

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

Application of Comcast Phone of California, LLC (U-5698-C) to expand its existing Certificate of Public Convenience and Necessity to provide limited facilities-based telecommunication service in the service territory of Ponderosa Telephone Co.

A.19-01-003

**REPLY OF COMCAST PHONE OF CALIFORNIA, LLC (U-5698-C) TO  
COMMENTS OF THE PONDEROSA TELEPHONE CO.**

Comcast Phone of California, LLC (U-5698-C) (“Comcast”) hereby replies to the Comments of Ponderosa Telephone Co. to Comcast’s Response to the Administrative Law Judge’s Request for Information, which Ponderosa filed on October 28, 2019 (“Ponderosa Comments”).<sup>1</sup>

**I. INTRODUCTION**

Ponderosa is unapologetic about its goal to preserve the status quo and keep its territory closed to facilities-based service alternatives,<sup>2</sup> even if those services provide (in Ponderosa’s own words) “superior sound quality and clarity, reliable emergency communications, and enhanced resiliency and security.”<sup>3</sup> For Ponderosa, these and other consumer benefits take a back seat to maintaining its position in the market and limiting competitive options. Ponderosa is so focused on achieving its goal of delaying or preventing landline voice competition that it distorts the record of both this proceeding and

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<sup>1</sup> On October 30, 2019, the ALJ issued an email ruling granting Comcast Phone to file a reply no later than November 6, 2019.

<sup>2</sup> See Ponderosa Comments at 3.

<sup>3</sup> Ponderosa Comments at 2.

the California High Cost Fund-A (“A-Fund”) docket. For example, Ponderosa urges the Commission to address Comcast’s application to expand its certificate of public convenience and necessity (“CPCN”) in the A-Fund proceeding (with its dozens of disparate issues and parties), despite the presiding ALJ’s ruling in that case that competition issues will *not* be taken up there any time soon. Ponderosa also misrepresents the applicability of the 2014 A-Fund decision (“2014 Decision”) and falsely accuses Comcast of failing to disclose that that its CPCN expansion request is intended to enable retail interconnected VoIP services (Comcast makes the point on nearly every page of its prior response, as discussed below). In sum, Ponderosa has presented no grounds for the Commission to delay ruling on Comcast’s Application. Comcast’s Application is ripe for review and approval.

**II. IT WOULD BE WRONG TO BURY THE DISCRETE ISSUES PRESENTED BY COMCAST’S APPLICATION IN A PROCEEDING INVOLVING UNRELATED ISSUES AND PARTIES.**

Ponderosa’s claim that it would be administratively efficient to consider Comcast’s application in the A-Fund proceeding is inconsistent with the law and Commission practice. The A-Fund proceeding already involves 34 separate issues (including sub-parts) with numerous parties advocating a host of disparate positions with little, if any, relation to Comcast’s Application. Adding Small ILEC competition issues, in general, and Comcast’s Application, in particular, would be inconsistent with the following: (1) federal law, which requires a Small ILEC to “prove” that public interest considerations warrant “a suspension

or modification” of competition-related obligations under the Communications Act;<sup>4</sup> (2) the 2014 Decision’s determination that Small ILEC competition issues should be addressed on a “location-specific” basis;<sup>5</sup> and (3) the call by the Assigned Commissioner and Assigned ALJ in the A-Fund proceeding to evaluate competitive entry into Small ILEC territories on a “case-by-case” basis.<sup>6</sup>

In sum, it would be more efficient, fairer to stakeholders, consistent with state and federal law,<sup>7</sup> and consistent with Commission precedent,<sup>8</sup> to resolve the issues in Comcast’s Application in this proceeding. That is especially the case in light of the recent statement by the ALJ presiding over the A-Fund case that competition issues will *not* be addressed at the upcoming evidentiary hearing, which Ponderosa acknowledges.<sup>9</sup> Thus, it is plain that Ponderosa’s advocacy is simply an attempt to further delay consideration of Comcast’s

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<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order (“First Local Competition Order”), 11 FCC Rcd 15499, ¶ 1263 (1996) (construing 47 U.S.C. § 251(f)(2). *See also* D.14-12-084 at 97, COL 27 (recognizing that the “[r]ural exemption under 47 U.S.C. 251(f) does not remove 47 U.S.C. Sections 251(a) and (b) obligations”).

<sup>5</sup> *See* 2014 Decision at 46.

<sup>6</sup> *See* R.11-11-007, Prehearing Conference Tr. at 373:6-12 and 441:18-22 (July 31, 2019).

<sup>7</sup> *See Response of Comcast Phone of California, LLC (U-5698-C) to Assigned Commissioner’s Scoping Memo and Ruling* at 4-5 (April 19, 2019) (discussing federal law prohibition on state attempts to prevent any entity to provide any interstate or intrastate telecommunications service).

<sup>8</sup> *See id.* at 1 and 8-10 (discussing state law and Commission precedent favoring competition in rural areas, and inapplicability of 2014 Decision to present Application).

<sup>9</sup> *See* Ponderosa Comments at 12 (n.20). As a consequence, Ponderosa’s purported concern about the prospect of inconsistent rulings between this and the A-Fund proceeding is baseless.

Application. We address several of Ponderosa’s arguments to the contrary point-by-point below:

The law calls for a case-by-case analysis. The 2014 Decision’s recognition that Small ILEC issues should be evaluated on a “location-specific” basis is consistent with the Commission’s long-standing approach to CPCN applications, which requires an individual review to ensure the “public convenience and necessity” standard is satisfied in each case.<sup>10</sup> That approach should govern here. The Small ILECs territories are a diverse set of areas with different “terrain ... levels of population and visitors ... service costs, and ... barriers to service.”<sup>11</sup> The 2014 Decision’s call for an individual, location-specific analysis is consistent with Commission practice and was a recognition that the CLEC competition in Small ILEC areas should not be resolved in a single, one-size-fits-all order.

A case-by-case approach is also consistent with federal law, which places the burden of proof squarely on Ponderosa, not Comcast, to file a petition to “prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251(b) or (c) should be granted.”<sup>12</sup> Ponderosa’s failure to avail

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<sup>10</sup> Pub. Util. Code § 1001; CPUC Rule 3.1(e). This standard is also referred to as a “public interest.” See D.13-05-035, Appendix A, Section 9 (“The applicant must demonstrate that granting its application will benefit the public interest.”).

<sup>11</sup> 2014 Decision at 46-47.

<sup>12</sup> *First Local Competition Order* ¶ 1262 (“[w]e believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification”).

itself of this process, established by federal law, is additional grounds for proceeding with review of Comcast's Application.

All key stakeholders are present. Ponderosa's contention that Comcast's Application should be considered in the A-Fund case so that other Small ILECs can participate is overblown and easily addressed in the context of this proceeding. It is unclear how Pinnacles Telephone Co., or any of the other Small ILECs, would be impacted by Comcast's operations in Ponderosa. Moreover, none of the "affected parties" referenced by Ponderosa seem to have any concern about this proceeding as none have sought to join as parties. If other small ILECs desire to participate in this proceeding, they can do so by filing a motion for party status.

### **III. THE COMMISSION'S 2014 DECISION DOES NOT PRECLUDE REVIEW OF COMCAST'S APPLICATION.**

Ponderosa's repeated claim that the Commission's 2014 Decision somehow precludes review of the present Application is incorrect. That decision deferred review of CPCN applications for Small ILEC territories until (1) "the Broadband Networks and Universal Service study is completed" and (2) the Commission could evaluate the impact that competition would have on specific RLECs' territories.<sup>13</sup> The first predicate, issuance of the Competition Study,<sup>14</sup> is complete and favors granting Comcast's Application.<sup>15</sup> The second is tied-up in this proceeding by Comcast's Application. Any additional analysis the

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<sup>13</sup> 2014 Decision at 46.

<sup>14</sup> See CPUC Communications Division, *Broadband Internet and Wireline Voice Competition Study in Service Territories of Small Incumbent Local Exchange Carriers* (September 2018) ("Competition Study").

<sup>15</sup> See Competition Study at 47.

Commission believes is necessary can—and should—be undertaken in this docket because such analysis would relate to Comcast and Ponderosa and not require consideration of unrelated issues.

Ponderosa’s own advocacy makes clear that the findings underlying the 2014 Decision’s deferral of competition are inapplicable here. For example, the 2014 Decision’s concern that competition could lead to service quality degradation is allayed by Ponderosa’s admission that Comcast’s offerings provide “superior sound quality and clarity, reliable emergency communications, and enhanced resiliency and security.”<sup>16</sup>

#### **IV. PONDEROSA OVERSTATES THE COMPETITIVE IMPACT OF COMCAST’S ENTRY.**

Ponderosa cannot deny that it has faced significant voice competition for many years from wireless services (mobile and fixed), satellite, and Internet telephony, without any demonstrable negative impact. The long-standing presence of this competition undermines Ponderosa’s claim that the introduction of fixed, interconnected VoIP services will materially alter the competitive landscape.

Equivalence with Wireless Services. Ponderosa’s claim that the retail interconnected VoIP service enabled by Comcast’s wholesale offering is “superior” to mobile wireless, and therefore a unique competitive threat, is belied by the Commission’s specific finding that “wireless and wireline phones are functional substitutes for one another in the voice market.”<sup>17</sup> While the Commission noted this equivalency may not be true

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<sup>16</sup> Ponderosa Comments at 2.

<sup>17</sup> D.16-12-025 at 37.

where there is poor signal availability or strength,<sup>18</sup> for 93% of rural households mobile voice is available from two or more service providers.<sup>19</sup> And a consumer is less likely to find signal issues in flat, suburban areas of Ponderosa's territory like Tesoro Viejo.<sup>20</sup> More generally, a 2016 Commission report shows wireless subscriptions in California nearly doubled over a 10-year period to a total of approximately 40 million subscriptions, as compared to less than 10 million VoIP subscriptions.<sup>21</sup> Simply put, there is no evidence that competition from fixed interconnected VoIP services is the unique and unprecedented competitive threat that Ponderosa claims.

Ponderosa already faces competition from VoIP service providers. Ponderosa would also have the Commission overlook the competitive significance of the current VoIP services offered in its territory by over-the-top providers like Google, Vonage, Facebook and others. However, Ponderosa's arguments are based on a mischaracterization of those services. First, as of 2017 over-the-top, interconnected VoIP comprised more than 20% of

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<sup>18</sup> *Id.*

<sup>19</sup> See California Public Utilities Commission, Communications Division, *Retail Communications Services in California* at 25, Table 12 (December 2018), available at [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/Reports\\_and\\_Presentations/CD\\_Mgmt/re/CompetitionReportFinal%20Jan2019.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/Reports_and_Presentations/CD_Mgmt/re/CompetitionReportFinal%20Jan2019.pdf) (last visited November 1, 2019).

<sup>20</sup> For example, mobile wireless service is available from all major wireless carriers in the relatively flat terrain of the Tesoro Viejo community in Ponderosa's service territory. See California Interactive Broadband Map, available at <http://www.broadbandmap.ca.gov/>.

<sup>21</sup> See California Public Utilities Commission, Communications Division, *Subscribership Trend of Communications Service in California by Technology, 2001 to 2016*, available at <https://www.cpuc.ca.gov/General.aspx?id=4170> (last visited November 1, 2019).

interconnected VoIP services in California and that figure is growing every year,<sup>22</sup> proving to be a meaningful voice alternative already available in Ponderosa's service territory.

Second, Ponderosa claims that over-the-top VoIP services do not have dedicated phone numbers or use ordinary phone hardware. Both assertions are false. Certain over-the-top VoIP services do provide a dedicated phone number,<sup>23</sup> and certain nomadic VoIP services work with landline telephones.<sup>24</sup>

## V. OTHER ISSUES

Comcast made abundantly clear that it seeks to enable retail competition. Ponderosa accuses Comcast of "disingenuously misleading" the Commission about the fact that its CPCN expansion request is intended to enable retail voice competition.<sup>25</sup> That claim is simply false. The point that Comcast's wholesale Local Interconnection Service offering will enable retail interconnected VoIP services is made on nearly every single page of the *Response of Comcast Phone of California, LLC (U-5698-C) to Administrative Law Judge's Ruling Requesting Information* (filed October 11, 2019) and appears throughout Comcast's advocacy in this proceeding.

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<sup>22</sup> See Federal Communications Commission, Voice Telephone Services Report, State-Level Subscriptions, [https://www.fcc.gov/sites/default/files/vts\\_st1\\_0.xlsx](https://www.fcc.gov/sites/default/files/vts_st1_0.xlsx).

<sup>23</sup> See, e.g., Google Voice, Set up Voice ("With Google Voice, you get a free phone number for calls, text messages, and voicemail."), available at <https://support.google.com/voice/answer/7207482?co=GENIE.Platform%3DDesktop&hl=en>.

<sup>24</sup> See, e.g., Vonage, *How Vonage VoIP home phone service works*, available at <https://www.vonage.com/personal/why-vonage/how-vonage-voip-service-works>.

<sup>25</sup> Ponderosa Comments at 5.

Ponderosa’s “cherry picking” claims are false. Ponderosa accuses Comcast of cherry-picking the Tesoro Viejo community,<sup>26</sup> but ignores that the Tesoro Viejo proactively picked Comcast.<sup>27</sup> In addition, Ponderosa does not dispute that much of the Tesoro Viejo is still under construction and outside of its existing service footprint.<sup>28</sup> Accordingly, it is wrong to claim that the interconnected VoIP service enabled by Comcast will cause any material impact on Ponderosa’s current customer base.

The Competition Study supports competitive market entry. Ponderosa attacks the Competition Study and its conclusion of the limited impact on Small ILECs, while at the same time selectively excerpting incomplete and inapplicable passages from the Study to support its arguments. For example, Ponderosa quotes the Competition Study’s observation that “cherry picking [of] the most profitable customers in each territory... can result in some customers transferring from Small ILECs to CLECs, resulting in a decrease in Small ILEC customer revenues.”<sup>29</sup> This is largely inapplicable to the present case because Comcast’s VoIP affiliate will be serving Tesoro Viejo, much of which is not yet even built. It is difficult to see how competing for customers that have yet to initiate wireline voice service in Ponderosa territory can be called cherry-picking the most profitable of its customers.

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<sup>26</sup> Ponderosa hyperbolically describes Comcast as “raid[ing]” the “high-end” community of Tesoro Viejo, but in a display of its disconnection from its own service territory, Ponderosa fails to recognize that starting home prices in Tesoro Viejo are several hundred thousand dollars below the median home price in California. *See* <http://www.tesoroviejo.com/homes/>.

<sup>27</sup> *See Reply of Comcast Phone of California, LLC (U-5698-C) to the Protest of Ponderosa Telephone Co.* at 2 (February 19, 2019).

<sup>28</sup> *See* Tesoro Viejo, *See how we will grow*, <http://www.tesoroviejo.com/>.

<sup>29</sup> Ponderosa Comments at 6.

Moreover – and again contrary to Ponderosa’s claims – the Commission has not “declined” to add the Competition Study to the evidentiary record in the A-Fund proceeding.<sup>30</sup> The ALJ merely clarified that the study is not yet in the evidentiary record,<sup>31</sup> which makes sense because evidentiary hearings have not yet been held.

Ponderosa’s downplays the benefits of competition. Without valid basis, Ponderosa seeks to discredit the Commission decisions that found competition in the telecommunications space to be in the public interest on the basis that they are from the “mid-1990s” and the 2014 Decision temporarily declined to open rural territories to CLEC competition.<sup>32</sup> However, the Commission decisions from the “mid-1990s” favoring telecommunications competition have not been overturned, and as recently as last month, the Commission issued a decision commemorating its earlier rulings: “[w]e have previously determined that public convenience and necessity require that competition be allowed in the provision of competitive local exchange service.”<sup>33</sup> Moreover, as noted above, the Commission’s temporary deferral of competition in rural territories, which is no longer applicable, does not impact the many positive benefits of competition here.

Comcast has no current operations in Ponderosa territory. In an apparent attempt to muddy the waters, Ponderosa falsely accuses Comcast of jumping the gun on its CPCN.

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<sup>30</sup> *Id.* at 5.

<sup>31</sup> R.11-11-007, *Administrative Law Judges’ Ruling Denying the Independent Small LECs’ Motion to Strike the Broadband Internet and Wireline Voice Competition Study from the Evidentiary Record* at 1 (September 19, 2019) (“...this study is not currently part of the evidentiary record.”).

<sup>32</sup> Ponderosa Comments at 8.

<sup>33</sup> D.19-10-005 at 5.

This is blatantly false. Although Comcast's cable affiliate does have operations in a small part of Ponderosa's service territory, which Comcast has previously disclosed in its pleadings, Comcast currently does not have CLEC operations in Ponderosa's service territory.

## VI. CONCLUSION

After responding to several ALJ requests for information, Comcast trusts that the Commission has sufficient information to move forward, without delay, to: (i) allow facilities-based, wireline competition consistent with federal law, FCC and Commission policy, and (ii) avoid depriving the residents in Ponderosa's service territory of the services that will flow from Comcast's operations. For the reasons explained above, and in prior filings, Comcast requests that the Commission continue its review of the Application in the present proceeding and grant its Application.

Respectfully submitted,

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