BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"").	**Rulemaking: R. 06-10-005**

INITIAL COMMENTS R.06-10-005

CITY OF ARCADIA

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INITIAL COMMENTS IN R.06-10-005

CITY OF ARCADIA

INTRODUCTION

We thank the California Public Utilities Commission ("Commission") for providing the opportunity to comment on the Commission's proposal for implementing the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA""). In accordance with Ordering Paragraph 5 of the Commission's R.06-10-005, Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement [DIVCA], issued on October 5, 2006 ("OIR"), the City of Arcadia timely files initial comments.

For more than twenty-five years, the City has granted franchises to video service providers, including cable television operators. The City has long promoted competition in the area of video services. As noted in our selection of issues and in our related recommendations contained in this filing, we are advising that the Commission adopt specific administrative practices, some of which translate into specific changes to the proposed application form. These recommendations are designed to protect the interests of local governments and the residents that they serve. DIVCA clearly grants local governments the authority to regulate ROW encroachment permitting, Electrical and Building Safety Codes, Franchise Fees, and Customer Service standards for video service providers. We request that the Commission's application process: (a) not only notify applicants of these local regulatory processes; but (b) require applicants to acknowledge their responsibilities to cooperate with local authorities in these matters.

The City understands that the Commission has a very difficult task in this process, partly due to: (a) the considerable length and scope of DIVCA; and (b) the very limited period of time in which the Commission has in which to create rules for a vastly different regulatory framework. The City invites the Commission to avail itself of the vast experience of local governments in the process.

To that end, we submit our comments and suggestions below concerning the OIR, the associated draft General Order ("DGO"), and the draft application forms. Please note that, unless otherwise noted, page numbers refer to the DGO.

RECOMMENDATIONS

1. ***A local government should be allowed to file comments regarding the granting of any state video franchise that will affect that local government, as well as any modification of said franchise--including transfers and renewals.***

Local governments should be allowed to file comments regarding the granting of any state video franchise that will affect that local government, as well as any modification of said franchise--including transfers and renewals.

At page 14, Subsection IV(C) of the DGO tentatively concludes that "No person or entity may file a protest to an application." The OIR, at page 11, repeats this preliminary finding. However, neither document provides strong support for this position, other than the OIR's noting that the Commission is the sole state video franchising authority and that the Commission may not exceed its authority granted in Section 5840 of the Public Utilities Code. (OIR, p. 11, citing Cal. Pub. Util. Code ' 5840(a) & (b). Unless otherwise noted,

Public Utilities Code sections/subsections refer to sections/subsections added to that Code by DIVCA)

American government, at all levels, time and again has created provisions for ultimate or sole agencies soliciting and taking into account outside comments in the decision-making process. Such input is especially valuable where the commenters have expertise regarding the matter being considered by the agency.

With respect to the granting of initial video franchises or their modification, local governments will often possess comprehensive and unique evidence relevant to an applicant's financial, legal, and technical qualifications. This will be especially true where those applicants have operated one or more franchised cable systems in a community for many years. The Commission would fail the public were the Commission to bar the submission of expert local government comments instrumental to the Commission making an informed decision in the best interest of the communities affected by the requested franchise.

Furthermore, DIVCA does not expressly prohibit the filing of comments concerning applications for a state franchise. In fact, the Commission is required to collect "adequate assurance that an 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" (Cal. Pub. Util. Code ' 5840(e)(9)). The Commission also has the authority to determine that an Application is "incomplete" if an Applicant fails to provide such assurances.

Additionally, DIVCA expressly gives a local government the opportunity to review every application from applicants that intend to provide service in that local government's jurisdiction (Cal. Pub. Util. Code ' 5840(e)(1)(D)).

Furthermore, as more thoroughly explained below, federal law governing cable television franchise renewals expressly requires public participation in that renewal process. Failure to allow such public and local government input concerning the renewal of DIVCA's state franchises would result in legally impermissible franchise renewals.

For the above reasons, the Commission should include a local government application comment process. The filing period for such comments could be limited by the 30-day review period but should allow local governments meaningful opportunities to provide necessary comments. Allowing such local government comment would not exceed Commission authority provided by DIVCA; rather, the ostensible public benefit underpinnings of DIVCA are consistent with Commission solicitation and review of such valuable local government input.

2. *The DGO and the OIR incorrectly mandate the extension of expired/expiring local franchises until January 2008.*

Subsection 5930(b) of the Public Utilities Code states:

> When an incumbent cable operator is providing service under an expired franchise or a franchise that expires before January 2, 2008, the local entity [the local government that granted the franchise] <u>may</u> extend that franchise on the same terms and conditions through January 2, 2008. A state franchise issued to any incumbent cable operator shall not become operative prior to January 2, 2008. [Emphasis added.]

The use of the word, "may," in this DIVCA-added subsection clearly demonstrates that the California legislature has given local governments the discretion to determine whether or not these expired/expiring local franchises will be extended.

Yet, despite this legislative grant of authority to local governments, the OIR, at page 8, attempts to remove this local government discretion:

> [T]the Commission tentatively concludes that incumbent cable providers whose local franchises expire prior to January 2, 2008 shall have the option of renewing their local franchises or seeking a state video franchise, and that incumbent cable providers opting to seek a state franchise shall have their existing local franchises extended until January 2, 2008. [Emphasis added.]

In addition to the OIR's questionable removal of authority from local governments, Section III(C)(2) of the DGO states:

> Prior to January 2, 2008, an Incumbent Cable Operator with an expired or expiring franchise may choose to renew the local franchise or seek a State Video Franchise. If a State Video Franchise is sought, the local franchise shall be extended under its existing terms until the state franchise is effective. [DGO, page 8. Emphasis added.]

Local governments, in accordance with applicable law and as a result of negotiations, grant cable franchises to cable operators. The consent of both parties is required for the modification, extension or renewal of these franchises. Federal law also requires that local cable franchises that expire prior to January 2, 2008 remain subject to the cable franchise renewal procedures contained in federal law. (See, for example, 47 U.S.C. § 546 (often referred to as "Section 626" (of the Cable Communications Policy Act

of 1984, or "Cable Act").) These procedures require certain findings and determinations from the local franchising authority, for example, ascertainment of cable television related community needs and interests. Allowing the cable or OVS provider to unilaterally extend the franchise would frustrate the bargaining ability of the local entity and would arguably violate federal law.

Furthermore, allowing unilateral franchise extension until January 2008 by the video provider may illegally interfere with local government efforts to increase PEG Access capital support through the enactment of PEG Ordinances allowed under subsection 5870(n) or by expediting conversion of expired/expiring cable/OVS franchises to state-granted video franchises allowed under subsection 5840(o). Therefore, the above-referenced Order language should be revised to comply with the clear and express language of DIVCA § 5930(b).

3. ***The bond valuations should be higher than the proposed amount of $100,000 and the bonds should be designed to truly protect local governments and their constituents.***

Subsection 5840(e) of the Public Utilities Code, states, in part, that the application for a state franchise "shall be made on a form prescribed by the commission and shall include all of the following . . .":

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

Unquestionably, the entities most likely to need the protection of bonds associated with state video franchises are local governments and their constituents--not the Commission.

Local governments often use security instruments to address cable operator customer service deficiencies, as well as other deficiencies by cable operators in meeting provisions of franchise agreements. By having the authority to draw against such instruments, LFAs are able to discourage such deficiencies. By drawing against such instruments, LFA s are: (a) able to recoup some or all of the damages the LFAs suffer as a result of these deficiencies; and (b) discourage the recurrence of such deficiencies.

Of the common security instruments used in the area of cable television regulation, letters of credit and security funds (such as certificates of deposit) controlled by local governments provide the most protection to local governments. Yet, DIVCA specifies the use of performance bonds, whose funds are more difficult for local governments to access.

Many such security instruments in California are valued at several hundred thousand dollars. In the City of Los Angeles, the valuation of the bonds pertaining to the various franchises totals over a million dollars. These amounts reflect the considerable costs of operating a cable system for just a few weeks, as well as the costly damage a cable operator may inflict on the property of the City and its residents. Many much smaller California cities than Los Angeles require security instruments of $100,000, or more.

Furthermore, security instrument amounts are often highest during the initial stages of cable franchises, when cable systems are being built and trenching and other construction activity in the public rights-of-way are greatest.

Well-informed cities drafting the terms of these security instruments will insist on

providing themselves a sufficient amount of time in which to act to protect their rights. Well-informed cities will insist on periods of sixty days or more. The thirty days often proposed by cable operators or companies supplying the bonds is often overly short for the effective local government action required by the bonds, in light of the fact that cable system problems noted by field personnel will generally have to be addressed at higher levels of government.

At Section IV.A.1(a), the DGO proposes that applicants either post a bond valued at $100,000 or produce a financial statement that demonstrates that the applicant possesses a minimum of $100,000 of unencumbered cash that is reasonably liquid and readily available to meet expenses. Neither the DGO nor the OIR provide any explanation regarding the methodology behind the extremely low bond valuation. Furthermore, neither the DGO nor the OIR address important issues, such as the identity of these bonds' beneficiaries (or "obligees") or the manner in which the bond amounts may be accessed by injured parties.

First, bonds, although a poor substitute for other type of security instruments, should be required for all state video franchises.

Second, with respect to cable systems that have already been constructed, the amounts of the bonds should, at a minimum, be consistent with the valuation amounts of the security instruments to which cable operators have already agreed. Third, with respect to video/high speed data systems that will require considerable future construction in the public rights-of-way, the amount of the bonds should reflect said activity.

Fourth, local governments in whose areas each state franchised system will operate should be listed as obligees on the pertinent bonds and these bonds should require that

these governments timely receive copies of each bond and any modifying instruments. In the event that the Commission ignores this recommendation, and the Commission fails to timely pursue bond remedies in the future, the Commission will create unnecessary liability for the State of California and the Commission.

Finally, the effective time for government action required by the bonds should be no less than ninety days, for the reasons provided above.

4. The DGO's video franchise assignment/transfer provisions should: (a) be modified to allow for comment and other input by local governments; (b) incorporate reasonable processing fees; and (c) be clarified in accordance with the Legislature's prohibition against transfers of franchises prior to the required Commission review.

DIVCA's state video franchise assignment/transfer provisions are largely contained in Subsections 5840(l), (m) of the Public Utilities Code and the related informational subsections contained in Section 5840. The DGO's treatment of these franchise assignment/transfer matters is largely found in Subsections 6.E and 6.G (pages 20-22 of the DGO). (Subsection 6.G pertains to "Miscellaneous Changes.")

As discussed above, the franchise assignment/transfer process, like other processes involving these franchises, would benefit greatly by Commission acceptance and meaningful consideration of comment by local governments and members of the public affected by said assignments/transfers.

Additionally, the DGO surprisingly does not include an application/processing fee for acting upon a request for Commission approval of a transfer. Because a transferee must provide to the Commission, and the Commission must review, largely the same types of

documentation that must be submitted as part of an original franchise application, a transfer application fee should be adopted and assessed by the Commission. This fee should be equivalent to the initial franchise application fee, which should be in the $7,500-$10,000 range, as discussed below.

Furthermore, the Commission should remove any confusion created or potentially created by the following language in Subsection 6.G of the DGO:

> As a condition of being issued a State Video Franchise, a State Video Franchise Holder must notify the Commission and affected Local Entities within 14 business days of the following:
>
> > (1) Any transaction involving a change in the ownership, operation, control, or organization of the State Video Franchise Holder, including but not limited to a merger, acquisition, or reorganization. . . .

By itself, subparagraph (1), which applies to franchise assignments/transfers, could lead a reader to believe that the franchise transferors/transferees need only notify the Commission and "affected Local Entities" of franchise transfers/assignments after the fact. The same observation can rightfully be made regarding the language in Subparagraphs (1) and (4) of Subsection 5840(m) of the Public Utilities Code. Therefore, Subsection VI.G of the DGO should expressly note that, with respect to many, if not all, of the events described in that subsection, the post-event notification discussed therein followed required pre-event notification to the Commission and/or local governments, and, in some cases, the pre-event notification was included in a mandatory application.

5. ***In addition to effecting the DGO, Subsection VI.G ("Miscellaneous Changes") modifications noted immediately above, the Commission should also revise the subsection so that it expressly notes all the activities or events to which the post-event notifications apply.***

Subsection 5840(m) of the Public Utilities Code is the basis of DGO, Subsection VI.G. Subsection 5840(m) lists six categories of events that require post-event notification to the Commission and local governments. However, Subsection VI.G only discusses three of these categories of events. The Commission should modify Subsection VI.G so that this subsection: (a) expressly refers to all six categories; and (b) expressly notes, as discussed above, that, with respect to many, if not all, of the events described in that subsection, the post-event notification discussed therein followed required pre-event notification to the Commission and/or local governments, and, in some cases, the pre-event notification was included in a mandatory application.

6. ***The Commission's video franchise renewal provisions do not comply with governing federal law.***

At page 19, Subsection VI(D)(2) of the DGO states:

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

This provision impermissibly contravenes an important DIVCA franchise renewal provision--that of complying with federal law. Because the California Legislature

recognized that the video franchises described in DIVCA would currently be governed by federal cable television law, Subsection (c) of Cal. Pub. Util. Code § 5850 requires that "[r]enewal of a state franchise shall be consistent with federal law and regulations." Because, not surprisingly, the DGO's initial video franchise-granting process does not mirror federal law governing cable franchise renewals, attempting to use a duplicate of this initial state franchise-granting process for the renewal of these state franchises results in violations of federal law.

47 U.S.C. § 546 (or "Section 626" of the Cable Act) sets forth cable franchise renewal procedures. Both the Section 626 "formal" and "informal" renewal processes require providing the public opportunities to comment and otherwise participate. The formal process requires, in part, that a cable franchisee or a franchising authority commence a proceeding for the purpose of: "(1) identifying the future cable-related community needs and interests; and (2) reviewing the performance of the cable operator under the franchise during the franchise term." (47 U.S.C. § 546(a).) The informal renewal process states, in part: "Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, <u>after affording the public adequate notice and opportunity for comment</u>, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced)." (47 U.S.C. § 546(g).)

By referencing federal law, the Legislature demonstrated an understanding that the Commission must do more than the bare minimum of determining whether a state video franchise renewal application is complete. Furthermore, even if the Legislature had

remained silent, federal law would be preemptive in this matter and would require adherence by the Commission and the California video providers it franchises.

In short, before allowing a state video franchisee to continue providing service under a renewed franchise for another ten years, the Commission must adhere to and promote the franchise renewal process required by federal law.

In light of the above, the City recommends that Subsection VI(D)(2) of the DGO be revised to read as follows:

> Requests for State Video Franchise renewals shall be submitted and evaluated by the Commission in accordance with the requirements of 47 U.S.C. § 546, and/or other applicable federal law, including those provisions mandating franchising authority consideration of solicited public comment.

7. ***The Commission should expressly state that Subsection 5840(d) of the Public Utilities Code applies to the issuance of all state video franchises, including original state franchises.***

Subsection 5840(d) of the Public Utilities Code states:

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

5 of the Government Code). [Emphasis added.]

The Cable Television and Video Provider Customer Service and Information Act, as well as the Video Customer Service Act, were both enacted over a decade ago and have applied to cable operators since their enactment. On numerous occasions, cable operators have been found to have violated one or both of these acts. It is not inconceivable that a locally franchised cable operator filing an application to replace a local cable franchise with a state video franchise could do so when that operator is in violation of a final nonappealable order involving one of these acts—in which case, Subsection 5840(d) would clearly apply, based on a strict reading of this subsection.

At page 15, in the last sentence of Subsection V.B, the DGO states that the "provision" of Subsection 5840(d) "applies to State Video Franchises sought through renewal or transfer of an existing State Video Franchises." Although this statement is true, the statement does not provide a complete description of the clear meaning of the Subsection 5840(d) language. The City recommends that the Commission delete this last sentence or revise the sentence to read: "Among the scenarios to which this provision applies are: (a) applications for State Video Franchises sought by entities who have previously held locally granted cable or OVS franchises; and (b) State Video Franchises sought through renewal or transfer of an existing State Video Franchise."

8. ***DIVCA emphatically states the Legislature's intent that local government revenues be protected. To the extent that the Commission administers DIVCA, the Commission should promote this legislative principle.***

Subsection 5810(a)(2)(C) of the Public Utilities Code states:

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

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

Subsection 5810(d) of the Public Utilities Code goes on to state:

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

Because the Commission has been creating and implementing fee schedules for decades, the Commission has developed considerable expertise in creating and implementing "fees of general applicability." The Commission should use this extensive experience to create general applicability fee frameworks with respect to Commission-assessed DIVCA fees.

The Commission should calculate and administer all DIVCA fees in a manner that does not create or appear to create legal justifications for offsetting these fees, wholly or partially, against franchise fees owed local governments. Additionally, as further discussed below, the City recommends that the draft Commission-created "Application Form" attached to the DGO be modified to contain a statement whereby the applicant expressly agrees that any Commission or State assessed fees do not constitute franchise fees and may not be offset against franchise fees owed to any local government.

9. The DGO's fee structure needs clarification; application review costs to the Commission and fees to applicants are grossly underestimated.

The City also responds to the Commission's request for comments regarding the calculation of the user fee (OIR, Section III.D.(3), at pages 25-26) and the appropriateness of establishing additional processing fees.

First, the OIR estimates that "Commission implementation of AB 2987 will require approximately $1 million dollars (OIR, Section III.D.(1), at page 21). The City is generally supportive of funding the division in a manner sufficient to satisfy the regulatory authority granted to the Commission under DIVCA. Accordingly, the City would like clarification regarding specifics of this budget (e.g.. identification of the five largest expenses by category and amount).

Second, we believe the Commission's proposed application fee of $2,000 is grossly underestimated. The proposed fee is lower than the fee many local governments charge for reviewing an initial franchise application, and even lower than the fee many local governments charge for transfer applications (which usually require review of an FCC Form 394). Based on this City's experience, this proposed fee appears to gravely underestimate the number of hours Commission staff, as well as the Commissioners, will actually be required to devote to the few franchise applications submitted to Commission in 2007. An initial application fee of $7,500 to 10,000 would likely better reflect the Commission's actual costs. Furthermore, by raising the application processing fees, the Commission could reduce the corresponding user fee.

Third, the DGO's proposed decision to forgo application fees for other types of Commission activity required by franchisee requests is against the public interest. Like

thrifty local governments in the video franchising area, the Commission should assess application/processing fees for reviewing and responding to requests from franchisees, such as requests pertaining to: (a) assignments/transfers of franchises (as noted above); and (b) any other modification of franchises, including those involving changes to service territories, as well as the submission of "supplemental" applications related to other matters. State franchisees who request franchise modifications and create additional work for the Commission should be required to provide the appropriate remuneration to the Commission.

Consistent with the DGO's definition for "Application Fee," the amount of these additional fees should be based on the Commission's "actual and reasonable costs of processing an application.

10. Service Area For Applications For State Video Franchises Should Be Limited To 750,000 Households.

Section 5840(f) of the Public Utilities Code states:

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

Section V.A. of the DGO states:

> The Commission prohibits the holding of multiple State Video Franchises through separate subsidiaries or affiliates of a single enterprise. Any

company with subsidiaries or affiliates may only receive a single State Video Franchise. [Footnotes omitted.]

Section VI.C of the DGO allows a Video Franchise Holder to "amend a State Video Franchise in order to reflect changes to its service territory," and foregoes assessing these franchisees a fee for requesting such an amendment from the Commission.

Although Section V.A and VI.C do not contravene DIVCA, the DGO adopts unwise approaches. As noted above, refusing to assess processing/application fees for requests adding to Commission work is not cost-effective. Furthermore, forcing franchise applicants to obtain only one franchise (in the case of Time Warner, such a franchise would number in the vicinity of 1.9 million customers), and depriving these companies of the opportunity to obtain separate franchises for customers who might be served by systems that are separated by hundreds of miles, deprives these applicants of flexibility that could benefit these companies. Moreover, statewide franchises will make it very difficult for the Commission or any local entity to adequately monitor specific performance and compliance matters relating to PEG provisions, customer service, and franchise fees.

Furthermore, allowing franchisees the opportunity to repeatedly revise their franchise service areas by numerous franchise modifications, at no extra cost to the franchisees, is inefficient and makes a mockery of the initial franchise application process.

Therefore, the City recommends the following:

(1) Franchisees be allowed to hold more than one franchise, either directly or indirectly, such as through affiliates or subsidiaries;

(2) No franchise service area should hold more than 750,000 households[1], with the exception of franchises pertaining to a city that individually holds more than 750,000—in which case the franchise may not include households in any adjoining city or county area;

(3) Initial franchise applications and any supplemental application devoted to service area modifications should specifically and accurately describe the service area the franchisee intends to serve during the five years following the submission of the initial franchise application or supplemental application, respectively;

(4) The Commission should assess application fees for reviewing and otherwise processing supplemental applications; these fees should be based on the "actual and reasonable costs of processing" such applications.

11. The draft "Appendix A" ("Franchise Application" and "Affidavit") should be modified to better protect local governments and their constituents.

"Appendix A" to the DGO is a crucial two-part component of this set of documents. The first part is the "Application For a New or Amended California State Video Franchise" ("Franchise Application"); the second part is the "Affidavit." Despite being prepared on very short notice, Appendix A has much merit. However, including the few modifications

[1] 750,000 households is a number that will likely produce video service subscriptions in range of approximately 300,000 video subscribers (based on 40 percent penetration). We have chosen 750,000 because it reflects the approximate size of many cable company clusters (Charter's LA area and Comcast's service areas surrounding San Francisco -- East Bay, Peninsula, North Bay, etc). We also believe that it will allow the Time Warner areas to be pieced into approximately seven regions. The PUC may not like the recommendation, but I feel compelled to stress the obvious benefits of improved oversight due to more manageable monitoring of socio-economic issues, local compliance issues and PEG funding.

recommended below will result in Appendix A and/or the Commission better:

(1) protecting the rights of local governments to collect all franchise fees to which these entities are entitled, partly by promoting the understanding that the Commission's processing fees are not franchise fees under applicable law and cannot legally be offset against franchise fees owed local governments;

(2) affirming and describing the duties of a successful applicant to comply with Local Entities' requirements concerning public right-of-way encroachment permitting and interconnection of PEG access facilities;

(3) developing processes for addressing complaints by Local Entities against state video franchise holders and/or addressing investigations and enforcement actions spearheaded by the Commission;

(4) promulgating reports to be completed by franchisees that result in accurate and comprehensive gross revenues data and related franchise fee calculations;

(5) promulgating reports to be completed by franchisees that depict these franchisees compliance with applicable customer service standards;

(6) conveying the information contained in the Appendix, largely due to greater clarity.

With these objectives in mind, the City recommends that the Appendix be modified as follows:

(1) Modify the "Parent company's" Item (Number 5 on page 4) to include information on all parent entities, if more than one, including the ultimate parent;

(2) Add a contact item for the person responsible "for ongoing communications with the Commission about the broadband or high-speed data business," if that person is different than the "Video Service" contact person listed in Item Number 7 on page 4;

(3) Eliminate the $100,000 bond amount in Item Number 19 on page 9 and use this Item to inform the applicant that the Commission will: (a) determine the proper amount and format of the bond after reviewing the application; (b) inform the applicant of the Commission's determinations; and (c) require that the applicant submit a properly executed bond to the Commission, as well as copies to all affected local governments, no later than sixty (60) days before beginning video system construction;

(4) Revise Item 2 in the second set of conditions in the Affidavit, so that this Item reads: "Applicant will abide by all consumer protection laws and rules addressed expressly or by reference in Section 5900 of the Public Utilities Code, as well as all other applicable consumer protection laws and rules, and acknowledges that one or more Local Entities will serve as the primary enforcement entity with respect to these standards."

(5) Revise Item 3 in the in the second set of conditions in the Affidavit, so that Item 3 reads: "Applicant will timely and fully remit all fees required by subdivision (a) of Section 5860 of the Public Utilities Code to the appropriate Local Entity and agrees that no fees assessed by the Commission may be offset against these Section 5860 fees, in whole or in part."

(6) Revise Item 4 in the second set of conditions in the Affidavit, so that Item 4 reads: "Applicant will timely and fully provide the public, educational, and governmental access (PEG Access) channels, as well as associated funding and support (such as system interconnection, where applicable), required by AB 2987, as well as any continued institutional network (I-Net) facilities and support required by AB 2987."

12. The Commission should take several additional steps to ensure that the Commission and local governments timely receive all information necessary for the successful accomplishment of their respective responsibilities.

In order to successfully complete tasks respectively allocated to the Commission and the City by DIVCA, both entities must be able to access the necessary comprehensive information in a timely manner. Based on our decades of experience administering cable television franchises, the City recommends that the Commission take the additional following information-gathering steps:

(1) With respect to the Local Entity contact information template required by Item 20 on page 9 of the "Franchise Application," the Commission should update this template annually each year an applicable franchise is in effect, initiating this process by using the most recent template each January to contact the appropriate Local Entities;

(2) When approving or denying a franchise application, or requesting more information from an applicant, the Commission should provide written copies of the pertinent documentation to affected or potentially affected local

governments concurrently with the provision of this documentation to the applicant;

(3) Work with local governments to timely create standard information solicitation forms regarding several areas—including, but not limited to:

a. Local entity contact information to be used by applicants and the Commission, including primary contacts pertaining to franchise fee payments and PEG Access operational issues;

b. Gross revenues/franchise fee documentation to be submitted with quarterly franchise fee payments to Local Entities;

c. PEG Access information, including channel activation, channel location, PEG Access funding/fees, and other support.

CONCLUSION

The broad scope of DIVCA and the short period of time given to the Commission to begin implementing the Commission's major role under the new regulatory framework have created many challenges for the Commission, local governments, and video service providers. The City has based the recommendations contained in these opening comments on the City's considerable and lengthy experience administering video franchises. The City hopes that you will find these comments of use. The City also looks forward to working with the Commission to bring about an implementation of DIVCA that is in the best public interest. Should you have any questions regarding the issues raised in these comments, please contact me at your earliest opportunity.

Submitted By:

Tracey L. Hause
Administrative Services Director
City of Arcadia
240 W. Huntington Drive
Arcadia, CA 91007
(626) 574-5425
thause@ci.arcadia.ca.us

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"").

Rulemaking: R. 06-10-005

NOTICE OF AVALABILITY OF THE COMMENTS OF CITY OF ARCADIA SERVICES

IN RESPONSE TO THE OIR ON DIVCA

October 24, 2006

City of Arcadia
240 W. Huntington Drive
Arcadia, CA 91007
Phone: 626-574-5425
Fax: 626-821-0092
Tracey L. Hause
Administrative Services Director

Pursuant to Rule 1.9 (c), (d) and (e) of the Commission's Rules of Practice and Procedure, The City of Arcadia hereby submits this Notice of Availability of the Comments of Telecom Services which were filed on this Commission on October 24, 2006. Any recipient of this Notice of Availability who is not receiving service by electronic mail in this proceeding may request a paper copy of the document. Please direct all such requests to Tracey L. Hause at 626-574-5425, fax: 626-821-0092 or e-mail: thause@ci.arcadia.ca.us.

Dated: October 24, 2006

Respectfully submitted,
City of Arcadia
By:
Tracey L. Hause
Administrative Services Director

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Initial Comments to Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement The Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"") by the City of Arcadia on all known parties to R.06-10-005 mailing a properly addressed copy by first-class mail with postage prepaid, or transmitting an e-mail message with the document attached, to each party named in the official service list.

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Executed on October 24, 2006 at Arcadia, California.

Signature

*where execution occurs outside California, verification must be made in accordance with the law of the state where execution occurs.