____

Phone: _____

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.

Build-Out Information

Answer questions 9 through 11 only if the Applicant or one of its Affiliates is a Telephone Corporation. Other Applicants should go to Question 13.

9. Does the Applicant alone or together with its affiliates have more than 1,000,000 telephone customers in California?

   ☐ Yes ☐ No

10. Does the Video Service Area include areas outside of the Telephone Service Area of the Applicant and its Affiliates?

    ☐ Yes ☐ No

11. Excluding direct-to-home satellite, is Video Service currently offered by another Video Service Provider in the Video Service Area proposed in this Application?

    ☐ Yes ☐ No

Existing Local Cable or Video Franchise Holder Information

Answer Question 12 only Applicant or its Affiliates is not an existing local cable or video franchise holder.

12. Does the Applicant alone or together with its Affiliates currently hold a local franchise, or has the Applicant 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

13. 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 Census Block Groups, or
    b. A geographic information system digital boundary meeting or exceeding national map accuracy standards.

    - *If Applicant chooses "a," then download and complete the electronic template available at http://www.cpuc.ca.gov/video/application .*
    - *If Applicant chooses "b," then submit the geographic information system digital boundary in digital format and on a CD to the Commission.*

14. Provide, as detailed below, a description of the socioeconomic status information of residents within the Video Service Area to be served pursuant to a State Video Franchise.

- *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 eligible for Video Service offered by the Company.

15. 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.*

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 eligible for Video Service offered by the Company.

16. 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 Area in the Video Service Area.

Financial, Legal, and Technical Qualifications

17. Attach to this Application, as Appendix C, a copy of a fully executed bond in the amount of $100,000 per 20,000 households in the Video Service Area, with a $100,000 minimum and a $500,000 maximum. The bond must list the Commission as obligee and be issued by a corporate surety authorized to transact a surety business in California.

Local Entity Contact Information

18. 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

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

Affidavit

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

A COMPLETE APPLICATION MUST INCLUDE:

- ☐ **Completed Application form**
- ☐ **CD(s) containing template(s) and data from the Commission website**
- ☐ **Appendix A**
- ☐ **Appendix B**
- ☐ **Appendix C**
- ☐ **Check in the amount of $2,000**
- ☐ **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 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 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 California Public Utilities Code § 5860(a) to the Local Entity.
4. Applicant will provide public, educational, and governmental access channels and the required funding as required by Public Utilities Code § 5870.

APPENDIX A

5. Applicant and any and all of its Affiliates' operations in California now and in the future shall be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940. Applicant specifically attests to the following:

    a. Reporting Requirements: Either (i) Applicant or (ii) the parent company of Applicant shall produce Commission-mandated reports for and on behalf of Applicant and any and all its Affiliates that operate in California.

    b. Antidiscrimination:

        i. If Applicant and its Affiliates together have more than one million telephone customers in California, Applicant shall satisfy the build-out requirements set forth in Public Utilities Code § 5890(b) & (e).

        ii. If Applicant and its Affiliates together have less than one million telephone customers in California, Applicant shall satisfy any build-out requirements established pursuant in Public Utilities Code § 5890(c).

    c. Cross-subsidization: Applicant refrains from using any rate increase of its or its Affiliates' basic telephone service offerings to reduce costs of Applicant's video service offerings.

    d. "Affiliate," as referenced herein, means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

6. Applicant shall fulfill all other requirements imposed by the Digital Infrastructure and Video Competition Act.

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

APPENDIX A

SUBSCRIBED AND SWORN to before me on the _____ day of _____ ,20____.

Notary Public In and For the State of _____.

My Commission expires: _____

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[1] _____
(attach additional sheets if necessary)

Issued at San Francisco this _____Day of _____, 20_____.

_____
Signed

[1] 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 A)

Appendix C: Entities Qualified to Become a State Video Franchise Holder

In the application certification required by Public Utilities Code § 5840(e)(1)(B), the applicant shall attest that any and all of its Affiliates' operations in California now and in the future will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940. This attestation shall include a commitment to fulfill the following obligations:

1. **Reporting requirements**: Either (a) the applicant or (b) the parent company of the applicant produces Commission-mandated reports for and on behalf the applicant of any and all of its Affiliates that operate in California.

2. **Antidiscrimination**:

    a. If the applicant and its Affiliates together have more than one million telephone customers in California, the applicant satisfies the build-out requirements set forth in Public Utilities Code § 5890(b) & (e).

    b. If the applicant and its Affiliates together have less than one million telephone customers in California, the applicant satisfies any build-out requirements established pursuant in Public Utilities Code § 5890(c).

3. **Cross-subsidization**: The applicant refrains from using any rate increase of its or its Affiliates' basic telephone service offerings to reduce costs of the applicant's video service offerings.

All General Order and decision references to requirements imposed on a state video franchise "holder" assume that the state video franchise holder is meeting the conditions stated above.

"Affiliate" means any company 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a state video franchise holder or any of its subsidiaries, or by that state video franchise holder's controlling corporation and/or any of its subsidiaries as well as any company in which the state video franchise holder, its controlling corporation, or any of the state video franchise holder's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

Appendix D: "Census Tract Basis" Reporting for Availability Data

This Appendix describes technical requirements for broadband and video availability reports. We recognize that some video service providers may keep records that match their potential customers' addresses with Census Block Groups, while others may catalog these addresses in alternate formulations that do not nest neatly within Census Tracts. For the latter, inherent imprecision is introduced when smaller groupings of spatial data are aggregated into larger Census Tracts.[1] This imprecision must be balanced with the need to maintain appropriate and consistent levels of detailed information required for informing our policy decisions. This Appendix, therefore, adopts standards for availability data reporting on a "census tract basis."

Applicants and state video franchise holders are deemed to have submitted availability data on a "census tract basis" if the following standards and conditions are fulfilled:

1. Broadband and video data is reported to the Commission in the template(s) created by the Commission, if the Commission's public website provides the template(s) for applicants' or state video franchise holders' use.

2. Broadband and video data is collected either on the basis of:

    a. Current Census Block Groups: Census Block Groups at the most recent U.S. Census.

    b. Alternate Geospatial Areas: Geospatial areas that (i) contain on average no more housing units than the average Current Census

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[1] Commonly referred to as the Modifiable Area Unit Problem. See S. Openshaw and S. Alvandies, *Applying Geocomputation to the Analysis of Spatial Distributions*, *in* 1 GEOGRAPHIC INFORMATION SYSTEMS: PRINCIPLES AND TECHNICAL ISSUES (P. Longley et al. eds., 2nd ed. 1999); C. Armhein, *Searching for the Elusive Aggregation Effect: Evidence from Statistical Simulations*, 27 ENV'T & PLAN. 105 (Jan. 1995).

Block Group in California and (ii) under no circumstances are greater than 1,000 housing units.[2]

3. Where Census Tract data provided to the Commission is wholly based upon data that is collected either by (i) Current Census Block Groups or (ii) Alternate Geospatial Areas that are entirely contained within a single Census Tract at the most recent U.S. Census (Current Census Tract), the video service provider shall produce the Current Census Tract number and associated broadband and video data. The video service provider also shall indicate that the data reported falls entirely within a single Current Census Tract (e.g., Aggregate_Flag = 1).

4. Where Census Tract data provided to the Commission is based upon data that is not collected by areas that are entirely contained within a single Current Census Tract, the video service provider must provide the Commission the following information for each Current Census Tract:

    a. The Census Tract number.

    b. Broadband and video data for households in the Census Tract. Broadband and video data shall be assigned to Census Tracts by consistently using one of the two following methods:

        i. An Alternate Geospatial Area is assigned to a Current Census Tract if that Tract contains the mean population weighted geographic center of Census Block Nodes falling within the Alternate Geospatial Area.

        ii. An Alternate Geospatial Area is assigned to a Census Tract if that Tract contains the highest population of summed Census Block Nodes falling within the Alternate Geospatial Area.

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[2] A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as a separate living quarters, or if vacant, intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building and that have direct access from outside the building or through a common hall.

c. A field indicating of method of choice for associating data with the Census Tract (e.g., aggregate_method = '1' for mean weighted center method, aggregate_method = '2' for highest population method).

d. A field indicating the number of Alternate Geospatial Areas that cross over the boundaries of the Census Tract (e.g., Aggregate_Flag = 2 for a Census Tract that contains two Alternate Geospatial Areas that fall within more than one Census Tract; Aggregate_Flag = 3 for a Census Tract that contains three Alternate Geospatial Areas that fall within more than one Census Tract).

e. A field indicating the summed population of all Census Block Nodes contained within Alternate Geospatial Areas that (i) fall within more than one Census Tract and (ii) are assigned to the Census Tract.

Appendix E: Data for Demographic Reporting Requirements

DIVCA requires state video franchise holders to submit demographic data on population and income distribution. These data shall be based upon projections from the most recent U.S. Census data.

A. Acceptable Sources of Demographic Data

Projections of U.S. Census data typically are not publicly available. To produce this required demographic data, state video franchise holders shall rely on data and projections from private vendors capable of producing reliable projections based on U.S. Census data. The fair, uniform, and consistent administration of DIVCA requires comparability among data sources. These data will be used by the Commission to assess compliance with a variety of DIVCA provisions.

By the date of the final order, the Commission shall compile a list of acceptable vendors from which it will accept demographic data. The Commission will post the list of acceptable vendors on its public website.

State video franchise holders that desire to submit data from a vendor not on the Commission's list must first file a petition with the Commission that details the alternate vendor's comparability with the sources on the Commission's list. An alternate vendor may be used only if the state video franchise holder receives written permission to do so from Commission staff in the video franchise unit.

B. Calculation of Household Information

Pursuant to Public Utilities Code §§ 5840(e)(6) and 5960(b), video service providers must report, on a Census Tract basis, information on housing units in their service areas. The following approximations may be used in producing this data:

1. Number of Households in the Telephone Service Area: The video service provider compiles housing unit counts from individual Census Block Groups falling within its telephone service area. Housing unit counts by Census Block Group are then summed to produce Census Tract results.

2. Number of Households in the Video Service Area: The video service provider compiles individual housing unit counts from Census Block Groups falling within its video service area. Housing unit

counts by Census Block Group are then summed to produce Census Tract results.

3. Number of Low-Income Households in the Video Service Area: The video service provider compiles low-income housing unit counts from individual Census Block Groups falling within its video service area. Housing unit counts by Census Block Group then are summed to produce Census Tract results.

4. Number of Low-Income Households Offered Video Service: The video service provider multiplies (i) the total number of housing units it offers video service in a Census Block Group by (ii) the percentage of low-income housing units in the Census Block Group. The percentage of low-income housing units is calculated by dividing the number of low-income housing units (Item #3) by the total house units in a Census Block Group (Item #4). Census Block Group counts of low-income housing units offered video service then are then summed to produce Census Tract counts.

Appendix F: Budget for the Year 1 Video Franchising Program

California Public Utilities Commission
Video Franchise Program
Fiscal Year 2007-2008 Budget

Staff Classification	Salary Range/Month	Total (annual)
Program and Project Supervisor	$6,589-8,009	$87,588
Regulatory Analyst V (2)	$5,909-7,181	$157,080
Regulatory Analyst IV	$5,378-6,537	$71,490
Regulatory Analyst III	$4,897-5,954	$65,106
Research Program Specialist II	$5,134-6,239	$68,238
Research Analyst II	$4,467-5,431	$59,388
Staff Services Analyst—Gen. (2)	$2,724-4,300	$84,288
Office Technician—Typing	$2,598-3,157	$34,530
Associate Information Systems Analyst (0.5)	$4,467-5,431	$29,694
Total		**$657,402**

Staff Benefits	Total (annual)
OASDI	$40,000
Health Insurance	$42,000
Retirement	$109,000
Total	**$191,000**

TOTAL SALARY AND BENEFITS
$848,402

Appendix G: EEO-1 Form

Joint Reporting Committee

- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance Programs (Labor)

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO—1

Standard Form 100 (Rev. 3/97)

O.M.B. No. 3046-0007
EXPIRES 10/31/99
100-214

SAMPLE

Section A—TYPE OF REPORT

Refer to instructions for number and types of reports to be filed.

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX).

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:

(2) ☐ Consolidated Report (Required)
(3) ☐ Headquarters Unit Report (Required)
(4) ☐ Individual Establishment Report (submit one for each establishment with 50 or more employees)
(5) ☐ Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only) _____

Section B—COMPANY IDENTIFICATION (*To be answered by all employers*)

				OFFICE USE ONLY
1. Parent Company				
a. Name of parent company (owns or controls establishment in item 2) omit if same as label				a.
Address (Number and street)				b.
City or town	State		ZIP code	c.
2. Establishment for which this report is filed. (Omit if same as label)				
a. Name of establishment				d.
Address (Number and street)	City or Town	County	State	ZIP code	e.
b. Employer Identification No. (IRS 9-DIGIT TAX NUMBER)					f.

c. Was an EEO–1 report filed for this establishment last year? ☐ Yes ☐ No

Section C—EMPLOYERS WHO ARE REQUIRED TO FILE (*To be answered by all employers*)

☐ Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

☐ Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?

☐ Yes ☐ No 3. Does the company or any of its establishments (a) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60–1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to $50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?

If the response to question C–3 is yes, please enter your Dun and Bradstreet identification number (if you have one): ☐☐☐☐☐☐☐☐☐

NOTE: If the answer is yes to questions 1, 2, or 3, complete the entire form, otherwise skip to Section G.

Section D—EMPLOYMENT DATA

Employment at this establishment—Report all permanent full-time and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

JOB CATEGORIES		NUMBER OF EMPLOYEES										
			MALE					FEMALE				
		OVERALL TOTALS (SUM OF COL. B THRU K)	WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
		A	B	C	D	E	F	G	H	I	J	K
Officials and Managers	1											
Professionals	2											
Technicians	3											
Sales Workers	4											
Office and Clerical	5											
Craft Workers (Skilled)	6											
Operatives (Semi-Skilled)	7											
Laborers (Unskilled)	8											
Service Workers	9											
TOTAL	10											
Total employment reported in previous EEO-1 report	11											

NOTE: Omit questions 1 and 2 on the Consolidated Report.

1. Date(s) of payroll period used:

2. Does this establishment employ apprentices?
1 ☐ Yes 2 ☐ No

Section E—ESTABLISHMENT INFORMATION *(Omit on the Consolidated Report)*

1. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.)

OFFICE USE ONLY

g.

Section F—REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition of reporting units and other pertinent information.

Section G—CERTIFICATION *(See Instructions G)*

Check one
1 ☐ All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)
2 ☐ This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date

Name of person to contact regarding this report (Type or print)	Address (Number and Street)			
Title	City and State	ZIP Code	Telephone Number (Including Area Code)	Extension

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII.
WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001.

SAMPLE

Appendix H: Enforcement Actions Pursuant to DIVCA

PENALTIES

Action: **Revocation or Suspension of State Video Franchise Due to Noncompliance with Statutory Provision(s) Subject to Commission Regulation**

When: An informal investigation determines:

1) The state video franchise holder has failed to comply with any demand, ruling, or requirement of the Commission made pursuant to and within the authority of DIVCA; or

2) The state video franchise holder has violated any provision of DIVCA or any rule or regulation made by the Commission under and within the authority of this legislation; or

3) A fact or condition exists that, if it had existed at the time of the original application for the state franchise (or transfer or amendment thereof), reasonably would have warranted the Commission's refusal to issue the state video franchise originally (or grant the transfer or amendment thereof).

How: The Commission may initiate a license revocation or suspension proceeding through the vote of the Commission. This proceeding will include public hearings as discussed in this decision. Revocation or suspension of the state video franchise will require a Commission vote at a public meeting.

Who: All interested parties may participate in proceeding.

Action: **Revocation or Suspension of State Video Franchise Due to Pattern and Practice of Noncompliance with Statutory Provision(s) Subject to Local Entities' Regulation**

When: Following the opening of a license revocation or license suspension proceeding by the Commission into allegations that a video franchise holder has a pattern and practice of failing to comply with measures subject to local entities' regulation.

How: The Commission may initiate a proceeding to revoke or suspend a franchise through a vote of the Commission. The revocation proceeding will include public hearings. The proceeding will

include no new Commission investigation into the violations of provisions found by local entities or the courts. Revocation or suspension will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: Fine Levied

When: An informal investigation determines:

1) The state video franchise holder has failed to comply with any demand, ruling, or requirement of the Commission made pursuant to and within the authority of Public Utilities Code Section § 5890; or

2) The state video franchise holder has violated any provision of Public Utilities Code § 5890 or any rule or regulation made by the Commission under and within the authority of this Section.

How: For minor fines of less than $5,000, the Executive Director will provide public notice via the Commission Calendar and via written notice to the state video franchise holder of the Commission's intention to impose a minor fine of less than $5,000. Minor fines will be addressed through the Commission's resolution process.

For major fines, the Commission will open a formal investigation into alleged violations of DIVCA through a majority vote of the Commission at a public meeting. Such an investigation will include public hearings. Any fine of $5,000 or more will require the vote of the Commission at a public meeting.

Who: All interested parties may participate by providing comments on a proposed resolution or through participation in the formal investigation.

FORMAL INVESTIGATIONS

Action: **Investigations into Violations of Franchising Provisions**

When: The Commission alleges that applicant has failed to comply with DIVCA franchising requirements.

How: The Commission may initiate a formal investigation into violations of the franchising provisions through a majority vote of the Commission at a public meeting. The investigation will include public hearings as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: **Investigation into Antidiscrimination and Build-Out Provisions**

When: 1) In response to a formal complaint filed by a local entity; or
2) Following the opening of an informal Commission investigation.

How: The Commission may initiate a formal investigation into alleged violations of the franchising provisions through a majority vote of the Commission at a public meeting. The investigation will include public hearings. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: **Investigation into Reporting Requirements**

When:
1) In response to a formal complaint filed by a local entity for failure of franchise to submit a report relevant to enforcement of Public Utilities Code § 5890; or
2) Following the opening of an informal investigation by the Commission to enforce any reporting provision

How: The Commission may initiate a formal investigation into alleged violations of the reporting requirements through a majority vote of the Commission at a public meeting. The investigation will include public hearings as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: **Investigation into Violations of Cross-Subsidy Provisions Found in DIVCA**

When: Following the opening of an investigation by the Commission into allegations that a telecommunications utility is subsidizing video services with revenues from residential basic rates.

How: The Commission may initiate a formal investigation into alleged violations of the reporting requirements through a majority vote of the Commission at a public meeting. The investigation will include public hearings as discussed in this decision. The investigation will focus on the telecommunications utility and be conducted pursuant to telecommunications utility regulation as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting.

Who: All interested parties may participate in proceeding.

Action: **Investigation into Failure to Submit Required User Fees**

When: Following the opening of an informal investigation by the Commission into allegations that a video franchise holder has failed to submit required user fees on a timely basis.

How: The Commission may initiate a formal investigation into alleged failures to submit required regulatory fees by majority vote at a public meeting. The investigation will include public hearings as discussed in this decision. Any penalty will require the vote of the Commission at a public meeting. The Commission may pursue the collection of fees in a court of competent jurisdiction

Who: All interested parties may participate in proceeding.