BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
08/03/20
04:59 PM

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

REPLY COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON PROPOSED DECISION ALLOWING AND ADOPTING CONDITIONS FOR WIRELINE COMPETITION IN SMALL LOCAL EXCHANGE CARRIER SERVICE TERRITORIES

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August 3, 2020

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the California Cable & Telecommunications Association ("CCTA") hereby files these reply comments in response to the opening comments on the July 6, 2020 *Proposed Decision Allowing and Adopting Conditions for Wireline Competition in Small Local Exchange Carrier Service Territories* ("PD").

I. SUMMARY

The opening comments reaffirm that the PD's proposal to add competitive local exchange carriers ("CLECs") to the list of providers that can compete in California's 13 small, rural local exchange carrier ("Small LEC") territories is a welcome, consumer-friendly step by the Commission. By adding CLECs to the competitive mix, the Commission will bring more, better, and lower-priced services to Californians.[1] The Small LECs' and The Utility Reform Network's ("TURN") proposals, on the other hand, would be a step in the wrong direction for several reasons. First, they are procedurally improper because they are beyond the permissible scope of PD comments. Second, they are substantively improper because they are inconsistent with federal law, discriminatory, and unduly burdensome. Third, they are inconsistent with good public policy because they would impede the very type of competitive entry the PD intends to create. Accordingly, CCTA urges the Commission to: (i) reject the further conditions proposed by the Small LECs and TURN, and (ii) modify the PD to remove any conditions on CLECs entering Small LEC territories beyond those already required under state and federal law, as discussed in CCTA's opening comments.

II. THE ADDITIONAL CONDITIONS PROPOSED IN THE OPENING COMMENTS ARE PROCEDURALLY IMPROPER.

The Small LECs' and TURN's comments proposing further conditions on CLECs that wish to enter Small LEC territories are beyond the scope of what is permitted in PD comments because they do not address any "factual, legal, or technical errors" with respect to the PD, but rather discuss policy positions with respect to CLEC market entry.[2]

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[1] *See* TURN Comments at 1; Cal PA Comments at 1.

[2] *See* Cal. Pub. Util. Comm'n Rules of Prac. & Proc. ("Rule") 14.3(c) ("Comments [on a proposed decision] shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. *Comments which fail to do so will be accorded no weight*.") (emphasis added).

Moreover, most of these proposals have already been considered by the Commission and rejected in the PD. Indeed, the Small LECs recognize this in their opening comments, repeatedly stating that the PD "rejects," "does not address," or "does not include" *all four* conditions included in their opening comments,[3] which were first proposed by the Small LECs *prior to* the PD's release.[4] Similarly, certain conditions proposed in TURN's opening comments were considered and not adopted in the PD.[5] Accordingly, these rehashed proposals should be accorded no weight and rejected.[6]

III. THE ADDITIONAL CONDITIONS PROPOSED IN THE OPENING COMMENTS ARE INCONSISTENT WITH FEDERAL LAW, DISCRIMINATORY, UNDULY BURDENSOME, AND WOULD DETER COMPETITION.

The Small LECs' and TURN's proposed conditions should also be rejected because they are inconsistent with federal law, discriminatory, unduly burdensome, and will actually deter the type of competition the PD intends to create.

Duplicative and Unnecessary Certificate of Public Convenience and Necessity ("CPCN") Requirements. The Small LECs and TURN seek to bury CLECs in unduly burdensome, duplicative, unnecessary, and discriminatory CPCN application and compliance requirements. The Small LECs' proposal requiring a CLEC to submit evidence regarding its self-designated service area would largely duplicate existing requirements, as the Commission already considers service territory in CPCN application proceedings,[7] requires CPCN applicants to meet a

[3] *See, e.g.*, Small LEC Comments at 5, 7-8; *see also* PD at 13-14, 19, 28-30, 32 (affirmatively recognizing each of the Small LECs' previous proposals and discounting or rejecting them for the reasons discussed therein).

[4] *See, e.g.*, Small LEC Comments (Jan. 6, 2020) at 6, 10 (proposing a "must serve" requirements throughout each exchange where a CLEC proposes to serve, including a requirement to offer all of the elements of basic service); *id.* at 6-7 (proposing that CLEC market entry into a Small LEC's service territory be conditioned on compliance with all G.O. 133-D sections applicable to the Small LECs); *id.* at 6 (proposing that competing CLECs be required to fulfill all reasonable requests for broadband-capable connections that meet FCC speed standards) *id.* at 7 (proposing that competing CLECs be required to submit two-year service quality improvement plans and progress reports on an annual basis).

[5] *See, e.g.*, TURN Comments (Jan. 6, 2020) at 6 (proposing CLECs be subject to timeframe and reporting requirements in building out their network in Small LEC territories); *id.* at 10-11 (suggesting that CLECs should be barred from entering into "exclusive contracts" in Small LEC territories).

[6] *See* Rule 14.3(c).

[7] *See* Rule 3.1(a); *see also, e.g.*, D.17-05-023; D.19-10-005.

preponderance of the evidence standard,[8] and requires CLECs to offer their services within their designated service areas on a nondiscriminatory basis.[9] Moreover, requiring a CLEC to gather evidence establishing that its services will be provided to a perfectly proportional number of residential, commercial, low-income, and non-low-income customers would be unduly burdensome and discriminatory. Neither CLECs competing elsewhere in the state nor voice service providers using other technologies are required to meet such heightened standards. It also fails to reflect the reality of many CLECs' service offerings, as many competitive carriers do not offer any retail or mass-market services at all.

TURN's proposals requiring CLECs to report on the anticipated timeframe of their network buildout and to relinquish their CPCNs for failing to meet the anticipated buildout milestones are duplicative, unduly burdensome, and discriminatory for the same reasons. Indeed, while facilities information is already required from CLECs,[10] the detailed reporting that TURN proposes currently applies only to CLECs that receive state and federal universal service program funds, such as the California Advanced Services Fund ("CASF").[11] Thus, the only way in which TURN's proposal can be distinguished from existing reporting requirements is that it proposes to extend reporting obligations to those CLECs who elect to forego state and federal funding and instead deploy facilities via private investment – a proposal that lacks any basis in the record, policy, or law and must, therefore, be rejected.

Moreover, requiring a CLEC to forecast how long it will take to build out its network over rugged, rural terrain, where obstacles are unpredictable, and to lose their CPCN for falling slightly behind schedule would be grossly unfair and unduly harsh. Such requirements would also inhibit CLEC entry into the Small LEC territories, distorting competition and harming consumers, as CLECs would be concerned about losing their CPCN and network investment due to milestone setbacks that are beyond their control. Adding to this collection of problems is the added fact that TURN's proposed relinquishment of a CLEC's CPCN is vague, as it is unclear whether the

[8] *See* D.08-12-058 at 17-19; D.09-07-024 at 3 n.3; D.14-07-029 at 7.

[9] *See* D.95-07-054, App. A §§ 4.F(1) & (2) ("CLEC Rule").

[10] *See, e.g.*, CLEC Rule 4.F(4).

[11] *See, e.g.*, Cal. Pub. Util. Code §§ 281(e)(3)(iii), 281(g)(2).

CLEC's CPCN would be lost only with respect to the designated service area in the Small LEC territory or rather the entire state.

Restrictions on Non-Jurisdictional Services. The Small LECs reassert that CLECs entering Small LEC territories must be required to fulfill all reasonable broadband service requests.[12] However, the proposal overlooks that some CLECs do not currently provide retail broadband and have no plans to do so. Moreover, as the Small LECs have previously pointed out, the Commission lacks jurisdiction over broadband and cannot lawfully impose such conditions on CLEC market entry.[13] Indeed, even at the federal level, where broadband jurisdiction is clear, broadband deployment requirements are only associated with acceptance of universal support,[14] which many CLECs choose not to receive.

"Regulatory Parity" Conditions. The Small LECs also propose subjecting any CLEC authorized to offer service in a Small LEC area to the litany of regulatory requirements that currently apply to Small LECs as part of the rate-of-return A Fund regulatory framework.[15] As the PD notes, these requirements are conditional on the Small LECs' receipt of millions of dollars in state and federal universal service funding to which CLECs have no access.[16] Thus, requiring CLECs to comply with these requirements, even though they may not elect to receive universal service funding, would be grossly unfair.[17]

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[12] *See* Small LEC Comments at 6-7.

[13] *See* Small LEC Comments (May 21, 2019) ("The Commission does not regulate broadband service, so it has no authority to adopt such measures."); *see also Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019) (confirming the FCC's and courts' ability to preempt state laws and regulations pertaining to broadband that conflict with the federal regulatory regime).

[14] *See In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 ¶ 86 (2011) (noting that offering broadband service is a "condition of receiving federal high-cost universal service support").

[15] *See* Small LEC Comments at 7-9 (proposing that competing CLECs be required to comply with all G.O. 133-D reporting obligations and service quality improvement reporting requirements applicable to Small LECs).

[16] *See* PD at 31.

[17] It is not surprising that the Small LECs fail to explain why CLECs operating in Small LEC territories should be subject to different rules than those that apply to CLECs operating in other areas of the state or to competitive voice service providers using other technologies – such as wireless and over-the-top VoIP – that are already offering service in Small LEC territories.

Moreover, the policy objectives that underlie many of the Small LECs' proposed obligations are already addressed in rules that apply to CLECs – *regardless of where they operate*. There is simply no need for another layer of duplicative, inconsistent, and/or conflicting requirements on top of what is already a complex regulatory regime. Accordingly, the Small LECs' efforts to erect barriers to competitive entry and deny consumers the right to new, competitively priced service offerings should be discarded.

Duplicative Restrictions on Customer Contracts. TURN again suggests that CLECs should be wholly barred from entering into "exclusive contracts" in the Small LEC territories.[18] However, both state and federal rules already address exclusive service arrangements and when such arrangements are anticompetitive or otherwise prohibited.[19] TURN has recognized these rules in its past filings,[20] and it has provided no reasoned basis for why such rules should be expanded via this proceeding (or that such an expansion would be procedurally proper and non-discriminatory, given the limited scope of this proceeding and the fact that such a condition would be dependent on which areas a CLEC wished to deploy services).

IV. CONCLUSION

CCTA again commends the PD with respect to its decision to finally open California's 13 Small LEC territories to CLEC competition. The opening comments filed reaffirm that this is the right choice for consumers. However, imposing conditions on competing CLECs that go beyond those that presently exist – including those in the PD and advocated by the Small LECs and TURN – would be unlawful, improper, and constitute poor public policy. Accordingly, the PD should be modified to remove any conditions that are inconsistent with or in addition to those existing under state and federal law, and those additional conditions proposed by the Small LECs and TURN should be rejected.

Respectfully submitted,

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Dated: August 3, 2020

[18] *See* TURN Comments at 3-4.

[19] *See* 47 C.F.R. § 64.2000 *et seq.* (implementing rules prohibiting exclusive agreements for facilities access to multi-tenant buildings and residential developments); D.98-10-058 (Commission Rights of Way Decision prohibiting exclusive access contracts).

[20] *See* TURN Comments (Jan. 6, 2020) at 10 & n.24.