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

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

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

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POST-WORKSHOP COMMENTS OF

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**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")**

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**ON SELECTED PROPOSALS AND QUESTIONS IN ATTACHMENT J TO
ADMINISTRATIVE LAW JUDGE'S RULING ADDING
WORKSHOP PRESENTATIONS INTO THE RECORD AND
INVITING POST-WORKSHOP COMMENTS**

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1 **I. INTRODUCTION**

2 On April 12, 2019, Administrative Law Judge Park issued a "Ruling Adding Workshop
3 Presentations into the Record and Inviting Post-Workshop Comments." ("ALJ Ruling").
4 Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor
5 Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone
6 Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U
7 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra
8 Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano
9 Telephone Company (U 1019 C), Winterhaven Telephone Company (U 1021 C) (the "Small
10 LECs") offer these post-workshop comments to the proposals and questions in Attachment J to
11 the ALJ Ruling. These comments are timely as they are filed within the 30-day timeframe
12 authorized by the ALJ Ruling. *See* Commission Rule 1.15 (deadlines that fall on a weekend are
13 extended to include the first business day thereafter).

14 The Small LECs welcome the opportunity to comment on the proposed definitions and
15 metrics for "essential service" and "affordability" to assist the Commission in setting "just and
16 reasonable rates" for voice service in Small LEC rate cases. *See* Pub. Util. Code § 451. They
17 have close ties with the rural communities that they serve, and the Small LECs are concerned
18 about affordability in these areas, which largely consist of low-income and middle-income
19 households. While the Small LECs support an examination of affordability in the context of
20 regulated intrastate voice services, many of the proposals and questions in Attachment J to the
21 ALJ Ruling concern unregulated retail broadband Internet access services. The Small LECs
22 object to the inclusion of these unregulated services within the scope of this proceeding.

23 *Restoring Internet Freedom Order*, at ¶ 199;¹ Pub. Util. Code § 710(a) *see also* *Opening*
24 *Comments to OIR*, at pp. 5-6. The Small LECs further object to the admission into the record of

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26 ¹ *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling*, Report and Order, FCC
27 17-166 (rel. Jan. 4, 2018). The entirety of the FCC's *Restoring Internet Freedom Order* is available at the following
link: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-166A1.pdf.

1 the following presentation, which is focused exclusively on the affordability of unregulated
2 broadband services: Achilles, Todd B., CPUC Affordability Workshop, OIR R.18-07-006
3 (January 22, 2019), attached to ALJ Ruling as Attachment H. *Id.*

4 **II. PROPOSED DEFINITIONS AND METRICS FOR ESSENTIAL SERVICE AND
5 AFFORDABILITY**

6 Attachment J to the Ruling asks whether the definition of essential service is suitable to
7 all public utility services. Insofar as the definitions of essential service and affordability pertain
8 to regulated wireline services, the Small LECs believe it is appropriate to develop definitions for
9 all public utility services, but the combined impact of multiple rate increases will be difficult to
10 measure and implement in individual rate case proceedings. Because each service and each
11 community is different, the application of the definitions and metrics must consider the nuances
12 in the affected community. Thus, in implementing affordability and essential service definitions
13 in individual cases, the Commission will need to focus on the impact of specific proposed rate
14 changes to individual utility's customers and individual utility's revenue requirements.

15 The Small LECs appreciate that the proposed definition of affordability is intended to
16 account for different circumstances faced by customers. In particular, the Small LECs urge the
17 Commission to consider specific impacts on localized communities in assessing affordability.
18 However, the proposed definition of "affordability" will be difficult to measure in individual
19 company rate case because it will not be possible to assess at the time of a proposed rate change
20 whether a customer will be able to pay for an essential quantity of utility service "on a full and
21 timely basis without substantial hardship." Therefore, this definition should be refined to include
22 more economic, socioeconomic, and demographic considerations.

23 At this stage of the proceeding, it is difficult to meaningfully comment on the proposed
24 affordability metrics without knowledge of the precise factors that will be included in the metrics
25 or how they will be implemented. That said, it is important to the Small LECs that any metric
26 used account for local conditions and geography as their rural customers face different
27 affordability concerns than urban customers. Therefore, comparisons between rates charged by
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1 urban providers should not be determinative of what a rural consumer finds “affordable.”
2 Flexibility must be incorporated into any definitions to account for additional factors and data on
3 a case-by-case basis in individual rate cases, particularly for rural consumers who will be subject
4 to different affordability considerations than urban customers.

5 In addition, the reliability of data sources used for each metric must be considered. For
6 example, Professor Teodoro and the Public Advocates Office both reference census block group
7 data by the American Community Survey. However, this data source is subject to huge margins
8 of error for rural communities. *See* A.17-10-004 (Foresthill General Rate Case), Exh. FTC-20
9 (Lehman Rebuttal), at 15. On the other hand, IRS tax data, while less granular, does not have
10 any margin of error. *Id.* at 14-15. The Commission should therefore rely on IRS data, as it will
11 lead to more reasonable overall results.

12 The Small LECs object to the proposed definitions and metrics for essential service and
13 affordability that address unregulated retail broadband Internet access services. As noted above
14 and in the Small LECs Opening Comments to the OIR, the Commission should not attempt to
15 address pricing or affordability for unregulated services. Based on findings that "regulation of
16 broadband Internet access service should be governed principally by a uniform set of federal
17 regulations," the FCC closed the door on any state-specific "public utility-type" regulations.
18 *Restoring Internet Freedom Order*, at ¶195, n. 730 (preempting state economic regulation,
19 including requirements concerning rates, tariffs and accounting).

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1 **III. PROPOSED IMPLEMENTATION OF DEFINITIONS AND METRICS**

2 Any definitions and metrics developed in this proceeding should be implemented only in
3 the context of rate of return regulated utility rate cases. The time period for assessing rate
4 impacts depends on the rate case cycles for different utilities. Rate cases are filed by specified
5 small telephone company groups every five years under the Rate Case Plan. Outside of rate
6 cases, the Commission should rely on publicly-available information. Additional reporting
7 obligations would be particularly burdensome and costly for the Small LECs and are
8 unnecessary to assess affordability when the rate cases already provide a more efficient forum
9 for doing so.

10 In the context of rate cases, local conditions should be considered, such as zip code data
11 available from IRS tax data. However, income should not be the only measure of economic
12 hardship. In addition to income, other measures should be considered on a case-by-case basis in
13 evaluating vulnerable populations, such as rural consumers and the elderly.

14 **IV. ALTERNATIVE CONSIDERATIONS FOR ASSESSING AFFORDABILITY**

15 As noted above, affordability considerations should not be limited to income and other
16 socioeconomic and geographic factors should be considered. The Commission should also
17 consider the amount by which a proposed rate increase differs from current rates. Rate shock
18 and customer harm can result even if the proposed rate is considered reasonable in the long-term.
19 It is also critical that the Commission consider consumer and local community input on any
20 proposed rate increases. While public participation hearings provide one avenue for obtaining
21 customer feedback, they must be scheduled at a time when consumers are available to provide
22 meaningful input on all proposed rate increases at stake in a proceeding. In some small
23 telephone company rate cases, public participation hearings have been scheduled on the Friday
24 before a holiday weekend and/or prior to the deadline for the Public Advocates' Office's
25 testimony. As a result, consumers were unable to provide input on the rate increases ultimately
26 proposed by the Public Advocates Office, which were significantly higher than those proposed
27 by the companies. In future workshops in this proceeding, it would also be useful to seek
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1 feedback from rural community groups or their representatives on affordability.

2 The Commission should also consider federal policies on affordability, particularly for
3 vulnerable rural consumers. On May 18, 2017, the FCC froze the rate floor at \$18.00 to remain
4 consistent with the directive under Section 254(b) of the Communications Act to advance
5 universal service in rural high cost areas and ensure rates are just, reasonable and affordable. *In*
6 *the Matter of Connect America Fund*, FCC Notice of Proposed Rulemaking and Order, WC 10-
7 90, FCC 17-61 (May 18, 2017). On April 12, 2019, the FCC voted to approve an order that
8 eliminates the rate floor. *In the Matter of Connect America Fund*, Report and Order, FCC 19-32,
9 ¶ 2 (April 15, 2019). In eliminating the rate floor, the FCC found that "the rate floor creates a
10 perverse incentive for carriers to raise local rates, harming consumers in rural areas and making
11 telephone service less affordable." *Id.* at ¶10, ¶1 (noting that the rate floor has increased "the
12 telephone rates of rural subscribers, who are often older Americans on fixed incomes, lower-
13 income Americans, and individuals living on Tribal lands. These Americans are some of those
14 least able to afford the needless rate increases caused by the rate floor."). The Commission
15 should defer to the FCC's sound judgement "based on an extensive and near-unanimous record,"
16 including comments by the AARP, the National Consumer Law Center, the National Tribal
17 Telecommunications Association, and small, medium, and large rural telephone companies "that
18 the rate floor is inconsistent with the direction of the Communications Act to advance universal
19 service while ensuring that rates are just, reasonable, and affordable." *Id.* at ¶9. Similarly, the
20 Commission's and the Public Advocates Office's policy in recent rate cases to require regular
21 increases to rates at levels beyond the company's own proposals will negatively impact rural
22 consumers.

23 **V. CONCLUSION**

24 The Small LECs appreciate the opportunity to comment on the issues raised in
25 Attachment J to the ALJ Ruling, and urge the Commission to consider the unique impact rate
26 increases have on rural consumers. The Small LECs also request that the Commission provide
27 for additional workshops, more concrete proposals, and further opportunities for input and
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1 comments before reaching any decision in this matter on affordability definitions, metrics and
2 implementation. The Commission should reach out to the parties in advance of the scheduling of
3 any future workshop so that the parties may propose representatives or experts to speak at and
4 attend such workshops.

5 Dated this 13th day of May, 2019, at San Francisco, California.

6 Respectfully submitted,
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