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

Order Instituting Rulemaking to Establish
a Framework and Processes for Assessing
the Affordability of Utility Service.

R. 18-07-006
(July 12, 2018)

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)
HORNIOS 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 STAFF PROPOSAL ON ESSENTIAL SERVICE AND AFFORDABILITY METRICS

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1 **I. INTRODUCTION**

2 Pursuant to the "Administrative Law Judge's Ruling Inviting Comments on Staff
3 Proposal ("ALJ Ruling") issued on August 20, 2019, Calaveras Telephone Company (U 1004 C),
4 Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill
5 Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone
6 Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C),
7 The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The
8 Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C),
9 Winterhaven Telephone Company (U 1021 C) (the "Small LECs") offer these comments on the
10 Staff Proposal and in response to the specific questions listed in the ALJ Ruling.

11 The Small LECs agree with the Staff Proposal that "[t]he framework should account for
12 California's geographic and economic diversity." *Staff Proposal* at 6. The Small LECs also
13 agree with the Staff's recommendation to use three separate proposals to help assess affordability
14 in light of the strengths and weaknesses of each metric. However, the Small LECs are concerned
15 that the data sources used for the metrics may be less reliable for rural communities. To properly
16 account for California's geographic diversity, it is therefore necessary to consider additional
17 economic, socioeconomic and demographic factors impacting affordability for rural communities
18 as discussed further herein.

19 The Staff Proposal does not contain any implementation recommendations, and it is
20 necessary to understand how Staff plans to implement the metrics in order to provide meaningful
21 comments. Therefore, the Small LECs request the opportunity to provide additional comments
22 in response to any implementation proposals that are provided in this proceeding. For
23 telecommunications services, the Small LECs recommend that the affordability metrics be used
24 as guidelines – rather than absolute formulas – to help inform the rates for regulated intrastate
25 voice services in rate case proceedings for rate-regulated providers.

26 The following comments provide the Small LECs' views on the subjects addressed in the
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1 ALJ Ruling.¹ To the extent possible, the Small LECs have attempted to consider the work
2 papers underlying the Staff Proposal. However, the materials were not provided until after 4:30
3 p.m. on Friday, September 6th. Because this timing did not allow sufficient time to analyze the
4 basis for the staff's recommendations and implementation examples in advance of the September
5 10th deadline for comments, the Small LECs reserve the right to provide additional comments
6 based on their review and interpretation of the work papers.

7 **II. THE RECOMMENDED ESSENTIAL SERVICE QUANTITIES NEED TO**
8 **ACCOUNT FOR BARRIERS TO BROADBAND DEPLOYMENT IN RURAL**
9 **AREAS.**

10 The Staff recommends a minimum connection speed of 20 megabits per second (Mbps)
11 downstream/3 Mbps upstream, which is derived from the results of data requests issued to six
12 large telecommunications service providers—AT&T, Frontier, Comcast, Cox, Sprint and
13 Verizon. *Staff Proposal* at 13-14.² Notwithstanding the Small LECs' jurisdictional objections to
14 the inclusion of unregulated broadband services within the definitions or standards for essential
15 services and affordability, the Small LECs offer brief comments to the extent they are used in
16 California Advanced Services Fund ("CASF") proceedings. While the Small LECs agree that
17 the FCC reports may provide useful guidance for speed and capacity standards, the FCC notes
18 that the numbers provided are "rough guidelines and are not based on surveys or experiments
19 conducted by the FCC."³ In addition, the FCC has conditioned federal funding upon the

20 ¹ As set forth in their prior comments in this proceeding, the Small LECs object to the inclusion of
21 unregulated broadband Internet access services within the scope of the Staff's Proposal on essential
22 service and affordability metrics. *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108,
23 *Declaratory Ruling*, Report and Order, FCC 17-166 (rel. Jan. 4, 2018) ("*Restoring Internet Freedom*
24 *Order*"), at ¶ 199; *see also Opening Comments to OIR*, at pp. 5-6. By providing these comments on the
25 Staff Proposal and responding to specific questions in the ALJ Ruling, the Small LECs do not waive this
26 argument.

27 ² The Staff proposal does not attach copies of the data requests or the service providers' responses.

28 ³ *See Broadband Speed Guide*, available at <https://www.fcc.gov/reports-research/guides/broadband-speed-guide>; *Household Broadband Guide*, available at [https://www.fcc.gov/research-reports/guides/household-broadband-guide](https://www.fcc.gov/reports-research-reports/guides/household-broadband-guide).

1 fulfillment of similar objectives, including meeting minimum broadband speed standards, which
2 were recently increased to 25 Mbps download and 3 Mbps upload. *In the Matter of Connect*
3 *America Fund*, WC Docket No. 10-90, *Report and Order* (“*ETC Reform Order*”), FCC 18-176
4 (rel. Dec. 13, 2018), at ¶ 104 (requiring carriers to expand availability of service offering
5 downloads of at least 25 Mbps and uploads of at least 3 Mbps over a five-year deployment
6 period to qualify for federal funding). The 25/3 Mbps broadband speed target is just one
7 component of the FCC’s guidelines associated with the receipt of federal funding.

8 For rate of return carriers that have selected Alternative Connect America Cost Model
9 (A-CAM) support, each carrier has a specific number of locations where it is expected to provide
10 25/3 Mbps capabilities, a specific number of locations that are expected to be at 10/1 Mbps
11 capabilities, and a specific number of locations that must be equipped with 4/1 Mbps access.
12 And some locations are subject to a “reasonable request” standard due to the extremely high cost
13 to provide broadband service at those locations. In some cases, there are more locations that
14 must be connected at 10/1 than 25/3 Mbps. The number of locations that must be met at any
15 particular speed capability is based upon household density criteria and the cost to provide
16 service to various locations. Deployment obligations for A-CAM carriers span a 10-year funding
17 window,⁴ with interim deployment obligations beginning at the end of the fourth year of funding.

18 Rate of return carriers that have not selected A-CAM support also have specific
19 broadband deployment obligations to a certain number of locations at 25/3 Mbps over a five-year
20 period. The number of locations that must be met is based on projected federal support, existing
21 broadband deployment at 25/3 Mbps, and the average cost of providing service as measured by
22 one of two criteria. The Small LECs' plant additions are designed to meet evolving federal and
23 state standards. However, given barriers to broadband deployment in rural areas, such as
24 mountainous, rugged terrain and sparsely populated areas, the Small LECs require adequate state
25 and federal funding to attempt to achieve these evolving state and federal standards. The higher

26 ⁴ This 10-year term of the revised A-CAM offer effectively extends A-CAM by two years for carriers that
27 elect this revised offer.

1 costs of broadband deployment in rural areas should be accounted for in ensuring that sufficient
2 support exists to keep rates affordable.

3 **III. THE PROPOSED DEFINITION OF AFFORDABILITY NEEDS**
4 **CLARIFICATION.**

5 The proposed definition of "affordability" is "the degree to which a household can
6 regularly pay for *essential service* of each public utility type on a full and timely basis without
7 substantial hardship." *Staff Proposal* at 6 (emphasis in original). However, as staff recognized
8 at the August 26, 2019 workshop, the term "substantial hardship" is undefined and a "moving
9 target." Clarification is needed on the meaning of this term. As the Small LECs noted in their
10 prior post-workshop comments, the proposed definition will be difficult to measure in individual
11 company rate cases because it will not be possible to assess at the time of a proposed rate change
12 whether a customer will be able to pay for an essential quantity of utility service "on a full and
13 timely basis without substantial hardship." *Small LECs Post-Workshop Comments* at 2. Because
14 factors other than affordability may relate to a customer's failure to timely pay for telephone
15 service, it will also be difficult to assess this definition following a rate change. It appears that
16 the proposed metrics are intended to be used as rough guidelines for applying this definition, but
17 additional clarification is needed before the reasonableness of implementing such guidelines
18 could be determined.

19 **IV. COMMENTS ON QUESTIONS IN ALJ RULING**

20 **A. Do the affordability metrics adequately address affordability? If not, how**
21 **should the metrics be changed?**

22 The Small LECs agree with the flexible and complementary approach recommended by
23 Staff to use three different metrics to help assess affordability given that each metric has certain
24 strengths and weaknesses. *Staff Proposal* at 6. While these metrics should be used as guides in
25 rate case proceedings to set rates for regulated intrastate voice services, given their flaws and
26 limitations, particularly for rural areas, other economic, socioeconomic, and demographic factors
27 should be considered to adequately assess affordability. The Small LECs' additional
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1 considerations for assessing affordability are also important, such as rate shock, input from rural
2 community members, and federal policies. *Small LECs Post-Workshop Comments* at 4-5.

3 **B. Are the proposed sources of data for household-level information acceptable**
4 **for constructing affordability metrics? If not, what sources would be more**
5 **appropriate, and why?**

6 The Public Use Microdata Samples ("PUMS") from the American Community Survey
7 ("ACS") and the ACS census tract data that staff proposes to use for the Affordability Ratio
8 ("AR") and Ability to Pay Index ("API"), respectively, are less reliable for rural areas. As the
9 Small LECs noted in prior comments, the ACS data are subject to large margins of error for rural
10 communities. *Small LECs Post-Workshop Comments* at 3. The PUMS data are subject to larger
11 margins of error than the ACS census tract data.⁵ At the workshop on August 26, Commission
12 Staff also acknowledged that there are limitations in the data sources and that proxies must be
13 used that are representative of households in a geographic region because it is not possible to
14 ascertain which utility provides service to a particular area in a Public Use Microdata Area
15 ("PUMA"). As the Staff Proposal notes, a single PUMA has a population of at least 100,000 and
16 is comprised of groups of census tracts. *Staff Proposal* at 17. Therefore, a single PUMA
17 contains "several rural and less populous counties." *Id.* at 25.

18 Although the implementation examples in the Staff Proposal are provided for rural areas,
19 Staff failed to incorporate necessary household weighting factors and margins of error in their
20 "illustrative" analysis. *Id.* As a result, these examples should not be viewed as illustrative in
21 light of these limitations, which could materially impact the rural areas used in the examples.
22 Despite the significant margins of error for certain rural communities, the Small LECs believe
23 the data sources may still be helpful in constructing affordability metrics. Other data sources,

24 ⁵ "Estimates made with PUMS data are subject to additional sampling error because the PUMS data
25 consists of a subset of the full ACS sample. Thus, standard errors of PUMS estimates can be larger than
26 standard errors that would be obtained using all of the ACS data." *Public Use Microdata Sample*
(PUMS): Accuracy of the Data (2017), at p. 10, available at: [https://www2.census.gov/programs-](https://www2.census.gov/programs-surveys/acs/tech_docs/pums/accuracy/2017AccuracyPUMS.pdf)
27 [surveys/acs/tech_docs/pums/accuracy/2017AccuracyPUMS.pdf](https://www2.census.gov/programs-surveys/acs/tech_docs/pums/accuracy/2017AccuracyPUMS.pdf).

1 however, may be useful in individual cases in light of the margins of error. For instance, IRS tax
2 data, while less granular, should also be considered as it does not have any margin of error.

3 *Small LECs Post-Workshop Comments* at 3.

4 **C. What regulatory, operational, and/or resource considerations might be**
5 **necessary to effectively implement affordability metrics?**

6 As counsel for California American Water Company noted during the workshop, the
7 answer to this question depends to some extent on who will be responsible for implementing the
8 affordability metrics. The Commission should consider the small size and limited staff and
9 resources of the Small LECs in implementing the affordability metrics. Because rate cases are
10 generally filed by specified small telephone companies every five years under the Rate Case
11 Plan, the Commission should not impose additional burdensome data requests or other
12 requirements on the Small LECs outside of rate cases to implement the affordability metrics for
13 regulated intrastate voice services. *See* D.15-06-048. Rather than implementing costly and
14 burdensome reporting requirements, data from the rate cases as well as publicly available data
15 can be used to implement and track affordability for voice services.

16 As previously noted, the Commission lacks jurisdiction to implement affordability
17 metrics for unregulated broadband services. At the workshop, Staff could not identify how the
18 metrics could be implemented for broadband services in Commission proceedings outside of
19 CASF grant proceedings given these jurisdictional limitations. Staff noted that the metrics could
20 be used as a tool for ratepayers to understand what is available from various providers so
21 ratepayers could choose to move to an area with the best rates. This limited utility does not
22 warrant the application of these metrics to unregulated broadband services. Moreover, the FCC's
23 preemption authority would extend to the Commission's implementation of burdensome
24 reporting requirements relating to broadband services or pricing. *Restoring Internet Freedom*
25 *Order*, at ¶195, n. 730 (preempting state economic regulation, including any requirements
26 concerning rates, tariffs and accounting). The FCC's preemption authority expressly includes
27 "any state laws that would require the disclosure of broadband Internet access service
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1 performance information, commercial terms, or network management practices in any way
2 inconsistent with the transparency rule" adopted by the FCC. *Id.* at ¶ 195, n. 729. The FCC's
3 preemption directive includes any state data collection requirements that are "akin" to those in
4 Title II. Annual reporting requirements, examinations of "transactions . . . which may affect
5 service," and general requirements to inspect records are also "plainly preempted" because they
6 have analogues in Title II and such requirements would "interfere with the balanced federal
7 regulatory scheme" that the FCC has adopted. *Restoring Internet Freedom Order*, at ¶ 198; *see*
8 47 U.S.C. §§ 219 (annual reporting); 215 (transactions affecting service); 220 (record
9 inspection).

10 **D. How should the Commission monitor and track affordability on a recurring**
11 **basis, outside of specific proceedings?**

12 As previously noted, the Small LECs oppose the implementation of burdensome
13 reporting requirements outside of rate case proceedings and suggest that the Commission use
14 publicly available data and rate case data to monitor and track affordability for regulated
15 intrastate voice services. These data can be used by the Commission to efficiently track
16 affordability across utilities.

17 **E. When and how should affordability metrics be utilized in Commission**
18 **decisions and program implementation?**

19 As described above, the metrics should be used as guidelines in helping the Commission
20 assess affordability in a rate case, the reasonableness of Lifeline rates, and in scoring CASF
21 projects as one of several factors. However, additional economic, socioeconomic and
22 demographic factors should also be considered to adequately assess affordability in rural
23 communities in light of the flaws and limitations in the metrics and data sources for rural areas.

24 **1. How should the Commission use or interpret the resulting values from**
25 **affordability metrics in proceedings?**

26 As described in Section IV.B, the inherent uncertainty of the source data advises against
27 any formulaic use of the proposed affordability metrics. Rather than using "point estimates,"
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1 uncertainty ranges will be required to evaluate the reasonableness of these metrics and help
2 assess affordability. This uncertainty does not invalidate the value of the metrics, but it does
3 impose a degree of ambiguity that requires case-by-case judgment. The target ranges should not
4 be applied as strict requirements for approving rate changes, but should be one factor used in
5 evaluating whether the rate is just and reasonable in addition to other relevant affordability and
6 demand factors, as well as company-specific revenue requirement and rate design considerations
7 in a particular rate case proceeding. The Small LECs' service territories include many low-
8 income customers and customers who are on fixed incomes, so it is important that rate cases
9 consider the individual characteristics of each customer base.

10 **2. How should the Commission use affordability metrics to prioritize or**
11 **design ratepayer programs?**

12 Based on the Scoping Ruling, the Small LECs understand that this proceeding will not
13 address modification of existing affordability programs or the creation of new ratepayer
14 programs. *Scoping Ruling* at 4-5. Therefore, this question appears to address an issue outside of
15 the scope of the current proceeding. Nonetheless, the Small LECs believe the metrics could be
16 useful in assessing affordability in the Lifeline proceeding and evaluating other low-income and
17 universal access programs.

18 **3. In which types of proceedings should the Commission assess**
19 **affordability? What criteria should be used to determine if a**
20 **proceeding requires an affordability assessment?**

21 As noted above, for telecommunications carriers, the affordability metrics should be
22 limited to rate cases for rate-of-return carriers who have rate cases, evaluating Lifeline rates, and
23 assessing the target population for CASF projects. The Commission does not have jurisdiction
24 to apply the metrics to unregulated broadband services.

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1 **V. CONCLUSION**

2 The Small LECs appreciate the opportunity to comment on the Staff's Proposal, and urge
3 the Commission to consider the unique issues impacting affordability for rural communities and
4 rural service providers. The Small LECs also request that the Commission provide for additional
5 workshops, concrete proposals on implementation, and further opportunities for input and
6 comments before reaching any decision in this matter on affordability definitions, metrics and
7 implementation. The Commission should reach out to the parties in advance of the scheduling of
8 any future workshop so that the parties may identify appropriate representatives or experts to
9 attend such events.

10 Dated this 10th day of September, 2019, at San Francisco, California.

11 Respectfully submitted,

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