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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into the Review of the California High Cost Fund-A Program	R. 11-11-007

COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON ALJ'S RULING SEEKING COMMENT ON GENERAL GUIDELINES FOR ALLOWING WIRELINE COMPETITION IN AREAS SERVED BY SMALL LOCAL EXCHANGE CARRIERS

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The California Cable & Telecommunications Association ("CCTA")[1] submits these comments in response to the questions posed in the Administrative Law Judge's Ruling Seeking Comment on General Guidelines for Allowing Wireline Competition in Areas Served by Small Local Exchange Carriers, dated November 8, 2019 ("ALJ Ruling").

A. Introduction

CCTA welcomes the opportunity to provide its views on how the California Public Utilities Commission ("Commission") should evaluate the "questions of fact and policy" raised by competitive local exchange carrier ("CLEC") entry into the service territories of the small incumbent local exchange carriers ("the Small ILECs").[2] In summary, CCTA's views are as follows:

- Section 251(f)(2) of the Communications Act provides the appropriate legal framework for evaluating the issues presented by competitive entry into the Small ILECs' service territories.[3] Under Section 251(f)(2), a Small ILEC must

[1] CCTA is a trade association consisting of cable providers that have collectively invested more than $40 billion in California's broadband infrastructure since 1996 with systems that pass approximately 96 percent of California's homes.

[2] ALJ Ruling at 2.

[3] *See* 47 U.S.C. § 251(f)(2). The Communications Act of 1934 ("Act") uses the term "rural telephone company" (defined at 47 U.S.C. § 153(44) (2019)).

affirmatively petition a state commission for relief from the interconnection and related obligations of Sections 251(b) and (c) of the Act. Section 251(f)(2) also sets forth the criteria for that analysis and places the burden squarely on the petitioning ILEC to prove that competition would "cause an adverse economic impact" and that delaying competition is "consistent with the public interest."[4] Moreover, the relief available under Section 251(f)(2) is limited in duration and scope.

- There is no basis to presume that wireline voice competition from new CLEC competitors will have a significant, negative impact on the Small ILECs or impair their ability to perform their carrier-of-last-resort ("COLR") obligations. The Small ILECs already face stiff competition from other voice service providers, including an array of wireless and over-the-top VoIP offerings. Like every other wireline competitor in the United States in recent years, they have experienced a declining customer base from the migration toward mobile telephony and the "cord-cutting" phenomenon. A new market entrant is unlikely to significantly alter the competitive landscape but will benefit consumers by expanding the range of available service and pricing options. Accordingly, CLEC entry into the Small ILECs' service territories should not be conditioned on requirements or obligations beyond those in current law.

- It would not be appropriate to consider making changes to the California High Cost Fund-A ("A Fund") framework at this time, as a result of prospective CLEC entry into Small ILEC territories. Because there is no basis to conclude that wireline voice competition from new CLEC competitors will have a significant impact, it would be premature to alter the framework for CLEC entry.

- CCTA urges the Commission to recognize that competition is not a zero-sum game, especially for the consumers who will benefit from the more innovative, lower-cost, and greater variety of services that inevitably result from competition. Increased competition in their markets will spur the Small ILECs to upgrade their networks, improve their service offerings, and make them more efficient operators, which will result in consumer benefits.

- Finally, a decision on the CLEC competition issue should not be contingent on resolution of the many other issues in this proceeding, which are specific to Small ILEC rate-of-return regulation and the A Fund framework. This proceeding has already been pending for eight years. The Commission should finally act on the stand-alone question of opening Small ILEC markets to CLEC competition for the benefit of consumers.

[4] 47 U.S.C. § 251(f)(2).

CCTA respectfully urges the Commission to expeditiously issue a Proposed Decision removing the ban on CLEC competition in Small LEC service areas and allowing wireline voice CLECs to enter the competitive playing field already occupied by Small ILECs, wireless carriers and over-the-top VoIP providers.

B. Procedural History and Background

The ALJ Ruling announces plans to end the blanket ban on local exchange competition in the 13 Small ILEC service territories.[5] CCTA applauds such action, which is long overdue. As far back as 1995, the Commission stated its intent to allow CLECs to operate in Small LEC areas.[6] The express ban on wireline voice competition has only been in place since 2014, when the Commission issued D.14-12-04 ("2014 Decision"). That decision found that the question of whether competitors should be allowed to enter the service territories of the Small ILECs was not yet "ripe for review."[7] That lack of ripeness clearly ended in January 2019, when CCTA member Comcast Phone of California ("Comcast") petitioned the Commission to expand the territorial scope of its CPCN to include the service territory of Ponderosa Telephone Co.[8]

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[5] ALJ Ruling at 2.

[6] D.95-07-054, 1995 Cal. PIUC 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." The Small LECs are specifically named as territories to be opened to competition in 1997.).

[7] 2014 Decision at 47.

[8] Application ("A.")19-01-003. In 2019, several other service providers filed CPCN applications seeking authority to offer services in Small ILEC territories. *See, e.g., In re CenturyLink*, A.19-05-005.

The ALJ Ruling states that, going forward, "questions of fact and policy" raised by CLEC entry into Small ILEC's territory "will be taken up on a case-by-case basis."[9] This process is consistent with the 2014 Decision's call for a "location-specific" analysis,[10] and should "permit development of an evidentiary record that will support specific findings of fact on the impact of competition on existing small LECs' service territories …."[11] The ALJ Ruling cites Comcast's Application to enter Ponderosa's service territory as "an example of such a proceeding."[12]

The ALJ Ruling poses seven separate questions (with multiple sub-parts) seeking information that will help the Commission analyze the issues presented by competitive entry into Small ILECs' territories. CCTA's answers to these questions are set forth below.

C. Answers to Questions in the ALJ Ruling[13]

1. *Response to Question No.1:* It would be inappropriate for the Commission to impose conditions under Section 253(b) of the Communications Act; Section 252(f)(2) provides the appropriate framework for evaluating CLEC entry.

a. Section 251(f)(2) of the Communications Act is the appropriate framework to evaluate CLEC entry into the Small ILEC service territories.

Although Question No.1 asks about potentially imposing conditions on CLECs under Section 253(b), this question requires a focus on Section 251(f), the regime

[9] ALJ Ruling at 2.

[10] 2014 Decision at 46-47.

[11] ALJ Ruling at 2.

[12] *Id.* at 3.

[13] Per the instructions in the ALJ Ruling (at 3), CCTA has not reproduced here each question presented. Each point heading, however, clearly identifies the question being discussed.

established by Congress for the purpose of analyzing CLEC entry into the Small ILECs' service territories. Congress enacted Section 251(f) as part of the market-opening provisions of the Telecommunications Act of 1996, which amended the Communications Act of 1934 ("1996 Act" or "Act"). As the Supreme Court explained in its first ruling interpreting the Act, "The Telecommunications Act of 1996 … fundamentally restructure[d] local telephone markets. States may no longer enforce laws that impede competition, and incumbent LECs are subject to a host of duties intended to facilitate market entry. Foremost among these duties [are] the [I]LEC's obligation under 47 U.S.C. § 251 to share its network with competitors."[14]

While Congress intended the "local competition" requirements created by Section 251 generally to apply to all carriers in all regions of the country, it "recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies."[15] Thus, Section 251(f) grants rural telephone companies, such as the Small ILECs, two separate types of "relief" from the competition mandated by the 1996 Act, of which the relevant one here is Section 251(f)(2).[16]

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[14] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999).

[15] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 154999 ¶ 1262 (1996) ("*First Local Competition Order").*

[16] Section 251(f)(1) provides rural telephone companies a standing exemption from the unbundling, collocation, and resale obligations of Section 251(c). That exemption is largely inapplicable, however, because, as CALTEL previously noted, CLECs today typically do not seek rights under Section 251(c). *See* CALTEL Opening Comments on Fourth Amended Scoping Memo at 2 (May 21, 2019). Comcast Phone, for example, sought and obtained an interconnection agreement with Ponderosa under Sections 251(a) and (b) only. *See* Comcast Phone of California, LLC Advice Letter 147 (submitted July 9, 2019), as approved on July 30, 2019.

Section 251(f)(2) provides that all Small ILECs must perform all the duties required by Sections 251(a) and (b) unless the ILEC can demonstrate that a "suspension or modification" of those requirements: [17]

> (A) is necessary—
>
> > (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
> >
> > (ii) to avoid imposing a requirement that is unduly economically burdensome; or
> >
> > (ii) to avoid imposing a requirement that is technically infeasible; and
>
> (B) is consistent with the public interest, convenience, and necessity.[18]

The statute places the burden squarely on the petitioning Small ILEC to "*prove* to the state commission that a suspension or modification of requirements of sections 251(b) or (c) should be granted."[19] Even if an ILEC can make the required showing, the state commission may only grant the request "to the extent that, and for such duration as, the State commission determines that such suspension or modification is necessary" to prevent the harms or promote the benefits listed in (A) and (B), above.[20] As the Federal Communications Commission ("FCC") has said, "[w]e believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception

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[17] Section 251(a) requires all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a). Section 251(b) imposes duties on all LECs to (1) permit resale; (2) provide number portability; (3) provide dialing parity; (4) afford access to "poles, ducts, conduits, and rights-of-way" belonging to the LEC; and (5) provide for the exchange, transport, and termination of traffic originated by other LECs. *Id.*§ 251(b)(1)-(5).

[18] 47 U.S.C. § 251(f)(2).

[19] *First Local Competition Order* ¶ 1263 (emphasis added).

[20] *Id.*

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."[21]

Since the passage of the 1996 Act, competition in rural LEC territories throughout the country has flourished while grants for relief under Section 251(f)(2) have been few and far between, reflecting the high burden the law imposes on a carrier seeking to avoid competition and the reluctance of state commissions around the country to deny consumers the benefits of competition.[22] The most recent grant was *more than 7 years ago*, when the Vermont Public Service Board granted the Waitsfield Telephone Company a limited, 18-month "suspension" of the obligation under Section 251(b)(2) to port telephone numbers to wireline competitors.[23] Despite partially granting Waitsfield's petition on the single issue of number portability, the Vermont Board subsequently denied Waitsfield's' request to extend the suspension period, emphasizing the Board's "ongoing recognition of the benefits of market competition in the telecommunications market" and determination to keep the suspension period "temporary and of limited duration."[24] The few other Section 251(f)(2)

[21] *Id.* ¶ 1262.

[22] Affiliates of Comcast Phone, for example, have almost 50 separate interconnection agreements with rural telephone companies around the country. Likewise, CCTA member Charter Communications has more than 140 such agreements. California is an outlier with its ban on wireline voice competition in rural territories. *See* CALTEL Opening Comments on Fourth Amended Scoping Memo at 7 (May 21, 2019).

[23] *Petition of Waitsfield-Fayston Telephone Company, Inc., Pursuant to 47 U.S.C. § 251(f)(2), for Suspension or Modification of the Interconnection Requirements of 47 U.S.C. § 251(b)*, Order, Docket No. 7798, 2012 WL 1883363 (Vt. P.S.B. Apr. 27, 2012).

[24] *Id*., Order re: Motion for Relief from Judgment, 2013 WL 4761161, at *3 (Vt.P.S.B. Aug. 30, 2013).

"suspension and modification" cases with which CCTA is familiar are similarly brief and narrow in duration and scope.[25]

In summary, Section 251(f)(2), not Section 253(b), establishes the process and criteria for evaluating CLEC entry into the Small ILECs' service territories. The Commission must follow this framework, which places the burden on the Small ILEC to petition for and prove that relief is justified, in evaluating CLEC requests to enter the Small ILECs' service territories. CCTA addresses some of the specific factual issues that might be relevant to such an inquiry in response to Question No. 5, which asks what "area and fact specific data" the Commission should consider "in evaluating competitive entry."

b. Imposing conditions under Section 253(b) would be wrong; Congress set forth these conditions in Section 251(f)(2).

In light of the framework created by Congress in Section 251(f)(2), it is wrong for the Commission to impose any blanket conditions on CLEC entry into the Small ILEC service areas pursuant Section 253(b) of the Communications Act. The Commission already imposes dozens of requirements on both CLECs and ILECs pursuant to statutory and Commission requirements.[26] CCTA is unfamiliar with any evidence or claim that these service obligations are not adequately advancing the public interest, including the public service goals set forth in Section 253(b) (preserving and advancing universal service,

[25] *See, e.g., Unitel, Inc. Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC's Request, et al.,*Docket No. 2012-198*, et al., Order, 2012 WL 4321158* (Maine P.U.C. Aug. 23, 2012) (six month suspension).

[26] *See, e.g.,* D.06-03-013, Appendix D.

protecting the public safety and welfare, ensuring quality telecommunications services, and safeguarding the rights of consumers).[27]

Moreover, imposing specific conditions on CLECs beyond those in current law would conflict with the requirements of Section 253(a). That statute expressly bars any "State or local statute or regulation, or other State or local legal requirement" from prohibiting or affecting "the ability of any entity to provide any interstate or intrastate telecommunications service."[28] The FCC has consistently interpreted Section 253 as "requiring competitive neutrality among the *entire universe* of participants and potential participants in a market," preempting state legal requirements that may disadvantage CLECs pursuant to Sections 253(a) and (d) of the Act (emphasis added).[29]

Thus, for example, the FCC ruled that a Texas statute that prohibited CLECs from entering ILEC service areas with fewer than 31,000 access lines violated Section 253(a).[30] The prohibition failed both because the practical effect of the statute was to block market entry by potential wireline service providers, rendering it not competitively neutral, and because no party had demonstrated that a prohibition was necessary to achieve any of the policy goals of Section 253(b).[31]

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[27] 47 U.S.C. § 253(b) (cited in ALJ Ruling at 4).

[28] 47 U.S.C. § 253(a).

[29] *AVR, L.P. d/b/a Hyperion of Tennessee L.P. Petition for Preemption,* Memorandum Opinion and Order, 14 FCC Rcd. 11064, 11701-02, para. 16 (1999) ("*Hyperion"*), *recon. denied,* 16 FCC Rcd. 1247 (2001).

[30] *Public Utility Commission of Texas,* Memorandum Opinion and Order, 13 FCC Rcd. 3460 paras. 106-07 (1997), *review denied*, 164 F.23d 49 (D.C.Cir. 1999).

[31] *Id.*

Likewise, the FCC found that a Wyoming statute that protected rural incumbents from competition, as well as the Wyoming Public Service Commission's decision denying a CLEC's application to enter a rural territory under the statute, violated Section 253(b).[32] A similar denial by Tennessee regulators of a potential competitor's application to provide local exchange services in a rural incumbent's service area also failed to fall within the scope of Section 253(b) because the FCC found this action shielded the ILEC from competition, placing both the action and the Tennessee statute outside the scope of Section 253(b).[33]

In sum, it is clear that Section 253(b), which broadly precludes states from imposing requirements that impede the ability of an entity to provide competitive services, does not provide statutory authority for imposing conditions on local exchange competition.

c. Imposing conditions on CLECs runs counter to Commission precedent.

In 1997, when the Commission first opened ILEC areas to competition, it imposed no specific conditions on CLEC entry. Indeed, the Commission's rules governing CLECs are robust, and among the most comprehensive and complex in the United States. Thus, when the Commission extended the coverage of its rules for local exchange competition to include the service territories of California's two mid-sized ILECs, Roseville Telephone Company and Citizens Telephone Company,[34] it rejected calls for "conditions" that went beyond its

[32] *Silver Star Telephone Co. Inc., Petition for Preemption and Declaratory Ruling,* Memorandum Opinion and Order, 12 FCC Rcd. 15639 paras. 42-46 (1997), *recon. denied,* 13 FCC Rcd. 16356 (1998), *aff'd, RT Commc'ns, Inc. v. FCC,* 201 F.3d 1264 (10th Cir. 2000).

[33] *Hyperion*, 14 FCC Rcd at 11070-75, ¶¶ 12-22.

[34] D.97-09-115 at 1.

standard rules.[35] Because no special circumstances make this issue different now, it would be inconsistent with Commission precedent to impose conditions beyond the robust CLEC rules already in place.

2. *Response to Question No. 2:* Consistent with Section 251(f)(2) and the ALJ Ruling, the Commission should evaluate the potential impact of CLEC entry into the Small ILECs' service territories on a case-by-case basis.[36]

Both Questions No. 2 and No. 4 ask for comment on how CLEC competition will impact the economic status of the Small ILECs. No one knows or can reasonably predict what will occur because each Small ILEC is different and CLEC entry is likely to proceed differently in each Small ILEC's service territory. That is precisely why the ALJ Ruling calls for case-by-case analysis (assuming, of course, that the Small ILECs actually petition for relief, which is the necessary predicate for initiating the process called for by Section 251(f)(2)).

As Comcast explained in its CPCN expansion proceeding, its Application to enter Ponderosa's service territory was prompted by a request from the developers of the Tesoro Viejo community in Madera County, who asked Comcast Cable to build a state-of-art broadband network in its rapidly growing community. That construction is underway, pursuant to Comcast Cable's statewide franchise. When completed, Comcast will offer advanced broadband, Internet access, and video programming services in the Tesoro Viejo community as the development is built and consumers request service. However, until Comcast Phone's CPCN is expanded to include the Ponderosa territory, Comcast will not be

[35] *Id*. at Sections II and V.

[36] This section of CCTA's comments addresses Questions No. 2 and No. 4 of the ALJ Ruling.

able to offer to customers the same interconnected VoIP service (the third leg of the "triple play" offering of video, broadband Internet, and voice) that it offers in other areas it serves in California and the nation.

Expanding Comcast's CPCN to include Ponderosa's service territory is not likely to affect Ponderosa economically because Tesoro Viejo is a largely greenfield community and, thus, the consumers moving there are not part of Ponderosa's existing customer base.

A different CLEC entering the territory with a different market-entry strategy might have a different impact (e.g., if the CLEC sought to compete for the ILEC's entire existing customer base). Accordingly, it is not possible to understand in advance how "competition" will generally affect Small ILECs. That is why the ALJ Ruling requires a location specific analysis to be conducted when and if conditions demand.

3. *Response to Question #3:* It would be inappropriate for the Commission to consider imposing conditions on CLEC entry beyond those required by current law.[37]

Consistent with the requirements of Section 251(f)(2), no conditions should be imposed on CLECs entering Small ILEC territories beyond those found in current law unless a Small ILEC petitions for suspension or modification of its interconnection obligations.

a. Imposing conditions would be inconsistent with federal law and the case-by-case approach called for by the Commission, the Assigned Commissioner, and the ALJ.

Conditioning CLEC entry into the Small ILECs' service territories on compliance with a set of predetermined (but as-yet unspecified) obligations would conflict with Section 251(f)(2), as well as the case-by-case analysis called for by the ALJ Ruling, prior

[37] This section is responsive to Questions No. 2 and No. 3, both of which ask about the imposition of conditions on CLECs.

Commission guidance, and statements by the Commissioner and ALJ assigned to this proceeding.

The 2014 Decision stated that CLEC competition should be evaluated on a "location-specific" basis because Small ILECs territories are a diverse set of areas with different "terrain ... levels of population and visitors ... service costs, and ... barriers to service."[38] This is consistent with the Commission's long-standing approach to CPCN applications, which requires that the "public convenience and necessity" standard is satisfied in each case.[39] It is further consistent with statements by the assigned Commissioner and ALJ in this proceeding.[40] Finally, the ALJ Ruling itself states: "[A] case-by-case approach to competition appears reasonable for determining specific findings of fact. Thus, the Commission will first consider *adopting general criteria*...."[41] Imposing blanket, one-size-fits-all conditions on every CLEC entering any Small ILEC territory conflicts with the flexible approach that the Commission has called for consistently.

[38] 2014 Decision at 46-47.

[39] Pub. Util. Code § 1001; CPUC Rule 3.1(e). This standard is also referred to as a "public interest." *See* D.13-05-035, Attachment A, Section 9 ("The applicant must demonstrate that granting its application will benefit the public interest.").

[40] *See* R.11-11-007 Prehearing Conference Tr. 373:6-12 (July 31, 2019) (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 something that I'm generally supportive of."); *id.* at 441:18-22 (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.").

[41] ALJ Ruling at 2 (emphasis added).

b. The arguments for imposing conditions are based on flawed assumptions.

Several of the questions in the ALJ Ruling appear to be exploring the argument that the Small ILECs will experience customer and revenue losses as a result of CLEC competition that will, in turn, harm the customer experience.[42] This argument is untenable. The record indicates that whether Small ILECs will experience revenue loss is "*unknown*," as the Commission's *Competition Study* specifically concluded.[43]

Moreover, it would be difficult, if not impossible, to separate the impact of CLEC market entry from other industry trends impacting the Small ILECs and other wireline voice service providers, regardless of their size. Significantly, almost 90 percent of California's rural households are already located in census blocks served by three or more voice providers,[44] and consumers continue to migrate to wireless voice services, which as of December 2017 represents nearly 75 percent of all "retail voice telephone service

[42] For example, Question No. 2 asks if the imposition of COLR obligations on CLECs is necessary to "prevent potential negative impacts." Question No. 3 asks how to "protect [Small ILEC] customers from loss or degradation of service quality when faced with revenue losses from CLEC competition." And Question No. 4 asks how the "long-term impacts of allowing CLEC competition" can be "mitigated."

[43] Mission Consulting, Inc. (for CPUC Communications Division), *Broadband Internet and Wireline Voice Competition Study in Service Territories of Small Incumbent Local Exchange Carriers ("*Competition Study") at 41 (Sept. 2018)

[44] *See* California Public Utilities Commission, Communications Division, *Retail Communications Services in California* at 8 (Dec. 2018), https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Communications/Reports_and_Presentations/CD_Mgmt/re/CompetitionReportFinal%20Jan2019.pdf.

connections" in the United States.[45] Nationally, wireline voice service connections declined by one-third (33 percent)from 2005 to 2017.[46]

These trends are well known to the Commission. Indeed, the Commission has recognized that, "wireless and wireline phones are functional substitutes for one another in the voice market,"[47] Wireless services are not just available in urban areas, but also in the rural communities that the Small ILECs primarily serve. In 2018, a Commission staff report found that mobile voice is available from two or more service providers in 93 percent of rural households in the State.[48] And competition is not just from wireless. Over-the-top VoIP services of one kind or another are now nearly ubiquitously available, including in Small ILEC territories, from providers like Google, Vonage, Facebook and others.[49] As of 2017, over-the-top, interconnected VoIP comprised approximately 20 percent of interconnected VoIP services in California, and that figure is growing every year.[50]

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[45] FCC Industry Analysis Division, Office of Economics and Analytics, *Voice Telephone Services: Status as of December 31, 2017, at 2* (Aug. 2019) https://docs.fcc.gov/public/attachments/DOC-359343A1.pdf).

[46] *Compare, id.* (reporting approximately 116 million total wireline voice connections) with FCC Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2005,* at 2 (July 2006) (176 million connections in 2005) https://www.fcc.gov/general/local-telephone-competition-reports). Note that the 2017 Report includes interconnected VoIP service connections in the total while the 2005 Report does not.

[47] D.16-12-025 at 37.

[48] *See Retail Communications Services in California* at 25, Table 12.

[49] D.16-12-025 at 28 ("we cannot ignore the fact that consumers want to use peer-to-peer applications, like Skype or FaceTime...").

[50] *See* Federal Communications Commission, Voice Telephone Services Report, State-Level Subscriptions, https://www.fcc.gov/sites/default/files/vts_st1_0.xlsx.

The impact of all this existing competition and the shift away from traditional wireline telephony has been felt in California's rural markets, as the following data from the FCC demonstrates:

California Small ILEC Line Counts[51]

	2005	2010	2014	2016	% Loss 2005-2016
Calaveras Tel. Co.	4,605	4,174	3,784	3,614	22%
California-Oregon Tel. Co.	2,660	2,485	1,987	1,845	31%
Ducor Tel. Co.	1,245	1,243	1,053	1,007	19%
Foresthill Tel. Co. (Sebastian)	3,244	3,012	2,480	2,549	21%
Happy Valley Tel. Co.	3,567	3,211	2,889	2,556	28%
Hornitos Tel. Co.	657	617	587	556	15%
Pinnacles Tel. Co.	289	259	233	243	16%
Ponderosa Tel. Co.	9,879	8,995	8,078	7,887	20%
Sierra Tel. Co.	23,320	21,952	19,574	18,655	20%
Volcano Tel. Co.	11,461	10,739	9,737	9,445	18%
Winterhaven Tel. Co.	1,678	1,111	803	744	56%

This data demonstrates that the Small ILECs have experienced line losses consistent with national figures. Indeed, as of December 31, 2018, in territories of Small ILECs participating in the A Fund, only 62 percent of households subscribe to voice services offered by Small ILECs.[52]

[51] Source: Universal Service Administrative Co., HC05 High Cost Loop Support Projected by State by State Area, https://www.usac.org/about/reports-orders/fcc-filings/ (last visited 1/03/2020).

[52] *See* Prepared Testimony of Jayne Parker on behalf of Public Advocates Offices at Figure 6 (submitted Nov. 15, 2019).

Yet despite these trends, the Small ILECs' revenues have largely held steady,[53] and the Small ILECs' draw on the A-Fund has generally *decreased* or remained flat.[54] Moreover, there has been no apparent decline in service quality during this period, contrary to the presumption underlying Question No. 3. Even with the significant competition that the Small ILECs have faced in recent years, they have performed well according to service quality metrics.[55] This is exactly what one would expect in a competitive market and confirms prior Commission findings that competitive alternatives in local telecommunications markets lead to improved service quality, expanded product and service capabilities, and greater reliability, among other things.[56]

Finally, regardless of the Small ILEC revenues, the A Fund will remain as a safety net and continue to help Small ILECs achieve a set rate of return, guaranteeing that consumers will retain access to just and reasonable rates in comparison to urban areas.[57]

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[53] *Compare* Resolution T-17298, Appendix A (2011) *with* Draft Resolution T-17682, Appendix (2020), showing that the majority of Small ILECs experienced increased revenue requirements in 2020 as compared to 2011.

[54] *Compare* Resolution T-17298 (2011) at 1 (designating $38.455 million in yearly A Fund support 10 Small ILECs for calendar year 2011) *with* Draft Resolution T-17682 (2020) at 1 (designating $36.191 million in yearly A Fund support for 10 Small ILECs for calendar year 2020).

[55] For calendar years 2014-2016, all GRC ILECs met the minimum standard for installation interval and customer trouble report, and all but one GRC ILEC met the minimum standard for out of service repair interval. *See California Wireline Telephone Service Quality Pursuant to General Orders 133-C and 133-D, Calendar Years 2014 through 2016* at 17-19, 22. https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Service_Provider_Information/2014-2016%20ServiceQuality%20staff%20report%20May%202018.pdf.

[56] *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.

[57] *See* Pub. Util. Code § 275.6(c)(3); and Competition Study at 4.

c. Any conditions the Commission might impose must be consistent with federal law.

Commission-imposed conditions must be consistent with Section 251(f)(2). Assuming that the Small ILEC actually petitions for relief and the findings of harm outlined in the statute are made, the Commission may impose only a time-limited "suspension or modification" on a Small ILEC's obligation to interconnect under Section 251(c) or perform one or more of the bilateral service obligations of Section 251(b). No other condition would be consistent with federal law.

Thus, there is no basis for the Commission to consider imposing COLR obligations on CLECs entering Small ILEC service territories as a pre-determined condition of entry. Such a requirement would be legally impermissible for several reasons. First, for the reasons explained above, it would almost certainly violate Section 253(a). Second, the Commission would not be able to defend the policy as competitively neutral because it would be an obligation only imposed on CLECs, which do not currently have such obligations.[58]

Moreover, each of the Small ILECs is an "eligible telecommunications carrier" ("ETC") under Section 214(e)(1) of the Communications Act and similar California law.[59] As such, each is a recipient of significant federal Universal Service Fund ("USF") and A Fund support, which they receive as a condition for performing their COLR obligations.[60]

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[58] In its application of Section 253(a), the FCC looks past superficial claims of equivalence to the real impact of the state or local policy. *See Hyperion*, 14 FCC Rcd at 11071, ¶ 16.

[59] 47 U.S.C. § 214(a); and Resolution T-17002, Appendix B.

[60] *See* Cal. Pub. Util. Code § 275.6(c) ("In administering the CHCF-A program the commission shall do all of the following: ... Employ rate-of-return regulation to determine a small independent telephone corporation's revenue requirement in a manner that provides

The following chart presents each Small ILEC's projected federal USF and state high-cost support for the first quarter of 2020.

Study Area Name	Federal High Cost USF – Q1 2020*	A-Fund Support – Q1 2020 **	Total
CALAVERAS TEL CO	$ 741,966.73	247,118.86	$989,085.59
CAL-ORE TELEPHONE CO	$ 427,308.00	116,874.62	$544,182.62
DUCOR TELEPHONE CO	$ 433,136.67	128,318.57	$561,455.24
FORESTHILL TEL CO.	$ 737,252.88	195,977.68	$933,230.56
HAPPY VALLEY TEL CO	$ 768,551.76	N/A	$768,551.76
HORNITOS TEL CO	$ 15,075.00	N/A	$15,075.00
WINTERHAVEN TEL. CO.	$ 24,429.00	N/A	$24,429.00
KERMAN TELEPHONE CO	$ 1,097,314.13	290,040.75	$1,387,354.88
THE PONDEROSA TEL CO	$ 1,767,873.69	308,075.13	$2,075,948.82
SIERRA TELEPHONE CO	$ 1,804,697.96	984,506.77	$2,789,204.73
THE SISKIYOU TEL CO	$ 2,404,148.23	372,307.51	$2,776,455.74
VOLCANO TEL CO	$ 1,136,009.17	335,237.50	$1,471,246.67
PINNACLES TEL CO	$ 123,982.50	37,469.30	$161,451.80

* Source: United States Administrative Service Co. (USAC).
** Source: Resolution T-17682.

Absent a significant change in law at both the federal and state level, none of these funds is available to a CLEC entering a Small ILEC's service territory.

In sum, there are significant legal and business differences between CLECs and ILECs. As a result, it would be inappropriate and legally untenable for the Commission to require CLECs to assume the COLR obligations of their ILEC competitors.

4. *Response to Question No. 4:* The impact of CLEC competition on the Small ILECs is impossible to predict and will vary from case-to-case.

Question No. 4 asks commenters to predict the short-term and long-term impacts of CLEC competition on the Small ILECs and how such impacts might "be mitigated." As

revenues and earnings sufficient to allow the telephone corporation to ... fulfill its obligations as a carrier of last resort in its service territory...").

explained above, there is no way to accurately predict the effects of such impacts on Small ILECs in general. Thus, there is no basis to adopt generic "mitigation" strategies on an *ex ante* basis.

5. *Response to Question No. 5:* The relevant "area and fact specific data" the Commission should consider in evaluating CLEC entry will vary from case-to-case.

Question No. 5 asks parties to identify area- and fact-specific data for each Small LEC service territory to be used to evaluate competitive entry. As explained above, the Commission should follow the procedures required by Section 251(f)(2) in evaluating a Small ILEC's petition to be relieved from one or more of the obligations of Section 251(b) and (c). The burden is on the Small ILEC to prove that such relief is necessary to prevent any harms enumerated in the statute and "is consistent with the public interest, convenience, and necessity."[61] Because the relevant considerations will undoubtedly vary case-by-case, as the Commission has recognized, there should be no attempt to circumscribe the evidence that a petitioning Small ILEC must present to make its case or that which an opposing CLEC may offer in rebuttal.

That said, certain evidence does seem likely to be particularly relevant in a Section 251(f)(2) proceeding. For example, a Small ILEC should be expected to provide customer line count and related financial information, as well as information regarding how a CLEC's entry would adversely affect its market and financial performance.

[61] 47 U.S.C. § 251(f)(2).

6. *Response to Question No. 6:* There is no direct connection between CLEC entry into the Small ILEC territories and the A-Fund framework; as a consequence, changes to the A-Fund should not be considered in this portion of the Rulemaking.

Because there is no basis to conclude that wireline voice competition from new CLEC competitors will have a negative impact, it would be premature to alter the A Fund framework due to potential CLEC entry. Accordingly, CCTA presents no specific comments on the rate-setting process or A Fund regulatory framework at this time, but reserves the right to address this topic in its reply comments.

7. *Response to Question No. 7:* No changes to the Commission's CLEC competition or consumer protection rules should be considered or adopted in the context of this proceeding.

The Commission should not consider modifying the CLEC competition rules in this proceeding.[62] Modification of the CLEC Rules is outside the scope of this proceeding, would violate due process, would likely violate Section 253, be discriminatory, not technology neutral, and would further prolong this 8-year proceeding.

First, modification of the CLEC Rules is outside the scope of this proceeding generally and outside the stand-alone issue of opening the Small ILEC markets to competition (the focus of this round of comments). The CLEC Rules have never been identified as an issue for consideration in the long history of this proceeding, and there is no need for additional consumer protections in Small ILEC territories. Moreover, the proposal to modify the CLEC Rules as they "apply to all CLECs operating in the state" would violate due

[62] D.95-07-054, Appendices A and B ("CLEC Rules").

process because it would require all CLECs operating in the state to receive notice in this proceeding, which has not occurred.[63]

Second, modification of the CLEC Rules in this proceeding would unfairly discriminate against wireline voice technologies. Asking whether the Commission should "consider developing comparable rules for CLECs wishing to compete in small LEC service territories" ignores the extensive wireless and wireline voice competition that the Small ILECs already face (discussed above). Imposition of additional CLEC Rules exclusively on new entrant wireline voice service providers in Small LEC areas would erect another discriminatory barrier to competition, violate the California policy favoring technology neutrality and deprive consumers in Small LEC areas of the benefits of competition.[64]

Third, even if procedurally proper and consistent with policy favoring technology neutrality, adding the issues raised in Question No. 7 to this proceeding would involve so many additional parties, with so many additional issues, that the proceeding would begin to resemble the wide-sweeping competition proceeding.[65] The parties that have diligently participated for the last 8 years would once again face indefinite delay in getting resolution of the issues this proceeding was intended to resolve.

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[63] *See People v. Western Air Lines, Inc*., 42 Cal.2d 621, 632 (1954) ("Due process as to the commission's ... action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made."); *see also Pac. Gas & Elec. Co. v. Pub. Utilities Com.,* 237 Cal. App. 4th 812, 859 (2015).

[64] *See, e.g.*, D.14-01-036 at 165, Conclusion of Law 9 ("The Moore Act, Public Utilities Code Section 871 *et seq.*, is technology neutral."); and D.95-07-054 at 24 (rejecting proposals to apply CLEC Rules only to wireline voice service in order to "maintain a technology-neutral policy").

[65] The Commission's proceeding focused on local competition, R.95-04-043 / I.95-04-044, involved dozens of parties and lasted several years.

Finally, imposing additional rules would be contrary to long-standing Commission efforts to promote broadband and advanced service deployment in rural communities. As the Legislature and the Commission have repeatedly recognized, rural communities face significant challenges to accessing advanced telecommunications services.[66] The ability to offer telephony as a bundled part of a service offering generally improves the business case in favor of market entry. Restricting the ability to do so may dampen the incentive to enter, thus reducing the likelihood of deployment of new facilities that would provide new services, including broadband services, contrary to one of the over-arching policy objectives of the Commission and the state.

D. Conclusion

For the foregoing reasons, the Commission should decline efforts to obstruct CLEC entry into the Small ILEC service territories. There is no basis for assuming that CLEC competition will "harm" the Small ILECs and, thus, no grounds for adopting prophylactic measures to "mitigate" that harm. To the extent the Small ILECs seek to preserve their service territory monopolies for an additional, but statutorily time-limited period, they must follow the procedural framework set forth in Section 251(f)(2), which places the burden on them to (i) seek relief, and (ii) demonstrate that relief is warranted. The Commission noted in the 2014 Decision that no Small ILEC had filed a Section 251(f)(2) petition, and that remains the case today. Accordingly, the Commission should finally renounce the ban on CLEC

competition in the Small ILEC territories established in the 2014 Decision and let the long-delayed competitive process proceed as Congress intended when it passed the 1996 Act.

Respectfully submitted,

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