

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
1/16/07 Chong Decision**

**PROPOSED DECISION OF COMMISSIONER CHONG  
(Mailed 1/16/2006)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA**

Rulemaking for Adoption of a General Order and  
Procedures to Implement the Digital  
Infrastructure and Video Competition Act of 2006.  
Rulemaking 06-10-005  
(Filed October 5, 2006)

**DECISION ADOPTING A GENERAL ORDER AND PROCEDURES  
TO IMPLEMENT THE DIGITAL INFRASTRUCTURE**

The following are the findings of fact and conclusions of law as they appear in the Chong order. Pages are numbered in accordance with the report

**Findings of Fact**

1. The Digital Infrastructure and Video Competition Act became effective January 1, 2007.
2. Preventing an incumbent cable operator in one service area from operating under a state video franchise in a new area would not promote widespread access to the most technologically advanced cable and video services in California.
3. The ability of a local entity to force an incumbent cable operator to agree to extra concessions during the time following the expiration of a local franchise but prior to when the incumbent may operate under a state video franchise would disadvantage incumbent cable operators over new entrants and create an unfair and unlevel playing field for market competitors.
4. Appropriate implementation of DIVCA, which is designed to create a fair and level playing field for all video service providers, requires the automatic

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

extension of local video franchises that (i) expire before January 2, 2008 and (ii) are held by incumbent cable operators planning to seek state video franchises.

5. Failure to allow state video franchise applications in advance of the expiration of local franchises would place incumbent cable operators in legal limbo during the time between expiration of their local franchises and issuance of their state video franchises.

6. It is reasonable and consistent with DIVCA's objectives to permit incumbent cable operators to apply for state video franchises before expiration of their local franchises.

7. Without further Commission action, the potential for evasion of statutory obligations increases through the holding of multiple state franchises via multiple entities.

8. Placing stipulations on when a video service provider is eligible to operate under a state video franchise will decrease the complexity of the application review process and reduce the potential for state video franchise holders to evade compliance with statutory obligations.

9. Stipulations placed on when a video service provider is eligible to operate under a state video franchise are relevant to implementation of statutory provisions concerning the cross-subsidization prohibition, build-out requirements and reporting obligations of DIVCA..

10. Without further Commission action, the Commission's ability to enforce build-out requirements could be impaired if a corporate family divides its video or telephone and video services among different operating entities in California.

11. Without further Commission action, the Commission's authority and ability to prevent subsidization of video services with telecommunications funds

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

pursuant to DIVCA could be challenged if a company divides its video and telecommunications services into two different operating entities.

12. Without further Commission action, it could be difficult, if not impossible, for the Commission to collect comprehensive broadband and video reports if a company separated its broadband operations from its video operations, or divided its video operations among multiple California entities

13. The proposal in R.06-10-005 to limit the award of a state video franchises to the parent company in a corporate family would be unduly burdensome.

14. It is necessary and reasonable to condition an applicant's eligibility for a state video franchise on its stipulating in its application affidavit that it and all its affiliates' California operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

15. The stipulations enumerated in Appendix C ensure that no state video franchise holder may evade DIVCA requirements due to the specific nature of its corporate structure.

16. It is reasonable to use as a definition of "affiliate" that set forth in R.92-08-008 and contained herein, because that definition is longstanding and commonly used in this forum.

17. R.92-08-008 states that "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

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

and/or indirectly have substantial financial interests in the company exercised through means other than ownership.

18. The Commission has found the definition of affiliate contained in R.92-08-008 as adequate for reporting purposed for some time.

19. It is reasonable to allow franchise applicants to describe their proposed video service area footprint as a collection of census block groups, or as a collection of blocks defined by a geographic information system digital boundary meeting or exceeding national map accuracy standards.

20. It is reasonable to define areas in the video service footprint as collections of touching census block groups or regions defined by geographic information system boundaries, because this definition provides adequate information about the footprint to the Commission and comports with common understanding of an "area."

21. It is reasonable to require a video franchise applicant to provide an expected date of deployment for each area in the video service footprint pursuant to the definition adopted herein, and accordingly to require the applicant to provide an expected date of deployment for the entirety of each noncontiguous grouping or region included in its proposed video service footprint.

22. In some cases, requiring the provision of deployment data at a greater level of granularity in the application could place some applicants at a competitive disadvantage to other applicants.

23. Data contained in the franchise application is not subject to confidentiality protections.

24. The Commission will receive deployment data at a high level of granularity through reports that a franchisee must submit. This data is subject to confidentiality protections consistent with Public Utilities Code § 583.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

25. Requiring applicants to provide deployment data in the application at a the level of detail adopted in the proposed General Order is reasonable in light of the fact that the Commission will obtain granular information through reports that are subject to confidentiality protections.

26. Access and subscription to advanced communication technologies are important socioeconomic indicators.

27. Broadband and video services are becoming increasingly important to active participation in our modern-day economy and society.

28. Restricting socioeconomic indicators to income alone focuses too narrowly on economic factors, and fails to encompass social factors.

29. DIVCA's legislative purposes include promoting widespread access to the most technologically advanced video services and closing the digital divide.

30. It is reasonable to require the submission of information on access and subscription to advanced communications services as part of the socioeconomic information collected pursuant to DIVCA.

31. AT&T's proposal to not define "socioeconomic indicators" would lead to confusion by applicants as to what information we expect to be filed with the Commission.

32. The diversity of parties' comments on the definition of "socioeconomic status information" demonstrates that reasonable people can disagree regarding the appropriate definition.

33. The early collection of broadband and video services information will give the Commission time to address and resolve data collection and analysis issues that arise.

34. The first report on broadband and video services data is due July 1, 2008.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

35. Due to the timing of data collection, requiring the submission of extensive socio-economic data simultaneously with the filing of a video franchise application, particularly for applications submitted early in a calendar year, is not reasonable.

36. Permitting the applicant for a video franchise to attest in its application that it will provide the Commission with the requested socioeconomic status information within four months of filing an application ensures that the Commission will have appropriate baseline information for reviewing a company's progress, but does not impose an unnecessary barrier to entry.

37. A four-month period for submitting socioeconomic data mirrors the amount of time allotted to state video franchise holders for their preparation of annual broadband and video reports.

38. It is reasonable to permit the applicant for a video franchise to attest in its application that it will provide the Commission with the requested socioeconomic status information within four months of filing an application.

39. It is not reasonable to deem an application incomplete when an applicant has attested that it will provide the Commission with the requested socioeconomic status information within four months of filing an application instead of in the application itself.

40. It is reasonable for the application to include information on all parent entities, if more than one, including the ultimate parent.

41. Since the Commission is requiring the submission of a bond to provide 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,

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

it is not necessary to explain what proof of legal and technical qualifications the Commission expects of an applicant.

42. Coordination and exchange of information with local entities will facilitate the success of the new state video franchise system.

43. The staff of the Commission's new video franchise unit is the appropriate unit to develop plans to coordinate with local entities.

44. It serves no useful purpose to require of applicants a showing as to how they intend to meet the statute's build-out and anti-discrimination requirements; rather, the focus should be on their concrete actions, or lack thereof, as franchisees.

45. Monitoring the actions of a franchisee through the Commission's reporting requirements will enable the Commission to determine whether a franchisee is complying with the statute's build-out and anti-discrimination requirements and to take appropriate enforcement steps if it is not complying.

46. Pursuant to Public Utilities Code § 5810(c), it is the intent of DIVCA that collective bargaining agreements be respected.

47. Pursuant to Public Utilities Code § 5870(b), a transferee of a state video franchise must agree 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.

48. To ensure the Commission is adequately informed of collective bargaining requirements when a state video franchise is transferred, it is consistent with DIVCA to require state video franchise holders to produce annual reports to that indicate whether their employees are subject to a collective bargaining agreement.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

49. When transfer of a state video franchise license is sought, it is consistent with DIVCA to require a transferee to complete an affidavit that attests it will respect existing collective bargaining agreements.

50. The affidavit requires the affiant to swear that she or he has “personal knowledge of the facts,” is “competent to testify to [the facts],” and has “authority to make this Application behalf of and to bind the Company.”

51. It is reasonable for the Commission to impose a bond requirement to determine whether applicants possess financial, legal and technical qualifications necessary to be state video franchise holders.

52. The Commission’s bond requirement only demonstrates that the applicant possesses the “qualifications” necessary to be a state video franchise holder in a proposed video service area. It does not substitute for security instruments that are typically required by a local entity as part of its oversight of local rights-of way.

53. Locally required security instruments can best take into account size and scope of a state video franchise holder’s local construction and operations.

54. A tiered bonding requirement can be sufficient to establish a state video franchise holder’s qualifications without placing a significant barrier to entry on applicants that are qualified to provide video service.

55. It is reasonable to adopt a tiered bonding requirement for video franchise holders and to base the size of the bond on the number of a state video franchise holder’s potential customers.

56. A requirement that state video franchise holders to carry a bond in the amount of \$100,000 per 20,000 households in a proposed video service area, with a required \$100,000 minimum and a cap of \$500,000, is reasonable in light of the

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

record of this proceeding that demonstrated a range of bonding requirements currently in use.

57. A cap of \$500,000 on the bond requirement will not discourage competition.

58. It is reasonable to require state video franchise holders to carry a bond in the amount of \$100,000 per 20,000 households in a proposed video service area, with a required \$100,000 minimum and a cap of \$500,000 on the bond requirement.

59. It is reasonable to require that a corporate surety authorized to transact a surety business in California issue the franchisee's bond because the bond is to fulfill state purposes.

60. It is reasonable to require that the bond list the Commission as the obligee and no other obligees because the bond is designed only to prove to the state that the applicant possess adequate qualification to be a state video franchise holder and because local entities may require addition security instruments.

61. It is reasonable to require that a state video franchise holder provide a copy of its executed bond with its application. It is reasonable to require that the state video franchise applicant provide a copy of this bond to affected local entities because it is part of the application.

62. It is not reasonable to require a state video franchise holder to provide a copy of the executed bond sixty days before it commences video system construction in a local jurisdiction because notice of the bond is provided through the receipt of a state video franchise application.

63. It is reasonable to require that a video franchise holder not allow its bond to lapse during any period of its operation pursuant to a state video franchise.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

64. An application fee of \$2000 is reasonable for recovering the costs to process an application for a video franchise.
65. The state franchising process is ministerial and less complex than the franchising process now in place at the local level.
66. It is not necessary to impose additional fees to cover other tasks associated with administering the state video franchise program. Such expenses will be recovered through annual user fees.
67. Since DIVCA envisions only a ministerial role for the Commission in the review of an application for a video franchise, it is not reasonable to permit protests of the application.
68. It would not be feasible to entertain protests, responses to protests, and Commission action to resolve the protests during the short period set by statute for the review of an application for a video franchise.
69. If an applicant submits a bond to demonstrate its qualifications to operate a video franchise, it is not necessary or reasonable to solicit or consider further information on the qualifications of an applicant.
70. It is reasonable for the Commission to provide notice of incompleteness and the specific reason for incompleteness in the same document.
71. It is reasonable for the Commission to provide notice of incompleteness and the specific reason for incompleteness to affected local entities as well as to the applicant.
72. It is reasonable for the Commission to provide notice of the statutory ineligibility of an applicant, if known, to the applicant.
73. It is reasonable that an application will not be deemed granted due to the Commission's failure to act when the applicant is statutorily ineligible to hold a statewide franchise under DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

74. Since DIVCA specifies that an incumbent cable operator's right to abrogate a local franchise is triggered when a video service provider that holds a state franchise provides notice to a local jurisdiction that it intends to initiate providing service in all or part of that jurisdiction, it is reasonable to require the state franchise holder to provide notice of imminent initiation of service to the incumbent cable operators operating in that jurisdiction.

75. Requiring concurrent notification of the local entity and the incumbent cable operator of imminent market entry by a state franchise holder is reasonable in light of the Legislative intent that DIVCA create a fair and level playing field for all market competitors.

76. It is reasonable to determine and collect a user fee from state video franchise holders to finance the costs of administering the state video franchise program.

77. The Commission determines the utility user fee for all utilities based on revenues.

78. It is reasonable for the Commission to assess the user fees applicable to video franchise holders based on the revenues reported by video franchise holders.

79. There are significant policy and administrative benefits to harmonizing our collection of user fees across all fee payers by relying on a revenue-based system that uses the Commission's traditional payment schedule and processes.

80. The budget adopted by the Commission to administer the costs of the video franchising program is reasonable.

81. It is reasonable to base a user fee upon the percentage of all state video franchise holders' gross state video franchise revenues that is attributable to an individual state video franchise holder.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

82. It is reasonable to determine the fee to be paid by each state video franchise holder annually.

83. The payment schedule developed herein for the payment of user fees is reasonable and consistent with the Commission collection of fees from utilities.

84. The replacement or reduction of our annual user fee with task-specific fees is inconsistent with the procedures used to assess fees on utilities subject to Commission jurisdiction.

85. For Fiscal Year 2007-2008, it is not practical to assess fees based on a franchisee's revenues.

86. For Fiscal Year 2007-2008, it is reasonable to assess user fees based on the pro rata share of households existing in its proposed video service area as adopted by the Commission through resolution.

87. The procedures for collecting franchise fees for Fiscal Year 2007-2008 as discussed herein, including the requirement that all franchisees pay for an entire year, are reasonable.

88. Basing a user fee for Fiscal Year 2007-2008 on a state video franchise holder's potential number of subscribers best responds to the legislative intent of creating a fair and level playing field and ensuring that areas served by small video service providers are not placed at a competitive disadvantage.

89. Basing user fees on telephone revenues or telephone lines is not reasonable because there is no direct nexus between telephone line and the provision of video service.

90. The proposal to collect year 1 fees in year 2 is not reasonable because the Commission has a legal obligation to collect fees in the year in which the state has authorized spending.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

91. It is not reasonable to accord trade secret protection to information provided pursuant to the revenue reporting requirements of DIVCA since this is public information and also released to the Federal Communications Commission and reported to local entities.

92. It is not reasonable to permit state franchise holders to submit user fees and data upon which the fees are based at the same time. Under the adopted fee systems, such a procedure does not permit the determination of the appropriate user fee.

93. The procedures for reporting, setting, and receiving user fees contained herein are reasonable and necessary to the implementation of DIVCA.

94. The procedures for reporting, setting, and receiving user fees closely track the user fee procedures currently used by California telecommunications carriers and should not raise novel implementation issues.

95. The employment reports required in General Order XX are reasonable.

96. It is reasonable to deem data on broadband and video availability to be collected “on a census tract basis” if a company uses a geocoding application that assigns its potential customers’ addresses in the manner prescribed in Appendix D.

97. It is reasonable to require reports on subscribership data to be based upon customers’ individual addresses and geocoded to specific, corresponding census tracts or other census units that nest within census tracts.

98. It is reasonable to require the reporting of broadband data on a census tract basis. It is reasonable to permit an approximation only if the state video franchise holder (i) does not maintain this information on a census tract basis in its normal course of business and (ii) the alternate reporting methodology reasonably approximates census tract data.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

99. The reporting requirements pertaining to broadband and video services discussed herein are reasonable.

100. It is reasonable to release annual broadband and video data only if the Commission determines that such a disclosure of the data will be made only “as provided for pursuant to Section 583”.

101. It is reasonable to expect that aggregated broadband and video data presented in statutorily required reports will not be competitively sensitive.

102. The level of detail required by the Commission for the reporting of broadband and video data by franchisees is reasonable.

103. Since Public Utilities Code § 5890(b) establishes low-income build-out requirements that are benchmarked upon household income as of January 7, 2007, it is reasonable and useful for enforcement to require low-income household information to be reported as of January 1, 2007.

104. It is reasonable to define “telephone service area” as the area where the Commission has granted an entity a Certificate of Public Convenience and Necessity.

105. To the extent a company does not have customers in a region, the company need only collect and report publicly available U.S. Census data for that region.

106. The information and reports required to enforce the anti-discrimination and build-out provisions, as set forth herein, are reasonable.

107. Reports on video availability will allow the Commission to gauge whether a state video franchise holder has made a “substantial and continuous effort” to meet the build-out requirements established by Public Utilities Code § 5890.

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW 1/16/07 Chong Decision

108. It is reasonable to require state video franchise holders to submit annual reports on video service offered, both to California households generally and to low-income households specifically and on a census tract basis.

109. Unless information on free service to community centers, required pursuant to Public Utilities Code 5890(b)(3), is reported to the Commission, there is no way for the Commission to know if the law is being adhered to.

110. The reporting requirements pertaining to the provision of free service to community centers, adopted herein, are reasonable and necessary for enforcement of specific DIVCA provisions.

111. Restricting public access to build-out data would unduly impede external stakeholders' ability to monitor compliance with build-out requirements.

112. It is not reasonable to give confidential treatment to build-out data.

113. Participation by state video franchise holders in Commission diversity efforts is in the public interest.

114. For franchise holders who decline to provide workplace diversity data equivalent to that provided by CUDC members, it is reasonable to require the state video franchise holder to provide the Commission with copies of its Employment Information Report EEO-1 (EEO-1) filings to the federal Department of Labor. An EEO-1 form is attached as Appendix G.

115. The filing of a copy of EEO-1 places a minimal burden on state video franchise holders.

116. It is reasonable to afford information provided on EEO-1 confidential treatment, releasing only aggregate video industry data at the statewide level.

117. Pursuant to Public Utilities Code § 5810(a)(2), DIVCA was intended to *both* (a) "promote the widespread access to the most technologically advanced

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

cable and video services” and (b) “complement efforts to increase investment in broadband infrastructure and close the digital divide,” so it is reasonable to find that “free service” provided to community centers must include both broadband and video services.

118. It is not reasonable to impose eligibility requirements on community centers beyond those imposed in Public Utilities Code § 5890(b)(3).

119. The build-out requirements adopted herein that pertain to franchise holders or their affiliates with more than one million telephone customers are reasonable.

120. The procedures adopted herein for determining the build-out requirements that pertain to franchise holders or their affiliates with less than one million telephone customers are reasonable.

121. Since DIVCA’s build-out requirements apply to holders of a video franchise (and not to applicants) and since DIVCA affords only thirty days for review to determine the completeness of an application, it is not reasonable to assess whether a proposed video service area is drawn in a discriminatory fashion at the time of application.

122. A review of a proposed video service area at the time of application is not necessary for proper enforcement of DIVCA, because local governments can bring complaints concerning discrimination to the Commission, which may open an investigation on discrimination matters at any time after the award of a video franchise.

123. The procedures adopted in General Order XX to extend build-out deadlines are reasonable.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

124. It is reasonable for the Commission to limit its initiation of investigation to issues that arise regarding franchising, anti-discrimination, reporting, the cross-subsidization prohibition, and annual user fees.

125. It is not reasonable for the Commission to initiate an investigation if we do not have authority to regulate in response to investigative findings.

126. It is reasonable for the Commission to hold public hearings whenever when franchising, anti-discrimination and build-out, reporting; crosssubsidization, or user fee provisions are at issue.

127. Under current Commission practice, an investigation typically may include evidentiary, full panel, and public participation hearings conducted in public.

128. It is reasonable that any investigation to determine whether an applicant failed to comply with DIVCA franchising provisions follow standard Commission proceedings for the initiation of an investigation. These procedures include a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation of Public Utilities Code § 5890 compliance is warranted.

129. It is reasonable for the Commission to undertake significant monitoring for the enforcement of the anti-discrimination and build-out requirements as discussed herein.

130. It is reasonable to require that a complaint by a local government alleging that a state video franchise holder has failed to meet the antidiscrimination and build-out requirements of Public Utilities Code § 5890 include sworn declarations pertaining to the facts that the local government

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

believes demonstrate a failure to fulfill obligations imposed by Public Utilities Code § 5890.

131. It is reasonable that the Commission require a local entity filing a complaint to clearly identify that the complaint pertains to a failure to meet an obligation imposed by Public Utilities Code § 5890.

132. In any proceeding investigating a state video franchise holder's compliance with the anti-discrimination and build-out provisions of Public Utilities Code § 5890, it is reasonable to allow interested parties to petition the Commission to participate in the investigation and hearing process.

133. The procedures described herein for initiating and conducting a proceeding investigating allegations of a state video franchise holder's failure to comply with the anti-discrimination and build-out provisions of Public Utilities Code § 5890 are reasonable.

134. The procedures described herein for initiating and conducting a proceeding investigating allegations of a state video franchise holder's failure to comply with the reporting requirements of DIVCA are reasonable.

135. The procedures adopted herein to enforce DIVCA reporting requirements are reasonable.

136. The Commission has remained vigilant in enforcing existing prohibitions on unlawful cross-subsidization of intrastate telecommunications services.

137. The freezing of basic residential rates adopted in Public Utilities Code § 5950 ensures that there is no opportunity for basic residential rates to be increased to support video service operations during the period of the freeze.

138. The Commission has reasonable requirements in place to prevent unlawful cross-subsidization of video services as discussed herein.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

139. The procedures discussed herein for investigation and sanctioning of the unlawful cross-subsidization of video services are reasonable.

140. The procedures contained in GO XX for enforcing the submission of user fees are reasonable.

141. It is reasonable for the Commission to exercise its authority to revoke or suspend a state video franchise in response to pattern and practice of material breaches that are established by local entities or the courts.

142. The procedures for initiating and conducting a proceeding concerning whether a pattern and practice of violations of DIVCA provisions that are regulated by local entities warrant suspension or revocation of the state video franchise are reasonable.

143. In conducting a proceeding concerning whether a pattern and practice of violations of DIVCA provisions that are regulated by local entities warrant suspension or revocation of the state video franchise, it is not reasonable for the Commission to consider the merits of alleged material breaches de novo.

144. It is not clear which of the Commission's Rules of Practice and Procedure remain applicable in a specific situation pertaining to a proceeding conducted pursuant to DIVCA.

145. The procedures adopted herein whereby DRA shall request reports from the Executive Director of the Commission are reasonable.

146. It is reasonable to require state video franchise holders to submit information to DRA when the information is necessary for DRA's advocacy and enforcement actions based upon Public Utilities Code §§ 5890, 5900, and 5950.

147. The procedures adopted herein concerning amendments to a state video franchise are reasonable.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

148. It is not reasonable to adopt state video franchise renewal provisions at this time.

**Conclusions of Law**

1. Increasing competition for video broadband services is a matter of statewide concern.
2. DIVCA directs the Commission to issue state franchises for the provision of video services in California.
3. Pursuant to Public Utilities Code § 5810, DIVCA declares that a state video franchising process should:
  - 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 their 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.
4. DIVCA provides that the Commission is the “sole franchising authority” for issuing state video franchises. After January 2, 2008, the Commission is the

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

only government entity that may grant a video service provider a franchise to operate within California.

5. Pursuant to DIVCA, video service providers are not public utilities and a holder of a state franchise shall not be deemed a public utility as a result of providing video service.

6. Pursuant to DIVCA, the Commission may not impose any requirement on any holder of a state franchise except as expressly provided by DIVCA.

7. DIVCA granted local entities, not the Commission, sole authority to regulate pursuant to many statutory provisions, including franchise fee provisions (§ 5860), PEG channel requirements (§ 5870), Emergency Alert System requirements imposed by the Federal Communications Commission (§ 5880), and, notably, federal and state customer service and protection standards (§ 5900).

8. Pursuant to DIVCA, the local entity is the lead agency for any environmental review with respect to network construction, installation, and maintenance in public rights-of-way (§§ 5820 and 5885).

9. It would not be consistent with DIVCA for the Commission to exercise its authority in a manner that diminishes the responsibilities afforded to local entities by DIVCA.

10. Pursuant to DIVCA, the Commission may promulgate rules only as necessary to enforce statutory provisions on franchising (§ 5840), antidiscrimination (§ 5890), reporting (§§ 5920 and 5960), cross-subsidization prohibitions (§§ 5940 and 5950), and regulatory fees (§ 401, §§ 440-444, § 5840).

11. It would not be consistent with DIVCA for the Commission to adopt regulatory proposals that fall outside the scope of the authority specifically assigned to the Commission under DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

12. An incumbent cable operator should not be considered an incumbent in areas outside of its franchise service areas as of January 1, 2007.
13. Section 5840(n) requires a state video franchise holder to notify the local entity that the video service provider will provide video service in the local entity's jurisdiction.
14. Pursuant to § 5930(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.
15. It is consistent with DIVCA to require automatic extension of local video franchises that expire before January 2, 2008 if they are held by incumbent cable operators planning to seek state video franchises.
16. DIVCA seeks to create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.
17. Permitting incumbent cable operators to apply for state video franchises before expiration of their local franchises is consistent with DIVCA.
18. Public Utilities Code § 5840(e)(1)(B) recognizes that both "the applicant" and "its affiliates" must "comply with all federal and state statutes, rules, and regulations," which include provisions found in DIVCA.
19. To ensure enforcement of DIVCA provisions cutting across communications sections, the Commission has the authority to require applicants to stipulate that it and all its affiliates' California operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.
20. It is consistent with Public Utilities Code § 5840(f) to require an applicant to include a statement in its affidavit that it and all its affiliates' California

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

operations will be included for the purposes of applying Public Utilities Code §§ 5840, 5890, 5960, and 5940.

21. The restrictions on who may hold a state video franchise adopted herein are consistent with DIVCA.

22. Use of the definition of affiliate set forth in R.92-08-008 and contained herein is consistent with DIVCA and prior Commission precedent.

23. The definition of affiliate set forth herein is consistent with DIVCA's statutory scheme.

24. Pursuant to Public Utilities Code § 5840(e)(6), permitting franchise applicants to describe their proposed video service area footprint as a collection of census block groups, or as a collection of blocks defined by a geographic information system digital boundary meeting or exceeding national map accuracy standards is consistent with DIVCA.

25. Pursuant to Public Utilities Code § 5840(e)(6) and § 5840(e)(8), defining areas in the video service footprint as collections of touching census block groups or regions defined by geographic information system boundaries is consistent with DIVCA.

26. Pursuant to Public Utilities Code § 5840(e)(8), requiring a video franchise applicant to provide an expected date of deployment for each area in the video service footprint pursuant to the definition proposed herein is consistent with DIVCA. The resulting provision of an expected date of deployment for the entirety of each non-contiguous grouping or region included in its proposed video service footprint is consistent with DIVCA.

27. DIVCA does not provide the Commission the authority to impose the confidentiality restrictions on expected deployment data submitted in the video

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

application that AT&T and Verizon have requested. Specifically, DIVCA does not give the Commission authority to impose confidentiality restrictions on local entities regarding expected deployment dates contained in the franchise application.

28. Requiring the submission of information on access and subscription to advanced communications services is consistent with DIVCA and its statutory purposes.

29. It is not consistent with DIVCA to require applicants to provide information in their application concerning the applicants' efforts over the last three years to help close the Digital Divide; fund access to new technology by underserved communities; demonstrate diversity at all levels of employment and management; demonstrate business opportunities created for small, minority owned, and women-owned businesses; and provide full content access to underserved and minority communities because such a requirement is inconsistent with DIVCA's application process, which sets forth requirements with particularity and strictly limits the Commission's role to determining whether the application is complete.

30. It is not consistent with DIVCA to require the reporting of services provided in languages other than English.

31. It is consistent with DIVCA to deem an application that contains an attestation that the applicant will submit socioeconomic data, including data on access and subscription to advanced communications services, as equivalent to an application that contains the data. Including such an attestation does not constitute grounds for deeming the application incomplete.

32. As amended pursuant to the discussion herein, the application form and the affidavits are consistent with DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

33. Public Utilities Code § 5840(e)(9) permits the Commission to require a bond to establish an applicant for a video franchise 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.

34. California Public Utilities Code § 58940(e)(1)(C) tasks local entities with governing the “time, place and manner” of a state video franchise holder’s use of the local rights-of-way.

35. DIVCA does not preclude local permits from requiring further security instruments to ensure that a state video franchise holder fulfills locally regulated obligations.

36. The requirement to name the Commission as an obligee of the bond and the requirement that the franchise applicant submit a copy of the bond as part of the application is consistent with DIVCA.

37. DIVCA does not permit the submission of a financial statement in lieu of a bond to demonstrate that an applicant is qualified to hold a state video franchise.

38. An application fee of \$2,000 is consistent with DIVCA.

39. If the workload related to the application review process differs from current Commission estimates, the Commission has the statutory authority to revise its calculation of the application fee and change the fee.

40. DIVCA does not provide authority to collect fees for other Commission franchise actions.

41. Public Utilities Code § 5840 directs that the Commission’s authority to oversee the state video franchise application process shall not exceed the provisions set forth in that section.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

42. Public Utilities Code § 5840 provides the Commission with authority to evaluate whether a state video franchise is complete or incomplete. This is a purely ministerial role.
43. Public Utilities Code § 5840 provides that the Commission must inform an applicant of whether its state video franchise application is complete within thirty calendar days of receipt of its application.
44. DIVCA provides the Commission with no discretion over the substance or timing of its review of applications for a video franchise. The substance of the Commission's review is limited to the ministerial task of determining whether the application is complete.
45. DIVCA requires the Commission to issue a franchise when the application is complete before the 14<sup>th</sup> day after that finding.
46. The only stated ground for rejecting an application is incompleteness.
47. If an application is incomplete, the Commission must explain with particularity how and the applicant has an opportunity to amend the application to overcome the defects.
48. Public Utilities Code § 5840 does not provide for protests.
49. The protest of a ministerial act would be an idle act and could accomplish nothing.
50. DIVCA provides for a short review period for applications for a video franchise. The Commission must notify an applicant within thirty days if an application is complete.
51. The failure of the Commission to act on an application within 44 days of its receipt is deemed to constitute issuance of the certificate applied for and requires no further action on behalf of the applicant.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

52. An amended application must be reviewed for completeness within thirty days of submission.

53. There is no statutory basis for TURN's assertion that DRA has a right to protest an application for a video franchise.

54. TURN and Joint Cities misconstrue DIVCA when they assert that Public Utilities Code § 5840(e)(1)(D) permits local entities to file protests. It only requires that local entities receive a copy of the application for a state franchise.

55. The requirement of a bond provides adequate assurance that an applicant possesses the necessary qualifications for a video franchise.

56. Pursuant to Public Utilities Code § 5840(h), notification of the affected local entities of whether the applicant's application is complete or incomplete and the particular items that are incomplete is consistent with DIVCA.

57. DIVCA establishes that no person or corporation shall be eligible for a new or renewed 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 or the Video Customer Service Act.

58. Pursuant to Public Utilities Code § 5840(b), a state video franchise holder must provide a local entity notice that it will begin offering service in the entity's jurisdiction. This notice of imminent market entry shall be given at least 10 days but no more than 60 days, before the video service provider begins to offer service.

59. Implicit in the incumbent cable operator's right to abrogate its franchise with the local entity is the assumption that an incumbent cable operator will know when a state video franchise holder provides notice of imminent market entry.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

60. Pursuant to Public Utilities Code § 5810(a)(2)(A), the Commission should place all user fees into a subaccount of the Commission Utilities Reimbursement Account.

61. The user fees assessed by the Commission on video franchise holders are not “franchise fees” as defined by Section 542 of the Federal Communications Act.

62. Fees levied by the Commission pursuant to DIVCA are either fees of “general applicability” or fees incidental to the awarding or enforcing the franchise.

63. Pursuant to Public Utilities Code § 401(b), the user fee shall *produce enough, and only enough, revenues to fund the commission* with (1) its authorized expenditures for each fiscal year to regulate . . . 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.

64. The user fee should include funding for DRA, whose budget is included in the Commission budget.

65. Pursuant to Public Utilities Code § 5810(a)(3), the collection of any fees from video franchise holders in the same manner and under the same terms as it collects fees from public utilities is consistent with DIVCA.

66. Pursuant to California Public Utilities Code § 5810(a)(3), any user fees levied by the Commission should not discriminate against video service providers or their subscribers.

67. Pursuant to Public Utilities Code §442(e), the Commission should issue refunds if it collects a fee in error.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

68. The methodology and procedures for assessing a user fee for Fiscal Year 2007-2008 are consistent with DIVCA.

69. The methodology and procedures for assessing a user fees for Fiscal Years following Fiscal Year 2007-2008 are consistent with DIVCA.

70. Pursuant to Public Utilities Code § 443(a), the Commission has the authority to require a video service provider to furnish information and reports needed to assess a user fee.

71. Public Utilities Code § 5920 imposes specific employment reporting requirements that direct state video franchise holders with more than 750 California employees to report upon the number and types of jobs held by their employees in California.

72. Pursuant to Public Utilities Code § 5920, state video franchise holders must provide projections of new hires expected an upcoming year.

73. Granting confidential treatment to employment data provided pursuant to DIVCA would violate the express language of Public Utilities Code § 5920(b), which requires the Commission to make the employment data available to the public on its Internet Web site.

74. Pursuant to Public Utilities Code § 5960, state video franchise holders must submit detailed annual reports on broadband and video services.

75. The reporting requirements pertaining to broadband and video services adopted in General Order XX are consistent with DIVCA and fulfill a variety of statutory purposes. In addition to enabling the Commission to monitor buildout, the reports can enable the Commission to support voluntary efforts to increase broadband adoption.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

76. The procedures for reporting information on video availability contained in General Order XX, including the reporting methodology contained in Appendix D, are consistent with the provisions of DIVCA.

77. The procedures for reporting subscribership data contained in General Order XX and discussed herein are consistent with the provisions of DIVCA.

78. Pursuant to Public Utilities Code § 5960(B)(1)(A), a state video franchise holder may elect to approximate data reported on a census tract basis only if the state video franchise holder (i) “does not maintain this information on a census tract basis in its normal course of business” and (ii) the alternate reporting methodology “reasonably approximate[s]” census tract data.

79. Pursuant to Pursuant to Public Utilities Code § 5960(d), annual broadband and video data reported to the Commission shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.

80. Scaling back broadband reporting requirements, as proposed by AT&T, contravenes the principles underlying DIVCA, including its goals to promote the widespread access to the most technologically advanced cable and video services to all California communities and to complement efforts to increase investment in broadband infrastructure.

81. Requiring further broadband reporting requirements, as proposed by CCTPG/LIF, lacks a statutory basis. CCTPG/LIF does not establish that this data is necessary for our enforcement of specific DIVCA provisions.

82. Requiring the reporting of low-income household information as of January 1, 2007 is consistent with the definition of low-income household found in Public Utilities Code § 5890(j)(2).

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

83. Public Utilities Code § 5890(b) establishes low-income build out requirements that are benchmarked upon household income as of January 1, 2007.

84. The reporting requirements pertaining to the provision of free service to community centers, adopted herein, are consistent with the enforcement of specific DIVCA provisions  
Pursuant to Public Utilities Code § 5890(b)(3), the community center reporting requirement should apply to state video franchise holders with more than one million telephone subscribers.

85. The submission of information pertaining to employment, such as CUDC information or EEO-1 forms, is consistent with DIVCA's interest in tracking new employment.

86. Pursuant to Public Utilities Code § 5890, the Legislature required certain state video franchise holders to offer video service to California consumers within predetermined time periods.

87. Build-out provisions in subsections (b)(1)-(2) and (e) of Public Utilities Code § 5890 clearly require the holders of a video franchise with more than one million telephone customers to (i) offer service to a certain percentage of households in their telephone service areas in a designated time period, depending on the technology used by the holders and (ii) ensure that a certain percentage of households offered video access are "low-income households."

88. Public Utilities Code § 5890(j)(2) defines a low-income household as one with an annual household income of less than \$35,000.

89. Pursuant to Public Utilities Code § 5890(b)(3), the holders of a video franchise with more than one million telephone customers must provide free

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW 1/16/07 Chong Decision

service to community centers at the ratio of one per community center per 10,000 customers.

90. Pursuant to Public Utilities Code § 5890(b)(3), a community center eligible for free service must be a facility that (i) qualifies for the California Teleconnect Fund, (ii) makes the state video franchise holder's service available to the community, and (iii) only receives service from one state video franchise holder at a time.

91. The build-out requirements adopted herein that pertain to state video franchise holders or their affiliates with more than one million telephone customers are consistent with DIVCA.

92. Pursuant to DIVCA, the design of build-out requirements that pertain to franchise holders or their affiliates with less than one million telephone customers is a fact-specific endeavor.

93. The procedures adopted herein for determining the build-out requirements that pertain to state video franchise holders or their affiliates with less than one million telephone customers are consistent with DIVCA.

94. Pursuant to Public Utilities Code § 5890(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.

95. If not rebutted, the existence of any one of the three factors listed in the prior Finding of Fact is sufficient to prove that a state video franchise holder is not discriminating in its provision of video service.

96. It is consistent with Public Utilities Code § 5890(d), which applies nondiscrimination provisions to a "holder" rather than an "applicant," that the

## **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **1/16/07 Chong Decision**

Commission's review of the anti-discrimination and build-out provisions take place after a state video franchise is awarded.

97. Pursuant to Public Utilities Code § 5890(g), local governments may bring complaints concerning discrimination to the Commission for resolution and the Commission itself may open investigations on discrimination matters.

98. Public Utilities Code § 5890(e)(2)-(3) establishes automatic extensions for build-out requirements imposed by Public Utilities Code § 5890(e)(1)-(2). These extensions go into effect if a significant percentage of households fail to subscribe to a state video franchise holder's service.

99. Public Utilities Code § 5890(f) affords the Commission discretionary authority to grant an extension for the build-out requirements imposed in subsections (b), (c), and (e).

100. The procedures adopted in General Order XX to extend build-out deadlines are consistent with DIVCA.

101. Pursuant to Public Utilities Code § 5890(g), we conclude that the Commission may suspend or revoke a state video franchise if it finds any of the following: (a) 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 Division 2.5; (b) The state video franchise holder has violated any provision of Division 2.5 or any rule or regulation made by the Commission under and within the authority of this division; or (c) A fact or condition exists that, if it had existed at the time of the original application for the state franchise (or transfer thereof), reasonably would have warranted the Commission's refusal to issue the state video franchise originally (or grant the transfer thereof).

102. DIVCA expressly limits the Commission's use of enforcement actions, such as investigations.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

103. Pursuant to DIVCA, the Commission may impose a fine only when a state video franchise holder is in violation of user fee or antidiscrimination/build-out provisions.

104. Pursuant to Public Utilities Code § 5890, the Commission is given authority to address local entities' formal complaints based on DIVCA only when the complaints arise under Public Utilities Code § 5890.

105. It is consistent with DIVCA for the Commission to limit its initiation of investigations to those situations where DIVCA explicitly assigns the Commission authority to regulate.

106. Pursuant to Public Utilities Code § 5890(g), the Commission has the flexibility to determine which type of public hearing could best develop the record needed for deciding an individual matter.

107. Pursuant to (i) our general enforcement powers in Public Utilities Code § 5890(g) and (ii) our specific authority to administer the state video franchise application process pursuant to Public Utilities Code § 5840, the Commission has the authority to investigate allegations that a fact or condition exists that, if it had existed at the time of the original application for the state video 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).

108. Pursuant to Public Utilities Code § 5890(g), the Commission may open an investigation to determine whether an applicant failed to comply with DIVCA franchising provisions.

109. It is consistent with DIVCA to require that any investigation to determine whether an applicant failed to comply with DIVCA franchising provisions follow standard Commission proceedings for the initiation of an

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

investigation. These procedures include a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation of Public Utilities Code § 5890 compliance is warranted.

110. Pursuant to DIVCA, formal investigation of antidiscrimination and build-out compliance may be launched in two ways: (i) in response to a complaint filed by a local government, or (ii) on the Commission's own motion.

111. The procedures and requirements discussed herein concerning complaints filed by local governments alleging the failure of a state video franchise holder to comply with the provisions of Public Utilities Code § 5890 concerning the anti-discrimination and build-out requirements are consistent with DIVCA.

112. The procedures and requirements discussed herein concerning investigations initiated by the Commission alleging the failure of a state video franchise holder to comply with the provisions of Public Utilities Code § 5890 concerning the anti-discrimination and build-out requirements are consistent with DIVCA.

113. The failure to comply with the anti-discrimination and build-provision of Public Utilities Code § 5890 may subject the franchisee to multiple penalties, including fines, suspension of a video franchise, and/or revocation of a video franchise.

114. Pursuant to DIVCA, it is unlawful for any applicant or state video franchise holder willfully to make any untrue statement of a material fact in any application, notice, or report filed with the Commission.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

115. Pursuant to DIVCA, it is unlawful for any applicant or state video franchise holder willfully to omit to state in any such application, notice, or report any material fact that is required to be stated by DIVCA.

116. Consistent with DIVCA, a formal investigation into compliance with reporting requirements may be launched (i) on the Commission's own motion or (ii) initiated in response to a complaint filed by a local government if the reporting requirement at issue is used to monitor compliance with Public Utilities Code § 5890.

117. Pursuant to Public Utilities Code § 444(a), the Commission may impose a penalty for failure to provide financial reports required by the Commission. In particular, the Commission may assess a penalty not to exceed 25 percent of the amount of a state video franchise holder's estimated user fee, on account of the failure, refusal, or neglect to prepare and submit the report required by Public Utilities Code § 443.

118. Pursuant to DIVCA, the Commission may fine a state video franchise holder if it fails to provide accurate reports needed to enforce anti-discrimination and build-out provisions.

119. The authority to impose penalties pursuant to Public Utilities Code § 5890(g) flows to instances where a state video franchise holder misstates or omits information required by Public Utilities Code § 5960.

120. Current federal and state law subject California telecommunications companies to a variety of measures designed to prevent unlawful crosssubsidization between telecommunications costs and non-telecommunications costs.

121. As discussed herein, the Commission has ample authority to investigate allegations of unlawful cross-subsidization.

## **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **1/16/07 Chong Decision**

122. Pursuant to Public Utilities Code § 5950, the Commission prohibits incumbent local exchange carriers that obtain a state video franchise from changing any rate for basic telephone service until January 1, 2009, unless the incumbent is subject to rate-of-return regulation.

123. The procedures discussed herein for investigation and sanctioning of the unlawful cross-subsidization of video services are consistent with DIVCA.

124. The procedures contained in GO XX for enforcing the submission of user fees are consistent with DIVCA.

125. DIVCA explicitly empowers local entities to enforce its consumer protection provisions.

126. DIVCA limits the Commission's role in enforcement of consumer protection provisions.

127. The procedures discussed herein in determining whether to initiate a proceeding to determine whether a pattern and practice of violating consumer protection laws warrants suspension or revocation of a video franchise are consistent with DIVCA.

128. It is necessary to ensure that the Commission's Rules of Practice and Procedure are consistent with DIVCA.

129. DIVCA limits DRA's role to advocacy and enforcement actions related to Public Utilities Code §§ 5890, 5900, and 5950.<sup>730</sup>

130. DIVCA provides that DRA may have access to information in the Commission's possession "for this purpose" of enforcing the Code sections listed in the preceding Conclusion of Law.

131. The procedures adopted herein whereby DRA shall request reports from the Executive Director of the Commission are consistent with DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

132. DIVCA does not permit the Commission to order a grant of intervenor compensation.

133. The procedures adopted herein concerning amendments to a video franchise are consistent with DIVCA.

134. Federal and state law may change between now and 2017, the earliest a state video franchise may be renewed.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

**Conclusions of Law**

135. Increasing competition for video broadband services is a matter of statewide concern.

136. DIVCA directs the Commission to issue state franchises for the provision of video services in California.

137. DIVCA declares that a state video franchising process should:

h. Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.

i. 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.

j. Protect local government revenues and their control of public rights of way rights-of-way.

k. Require market participants to comply with all applicable consumer protection laws.

l. Complement efforts to increase investment in broadband infrastructure and close the digital divide.

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

n. Maintain all existing authority of the California Public Utilities Commission as established in state and federal statutes.<sup>731</sup>

138. DIVCA provides that the Commission is the “sole franchising authority” for issuing state video franchises. After January 2, 2008, the Commission is the

---

731 ID. AT § 5810(2).

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW 1/16/07 Chong Decision

only government entity that may grant a video service provider a franchise to operate within California.

139. Pursuant to DIVCA, video service providers are not public utilities and a holder of a state franchise shall not be deemed a public utility as a result of providing video service.

140. Pursuant to DIVCA, the Commission may not impose any requirement on any holder of a state franchise except as expressly provided by DIVCA.

141. DIVCA granted local entities, not the Commission, sole authority to regulate pursuant to many statutory provisions, including franchise fee provisions (§ 5860), PEG channel requirements (§ 5870), Emergency Alert System requirements imposed by the Federal Communications Commission (§ 5880), and, notably, federal and state customer service and protection standards (§ 5900).<sup>732</sup>

142. Pursuant to DIVCA, the local entity is the lead agency for any environmental review with respect to network construction, installation, and maintenance in public rights-of-way (§§ 5820 and 5885).

143. It would not be consistent with DIVCA for the Commission to exercise its authority in a manner that diminishes the responsibilities afforded to local entities by DIVCA.

144. Pursuant to DIVCA, the Commission may promulgate rules only as necessary to enforce statutory provisions on franchising (§ 5840), anti-

---

<sup>732</sup> The Commission is granted no authority to regulate the rates, terms, and conditions of video services, except as explicitly set forth in DIVCA. *Id.* at § 5820(c). See also 47 U.S.C. § 541(c) (“Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.”)

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

discrimination (§ 5890), reporting (§§ 5920 and 5960), cross-subsidization prohibitions (§§ 5940 and 5950), and regulatory fees (§ 401, §§ 440-444, § 5840).

145. It would not be consistent with DIVCA for the Commission to adopt regulatory proposals that fall outside the scope of the authority specifically assigned to the Commission under DIVCA.

146. An incumbent cable operator should not be considered an incumbent in areas outside of its franchise service areas as of January 1, 2007.

147. Section 5840(n) requires a state video franchise holder to “notify the local entity that the video service provider will provide video service in the local entity’s *jurisdiction*.”

148. Pursuant to § 5930(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.

149. It is necessary and reasonable to require automatic extension of local video franchises that expire before January 2, 2008 that are held by incumbent cable operators planning to seek state video franchises.

150. DIVCA seeks to create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.

151. Permitting incumbent cable operators to apply for state video franchises before expiration of their local franchises is consistent with DIVCA.

152. Public Utilities Code § 5840(f) states that 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.”

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

153. It is consistent with Public Utilities Code § 5840(f) to adopt restrictions on who may hold a video franchise and how they may operate under a franchise.

154. . Public Utilities Code § 5840(e)(1)(B) recognizes that both “the applicant” and “its affiliates” must “comply with all federal and state statutes, rules, and regulations,” which include provisions found in DIVCA.

155. The restrictions on how a franchisee may operate enumerated in Appendix C are consistent with DIVCA.

156. It is reasonable to use as a definition of affiliate the one set forth in R.92-08-008 and contained herein.

157. The definition of affiliate set forth herein is consistent with DIVCA’s statutory scheme.

158. Pursuant to Public Utilities Code § 5840(e)(6), permitting franchise applicants to describe their proposed video service area footprint as a collection of census block groups, or as a collection of blocks defined by a geographic information system digital boundary meeting or exceeding national map accuracy standards is consistent with DIVCA.

159. Pursuant to Public Utilities Code § 5840(e)(6) and § 5840(e)(8), defining areas in the video service footprint as collections of touching census block groups or regions defined by geographic information system boundaries is consistent with DIVCA.

160. Pursuant to Public Utilities Code § 5840(e)(8), requiring a video franchise applicant to provide an expected date of deployment for each area in the video service footprint pursuant to the definition proposed herein is consistent with DIVCA. The resulting provision of an expected date of deployment for the entirety of each non-contiguous grouping or region included in its proposed video service footprint is consistent with DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

161. DIVCA does not provide the Commission the authority to impose the confidentiality restrictions on expected deployment data submitted in the video application that AT&T and Verizon have requested. Specifically, DIVCA does not give the Commission authority to impose confidentiality restrictions on local entities regarding expected deployment dates contained in the franchise application.

162. Requiring the submission of information on access and subscription to advanced communications services is consistent with DIVCA and its statutory purposes.

163. It is not consistent with DIVCA to require applicants to provide information in their application concerning the applicants efforts over the last three years to help close the Digital Divide; fund access to new technology by underserved communities; demonstrate diversity at all levels of employment and management; demonstrate business opportunities created for small, minority owned, and women-owned businesses; and provide full content access to underserved and minority communities because such a requirement is inconsistent with DIVCA's application process, which sets forth requirements with particularity and strictly limits the Commission's role to determining whether the application is complete.

164. It is not consistent with DIVCA to require the reporting of services provided in languages other than English.

165. It is consistent with DIVCA to deem an application that contains an attestation that the applicant will submit socioeconomic data, including data on access and subscription to advanced communications services, as equivalent to an application that contains the data. Including such an attestation does not constitute grounds for deeming the application incomplete.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

166. As amended pursuant to the discussion herein, the application form and the affidavits are consistent with DIVCA.

167. Public Utilities Code § 5840(e)(9) permits the Commission to require a bond to establish an applicant for a video franchise 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.

168. California Public Utilities Code § 58940(e)(1)(C) tasks local entities with governing the “time, place and manner” of a state video franchise holder’s use of the local rights-of-way.

169. DIVCA does not preclude local permits from requiring further security instruments to ensure that a state video franchise holder fulfills locally regulated obligations.

170. The requirement to name the Commission as an obligee of the bond and the requirement that the franchise applicant submit a copy of the bond as part of the application is consistent with DIVCA.

171. DIVCA does not permit the submission of a financial statement in lieu of a bond to demonstrate that an applicant is qualified to hold a state video franchise.

172. An application fee of \$2000 is consistent with DIVCA.

173. If the workload related to the application review process differs from current Commission estimates, the Commission has the statutory authority to revise its calculation of the application fee and change the fee.

174. DIVCA does not provide authority to collect fees for other Commission franchise actions.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

175. Public Utilities Code § 5840 directs that the Commission's authority to oversee the state video franchise application process shall not exceed the provisions set forth in that section.

176. Public Utilities Code § 5840 provides the Commission with authority to evaluate whether a state video franchise is complete or incomplete. This is a purely ministerial role.

177. Public Utilities Code § 5840 provides that the Commission must inform an applicant of whether its state video franchise application is complete within thirty calendar days of receipt of its application.

178. DIVCA provides the Commission with no discretion over the substance or timing of its review of applications for a video franchise. The substance of the Commission's review is limited to the ministerial task of determining whether the application is complete.

179. DIVCA requires the Commission to issue a franchise when the application is complete before the 14<sup>th</sup> day after that finding.

180. The only stated ground for rejecting an application is incompleteness.

181. If an application is incomplete, the Commission must explain with particularity how and the applicant has an opportunity to amend the application to overcome the defects.

182. Public Utilities Code § 5840 does not provide for protests.

183. The protest of a ministerial act would be an idle act and could accomplish nothing.

184. DIVCA provides for a short review period for applications for a video franchise. The Commission must notify an applicant within thirty days if an application is complete.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

185. The failure of the Commission to act on an application within 44 days of its receipt is deemed to constitute issuance of the certificate applied for and requires no further action on behalf of the applicant.

186. An amended application must be reviewed for completeness within thirty days of submission.

187. There is no statutory basis for TURN's assertion that DRA has a right to protest an application for a video franchise.

188. TURN and Joint Cities misconstrue DIVCA when they assert that Public Utilities Code § 5840(e)(1)(D) permits local entities to file protests. It only requires that local entities receive a copy of the application for a state franchise.

189. The requirement of a bond provides adequate assurance that an applicant possesses the necessary qualifications for a video franchise.

190. Pursuant to Public Utilities Code § 5840(h), notification of the affected local entities of whether the applicant's application is complete or incomplete and the particular items that are incomplete is consistent with DIVCA.

191. DIVCA establishes that no person or corporation shall be eligible for a new or renewed 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 or the Video Customer Service Act.

192. Pursuant to Public Utilities Code § 5840(b), a state video franchise holder must provide a local entity notice that it will begin offering service in the entity's jurisdiction. This notice of imminent market entry shall be given at least 10 days but no more than 60 days, before the video service provider begins to offer service.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

193. Implicit in the incumbent cable operators right to abrogate its franchise with the local entity is the assumption that an incumbent cable operator will know when a state video franchise holder provides notice of imminent market entry.

194. Pursuant to Public Utilities Code § 5810(a)(2)(A), the Commission should place all user fees into a subaccount of the Commission Utilities Reimbursement Account.

195. The user fees assessed by the Commission on video franchise holders are not “franchise fees” as defined by Section 542 of the Federal Communications Act.

196. Fees levied by the Commission pursuant to DIVCA are either fees of “general applicability” or fees incidental to the awarding or enforcing the franchise.

197. Pursuant to Public Utilities Code § 401(b), the user fee shall *produce enough, and only enough, revenues to fund the commission* with (1) its authorized expenditures for each fiscal year to regulate . . . 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.

198. The user fee should include funding for DRA, whose budget is included in the Commission budget as a separate line item.

199. Pursuant to Public Utilities Code § 5810(a)(3), the collection of any fees from video franchise holders in the same manner and under the same terms as it collects fees from public utilities is consistent with DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

200. Pursuant to California Public Utilities Code § 5810(a)(3), any user fees levied by the Commission should not discriminate against video service providers or their subscribers.
201. Pursuant to Public Utilities Code §442(e), the Commission should issue refunds if it collects a fee in error.
202. The methodology and procedures for assessing a user fee for Fiscal Year 2007-2008 are consistent with DIVCA.
203. The methodology and procedures for assessing a user fees for Fiscal Years following Fiscal Year 2007-2008 are consistent with DIVCA.
204. Pursuant to Public Utilities Code § 443(a), the Commission has the authority to require a video service provider to furnish information and reports needed to assess a user fee.
205. Public Utilities Code § 5920 imposes specific employment reporting requirements that direct state video franchise holders with more than 750 California employees to report upon the number and types of jobs held by their employees in California.
206. Pursuant to Public Utilities Code § 5920, state video franchise holders must provide projections of new hires expected an upcoming year.
207. Granting confidential treatment to employment data provided pursuant to DIVCA would violate the express language of Public Utilities Code § 5920(b), which requires the Commission to make the employment data available to the public on its Internet Web site.
208. Pursuant to Public Utilities Code § 5960, state video franchise holders must submit detailed annual reports on broadband and video services.
209. The reporting requirements pertaining to broadband and video services adopted in General Order XX are consistent with DIVCA and fulfill a variety of

## **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **1/16/07 Chong Decision**

statutory purposes. In addition to enabling the Commission to monitor buildout, the reports can enable the Commission to support voluntary efforts to increase broadband adoption.

210. The procedures for reporting information on video availability contained in General Order XX, including the reporting methodology contained in Appendix D, are consistent with the provisions of DIVCA.

211. The procedures for reporting subscribership data contained in General Order XX and discussed herein are consistent with the provisions of DIVCA.

212. Pursuant to Public Utilities Code § 5960(B)(1)(A), a state video franchise holder may elect to approximate data reported on a census tract basis only if the state video franchise holder (i) “does not maintain this information on a census tract basis in its normal course of business” and (ii) the alternate reporting methodology “reasonably approximate[s]” census tract data.

213. Pursuant to Pursuant to Public Utilities Code § 5960(d), annual broadband and video data reported to the Commission shall be disclosed to the public only as provided for pursuant to Public Utilities Code § 583.

214. Scaling back broadband reporting requirements, as proposed by AT&T, contravenes the principles underlying DIVCA, including its goals to promote the widespread access to the most technologically advanced cable and video services to all California communities and to complement efforts to increase investment in broadband infrastructure.

215. Requiring further broadband reporting requirements, as proposed by CCTPG/LIF, lacks a statutory basis. CCTPG/LIF does not establish that this data is necessary for our enforcement of specific DIVCA provisions.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

216. Requiring the reporting of low-income household information as of January 1, 2007 is consistent with the definition of low-income household found in Public Utilities Code § 5890(j)(2).

217. Public Utilities Code § 5890(b) establishes low-income build-out requirements that are benchmarked upon household income as of January 7, 2007.

218. Pursuant to Public Utilities Code § 5890, the Legislature prohibited state video franchise holders from discriminating against or denying access to service to any group of potential residential subscribers on the basis of income of the residents in the local area in which the group resides.

219. The reporting requirements pertaining to the provision of free service to community centers, adopted herein, are consistent with the enforcement of specific DIVCA provisions

220. Pursuant to Public Utilities Code § 5890(b)(3), the community center reporting requirement should apply to state video franchise holders with more than one million telephone subscribers.

221. The submission of information pertaining to employment, such as an CUDC information or EEO-1 forms, is consistent with DIVCA's interest in tracking new employment.

222. Pursuant to Public Utilities Code § 5890, the Legislature required certain state video franchise holders to offer video service to California consumers within predetermined time periods (build-out requirements).

223. Build-out provisions in subsections (b)(1)-(2) and (e) of Public Utilities Code § 5890 clearly require the holders of a video franchise with more than one million telephone customers to (i) offer service to a certain percentage of households in their telephone service areas in a designated time period,

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

depending on the technology used by the holders and (ii) ensure that a certain percentage of households offered video access are “low-income households.”

224. Public Utilities Code § 5890(j)(2) defines a low-income household as one with an annual household income of less than \$35,000.

225. Pursuant to Public Utilities Code § 5890(b)(3), the holders of a video franchise with more than one million telephone customers must provide free service to community centers at the ratio of one per community center per 10,000 customers.

226. Pursuant to Public Utilities Code § 5890(b)(3), a community center eligible for free service must be a facility that (i) qualifies for the California Teleconnect Fund, (ii) makes the state video franchise holder’s service available to the community, and (iii) only receives service from one state video franchise holder at a time.

227. The build-out requirements adopted herein that pertain to franchise holders or their affiliates with more than one million telephone customers are consistent with DIVCA.

228. Pursuant to DIVCA, the design of build-out requirements that pertain to franchise holders or their affiliates with less than one million telephone customers is a fact specific endeavor.

229. The procedures adopted herein for determining the build-out requirements that pertain to franchise holders or their affiliates with less than one million telephone customers are consistent with DIVCA.

230. Pursuant to Public Utilities Code § 5890(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

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW 1/16/07 Chong Decision

discrimination in providing service has not occurred within those areas. Thus, if not rebutted, the existence of any one of these three factors is sufficient to prove that a state video franchise holder is not discriminating in its provision of video service.

231. It is consistent with Public Utilities Code § 5890(d), which apply nondiscrimination provisions to a “holder” rather than an “applicant,” that the Commission’s review of a the anti-discrimination and build-out provisions area take place after a state video franchise is awarded.

232. Pursuant to Public Utilities Code § 5890(g), local governments may bring complaints concerning discrimination to the Commission for resolution and the Commission itself may open investigations on discrimination matters.

233. Public Utilities Code § 5890(e)(2)-(3) establishes automatic extensions for build-out requirements imposed by Public Utilities Code § 5890(e)(1)-(2). These extensions go into effect if a significant percentage of households fail to subscribe to a state video franchise holder’s service.

234. Public Utilities Code § 5890(f) affords the Commission discretionary authority to grant an extension for the build-out requirements imposed in subsections (b), (c), and (e).

235. The procedures adopted in General Order XX to extend build-out deadlines are consistent with DIVCA.

236. Pursuant to Public Utilities Code § 5890(g) provides that the scope of our revocation authority extends to all provisions of “this division,” i.e., Division 2.5. Accordingly, we conclude that the Commission may suspend or revoke a state video franchise if it finds any of the following: a) 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 Division 2.5; b) The

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

state video franchise holder has violated any provision of Division 2.5 or any rule or regulation made by the Commission under and within the authority of this division; and c) A fact or condition exists that, if it had existed at the time of the original application for the state franchise (or transfer or renewal thereof), reasonably would have warranted the Commission's refusal to issue the state video franchise originally (or grant the transfer or renewal thereof).

237. DIVCA expressly limits the Commission's use of enforcement actions, such as investigations.

238. Pursuant to DIVCA, the Commission may impose a fine only when a state video franchise holder is in violation of Public Utilities Code § 5890.

239. Pursuant to Public Utilities Code § 5890, the Commission is given authority to address local entities' formal complaints only when the complaints arise under Public Utilities Code § 5890.

240. It is consistent with DIVCA for the Commission to limit its initiation of investigations to those situations where DIVCA explicitly assigns the Commission authority to regulate.

241. Pursuant to Public Utilities Code § 5890(g), the Commission has the flexibility to determine which type of public hearing could best develop the record needed for deciding an individual matter.

242. Pursuant to the general enforcement powers in Public Utilities Code § 5890(g) and (ii) our specific authority to administer the state video franchise application process, pursuant to Public Utilities Code § 5840, the Commission has the authority to investigate allegations that a fact or condition exists that, if it had existed at the time of the original application for the state video franchise (or transfer or amendment thereof), reasonably would have warranted the

## **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **1/16/07 Chong Decision**

Commission's refusal to issue the state video franchise originally (or grant the transfer or amendment thereof).

243. Pursuant to Public Utilities Code § 5890(g), the Commission may open an investigation to determine whether an applicant failed to comply with DIVCA franchising provisions.

244. It is consistent with DIVCA to require that any investigation to determine whether an applicant failed to comply with DIVCA franchising provisions follow standard Commission proceedings for the initiation of an investigation. These procedures include a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation of Public Utilities Code § 5890 compliance is warranted.

245. Pursuant to DIVCA, Formal investigation of antidiscrimination and build-out compliance may be launched in two ways: (i) in response to a complaint filed by a local government, or (ii) on the Commission's own motion.

246. The procedures and requirements discussed herein concerning complaints filed by local governments alleging the failure of a franchisee to comply with the provisions of Public Utilities Code § 5890 concerning the antidiscrimination and build-out requirements are consistent with DIVCA.

247. The procedures and requirements discussed herein concerning investigations initiated by the Commission alleging the failure of a franchisee to comply with the provisions of Public Utilities Code § 5890 concerning the antidiscrimination and build-out requirements are consistent with DIVCA.

248. The failure to comply with the anti-discrimination and build-provision of Public Utilities Code § 5890 may subject the franchisee to multiple penalties.

## **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **1/16/07 Chong Decision**

The Commission can impose fines, suspend a video franchise, and/or revoke a video franchise.

249. Pursuant to DIVCA, it is unlawful for any applicant or state video franchise holder willfully to make any untrue statement of a material fact in any application, notice, or report filed with the Commission.

250. Pursuant to DIVCA, it is unlawful for any applicant or state video franchise holder willfully to omit to state in any such application, notice, or report any material fact which is required to be stated by DIVCA.

251. Consistent with DIVCA, a formal investigation into compliance with reporting requirements may be launched on the Commission's own motion. In addition, an investigation also may be initiated in response to a complaint filed by a local government if the reporting requirement at issue is used to monitor compliance with Public Utilities Code § 5890.

252. Pursuant to Public Utilities Code § 444(a), the Commission may impose a penalty for failure to provide financial reports required by the Commission. In particular, the Commission may assess a penalty not to exceed 25 percent of the amount [a state video franchise holder's estimated user fee], on account of the failure, refusal, or neglect to prepare and submit the report required by Public Utilities Code § 443.

253. Pursuant to DIVCA, the Commission may fine a state video franchise holder if it fails to provide accurate reports needed to enforce anti-discrimination and build-out provisions.

254. The authority to impose penalties pursuant to Public Utilities Code § 5890(g) flows to instances where a state video franchise holder misstates or omits information required by Public Utilities Code § 5960.

## **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **1/16/07 Chong Decision**

255. Current federal and state law subject California telecommunications companies to a variety of measures designed to prevent unlawful crosssubsidization between telecommunications costs and non-telecommunications costs.

256. As discussed herein, the Commission has ample authority to investigate allegations of unlawful cross-subsidization.

257. Pursuant to Public Utilities Code § 5950 prohibits incumbent local exchange carriers that obtain a state video franchise from changing any rate for basic telephone service until January 1, 2009, unless the incumbent is subject to rate-of-return regulation.

258. The procedures discussed herein for investigation and sanctioning of the unlawful cross-subsidization of video services are consistent with DIVCA.

259. The procedures contained in GO XX for enforcing the submission of user fees are consistent with DIVCA.

260. DIVCA explicitly empowers local entities to enforce its consumer protection provisions.

261. DIVCA limits the Commission's role in enforcement of consumer protection provisions.

262. The procedures discussed herein in determining whether to initiate a proceeding to determine whether a pattern and practice of violating consumer protection laws warrants suspension or revocation of a video franchise are consistent with DIVCA.

263. It is necessary to ensure that the Commission's Rules of Practice and Procedure are consistent with DIVCA.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

264. DIVCA limits DRA's role to advocacy and enforcement actions related to Public Utilities Code §§ 5890, 5900, and 5950.<sup>733</sup> Section 5890 contains the nondiscrimination and build-out requirements. Section 5900 pertains to the enforcement of customer service and consumer protection standards. Section 5950 includes the statutory prohibition on increasing basic residential telecommunications rates until after January 1, 2009.

265. DIVCA further provides that DRA may have access to information in the Commission's possession "for this purpose" of enforcing the Code sections listed above.

266. The procedures adopted herein whereby DRA shall request reports from the Executive Director of the Commission are consistent with DIVCA.

267. DIVCA does not permit the Commission to order a grant of intervenor compensation.

268. The procedures adopted herein concerning amendments to a video franchise are consistent with DIVCA.

269. Federal and state law may change between now and 2017, the earliest a state video franchise may be renewed.

---

<sup>733</sup> CAL. PUB. UTIL. CODE § 5900(k). DRA has no statutory authority to advocate or initiate enforcement actions pursuant to Public Utilities Code § 5840, the section pertaining to applications. We also find that we have no statutory obligation to provide DRA with special notification concerning our action on a franchise application. As a courtesy, however, we will provide DRA an e-mail notice at the time of our action on a franchise application. The Commission's action on a state video franchise application is a matter of public record and will be announced on the Commission's website.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

**O R D E R**

**IT IS ORDERED** that:

1. A franchisee shall not allow its bond to lapse during any period of its operation pursuant to a state video franchise.
2. The Executive Director shall provide notice of incompleteness and the specific reason for incompleteness in the same document. The director should provide this notice both to the franchise applicant and to affected local entities.
3. The Executive Director shall provide notice of statutory ineligibility, when known, to the applicant for a state franchise.
4. A state video franchise holder shall provide a local entity and affected incumbent cable operators notice that it will begin offering service in the entity's jurisdiction. This notice of imminent market entry shall be given at least 10 days but no more than 60 days, before the video service provide begins to offer service.
5. The Executive Director shall place all video franchise holder's fee payments into a subaccount of the Commission's Utilities Reimbursement Account.
6. The Commission shall annually determine the fee to be paid by each state video franchise holder pursuant to the methodology and procedures discussed herein.
7. The Commission shall refund any user fee collected in error.
8. Video franchise holders shall provide the Commission with the reports and information needed to assess annual user fees according to the method and schedule discussed herein.
9. The General Order XX attached to this decision is hereby adopted.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

10. Applicants for a state video franchise shall follow the procedures and comply with the requirements of General Order XX

11. When, pursuant to the provisions of General Order XX that pertain to any video service provider that, when combined with its affiliates, has with less than one million telephone customers, the Commission receives a pre-application for a video franchise, the Commission shall either open a new phase of this proceeding to determine build-out requirements or open a new proceeding for this purpose.

12. The Commission shall provide for a public hearing in any proceeding where franchising; anti-discrimination and build-out; reporting; crosssubsidization; or user fee provisions are at issue.

13. Any investigation initiated by the Commission to determine whether an applicant failed to comply with DIVCA franchising provisions shall follow standard Commission proceedings for the initiation of an investigation. These procedures include, among other things, a majority vote of the Commission on an order initiating the investigation that either contains a report or the declarations of Commission witnesses pertaining to facts that demonstrate an investigation of Public Utilities Code § 5840 compliance is warranted. Such an investigation should proceed in the manner discussed herein, including public hearings. The Commission may let interested parties participate in the investigation and hearing process.

14. Any complaint by a local government alleging that a state video franchise holder has failed to meet the anti-discrimination and build-out requirements of Public Utilities Code § 5890 shall include sworn declarations pertaining to the facts that the local government believes demonstrate a failure to fulfill obligations imposed by Public Utilities Code § 5890. In addition, the local

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

entity filing a complaint shall clearly identify that the complaint pertains to a failure to meet an obligation imposed by Public Utilities Code § 5890.

15. Any investigation initiated by the Commission alleging that a state video franchise holder has failed to meet the anti-discrimination and build-out requirements of Public Utilities Code § 5890 shall include sworn declarations pertaining to the facts that the local government believes demonstrate a failure to fulfill obligations imposed by Public Utilities Code § 5890. In addition, the order instituting the investigation shall clearly identify that the complaint pertains to a failure to meet an obligation imposed by Public Utilities Code § 5890. Such an investigation should proceed in the manner discussed herein, including public hearings. The Commission may let interested parties participate in the investigation and hearing process.

16. Any investigation into allegations that a state video franchise holder has failed to meet the reporting requirements of DIVCA shall follow the procedures discussed herein.

17. Any investigation into allegations that a state video franchise holder has violated the provisions of DIVCA prohibiting cross-subsidization of video service shall follow the procedures discussed herein.

18. Any investigation into allegations that a state video franchise holder has violated the user fees requirements of DIVCA shall follow the procedures used in enforcing other DIVCA provisions regulated by the Commission.

19. The Commission shall follow the procedures discussed herein in determining whether to initiate a proceeding to determine whether a pattern and practice of violating consumer protection laws warrants suspension or revocation of a video franchise. In conducting this legal proceeding, the Commission shall not consider the merits of alleged material breaches de novo.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**  
**1/16/07 Chong Decision**

Instead, the Commission shall only consider whether enforcement actions and penalties assessed by a local entity were either uncontested or sustained by courts and whether these enforcement actions and penalties rise to a level such that state video franchise suspension or revocation is warranted.

20. Phase II of this proceeding shall determine which of the Commission's Rules of Practice and Procedure remain applicable in proceedings conducted pursuant to DIVCA.

21. In a dispute involving DRA pertaining to access to a report required by DIVCA, the Commission shall resolve the dispute using the procedures described herein and pursuant to Resolution ALJ 195.

22. The Commission shall not consider any protest to a franchise application.

23. No party shall be awarded intervenor compensation in a proceeding concerning DIVCA.

24. Phase II of this proceeding will address renewal issues to the extent possible at the time of the proceeding.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.