

**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

**RESPONSE OF COMCAST PHONE OF CALIFORNIA, LLC (U-5698-C) TO
ADMINISTRATIVE LAW JUDGE’S RULING REQUESTING INFORMATION**

Comcast Phone of California, LLC (U-5698-C) (“Comcast Phone”) hereby responds to the questions posed to the Parties in the September 26, 2019 *Administrative Law Judge’s Ruling Requesting Information from Comcast and Ponderosa* (“ALJ RFI”).

I. BACKGROUND AND INTRODUCTION

Comcast Phone filed an application (“Application”) to expand its certificate of public convenience and necessity (“CPCN”) over nine months ago. Since that time, Comcast Phone has demonstrated that Federal and state law favor approval of its Application without delay.¹ The responses to the ALJ RFI, set forth below, further demonstrate that granting Comcast Phone’s Application is in the public interest. Comcast Phone’s services will (i) enhance redundancy and options for emergency voice communications when fires or other disasters strike; and (ii) enable interconnected voice-over-Internet-protocol (“VoIP”) providers to offer high quality retail services—a competitive alternative—to customers in the service territory.² Moreover, Comcast Phone’s

¹ See Reply of Comcast Phone of California, LLC (U-5698-C) to the Protest of Ponderosa Telephone Co. at 2-5 (February 19, 2019); Response to Assigned Commissioner’s Scoping Memo and Ruling at 3-5 (April 19, 2019).

² Consumers in Ponderosa’s service territory already have other options for voice service providers beyond Ponderosa, 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 because of the current limitations on Comcast Phone’s CPCN.

largely wholesale service offerings will not directly impact the retail voice telecommunications services that Ponderosa Telephone Company (“Ponderosa”) provides in the territory. Any indirect impact on Ponderosa’s retail services will be limited and benefit consumers. Finally, this proceeding should not be delayed due to the concurrent pendency of Rulemaking 11-11-007 (“CHCF-A Proceeding”). To the contrary, the ALJ and Commissioner presiding there have stated that the Commission could review requests to operate in Small ILEC territories on a case-by-case basis – exactly the opportunity afforded the Commission by Comcast Phone’s Application. Accordingly, Comcast Phone’s Application should be considered and approved.

II. RESPONSES

1. How will any of the proposed services impact wireline retail services in Ponderosa’s territory?

Comcast Phone’s proposed service offerings will not directly impact retail services in Ponderosa’s territory because it will be offering largely *wholesale* telecommunications services. Comcast Phone proposes to offer three types of services: local interconnection services (“LIS”), exchange access services, and transport services.³

As Comcast has explained, LIS will enable facilities-based providers of retail interconnected VoIP services to send voice calls to, and receive voice calls from, local exchange carriers (“LECs”) that serve customers via traditional circuit switched technologies. LIS also provides certain ancillary services, such as access to 911 emergency calling and telephone numbers. LIS will thus enable consumers in Ponderosa’s service territory to have additional high-quality options for voice services beyond the current

³ See Response of Comcast Phone of California, LLC (U-5698-C) to Administrative Law Judge’s Ruling Requesting Information at 1-3 (May 28, 2019).

wireless and over-the-top (“OTT”) VoIP options as alternatives to Ponderosa’s basic telephone service. Comcast Phone’s exchange access offering is, likewise, a wholesale service that enables VoIP end-users to place and receive long-distance calls and will have no impact on retail services in Ponderosa’s service territory.⁴ Comcast Phone’s interconnected VoIP service provider affiliate (“Comcast IP”) will use these wholesale telecommunications services to provide retail interconnected VoIP services in the Tesoro Viejo community in Ponderosa’s service territory, just as Comcast IP (and another VoIP provider) use Comcast Phone’s services to serve end-users elsewhere in California and around the country.

Comcast Phone plans to also provide high bandwidth transport services used by businesses, schools, libraries, government agencies and enterprise customers who need efficient and cost-effective networking options that enable reliable high-speed communications among different locations.

While Comcast Phone’s wholesale offerings will enable the development of competition for retail voice services in the Ponderosa service territory, this additional competition will not significantly impact Ponderosa or its customers. To the contrary, the “Competition Study” commissioned by the Commission’s Communications Division specifically found that “voice competition is not expected to have a significant direct impact on Small ILECs and their customers....”⁵ Indeed, as the Competition Study notes, the Small

⁴ The service is a tariffed offering that is posted on Comcast’s web site: https://cdn.comcast.com/-/media/Files/FEDCM-MIG/Batch-3/PDF/pages/Corporate/About/PhoneTermsOfService/Circuit-Switched/CDPStateTariffs/California/CA_Access_Section_3.pdf?rev=59c531c5-e790-492f-9600-bf5eb90c3d32&la=en.

⁵ CPUC Communications Division, *Broadband Internet and Wireline Voice Competition Study in Service Territories of Small Incumbent Local Exchange Carriers* (“Competition Study”) which explains Competition Study at 47 (September 2018).

ILECs, including Ponderosa, already face substantial competition from wireless and OTT VoIP providers.

The Competition Study concludes that the CHCF-A will ensure that Carriers of Last Resort (“COLR”), like Ponderosa, have access to universal service funds to keep basic service rates reasonable.⁶ This determination is aligned with the findings by other state commissions that entry into rural territories does not harm universal service objectives.⁷

To the extent there is an impact on Ponderosa’s tariffed service offerings, the impact is likely to be positive for consumers in Ponderosa’s service territory. The Commission has found that competitive alternatives in local telecommunications markets lead to efficient pricing, improved service quality, expanded product and service capabilities, greater reliability, and increased consumer choice.⁸ The presence of an additional wireline voice service provider – which Comcast Phone’s offerings will make possible – will supplement access to 911 emergency calling.

⁶ See Competition Study at 5; Pub. Util. Code § 275.6(a) (“The commission shall exercise its regulatory authority to maintain the [CHCF-A] to provide universal service rate support to small independent telephone corporations in amounts sufficient to meet the revenue requirements established by the commission through rate-of-return regulation in furtherance of the state’s universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state.”).

⁷ See, e.g., Application of Comcast Phone of Oklahoma, LLC to Expand its Service Territory to Include the Local Exchange Territory of Bixby Telephone Company, *Report and Recommendation of the Administrative Law Judge*, Cause No. PUD 20700077 at 6 (Findings of Fact No. 10) (February 7, 2018) (“The Commission further finds that Comcast’s proposed expansion into the additional exchange is consistent with universal service goals.”). No other state commission in the nation that has issued a blanket ban on competition in rural LEC territories, and neither Small LECs nor the CPUC has shown any harm to universal service in those other states.

⁸ See, e.g., D. 94-09-065, D. 95-07-054, D. 96-02-072, D. 96-03-020, D. 96-04-052, and D.16-12-025.

Finally, while Comcast Phone seeks authority to operate throughout the Ponderosa service territory, Comcast Phone plans to, at least initially, serve only Tesoro Viejo.⁹ Comcast Phone's entry will therefore have limited impact on Ponderosa's wireline retail service business at the outset. Thus, while federal and state law dictate that competition must not be restricted (regardless of the impact on incumbents), in this case, any additional direct voice competition enabled by Comcast Phone's entry would be limited.

2. Specifically, if Comcast proposes to offer local interconnection services, which is a wholesale telecommunications service, who are Comcast's wholesale customers?

Initially, Comcast Phone will provide its LIS service to its affiliate, Comcast IP Phone, LLC, enabling the provision of retail VoIP services. While Comcast Phone does offer its LIS service to third-party providers of interconnected VoIP services, Comcast Phone is not aware of any other third-party providers that may purchase its services in Ponderosa's service territory.

3. What retail services will Comcast's wholesale customers offer in Ponderosa's territory?

Comcast Phone's wholesale customers will offer retail interconnected VoIP, enabling local and long-distance calling. (Comcast Phone notes that its cable affiliate already provides Internet access service and video programming to customers in the territory.)

⁹ 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 (Comcast IP Phone) 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.

4. Does Comcast expect its wholesale customers, who provide retail services, to seek to obtain a CPCN from the Commission to provide retail wireline services in Ponderosa’s territory?

Comcast Phone does not expect its retail interconnected VoIP service provider customers to obtain a CPCN as there is no requirement for interconnected VoIP providers to possess a CPCN in California.¹⁰ Comcast Phone expects that its interexchange carrier customers of its access services will either have a California CPCN or be registered with the Commission, as appropriate, depending on the types of services they provide. However, in all cases, Comcast Phone expects and requires all wholesale customers to comply with applicable law.

5. How would Comcast’s offering of wholesale services affect the question being examined in the Rulemaking regarding whether the territories of some or all of the 13 small incumbent local exchange carriers (small ILECs) should be open to wireline voice competition?

Even if Comcast Phone’s service offerings were relevant to the CHCF-A Proceeding, the Assigned Commissioner and Assigned Administrative Law Judge in that proceeding have made clear that the Commission should examine requests to operate in Small ILEC territories on a case-by-case basis. At the recent prehearing conference in that proceeding, Commissioner Guzman Aceves stated: “And so we want to encourage what is already happening in some cases to continue, which is putting forward the need to review an application when there is competition. But I think the overall consensus of case-by-case is

¹⁰ Public Utilities Code § 710, until January 1, 2020, prohibits the Commission from regulating VoIP) service, except as required or delegated by federal law or expressly provided in statute. Instead of obtaining a CPCN, Commission staff effected the informal VoIP registration process, pursuant to which the VoIP provider submits a form in order for the provider to obtain an identification number used for reporting and remitting surcharges. *See* <https://www.cpuc.ca.gov/General.aspx?id=1004>.

something that I'm generally supportive of.”¹¹ Similarly, Assigned Administrative Law Judge McKenzie stated: “I think there's some movement toward the idea of looking at competition on a case-by-case basis. Because it seems very fact-specific to individual service territories.”¹² In addition, the Assigned Administrative Law Judge in the CHCF-A Proceeding stated in an email to the service list that “[a]t this time, we do not intend to take up the issue of allowing competition in the small ILECs’ service territories in these evidentiary hearings”¹³—thus further supporting the conclusion that the factual analysis surrounding competitive local exchange carrier (“CLEC”) entry into Small ILEC territories is better resolved in separate CPCN application proceedings, as opposed to the generic CHCF-A Proceeding.

Allowing CLECs to serve incumbent local exchange carrier (“ILEC”) territories prior to resolving all high cost fund issues is aligned with past Commission practice. The Commission has a history of opening markets prior to addressing subsidy funds, as it did with California High Cost Fund-B.¹⁴ Reviewing and approving the Application in the present proceeding will not disrupt the Commission’s review of competition generally in the CHCF-A Proceeding. Rather, if anything, the record developed in this proceeding could be helpful to any analysis of competition that may be conducted in the CHCF-A Proceeding.

¹¹ R.11-11-007, Prehearing Conference Tr. 373:6-12 (July 31, 2019).

¹² *Id.* at 441:18-22.

¹³ R.11-11-007, ALJ Email Ruling at 3 (September 9, 2019).

¹⁴ The Commission began accepting CLEC CPCN applications for major ILEC markets in July 1995. *See* D.95-07-054. Meanwhile, the Commission did not enact the rules for the California High Cost Fund-B, to provide subsidies to those major ILECs, until over a year later in October 1996. *See* D.96-10-066.

To the extent the Commission has any concerns about how the competition enabled by Comcast Phone’s service offerings may impact Ponderosa and its draw on the CHCF-A, the record demonstrates that such concerns are misplaced. In Comcast Phone’s previous filings, it demonstrated that growth of service alternatives (wireless and OTT VoIP) has not increased Ponderosa’s draw on the CHCF-A and Comcast Phone’s entry should not lead to significantly different outcome. To the contrary, over time, Ponderosa’s CHCF-A draw has *decreased*.¹⁵ This is consistent with the experience of the California High Cost Fund-B, which shows that opening ILEC markets to competition actually decreases pressure on such subsidy funds, without sacrificing access to basic telephone service.¹⁶

Moreover, while opening Ponderosa’s service territory to Comcast Phone will lead to some retail competition, it should not meaningfully undermine Ponderosa’s overall revenues nor, as explained above, result in increased draw on the CHCF-A. The CHCF-A 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.¹⁷

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 October 11, 2019). *See also* D.17-11-013.

¹⁷ *See* Pub. Util. Code § 275.6(c)(3); Competition Study at 4.

Finally, as noted above, 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. 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.

6. Whether Comcast's offering of services to wholesale customers, who provide retail services, would affect the Rulemaking with respect to the question of whether the territories of some or all of the 13 small ILECs should be open to wireline voice competition?

See Response to Question 5.

III. CONCLUSION

For the reasons explained above, Comcast Phone requests that the Commission continue its review of the Application in the present proceeding and grant its Application.

Respectfully submitted,

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