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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)

REPLY 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 STAFF PROPOSAL ON ESSENTIAL SERVICE AND AFFORDABILITY METRICS

Mark P. Schreiber
Patrick M. Rosvall
Sarah J. Banola
COOPER, WHITE & COOPER LLP
201 California Street, 17th Floor
San Francisco, California 94111
Telephone: (415) 433-1900
Facsimile: (415) 433-5530
Email: prosvall@cwclaw.com

Attorneys for the Small LECs

September 20, 2019

1 **I. INTRODUCTION**

2 Pursuant to the Administrative Law Judge's Ruling Inviting Comments on Staff Proposal
3 ("ALJ Ruling") issued on August 20, 2019, Calaveras Telephone Company (U 1004 C), Cal-Ore
4 Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U
5 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011
6 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa
7 Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou
8 Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), Winterhaven
9 Telephone Company (U 1021 C) (the "Small LECs") offer these reply comments addressing
10 certain positions and arguments from other interested parties in their opening comments on the
11 Staff Proposal.¹

12 The comments from CCTA and the Small LECs demonstrate that unregulated interstate
13 broadband services should be excluded from the affordability framework to the extent that the
14 Commission seeks to regulate these rates because they are beyond the scope of this proceeding
15 and the Commission's jurisdiction. The comments of the consumer groups do not provide
16 persuasive authority to refute these scoping and jurisdictional barriers. While the consumer
17 groups propose that broadband services be included within the affordability framework, given
18 these barriers, the inclusion of unregulated services for purposes of rate regulation or data

19 ¹ The Small LECs received opening comments from the following parties: California Cable and
20 Telecommunications Association ("CCTA"), Pacific Bell Telephone Company d/b/a AT&T
21 California and its affiliates ("AT&T"), The Public Advocates Office ("Public Advocates
22 Office"), Center for Accessible Technology ("CforAT"), The Greenlining Institute
23 ("Greenlining"), The Utility Reform Network ("TURN"), the Utility Consumers' Action Network
24 ("UCAN"), California Water Association ("CWA"), Pacific Gas and Electric Company
25 ("PG&E"), San Diego Gas & Electric Company ("SDG&E") and Southern California Gas
26 Company ("SoCal"), Southern California Edison Company ("SCE"), Southwest Gas Corporation
27 ("Southwest Gas"), PacifiCorp d/b/a Pacific Power ("PacifiCorp"), California Community
28 Choice Association ("CalCCA"), GRID Alternatives ("GRID"). Given the number of comments
and short time period provided for reply comments, the Small LECs have focused their reply
comments on the opening comments relating to affordability metrics for the telecommunications
industry. The Small LECs reserve the right to address other comments that may be relevant to
the Commission's affordability analysis as this proceeding develops.

1 reporting requirements cannot serve a valid and lawful purpose in a Commission proceeding.

2 As to regulated intrastate voice services and other regulated services, the parties'
3 comments generally support the use of transparent, practical and cost-effective affordability
4 metrics that rely on publicly available data. Several parties have also cautioned against the use
5 of the affordability metrics as strict requirements and urged the Commission to include
6 additional relevant factors. For the Small LECs, it is critical that the Commission account for
7 their small size and rural service territories in developing and implementing the metrics.

8 **II. THE OPENING COMMENTS OF THE PUBLIC ADVOCATES OFFICE, TURN**
9 **AND GREENLINING DO NOT ADDRESS THE JURISDICTIONAL AND**
10 **SCOPING BARRIERS THAT PRECLUDE THE COMMISSION FROM**
11 **APPLYING THE AFFORDABILITY METRICS TO BROADBAND SERVICES.**

12 The Public Advocates Office, TURN and Greenlining each recommend that the
13 Commission apply the affordability metrics to broadband services, but they fail to address the
14 Commission's lack of jurisdiction to regulate broadband rates. The Public Advocates Office
15 proposes that the Affordability Ratio ("AR") include in the numerator only the utility bill under
16 evaluation, and include in the denominator the household income net of housing less the bills for
17 the remaining utility services and broadband service. *Public Advocates Office Opening*
18 *Comments on Staff Proposal* at 6-8. In support of this proposal, the Public Advocates Office
19 recognizes that the Commission does not regulate broadband rates. *See id.* at 8 (arguing that its
20 AR recommendation is appropriate because the "Commission should not use the rates it can
21 regulate as a lever to impact the affordability of rates it does not currently regulate.").
22 Greenlining proposes that the affordability metrics be applied to both fixed and mobile
23 broadband services, but fails to provide any jurisdictional basis for the Commission to do so.
24 *Greenlining Opening Comments on Staff Proposal* at 1-2.

25 TURN claims that Section 706 of the Telecommunications Act of 1996 "is a separate
26 grant of authority from Congress" that provides the Commission with authority to regulate the
27 affordability of broadband services. *TURN Opening Comments on Staff Proposal* at 14; *see* 47
28 U.S.C. § 1302(a). The FCC has squarely repudiated TURN's position, noting that "provisions in

1 section 706 . . . directing the Commission to encourage deployment of advanced
2 telecommunications capability are better interpreted as *hortatory* rather than as independent
3 grants of regulatory authority." *Restoring Internet Freedom Order* at ¶ 267 (emphasis added), n.
4 731.² The FCC explained that the provisions of Section 706 merely "exhort[] the Commission to
5 exercise market-based or deregulatory authority granted under other statutory provisions," rather
6 than constituting "independent grants of regulatory authority." *Id.* at ¶¶ 267-270.³

7 In addition, Section 706 does not give state commissions the power to adopt rules for
8 services that are not within their subject matter jurisdiction—*i.e.*, services that they do not
9 already regulate. Rather, by its plain terms, Section 706(a) applies to "[t]he [FCC] and each
10 State commission *with regulatory jurisdiction* over telecommunications services" and only
11 permits state commissions to use "regulating methods" already available to them. 47 U.S.C. §
12 1302(a) (emphasis added). The *Restoring Internet Freedom Order* reclassified broadband
13 Internet access service as an information service. *Restoring Internet Freedom Order*, at ¶¶ 20,
14 26. The Commission's subject matter jurisdiction is limited to intrastate services and expressly
15 excludes services subject to interstate authority, such as Internet access service. *See CCTA*
16 *Comments on Staff Proposal* at 4; *see also* 47 U.S.C. §§ 151-152; *Ivy Broad. Co. v. AT&T Co.*,

17 ² *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling,*
18 *Report and Order*, FCC 17-166 (rel. Jan. 4, 2018), petitions for rev. filed (D.C. Cir. Nos. 18-
19 1051 *et al.*) ("*Restoring Internet Freedom Order*").

20 ³ The Commission is bound by the FCC's determination on the meaning of Section 706 in the
21 *Restoring Internet Freedom Order*. TURN improperly relies on the D.C. Circuit's decision in
22 *Verizon v. FCC* construing Section 706. *Verizon v. FCC*, 740 F.3d 623, 637 (D.C. Cir. 2014).
23 The holding of the *Verizon v. FCC* case pertained to the legality of the FCC's first *Open Internet*
24 *Order*, which was largely vacated; its holding may not be read to support the regulation of
25 broadband rates. In any event, the D.C. Circuit recognized that Section 706 can reasonably be
26 read, as the FCC did in the *Restoring Internet Freedom Order*, as "simply setting forth a
27 statement of congressional policy, directing the Commission to employ 'regulating methods'
28 already at the Commission's disposal in order to achieve the stated goal[.]" *Id.* at 637; *see also*
Restoring Internet Freedom Order, at ¶ 281 (despite two D.C. Circuit cases conclusions that the
FCC could permissibly adopt an alternative view that Section 706 is a grant of regulatory
authority, these cases did not find that the FCC's "previous reading was the only (or even the
most) reasonable interpretation of section 706, leaving the Commission free to adopt a different
interpretation upon further consideration.").

1 391 F.2d 486, 490 (2d Cir. 1968) ("this broad scheme for the regulation of interstate service by
2 communications carriers indicates an intent on the part of Congress to occupy the field to the
3 exclusion of state law"). As CCTA explains, "*broadband is neither a telecommunications*
4 *service nor an intrastate service.*" CCTA Comments on Staff Proposal at 4 (emphasis in
5 original). As such, it is beyond both the Commission's jurisdiction and the scope of this
6 proceeding. *Id.* at 2-4. While the Small LECs do not oppose the inclusion of broadband prices
7 within the AR or Hours at Minimum Wage ("HM") metrics, broadband prices should be treated
8 similarly to unregulated housing costs because the Commission lacks jurisdiction to regulate
9 broadband rates.

10 **III. THE PUBLIC ADVOCATES OFFICE'S PROPOSAL TO USE ACTUAL**
11 **RESIDENTIAL USAGE DATA FOR ESSENTIAL SERVICE QUANTITIES**
12 **DISREGARDS THE STAFF PROPOSAL'S DEFINITION OF "ESSENTIAL**
13 **SERVICE."**

14 The Staff Proposal defines "essential service" as "service that meets a household's basic
15 needs and is reasonably necessary for that household's health, safety, and full participation in
16 society." Staff Proposal at 5. Staff defines "telecommunications essential service" as "voice and
17 broadband services required for education; telehealth; safety; and participation in society, such as
18 completing job applications and accessing government assistance programs." *Id.* As noted
19 above, this definition should not include broadband services as a telecommunications service
20 because broadband services are not telecommunications services. Notwithstanding this legal
21 restriction, it is evident from this definition and comments made by Staff at the August 26, 2019
22 workshop that Staff intended to exclude high definition video, gaming and other broadband
23 services that are not considered "essential" to meeting basic needs required for participation in
24 society. The Public Advocates Office, however, asserts that the "Commission must instead set
25 standards to reflect what *Californians* purchase and use" without regard to what is considered
26 essential. Public Advocates Office Opening Comments on Staff Proposal at 20 (emphasis in
27 original). The Public Advocates Office contends that the Staff's standards do not account for
28 Staff's findings that "70% of Californians subscribe to speeds of 70/5 Mbps or greater." *Id.*

1 The Public Advocates Office's proposed actual usage standards would not satisfy the
2 Staff's definition of "essential service." As AT&T's comments reflect, the broadband capacity
3 and speed standards should exclude entertainment video, which requires significant bandwidth
4 and speed. *AT&T Comments on Staff Proposal* at 2. The Public Advocates Office's proposed
5 usage standards would improperly include these non-essential services, such as entertainment
6 and gaming. Moreover, as CCTA notes, Staff incorrectly concludes that 70% of Californians
7 subscribe to speeds of 70/5 Mbps or greater based on Staff's flawed interpretation of
8 subscribership data. *CCTA Comments on Staff Proposal* at 9 (The underlying subscribership
9 data "only includes the highest subscribed speed per census block or census tract, not the
10 average minimum speed that the majority of Californians subscribe to, as the Staff Proposal
11 incorrectly suggests.") (emphasis in original).

12 **IV. AFFORDABILITY METRICS SHOULD BE TRANSPARENT, PRAGMATIC**
13 **AND COST-EFFECTIVE.**

14 The Small LECs agree with the comments of some of the parties that the data and work
15 papers for the affordability metrics should be transparent and available to the parties. *See, e.g.,*
16 *Public Advocates Office Opening Comments on Staff Proposal* at 3; *PG&E Comments on Staff*
17 *Proposal* at 6. The metrics should be pragmatic so they can be effectively implemented in
18 Commission proceedings without imposing an undue burden on the Commission or the utilities.
19 *See, e.g., PacificCorp Comments on Staff Proposal* at 5 (recommending that the calculations for
20 the metrics be "streamlined or simplified to reduce the burden" imposed on small
21 multijurisdictional utilities and their customers); *Staff Proposal* at 5 ("The framework should be
22 feasible for staff and the Commission to implement."). In this regard, the Commission should
23 use publicly available data sources as suggested by multiple parties, rather than engaging in
24 unnecessary and burdensome data collection from the carriers. *See, e.g., CCTA Comments on*
25 *Staff Proposal* at 8 (data collection for broadband pricing is unnecessary as this data is publicly
26 available on service provider websites and CD has already prepared reports on communications
27 service pricing from public data sources); *TURN Opening Comments on Staff Proposal* at 9
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1 (supporting Staff's use of publicly available data sources); *accord Cal CCA Opening Comments*
2 *on Staff Proposal* at 4.

3 Contrary to the goal of the Staff Proposal to ensure "cost-efficient" implementation of the
4 affordability metrics and a "sustainable and cost-effective" approach (*Staff Proposal* at 25, 34),
5 some of the recommendations in the opening comments would make the metrics more difficult to
6 implement and result in the imposition of costly and burdensome data collection. For example,
7 TURN proposes that the affordability metrics include essential non-utility expenditures in the
8 AR analysis. *TURN Opening Comments on Staff Proposal* at 2-8. While the Small LECs agree
9 that these non-utility essential expenses are important in assessing affordability, including other
10 non-utility essential costs will require additional data inputs and sources, which will increase the
11 burden and costs of applying an AR metric. Additional research would also be needed to
12 evaluate the reliability of each data source.

13 The Public Advocates Office and Greenlining also propose additional data collection and
14 tracking, which would impose undue burdens on the Small LECs given their limited resources
15 and size. *Public Advocates Office Opening Comments on Staff Proposal* at 2 (recommending
16 that the Commission "track complementary data on utility cost changes and impacts, service
17 quality, disconnections, rate, and billing structure changes for each industry."); *Greenlining*
18 *Opening Comments* at 3 (proposing that the Commission "monitor, track and provide updated
19 affordability data to the public on a yearly basis."). The collection of additional data should not
20 be necessary for the Small LECs, as pricing information is publicly available and additional
21 affordability data can be addressed in rate cases. As to broadband pricing, such data collection is
22 outside the scope of this proceeding because it is not a regulated service. As the Small LECs and
23 CCTA noted in their comments, the utility of data collection regarding broadband pricing is
24 questionable in light of the Commission's lack of jurisdiction over broadband rates. *Small LECs*
25 *Comments on Staff Proposal* at 6; *CCTA Comments on Staff Proposal* at 7 (noting that the
26 Scoping Memo specifies that the affordability framework is intended for use in "individual
27 Commission proceedings and utility rate requests."). While Staff and certain parties suggest that
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1 the broadband pricing data can be used in universal service programs, such as CASF or LifeLine,
2 these universal programs are not within the scope of this proceeding. *Scoping Memo* at 4-5; see
3 also *CCTA Comments on Staff Proposal* at 7.⁴

4 **V. THE PARTIES PROVIDE HELPFUL SUGGESTIONS ON IMPLEMENTATION,**
5 **BUT ADDITIONAL INFORMATION FROM THE COMMISSION ON**
6 **PROPOSED IMPLEMENTATION IS NECESSARY.**

7 The Small LECs agree with CWA that additional factors need to be considered in
8 addition to the affordability metrics, such as geography and demographics. *CWA Opening*
9 *Comments on Staff Proposal* at 2-3; see also *PacifiCorp Comments on Staff Proposal* at 5
10 (supporting "any effort to tailor solutions to allow for differences in service territory and to serve
11 the interests of customers of the smaller utilities."). In addition, the Commission must still
12 ensure that the revenue requirement reflects the utility's actual cost of providing service. *CWA*
13 *Opening Comments on Staff Proposal* at 5 (The Commission "must recognize that any
14 affordability assessment must be secondary to the establishment of a revenue requirement that
15 reflects the utility's actual cost of providing service."); *Small LECs Comments on Staff Proposal*
16 at 8.

17 The Small LECs agree with the Public Advocates Office's proposal that the AR include
18 in the numerator only the utility bill under evaluation, and include in the denominator the
19 household income net of housing less the bills for the remaining utility services and broadband
20 service. *Public Advocates Office Opening Comments on Staff Proposal* at 6-8. This is more
21 appropriate for implementation in individual industry rate case proceedings where only one
22 utility's rates are under consideration. The Small LECs further agree with the Public Advocates
23 Office that the Commission should not set "hard thresholds" for affordability based on the

24 ⁴ In addition, as the Small LECs and CCTA noted in their comments, imposing data reporting
25 requirements on broadband service would be contrary to the FCC's *Restoring Internet Freedom*
26 *Order*. *Small LECs Comments on Staff Proposal* at 6-7; *CCTA Comments on Staff Proposal* at 5
27 ("[R]equiring broadband data collection, as Staff proposes, would impose requirements that the
28 *RIF Order* repealed, and places an undue burden on broadband service providers to direct
resources to compliance with regulation, especially where broadband pricing is publicly
available.").

1 metrics. *Id.* at 24.

2 TURN proposes that each time a utility requests to increase rates, the utility should have
3 the burden of showing: "1) the effect of the request on the affordability metrics; and 2) the
4 cumulative effect of the request and other pending requests for rate increases on the affordability
5 metrics." *TURN Opening Comments on Staff Proposal* at 11. The Small LECs disagree that an
6 individual rate case proceeding should involve an evaluation of "other pending requests for rate
7 increases" as the scope of a rate case is limited to consideration of the rate design for the utility
8 that files the rate case. In addition, TURN's proposal would increase the costs of rate case
9 proceedings by requiring the parties to gather and incorporate information regarding rate design
10 for other companies. The Small LECs also disagree that the affordability metrics should apply
11 outside the context of formal rate case proceedings for regulated intrastate voice services. To the
12 extent the Commission considers TURN's proposal with respect to the impact of an individual
13 proposed rate increase for regulated utility services, the party proposing the rate increase should
14 bear the burden to show the impact on the affordability metrics. In the Small LECs' most recent
15 rate cases, the Public Advocates Office has sought rate increases higher than those proposed by
16 the Small LECs; in light of this fact, it would be inappropriate to place the burden on the
17 company.

18 More information is needed from the Commission regarding who will be responsible for
19 implementing the metrics and how the metrics will be implemented. The Small LECs reserve
20 their right to provide additional comments on implementation once this information is provided.

21 **VI. CONCLUSION**

22 The parties' comments and the Staff Proposal uniformly support the use of practical and
23 cost-effective affordability metrics to ensure that regulated rates are affordable. In further
24 developing the affordability metrics and making implementation proposals, the Commission
25 should ensure the metrics and implementation adhere to this principle. The comments also
26 highlight the need for flexibility in the affordability metrics to ensure that all relevant factors are
27 considered. The Small LECs look forward to receiving and commenting on the Staff's proposal
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1 regarding implementation of the metrics.

2 Dated this 20th day of September, 2019, at San Francisco, California.

3 Respectfully submitted,

4
5 Mark P. Schreiber
6 Patrick M. Rosvall
7 Sarah J. Banola
8 COOPER, WHITE & COOPER LLP
9 201 California Street, 17th Floor
10 San Francisco, CA 94111
11 Telephone: (415) 433-1900
12 Telecopier: (415) 433-5530
13 Email: prosvall@cwclaw.com

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By: /s/ Sarah J. Banola
Attorneys for the Small LECs