



June 16, 2014

**Via U.S. Mail and E-Mail**

Mr. Ryan Dulin  
Director, Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: **Small LECs' Reply Comments on Draft Resolution T-17443**

Dear Mr. Dulin:

In accordance with the Notice of Availability from the Communications Division dated May 27, 2014, the Small LECs<sup>1</sup> hereby submit this reply to the opening comments of interested parties addressing Draft Resolution T-17443 ("Draft Resolution"). Overall, the opening comments reflect a general consensus amongst existing broadband providers that the timelines and the mechanics of the right of first refusal opportunity described in the Draft Resolution are flawed, inconsistent with the intent of SB 740, and should be modified. The opening comments also provide support for adopting the Small LECs' proposal to allow existing service providers a voluntary opportunity to update the Commission's broadband availability maps. However, the opening comments also include proposals that should be categorically rejected. Specifically, ORA's proposals to make the construction deadline binding and subject to penalties are inappropriate because they would penalize providers for environmental and permitting delays that are outside of their control. ORA's proposal to impose additional evaluation factors for assessing existing providers' CASF applications would also be discriminatory and should be similarly rejected. Finally, the Small LECs would also support Frontier's proposal to increase the percentage of funding costs covered by the CASF program for unserved areas, as it would assist the Commission in achieving its broadband penetration goals.

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<sup>1</sup> Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the "Small LECs").

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**I. The Draft Resolution's Proposal to Implement the Right of First Refusal is Inconsistent with SB 740 and the Commission Should Allow Service Providers to Voluntarily Resolve Discrepancies in Broadband Availability Maps.**

The Small LECs agree with existing service providers that the Draft Resolution does not provide a meaningful right of first refusal opportunity and is inconsistent with the intent of SB 740. *Verizon*, at pp. 1-2; *CCTA*, at pp. 2-3. As the Small LECs explained in opening comments, the intent of the right of first refusal opportunity provided in SB 740 is to ensure that public funds are utilized in a manner that minimizes wasteful overbuilding in an area where an existing broadband provider is willing to upgrade service within a reasonable time. As also explained by Verizon, SB 740 requires the right of refusal to be applied on a project by project basis, which is inconsistent with the letter of intent process contemplated by the Draft Resolution. *Verizon*, at p. 1. CCTA also correctly states that the Draft Resolution appears to be confusing SB 740's goal of approving *funding* for infrastructure projects that will provide broadband access to no less than 98% of California households by December 31, 2015 with the *completion* of these upgrades by that same date. *CCTA*, at pp. 2-3. Accordingly, the Small LECs agree that the Draft Resolution's bases for requiring existing providers to exercise their right of first refusal opportunity before the first CASF application deadline and for imposing aggressive timelines for existing providers are unsupported by SB 740.

The opening comments also support the Small LECs' proposal to establish a voluntary opportunity for existing service providers to update the Commission's broadband maps. The opening comments suggest that there remains confusion or disagreement even amongst the consortia groups regarding the Commission's list of priority areas as several comments were intended solely to update or resolve inconsistencies in the Commission's list of priority areas. *See, e.g., UCCC*, at p. 1; *GCCTBP*, at p. 1. In light of these discrepancies, the Small LECs believe it would be productive to resolve these disputes regarding service speeds before the first CASF application deadline, and the Small LECs would support proposals for interested parties to voluntarily meet and confer on this issue. *Tom West*, at p. 9.

**II. ORA's Recommendations are Improper, Discriminatory, and Should be Rejected.**

The Small LECs disagree with ORA's proposal that the April 1, 2015 deadline to complete project upgrades should be binding and subject to penalties. *ORA*, at p. 4. This proposal should be rejected because it ignores the fact that construction delays may not be within a broadband provider's control. It appears that at least one underlying assumption for this recommendation is ORA's belief that the hard deadline is necessary to ensure accountability because the Draft Resolution allows existing providers the opportunity to "game the system." *ORA*, at pp. 1-2. The Small LECs object to this characterization, as it improperly assumes that the Small LECs are intentionally refusing to provide broadband service to their customers by delaying construction. As the Small LECs explained in opening comments, the deadline described in the Draft Resolution fails to account for the geographical challenges of construction projects in rural areas. The proposal also ignores the time intensiveness of engaging in the

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planning, engineering, and procuring of parts and materials for these projects. *Verizon*, at pp. 1-2. Moreover, delays are often outside of a broadband provider's control. Delays may result from extreme weather conditions as noted in the Small LECs' opening comments, or as noted by Verizon and CCTA, delays may also result from CEQA reviews and permitting applications and approvals. *Verizon*, at p. 2; *CCTA*, at p. 4. Any one of these factors could make it impossible for carriers to meet the April 1, 2015 deadline, and carriers should not be assessed penalties for circumstances that are far beyond their control.

ORA also proposes to impose an additional factor for evaluating CASF applications submitted by existing service providers. *ORA*, at p. 3. Specifically, ORA argues that existing service providers' CASF applications should be assessed based on the financial ability of the provider to fund the upgrade without CASF funds or with partial CASF funds lower than the amount requested, and any approval should diminish the CASF award accordingly. *Id.* The Small LECs are unclear as to whether the proposed factor would be intended to be applied beyond the circumstances described by ORA in its comments, but the Small LECs believe that the proposed assessment of a broadband provider's financial ability should be rejected in all circumstances. Not only is this proposal specifically discriminatory against existing service providers, but it would improperly require a judgment as to a broadband provider's financial ability that is not contemplated by the CASF program's rules. There is no justification for this additional assessment, and the Commission should reject this baseless and discriminatory proposal.

### **III. The Draft Resolution Should Increase CASF Funding for Unserved Areas.**

Finally, the Small LECs would support Frontier's proposal to eliminate the contribution threshold in order to allow the possibility of providing a higher percentage of grant funding for unserved areas. *Frontier*, at pp. 3-4. As Frontier explains, many of the remaining unserved areas are in "extremely rural and high cost areas that cannot be financially justified because of the significant upfront investment to deploy the infrastructure and facilities to provide broadband service." *Id.* at 3. The Small LECs agree that a higher CASF funding may be appropriate and justifiable for these reasons. This modification would also be consistent with recent a Commission resolution that awarded CASF funding equal to 90% of the projected budget. Res. T-17429.

Should you have any questions, please contact Lisa Tse at [ltse@cwclaw.com](mailto:ltse@cwclaw.com).

Very truly yours,



Lisa P. Tse

cc: John Baker, [john.baker@cpuc.ca.gov](mailto:john.baker@cpuc.ca.gov);  
Draft Resolution T-17443 Service List