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**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 THE PROTEST OF PONDEROSA TELEPHONE CO.**

Pursuant to Rule 2.6(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Comcast Phone of California, LLC (U-5698-C) (“Comcast Phone”) submits this reply to the protest of the Ponderosa Telephone Co. (“Ponderosa”) to Comcast Phone’s Application to expand the territorial scope of its Certificate of Public Convenience and Necessity (“CPCN”) to include Ponderosa’s service territory (“Application”).

I. INTRODUCTION

The Commission should reject Ponderosa’s attempt to prevent consumers from receiving additional advanced wireline voice services, and grant Comcast Phone’s Application. Federal and state law favor Comcast Phone’s market entry into the Ponderosa service territory and present no valid grounds to delay such entry. Likewise, Comcast Phone’s entry will have minimal impact on Ponderosa. The Commission should, therefore, reject Ponderosa’s request to hold the Application in abeyance until it concludes Phase 2 of the California High Cost Fund A (“CHCF-A”) rulemaking proceeding, and instead analyze the public interest considerations raised by Comcast Phone’s request in *this* proceeding.

II. PROCEDURAL AND FACTUAL BACKGROUND

Comcast Phone's request for authority to operate in Ponderosa's service territory arises from a request by the developers of the Tesoro Viejo community in Madera County. Pursuant to the Tesoro Viejo developer's request, Comcast Phone's cable affiliate has commenced building a state-of-the-art communications network to support the provision of a full array of service offerings, including voice services, to the community's residents. The territorial limitations of Comcast Phone's current CPCN, however, preclude it from offering voice services to current and future Tesoro Viejo residents.

Accordingly, on January 4, 2019, Comcast Phone filed its Application to expand its CPCN for authority to operate in the Ponderosa service territory, and, on January 18, 2019, Comcast Phone requested interconnection with Ponderosa under Sections 251(a) and (b) of the federal Communications Act of 1934 ("Communications Act").¹ Ponderosa filed its Protest on February 8, 2019. Ponderosa contends that Comcast Phone's Application is "premature and should be abated" until the Commission concludes the CHCF-A proceeding. For reasons discussed below, this contention is incorrect and would result in a bad policy outcome.

III. FEDERAL AND STATE LAW FAVOR APPROVAL OF COMCAST PHONE'S APPLICATION WITHOUT DELAY

The U.S. Congress opened local telecommunications markets to competition 23 years ago by enacting the federal Telecommunications Act of 1996 (which amended the Communications Act). Congress intended for the local exchange market-opening requirements of the federal Telecommunications Act generally to apply to all carriers in all parts of the country, including

¹ Federal and state law work together to facilitate competition. In many states, competitive local exchange carriers must obtain authority from a state public utilities or public service commissions to provide services in the territory of an incumbent local exchange carrier ("ILEC"). In California, such authority is obtained via a CPCN. To exchange traffic with an ILEC, competing carriers seek interconnection and related services under sections 251 and 252 of the federal Communications Act.

rural America.² As the Federal Communications Commission has explained, “[c]ompetition in local telecommunications markets can deliver significant benefits to consumers in rural communities, including advanced features and costs savings. Such competition can also spur incumbent providers to improve their voice offerings and offer new services, such as broadband, to compete for customers.”³ State law and past Commission decisions echo these federal positions favoring market entry.⁴

However, the federal Communications Act also contains provisions that specifically insulate rural incumbent local exchange carriers (“ILECs”) from competition by limiting the interconnection and related services that such carriers have to provide under Section 251 in certain circumstances. Section 251(f)(1) grants rural ILECs a standing exemption from the obligations of Section 251(c).⁵ This “rural exemption” remains in place unless and until it is terminated by a state commission and the rural ILEC receives a bona fide request for interconnection. Likewise, under Section 251(f)(2), a rural ILEC can seek temporary and limited relief from Section 251(b) obligations if it can prove to the state commission that a “suspension or modification” of those obligations is “necessary” to avoid “adverse economic impact” or

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, ¶ 11 (1996) (explaining Congress’ expectation that the “transition to competition” would take place in rural as well as urban parts of the country).

³ *Petition of CRC Communications of Maine, Inc. and Time Warner Cable, Inc. for Preemption Pursuant to Section 253 of the Communications Act*, Declaratory Ruling, 26 FCC Rcd. 8259, ¶ 12 (2011).

⁴ See Pub. Util. Code § 709(c) and (g) (declaring policy of “wide choice of state-of-the-art services” and “To remove the barriers to open and competitive markets.”); Pub Util. Code § 709.5 (“It is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction be opened to competition not later than January 1, 1997.”); D.95-07-054, 1995 Cal. PUC LEXIS 604 at *3 (“By January 1, 1997, we shall resolve remaining outstanding issues to permit the opening of all telecommunications markets, including small and mid-sized LECs, to competition.” Ponderosa is specifically named as one of the territories to be opened to competition in 1997).

⁵ 47 U.S.C. § 251(f)(1).

“undu[e] economic[] burden[]” and “is consistent with the public interest, convenience, and necessity.”⁶

In Decision (D.) 14-12-084 (“2014 Decision”) in the CHCF-A Proceeding, the Commission addressed these competing policies as part of its consideration of whether competitive local exchange carriers (“CLECs”) should be permitted to enter Small ILEC service territories.⁷ It found that no decision was then necessary because “since the passage of the ’96 Act ... no [CLEC] has made a bona fide request to a Small ILEC ... seeking access to elements set forth in Section 251(c) ... [or] Section 251(b).”⁸ Nor had any application “been received by this Commission to change the CPCN service areas to allow for service in areas served by Small ILECs.”⁹ Also, no Small ILEC had, to that point, “filed with this Commission a request” for Section 251(f) relief.¹⁰ As a result, the Commission found that “a final decision on whether to open some or all of the Small ILEC areas to competition ... is not ripe for review.”¹¹ That is no longer the case.

The open issues which led the Commission to defer authorizing CLEC entry in 2014 are not concerns here. Comcast Phone has requested interconnection and sought to expand its service territory to include Ponderosa’s service territory via an expansion of its CPCN. The Section 251(f)(1) exemption is not applicable because Comcast Phone had not made a request for interconnection with Ponderosa under Section 251(c). Instead, Comcast Phone seeks rights

⁶ 47 U.S.C. § 251(f)(2) (emphasis added).

⁷ See 2014 Decision, mimeo at 30-46.

⁸ *Id.* at 39.

⁹ *Id.* at 41.

¹⁰ *Id.* at 43.

¹¹ *Id.* at 47.

under Sections 251(a) and (b). Ponderosa must comply with Comcast's request absent a request for "suspension or modification" under Section 251(f)(2),¹² which Ponderosa has not sought. Thus, there are no federal law grounds for excluding Comcast Phone from Ponderosa's service territory. Moreover, as previously described, federal and state law favor grant of Comcast Phone's request for market entry. The pendency of Comcast Phone's Application for territorial expansion and its interconnection request mean that the issues the Commission deferred addressing in 2014 are now ripe for review.

IV. PONDEROSA'S EFFORTS TO BLOCK ADDITIONAL CONSUMER CHOICE ARE UNFOUNDED

Contrary to Ponderosa's allegations, the Application does not seek to "prejudge the outcome" of the CHCF-A proceeding.¹³ Comcast Phone's request is fully consistent with the 2014 Decision and, as explained below, would have limited effect on Ponderosa and its draw on CHCF-A fund. For these reasons (as well as those set forth in section III above), Comcast Phone respectfully maintains that the Commission should summarily grant the Application based on the evidence and argument presented in the Application and this reply. Alternatively, the Commission should use this proceeding as the vehicle to conduct the "location-specific-fact finding" for the Ponderosa service territory called for in the 2014 Decision.¹⁴ Either way, waiting until the conclusion of the CHCF-A proceeding as Ponderosa advocates does not advance the public interest. The CHCF-A proceeding, has been pending for nearly eight years, it

¹² As the Commission has recognized, the "[r]ural exemption under 47 U.S.C. 251(f)(1) does not remove 47 U.S.C. Sections 251(a) and (b) obligations." 2014 Decision, mimeo at 97 (COL 27).

¹³ Protest at 2.

¹⁴ 2014 Decision, mimeo at 46.

is unclear when that proceeding will be resolved, and consumers should not have to wait indefinitely to reap the benefits of additional service choices.

As an initial matter, Comcast Phone's entry into the service territory of Ponderosa would have limited effect on Ponderosa and its draw on CHCF-A. First, there already has been increasing voice competition in Ponderosa's service territory for many years from wireless carriers and over-the-top voice providers, among others, with no increase in Ponderosa's CHCF-A draw; to the contrary, over time Ponderosa's CHCF-A draw has *decreased*.¹⁵ Second, a brief review of the history of the California High Cost Fund-B shows that opening ILEC markets, like Ponderosa, to competition actually decreases pressure on such subsidy funds, without sacrificing access to basic telephone service.¹⁶ Third, while Comcast Phone seeks authority to operate throughout the Ponderosa service territory, Comcast Phone plans to, at least initially, serve only Tesoro Viejo. Comcast Phone's entry will therefore have limited impact on Ponderosa's revenues at the outset.¹⁷ Thus, while federal and state law dictate that competition must not be restricted (regardless of the impact on incumbents), in this case, direct voice competition would be limited and would not put pressure on the CHCF-A. For these reasons, the Commission

¹⁵ Compare Resolution T-17132 (2009) at 1 ("This resolution also authorizes CHCF-A support for Ponderosa for test year 2009 of \$3,680,994....") against *In re Ponderosa*, D.17-11-013, mimeo at 2 ("This decision adopts...for Test Year 2018 (TY 2018) including a subsidy draw of \$3,616,969 from the California High Cost Fund-A").

¹⁶ California High Cost Fund-B provides subsidies to carriers of last resort for providing basic local telephone service to residential customers in high-cost areas that are currently served by ILECs whose service territories were opened to competition in the mid-1990s. Since opening those service territories to competition, the budget for the fund has decreased from \$350 million in 1996 to \$22.3 million in fiscal year 2017-2018. See "California High Cost Fund-B," <http://www.cpuc.ca.gov/General.aspx?id=989> (last visited February 18, 2019). See also D.17-11-013.

¹⁷ Comcast Phone's cable affiliate has very limited fiber optic network plant in the Friant rate center, providing video and internet services to a small number of customers. Comcast Phone's VoIP affiliate may in the future offer voice services to these customers and others in the Friant rate center as well. However, given the relatively small number of customers at stake in this single rate center as compared to the entire Ponderosa footprint, the level of competition should not materially impact Ponderosa overall.

should grant the Application based on the evidence and argument presented in the Application and in this reply.

If the Commission decides it cannot grant the Application on its merits there is an alternate path to permitting Comcast to compete in Ponderosa territory. The 2014 Decision sets forth a two-step process for market entry that the Commission may apply in the present proceeding. The 2014 Decision deferred consideration of CLEC entry into Small ILEC territories to until “the Broadband Networks and Universal Service study is completed.”¹⁸ The Commission then envisioned conducting a “location-specific” assessment of whether a specific Small ILEC’s service territory “should be opened to CLEC competition.” In this case, step one, the Broadband Networks and Universal Service study (“Competition Study”) has been completed and its conclusion – “[o]pening Small ILEC territories to wireline voice competition is not expected to have a significant direct impact on small ILECs” – squarely favors granting the Application for Comcast Phone to operate in Ponderosa’s service territory.¹⁹ As to the second step, the Commission should use the present proceeding as the vehicle to perform the contemplated location-specific assessment for Comcast Phone’s market entry into the Ponderosa service territory.

V. GRANTING THE APPLICATION IS IN THE PUBLIC INTEREST

Comcast Phone’s entry into Ponderosa service territory is clearly in the public interest. As discussed above, consumers in Ponderosa’s service territory already have other options for voice service providers beyond Ponderosa’s, including wireless and over-the-top VoIP services, but do not yet receive the benefit of Comcast Phone’s and its affiliate’s advanced voice services

¹⁸ 2014 Decision, mimeo at 46.

¹⁹ Competition Study at 47.

because of the current limitations on Comcast Phone's CPCN. Singling out a CLEC, facilities-based voice service as the only option that consumers are **not** able to receive simply does not make policy sense and arbitrarily deprives consumers of benefits of additional service choices.

Moreover, while opening Ponderosa's service territory to Comcast Phone will lead to some competition, it should not meaningfully undermine Ponderosa's overall revenues or, as explained above, result in increased draw on the CHCF-A fund. Indeed, regardless of whether the Commission grants the Application, the CHCF-A fund will remain as a safety net by continuing to help Ponderosa achieve a set rate of return and guaranteeing that consumers will retain access to just and reasonable rates in comparison to urban areas.²⁰

VI. CONCLUSION

For the foregoing reasons, the Commission should grant Comcast Phone's Application.

Respectfully submitted,

/s/

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²⁰ See Pub. Util. Code § 275.6(c)(3); Competition Study at 4.