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

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund.

R. 12-10-012
(Filed October 25, 2012)

**OPENING COMMENTS OF
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)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
(the "SMALL LECs")**

ON ORDER INSTITUTING RULEMAKING

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December 3, 2012

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 6.2 of the California Public Utilities Commission's ("Commission") Rules
3 of Practice and Procedure ("Rules"), and in accordance with the timeframe for comments outlined
4 in Ordering Paragraph 3 of R.12-10-012, Calaveras Telephone Company (U 1004 C), Cal-Ore
5 Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co.
6 (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company
7 (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The
8 Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou
9 Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C) and Winterhaven
10 Telephone Company (U 1021) (the "Small LECs") hereby offer opening comments on the Order
11 Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund
12 ("OIR"). This OIR revisits eligibility requirements related to the California Advanced Services
13 Fund ("CASF") and considers whether the Commission should adopt rules that would permit non-
14 regulated entities to apply for CASF infrastructure grants and loans. Currently, CASF support is
15 limited to telephone corporations, defined by Section 234 of the Public Utilities Code as entities
16 that hold either a Certificate of Public Convenience and Necessity ("CPCN") or a Wireless
17 Identification Registration ("WIR").

18 The Small LECs appreciate the Commission's ongoing efforts to advance universal service
19 and broadband deployment goals through the CASF program. The Commission's recent decision
20 implementing SB 1040 (D.12-02-015) improved the program significantly by raising the grant
21 contribution level and enhancing transparency in the grant process. The Small LECs support the
22 Commission's continuing efforts to identify ways to improve the program. However, the Small
23 LECs remain concerned that expanding the program to non-regulated providers may not ultimately
24 benefit the telecommunications end users whose surcharge payments support the CASF. As the
25 Commission observed in D.12-02-015, "staff's experience with non-CPCN holders has been
26 challenging," and several unregulated providers who received grants did not follow through on
27 them. D.12-02-015, at p. 21. Moreover, as the OIR acknowledges, legislative change would be

1 necessary to expand the CASF to alternative providers.

2 If the CASF program is expanded to non-regulated entities, the Commission should impose
3 certain conditions to ensure that proper oversight is in place and ratepayers get the full benefit of
4 CASF projects. Specifically, the Commission should require non-CPCN holders to provide a
5 performance bond to cover the amount of CASF funding to be disbursed. Particularly with
6 unregulated providers, the Commission should also carefully evaluate business plans to ensure that
7 proposed CASF projects actually confer a sufficient benefit to ratepayers to warrant the
8 expenditure of public funds. Further, to the extent that a CASF project is proposed in a portion of
9 a Small LEC's territory, the Small LECs should have an opportunity to show either: (1) that the
10 area identified already has sufficient facilities to provide the required broadband speeds; (2) that
11 construction plans are in place to upgrade current facilities to provide the required broadband
12 speeds; or (3) that the current facilities can be upgraded to meet the applicable broadband
13 standards at a lower cost than the amount being requested from the CASF. The Small LECs are
14 Carriers of Last Resort ("COLRs") in some extremely rural and remote areas of the state, and they
15 receive federal and state funding to ensure that they are positioned to fulfill reasonable requests for
16 broadband and voice service in those areas. To ensure that there is not duplicative funding, the
17 Commission should rely on COLR obligations and existing funding first before it approves CASF
18 projects in areas that Small LECs are serving or poised to serve.

19 **II. PERFORMANCE BOND REQUIREMENTS FOR NON-REGULATED ENTITIES**
20 **WOULD PROVIDE AN APPROPRIATE VEHICLE FOR COMMISSION**
21 **OVERSIGHT.**

22 The Small LECs appreciate the OIR's awareness of ratepayer interests in its consideration
23 of possible requirements on non-regulated entities similar to those established for non-telephone
24 corporations who obtained American Recovery and Reinvestment Act ("ARRA") grants.¹ Most
25 importantly, the Commission must ensure that it has sufficient oversight authority over non-

26 ¹ OIR, at p. 20-21. In D.09-07-020, the Commission determined that it would provide CASF support to
27 ARRA grantees that were not telephone corporations, contingent upon the Legislature's passage of AB 1555. AB
28 1555 was enacted in July 2009, giving the Commission authority to provide CASF matching grants to ARRA
grantees. In Resolution T-17233, the Commission adopted specific rules governing the participation of non-
certificated or registered entities in the CASF program, including a performance bond requirement.

1 regulated entities. A performance bond requirement is a reasonable way to achieve this goal. This
2 requirement would be consistent with the conditions imposed by the Commission on non-
3 regulated entities when they received limited access to CASF funds to match ARRA grants. The
4 Commission appropriately reasoned that the requirement would "ensure project
5 completion...continued operations or compliance with the approved pricing terms and conditions
6 and pricing commitment period." Res. T-17233, at p. 8. Further, the Commission recognized that
7 a bond requirement was necessary since non-regulated entities were not under the regulatory
8 purview of the Commission and the Commission lacked the ability to exercise any punitive
9 measures on non-regulated entities for violating the terms of CASF awards. Res. T-17233, at pp.
10 6-7. Whereas the Commission has significant authority over telephone corporations and has
11 ample mechanisms to enforce regulated providers' compliance with Commission rules, additional
12 steps are necessary to ensure that unregulated providers follow through on their commitments to
13 complete CASF projects and follow the Commission's rules.

14 The Commission should take a careful look at all of the prerequisites for obtaining a CPCN
15 to determine whether similar requirements should be imposed upon unregulated CASF grantees.
16 At a minimum, a performance bond requirement should be put in place for these providers.

17 **III. ALLOWING THE SMALL LECs TO SERVE AREAS IDENTIFIED AS**
18 **UNDERSERVED AND UNSERVED IN THEIR SERVICE TERRITORIES WILL**
19 **BENEFIT RATEPAYERS.**

20 The Commission should allow the Small LECs to have the first opportunity to fulfill
21 broadband requests in underserved or unserved areas of their own service territories. Small LECs
22 already have access to the CHCF-A and federal high-cost funding sources that together support
23 deployment of broadband facilities, as well as ongoing maintenance and operating costs associated
24 with their multi-use networks. These resources ensure that broadband customers in the Small LEC
25 territories may benefit from long-term reliable broadband services, and the Commission should
26 not duplicate these resources by funding competitors in areas where Small LECs are ready and
27 willing to serve.

Because of the Commission's reliance on "advertised speeds" as a prerequisite for defining

1 "underserved" areas, areas in Small LEC territories may be mis-identified as CASF-eligible even
2 though facilities already exist to serve customers. In other instances, Small LECs may have
3 construction plans in place to upgrade facilities to meet required broadband standards, or they may
4 be in a position to upgrade these facilities at a lower cost than a requested CASF grant. It would
5 be an inefficient use of public funds to fund competition where adequate broadband coverage
6 already exists just because the full capabilities of the network had not been ubiquitously
7 "advertised." The Small LECs should have the opportunity to fulfill service commitments within
8 their territories, consistent with their COLR obligations.

9 It should also be noted that recent clarifications in state law have resolved some of the
10 concerns that previously hampered the Small LECs' participation in the CASF program within
11 their service territories. Prior to the passage of SB 379 (2012 Fuller), the Commission had not
12 clarified whether Small LECs could include the carrier portion of CASF project costs in rate base.
13 Without assurances that these investments would generate returns through rate-of-return carriers'
14 rate base, the Small LECs could not risk incurring unrecoverable broadband deployment costs in
15 some of the "underserved" portions of the high-cost, remote areas within their service territories.
16 With the recent passage of SB 379, rate-of-return carriers will have a greater ability to identify
17 CASF-eligible projects that may be appropriate to pursue within their service areas.

18 **IV. CONCLUSION.**

19 The Small LECs remain skeptical of the ultimate benefit of an expansion to the CASF to
20 include unregulated, unregistered providers. Nevertheless, should CASF be broadened to include
21 these entities, the Small LECs encourage the Commission to adopt sufficient controls to oversee
22 projects pursued by unregulated entities. The Commission must always ensure that ratepayer
23 funds are utilized in a manner that conforms to the expectations and interests of the ratepayers. By
24 adopting the precautions discussed above, the Commission would help ensure that a further
25 expansion of the CASF does not result in a lack of oversight or a misdirection of ratepayer funds.
26 The Small LECs will continue to monitor the Commission's proposals for expansion of the CASF
27 and be prepared to offer additional suggestions as this proceeding moves forward.

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Dated this 3rd day of December, 2012, at San Francisco, California.

Respectfully submitted,

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