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**PROPOSED DECISION** Agenda ID #18592 (Rev. 1)  
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8/6/2020 Item #30

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**  
Mailed 7/6/2020

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

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

Rulemaking 11-11-007

**DECISION ALLOWING AND ADOPTING CONDITIONS FOR WIRELINE  
COMPETITION IN SMALL LOCAL EXCHANGE CARRIER SERVICE  
TERRITORIES**

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**Appendix C**

**DECISION ALLOWING AND ADOPTING CONDITIONS  
FOR WIRELINE COMPETITION IN  
SMALL LOCAL EXCHANGE CARRIER SERVICE TERRITORIES**

**Summary**

By this decision, we open the service territories of 13 Small Local Exchange Carriers (Small LECs) to wireline competition from Competitive Local Exchange Carriers (CLECs) as required by Section 253(a) of the Telecommunications Act of 1996 (Act). CLECs seeking to compete in the service territories of the Small LECs must satisfy the general conditions for competition adopted in this decision pursuant to Section 253(b) of the Act that are necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications service, and safeguard the rights of consumers. These general conditions are nondiscriminatory and are competitively neutral. They incorporate and update the local competition rules applicable to CLECs set forth in Decision 95-07-054, in which we expressed our intent to open all markets, including the service territories of the Small LECs, to competition.

We recognize that this decision may have significant financial and other impacts on the Small LECs not specifically addressed in the general conditions adopted today. In the future, we will consider additional appropriate location-specific conditions in individual applications, when and if filed by a CLEC, to compete with the Small LECs. We will also consider whether it is appropriate to open a new proceeding regarding the possible alteration of the California High Cost Fund-A framework to reflect competition by CLECs in the service territories of the Small LECs.

This proceeding remains open.

## **1. Background**

In 1995, the California Public Utilities Commission (Commission) opened telecommunications markets to competition and adopted local competition rules applicable to Competitive Local Exchange Carriers (CLECs).<sup>1</sup> In Decision (D.) 14-12-084, the Commission first looked at the issue of wireline competition in the service territories of 13 Small Local Exchange Carriers (Small LECs).<sup>2</sup> Although the Commission recognized that competition is an important goal in the territories covered by the California High Cost Fund A (CHCF-A or A-Fund) program,<sup>3</sup> it decided that the goals of federal and state universal service reflected in 47 U.S.C. Section 254 (Section 254)<sup>4</sup> and Public Utilities (Pub. Util.)

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<sup>1</sup> Decision 95-07-054. Pursuant to Public Utilities Code Sections 234 and 1001 and Decision 95-07-054, a CLEC provides local telephone services in the service territories formerly reserved for Incumbent Local Exchange Carriers (ILECs), in competition with ILECs, and must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Commission. 47 U.S.C. Section 61.26 (a)(1) also defines a CLEC as “a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of ‘incumbent local exchange carrier’ in 47 U.S.C. Section 251(h).”

<sup>2</sup> The 13 Small LECs are Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company.

<sup>3</sup> The CHCF-A was implemented in accordance with Public Utilities Code Section 275.6 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.

Code Section 871, and the goals of public safety, reliability, affordability, and economic development under California state law should be considered at that time.<sup>5</sup> While the California Cable & Telecommunications Association (CCTA)<sup>6</sup> and the California Association of Competitive Telecommunications Companies (CALTEL)<sup>7</sup> argued that federal law mandates competition, the Commission noted that no CLEC had applied to expand service into a territory served by a Small LEC. The Commission found that the question whether CLEC competition should be allowed in the service territories of the Small LECs was not yet “ripe for review.”<sup>8</sup> The Commission determined that more study was needed on the potential impact of competition on universal service, reliability, safety, just and reasonable rates, deployment of broadband capable networks, deployment and maintenance of high-quality voice networks, users of telecommunications services, and the A-Fund.<sup>9</sup> As the Commission noted in 2014, location-specific fact-finding has merit in light of the variations in the areas served by California’s 13 Small LECs, with widely varying terrain, levels of population and visitors,

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<sup>4</sup> All references to a Section in this decision are to the corresponding section of the Telecommunications Act of 1996 codified at 47 U.S.C. Section 251 *et seq.*

<sup>5</sup> D.14-12-084 at 38.

<sup>6</sup> CCTA is a trade association representing cable operators and their affiliates, providing voice, Internet broadband and video services throughout California.

<sup>7</sup> CALTEL is a non-profit trade association working to advance the interests of fair and open competition and customer-focused service in California telecommunications. CALTEL members are CLECs that provide resale and facilities-based services to residential and business customers in the California operating territories of AT&T, Verizon, SureWest and Frontier.

<sup>8</sup> D.14-12-084 at 47.

<sup>9</sup> *Id.* at 45.

service costs, and service barriers, including a lack of electricity in portions of the service territory of Siskiyou Telephone Company.<sup>10</sup> The Commission called for its Communications Division to hire a consultant to prepare a study that would allow for evidence-based decision-making based on local conditions.<sup>11</sup> The Commission stated that it would revisit opening the service territories of the Small LECs to wireline competition in Phase 2 of this proceeding.<sup>12</sup>

In September 2018, the Commission's Communications Division released the Broadband Internet and Wireline Voice Competition Study (Study). On March 22, 2019, assigned Commissioner Guzman Aceves issued a scoping memo that referenced the Study and invited parties to comment on whether to open the service territories of the Small LECs to wireline voice competition. At the Prehearing Conference held July 31, 2019, parties discussed with the Assigned Commissioner and assigned Administrative Law Judges whether a case-by-case approach to allow competition in specific territories was appropriate. The Assigned Commissioner stated that a case-by-case approach would be appropriate because there are many ways to provide service in each of the service territories of the Small LECs due to physical differences and the number and location of service connections.<sup>13</sup> The assigned Administrative Law Judges issued a Ruling on November 8, 2019 (November 8 Ruling), seeking comment on

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<sup>10</sup> *Id.* at 46.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> July 31, 2019 Prehearing Conference Transcript at 372-73.

several questions, including which conditions are necessary to protect ratepayers pursuant to Section 253(b).

The Utility Reform Network (TURN), CCTA, 10 of the Small LECs (Independent Small LECs)<sup>14</sup>, and the three other Small LECs (TDS Companies)<sup>15</sup> filed opening comments to the November 8 Ruling on January 6, 2020 and reply comments on January 21, 2020.

On May 18, 2020, the Independent Small LECs filed a motion with the Commission for a one-year extension of general rate case filing deadlines, a freeze of the CHCF-A waterfall mechanism, and a resequencing of certain rate cases. On May 29, 2020, CCTA filed a response to the Independent Small LECs' motion. On June 2, 2020, the Public Advocates Office filed a response to the Independent Small LECs' motion.

## **2. Federal and State Law Requirements Regarding Competition**

### **2.1. Applicable Law**

We first address the threshold question whether the Commission must allow competition by CLECs in the service territories of the Small LECs. Section 253(a) provides that “[n]o State or local statute or regulation, or other State or

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<sup>14</sup> The 10 Independent Small LECs that currently receive CHCF-A support are Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company.

<sup>15</sup> The three TDS Companies that currently do not receive CHCF-A support are Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company.

local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

Pub. Util. Code Section 709.5(a) states, “It is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction be opened to competition ....” (emphasis added).

## **2.2. Positions of Parties**

CCTA urges the Commission to expeditiously issue a decision removing the ban on competition by CLECs in the service territories of the Small LECs by allowing wireline voice CLECs to enter the competitive playing field already occupied by the Small LECs, wireless carriers, and over-the-top Voice over Internet Protocol (VoIP) providers.<sup>16</sup>

The Independent Small LECs “maintain their position that the categorical prohibition on CLEC competition in these areas should remain.”<sup>17</sup> In addition, the Independent Small LECs argue that evidentiary hearings are required before competition can be allowed in their service areas.<sup>18</sup> The Independent Small LECs also contend that competition should not be allowed as a matter of policy because of the “potential to invite cream skimming and impair the safety net that rural customers derive from the safe, reliable service provided by the Independent Small LECs.”<sup>19</sup>

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<sup>16</sup> CCTA January 6, 2020 Comments (CCTA Comments) at 3.

<sup>17</sup> Independent Small LECs’ January 6, 2020 Comments (Independent Small LECs’ Comments) at 1.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 4.

TURN notes that it has not supported the blanket requests for competitive access to the service areas of the Small LECs proposed by other parties. Rather, the evaluation of a request by a CLEC to offer wireline voice service in a Small LEC territory should be on a case-by-case basis, and TURN urges the Commission to adopt a framework for access to the service territories of the Small LECs that supports fundamental policy objectives and statutory mandates, including universal service, competitive choice, and broadband access.<sup>20</sup>

### **2.3. Discussion**

Section 253(a) is a mandate to allow competition throughout California, including the service territories of the Small LECs. As the U.S. Supreme Court has stated, “The Telecommunications Act of 1996 … fundamentally restructure[d] local telephone markets. States may no longer enforce laws that impede competition.”<sup>21</sup>

California law also supports the conclusion that competition must be allowed in the service territories of the Small LECs. Pub. Util. Code Section 709.5(a) reflects the Legislature’s intent that all telecommunications markets, including the service territories of the Small LECs, be open to competition. In D.95-07-054, we expressed our intent to open all markets, including the Small LECs, to local exchange competition in accordance with Pub. Util. Code Section 709.5(a).<sup>22</sup> Therefore, pursuant to Section 253(a) and Pub. Util. Code Section

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<sup>20</sup> TURN January 6, 2020 Comments (TURN Comments) at 1-4.

<sup>21</sup> *AT&T Corp. v. Iowa Utils. Bd.* (1999) 525 U.S. 366, 371.

<sup>22</sup> D.95-07-054 at 16.

709.5(a), we determine that wireline competition must be allowed in the service territories of the Small LECs as a matter of law.

In D.14-12-084, we recognized the critical importance of determining whether opening the service territories of the Small LECs to competition would further the public interest. By this decision, we recognize that the public interest is furthered both by allowing competition in the service territories of the Small LECs as required by law and, as set forth below, by setting forth mandatory general conditions for that competition that preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. We remain mindful of the concerns we expressed in D.14-12-084 regarding possible service degradation in a competitive market, and we reaffirm the merit of location-specific fact finding in individual applications by CLECs to compete in light of the varying conditions in the areas served by the Small LECs. Thus, while competition is mandated by law, that competition will be conditioned and not unfettered.

Because we find wireline competition must be allowed as a matter of law, we do not need to hold further evidentiary hearings on allowing competition in the service territories of the Small LECs pursuant to Pub. Util. Code Section 1708, which provides:

The Commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall when served upon

the parties, have the same effect as an original order or decision.

As the Commission stated in 2001, “No hearing should be required pursuant to [Pub. Util. Code Section 1708] since the matters determined are all matters of law on which the parties have had an adequate opportunity to present their positions.”<sup>23</sup> In this proceeding, the Commission gave notice to all participating parties, including the Small LECs, that the Commission was considering the question of whether it should open the Small LECs’ service areas to wireline voice competition.<sup>24</sup> As a result, the parties had a full and fair opportunity to brief the question of whether federal law required opening wireline competition in the service territories of the Small LECs. In addition, the Commission has concluded that it may adopt rules involving purely policy or legal issues without hearings.<sup>25</sup> Further, we will hold evidentiary hearings in individual CLEC applications for expansion if it is determined that there are material issues of fact. Therefore, further evidentiary hearings are not necessary to decide that the service territories of the Small LECs should be opened to competition from the CLECs.

## **1. Conditions Applicable to Competition**

### **3.1. Applicable Law**

Section 253(b) states:

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<sup>23</sup> D.01-08-062 at 12.

<sup>24</sup> Fourth Amended Assigned Commissioner’s Scoping Memo and Ruling at 4.

<sup>25</sup> D.95-07-054 at 11.

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Pub. Util. Code Section 709.5(a) provides that “[t]he commission shall take steps to ensure that competition in telecommunications markets is fair and that the state's universal service policy is observed.”

Section 251(a) imposes a duty on each telecommunications carrier “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” Under Section 251(b), each local exchange carrier has the duties not to prohibit or impose unreasonable or discriminatory conditions on the resale of telecommunications services and to afford access to the poles, ducts, conduits, and rights-of-way of that carrier to competing providers of telecommunications services. Section 251(c) imposes the duties on each incumbent local exchange carrier to provide interconnection with that carrier's network and unbundled access to network elements to any requesting telecommunications carrier.

Section 251(f)(1) exempts a rural local exchange carrier, including the Small LECs, from the obligations of Section 251(c) until the rural carrier receives a “bona fide” request for interconnection, services, or network elements, the requesting party submits its request to the Commission, and the Commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 regarding universal

service requirements. Under Section 251(f)(2), a carrier “with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide” can petition the Commission for a suspension or modification of the requirements of Sections 251(b) and (c). Section 251(f)(2) further provides:

The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(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
- (iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

### **3.2. Positions of Parties**

In the November 8 Ruling, we asked the parties to respond to the following question:

What, if any, conditions are appropriate for the Commission to consider imposing on both CLECs and small LECs in the small LEC service areas under Section 253(b) of the Federal Telecommunications Act of 1996?  
Specifically, please consider conditions related to:

- Requirements necessary to preserve and advance universal service;
- Protecting the public safety and welfare;
- Ensuring the continued quality of telecommunications services; and,
- Safeguarding the rights of consumers.

CCTA disagrees that Section 253(b) establishes the process and criteria for evaluation of entry by CLECs into the service territories of Small LECs and instead cites to Section 251(f)(2), which places the burden on the Small LECs to petition for and prove that relief is justified in evaluating requests by CLECs to compete.<sup>26</sup> CCTA argues that the policy objectives underlying many of the obligations that the Small LECs and TURN would impose on CLECs operating in the service territories of the Small LECs are already addressed in rules that apply to CLECs, regardless of where they operate.<sup>27</sup> CCTA also argues that the Federal Communications Commission (FCC) has consistently interpreted Section 253(b) to require competitive neutrality among the entire universe of participants and potential participants in a market.<sup>28</sup> Finally, CCTA states (without citation) that it is clear that Section 253(b) does not provide statutory authority for imposing conditions on local exchange competition.<sup>29</sup> Instead, CCTA points to Section 251(f) as the applicable law.

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<sup>26</sup> CCTA January 6, 2020 Comments (CCTA Comments) at 8.

<sup>27</sup> CCTA Reply Comments at 9.

<sup>28</sup> CCTA Comments at 9.

<sup>29</sup> *Id.* at 10.

According to the Independent Small LECs, the language of Section 253(b) contradicts CCTA's argument that the Commission should not be able to place any regulatory requirements on CLECs.<sup>30</sup> The Independent Small LECs argue that the interest of the CLECs in serving the wealthiest and most accessible populations directly impairs the Commission's ability to fulfill the stated policy goals of Section 253(b). The Independent Small LECs point to Comcast Phone's application to selectively serve the Tesoro Viejo area of Ponderosa Telephone Company's service territory<sup>31</sup> as an example of cream skimming.<sup>32</sup> Such competition may require the Independent Small LECs to draw more heavily on the CHCF-A Fund. The Independent Small LECs believe that allowing the CLECs to enter the territories of the Independent Small LECs and serve only the most profitable customers is tantamount to using the A-Fund to subsidize competition.<sup>33</sup> The Independent Small LECs state that one reasonable response to cream skimming would be to require that any competing CLECs be both Carriers of Last Resort (COLRs) and Eligible Telecommunication Carriers (ETCs). At a minimum, the Independent Small LECs urge the Commission to require the

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<sup>30</sup> Independent Small LECs' Reply Comments at 6.

<sup>31</sup> See Application 19-01-003 – Comcast Phone of California LLC (U5698) to expand its existing Certificate of Public Convenience and Necessity to provide limited facilities-based telecommunications service in the service territory of Ponderosa Telephone Co. (filed January 4, 2019).

<sup>32</sup> Independent Small LECs' Reply Comments at 7.

<sup>33</sup> *Id.* at 8.

CLECs to fulfill all reasonable requests for voice and broadband-capable facilities at the exchange level.<sup>34</sup>

The Independent Small LECs agree that the Commission's consideration of competition by CLECs should focus on the four goals listed in Section 253(b). In this regard, the Independent Small ILECs urge the Commission to adopt the requirement that competing CLECs should provide voice grade service, including all elements of basic residential and single-line business service, throughout each exchange in which they choose to pursue customers. According to the Independent Small LECs, this would reduce the potential for cream skimming, at least within each exchange.<sup>35</sup> The Independent Small LECs also urge an obligation to provide service to all reasonable requests for broadband-capable connections within each served exchange and compliance with several reporting requirements required of utilities.<sup>36</sup> To ensure a level playing field, the Independent Small LECs urge that the CLECs be required to follow the same affiliate transaction and cost allocation requirements that are applicable to the Independent Small LECs. Finally, the CLECs should be required to comply with all disaster relief, emergency response, and safety requirements.<sup>37</sup> In addition to those minimum requirements, the Independent Small LECs recommend that:

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<sup>34</sup> Independent Small LECs' Comments at 10.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *Id.* at 6-7.

<sup>37</sup> *Id.* at 8.

If a case by case approach is utilized to evaluate CLEC entry in Independent Small LEC territories, the Commission should evaluate the specific needs of the affected communities and consider whether, based on the factual record developed in such a proceeding, CLEC competition should be permitted. If it is permitted, the record in each proceeding should determine whether to impose additional requirements beyond the minimum requirements identified above.<sup>38</sup>

TURN argues that conditions for CLECs are necessary to ensure continued provision by the Small LECs of high quality and affordable services.<sup>39</sup> TURN contends that these conditions should be part of an overall framework for competitive entry and include must-serve obligations within the self-defined service area of CLECs, customer notice requirements, consumer protection rules, service quality metrics and reporting, and emergency services obligations.<sup>40</sup> TURN also points out that expanding competitive entry in the service areas of the Small LECs has at least the potential for resulting in more subsidies flowing to the Small LECs. TURN notes, “With larger A Fund draws, California ratepayers will pay increased surcharges to support Small LEC COLR obligations as competitive carriers enter the more lucrative sub-sets of these rural market areas.”<sup>41</sup>

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<sup>38</sup> *Ibid.*

<sup>39</sup> TURN Comments at 8.

<sup>40</sup> *Id.* at 9.

<sup>41</sup> *Id.* at 8.

### **3.3. Discussion**

We disagree with CCTA’s argument that the Commission should apply Section 251(f) and disregard Section 253(b). First, the language of Section 253(b) is clear that the Commission has the authority to impose competitively neutral requirements, including conditions, on CLECs seeking to compete in the Small LECs’ service territories. Under the rules of statutory construction, the unambiguous words of a statute are to be interpreted literally.<sup>42</sup> To the extent that two sections of a statute conflict, the rules of statutory construction mandate that the conflicting sections be harmonized to the extent possible.<sup>43</sup> Thus, we cannot choose to disregard any provision of applicable law, including the unambiguous provisions of Section 253(b).

In this case, there is no conflict in the language of Sections 251(f) and 253(b). Rather, each section serves a distinct purpose: The Commission has the authority under Section 253(b) to adopt neutral service requirements, and it has the separate authority under Section 251(f) to review exemption requests. Nothing in the language of Section 251(f) supports the conclusion that it was designed to prevent a state commission from promulgating nondiscriminatory conditions in furtherance of the goals of universal service, public safety and welfare, telecommunications services quality, and consumer rights.

Second, there has never been a request for an exemption under Section 251(f)(2) in this proceeding or in any other current or past proceeding before the

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<sup>42</sup> *Rancho Bernardo Development Co. v. Superior Court* (1971) 2 Cal. App. 4th 358, 363.

<sup>43</sup> *Channell v. Superior Court of Sacramento County* (1964) 226 Cal.App.2d 246, 252.

Commission. Application (A.) 19-01-003, which concerns the application of Comcast Phone to expand its CPCN to provide service in the Ponderosa Telephone Company (Ponderosa) service territory, marks the first proceeding before the Commission in which a service provider has asked the Commission for approval to compete in a Small LEC service territory. In comments in that proceeding, Comcast Phone stated that it requested interconnection with Ponderosa pursuant to Sections 251(a) and (b), and not Section 251(c). Comcast Phone further noted that Ponderosa has not filed a request for an exemption under Section 251(f)(2).<sup>44</sup>

In its comments in the Comcast Phone CPCN expansion proceeding, Ponderosa has made clear its position that the proceeding is not related to Section 251:

This application proceeding does not present the question whether Comcast is entitled to interconnection under Section 251 of the federal Telecommunications Act. Rather, Comcast's Application to expand its Certificate of Public Convenience and Necessity ("CPCN") presents the same question that the Commission is currently considering in R.11.11.007: "whether as a matter of federal or state law, and CPUC analysis of the best policy, areas served by [rural telephone companies] should be open to competition from wireline telecommunications carriers."<sup>45</sup>

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<sup>44</sup> A.19-0-1-003, Feb. 19, 2019 Reply of Comcast Phone to the Protest of Ponderosa at 4-5.

<sup>45</sup> April 19, 2019 Response of Ponderosa to Assigned Commissioner's Scoping Memo and Ruling at 1.

Thus, acceptance of CCTA's position that Section 251(f)(2) is the sole means of imposing conditions would render the Commission without any authority to condition competition and promote the public interest goals of Section 253(b) where, as in the Comcast Phone proceeding, no petition under Section 251(f)(2) has been filed and the Small LEC has indicated that Section 251 is inapplicable. Both the clear language of Section 253(b) and its public policy goals do not support CCTA's view. Rather, in determining appropriate conditions to place on CLECs wishing to compete in the service territories of the Small LECs, the Commission may, if it wishes, look to Section 251(f)(2) for guidance, but it is not bound by the requirements of Section 251(f)(2) unless a rural telephone company, including a Small LEC, requests an exemption pursuant to that subsection.

Third, under Section 253(b), states may adopt conditions to further the goals enumerated in that section so long as the conditions are nondiscriminatory and competitively neutral.<sup>46</sup> Section 253(b)'s goals are consistent with and advance the Commission's goals that all Californians have access to affordable, high quality and reliable communications services, including access to emergency communications services. Section 253(b) provides a reasonable and balanced approach in establishing conditions that both promote competition and protect telecommunications service quality and public safety.

As a result, while we open the service territories of the Small LECs to competition from CLECs pursuant to Section 253(a), we conclude that we have

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<sup>46</sup> *Qwest Communications Corp. v. City of Berkeley* (N.D.Cal. 2001) 202 F.Supp.2d 1085, 1090.

the authority under Section 253(b) to impose nondiscriminatory conditions on the entry of CLECs into those territories that are necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. As discussed further below, at such time as individual applications for competition by CLECs are considered by the Commission, the Commission will determine whether any additional specific conditions are warranted on a location-specific basis given the physical and demographic characteristics of the Small LEC territory and other relevant factors. This location-specific approach was first outlined in D.14-12-084, which stated that CLEC competition should be evaluated on a “location specific” basis because the Small LEC territories are a diverse set of areas with different “terrain...levels of population and visitors...service costs, and barriers to services.”<sup>47</sup>

### **3.4. General Conditions Applicable to CLECs**

D. 95-07-054 adopted rules applicable to CLECs operating in California, and most of those rules are relevant to CLECs that seek to expand wireline service within the service territories of the Small LECs, although some require updating due to the passage of time. In addition, we consider other decisions and general orders applicable to CLECs operating within California for several of the general conditions listed below. The Commission may consider waivers or exemptions of these conditions on a case-by-case basis in individual applications. Without diminishing the importance of each general condition set forth below,

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<sup>47</sup> D.14-12-084 at 46-47.

we particularly note General Condition 1 that addresses the issue of whether a CLEC must serve all customers in each local exchange area it proposes to serve. The Independent Small LECs have proposed a “must serve” requirement throughout each exchange where a CLEC proposes to serve, including a requirement to offer all of the elements of basic service.<sup>48</sup> However, we agree with TURN that this condition is unduly burdensome.<sup>49</sup> As TURN points out, this requirement raises significant entry barriers. A local exchange area in a Small LEC service area can encompass hundreds of square miles and include difficult terrain and widely dispersed customers. Currently, CLECs must ensure that their local voice customers can receive and complete calls through an exchange but are not required to serve an entire exchange. Unlike rate-regulated Small LECs, CLECs would not receive any A-Fund subsidies for serving such customers.<sup>50</sup> As further discussed below, we agree with TURN that a “must serve” requirement throughout a local exchange area would essentially impose COLR duties on CLECs, which we find discriminatory, unduly burdensome, and inconsistent with Section 253(b). We concur with TURN that a must-serve requirement in the CLEC service area as defined by the CLEC in its application for entry is appropriate. This requirement is reflected in General Condition 1, which we adopt today, and which was initially adopted for CLECs in D.95-07-054.

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<sup>48</sup> Independent Small LECs’ Comments at 6, 10.

<sup>49</sup> TURN Reply Comments at 8.

<sup>50</sup> *Ibid.*

As TURN states, during the location-specific review of an application, stakeholders can argue whether the CLEC has appropriately defined its service area in a nondiscriminatory manner.<sup>51</sup> In our review of individual applications, we will consider whether CLECs, as public utilities, are in compliance with all applicable laws, including Pub. Util. Code Section 453, which prohibits a public utility from granting any person an advantage, subjecting any person to any prejudice, or establishing any unreasonable difference between localities or classes of service.<sup>52</sup>

Regarding General Condition 10 set forth below, the Commission recognizes the importance and immediacy of the issues of network functionality and emergency power backup during outages. As noted by TURN, most customers of Small LECs are served by Time Division Multiplexing (TDM) networks that are supported by robust back-up power in central offices and at remote terminals. The Small LECs serve sparsely populated rural areas that are prone to power outages, whether caused by natural disasters or public safety power shutoffs. CLECs entering these rural areas will likely target the most populated areas and may construct new facilities.<sup>53</sup> It is essential that CLEC applicants show sufficient back-up power in these new facilities to ensure

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<sup>51</sup> TURN Reply Comments at 9.

<sup>52</sup> Pub. Util. Code Section 453(a)-(c).

<sup>53</sup> TURN Reply Comments at 10.

reliability during a significant power outage. The burden here is minimal while providing significant benefits to customers in fire-prone and isolated areas.<sup>54</sup>

On March 6, 2020, the Assigned Commissioner in the Commission's Emergency Disaster Relief proceeding R.18-03-011 released a Ruling and Proposal (ACR) concerning "resiliency planning for communications service providers in areas that are prone to outage events and wildfires, with the ultimate purpose of establishing rules for resiliency by Summer 2020, if not sooner, in advance of the upcoming fire season."<sup>55</sup> The ACR includes the following proposed rule:

All Providers shall have on-site emergency backup power to support all essential communications equipment including but not limited to, switching centers, central offices, wire centers, head ends, network nodes, field cabinets, remote terminals, and cellular sites (or their functional equivalents) necessary to maintain service for a minimum of 72 hours immediately following a power outage. Service must be sufficient to maintain access for all customers to 9-1-1 service, to receive emergency notifications, and to access web browsing for emergency notices.<sup>56</sup>

Due to our concerns over the resiliency of the communications network,<sup>57</sup> we impose as a general condition that applications for entry into the service

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<sup>54</sup> *Ibid.*

<sup>55</sup> R.18-03-011, March 6, 2020 ACR at 2.

<sup>56</sup> *Id.* at Appendix A, at 3.

<sup>57</sup> *Id.* at 2, citing D.19-08-025 and Assigned Commissioner's Amended Phase 2 Scoping Memo and Ruling (January 21, 2020) in R.18-03-011 (reliable and resilient communications network is urgently needed to ensure public health and safety).)

territories of Small LECs comply with the rules ultimately adopted by the Commission in R.18-03-011.<sup>58</sup>

We specifically adopt the following general conditions today to all CLECs that seek to expand their service area to compete for wireline services in the service territories of the Small LECs:

- 1) CLECs shall be required to serve customers requesting wireline voice service within their self-designated service territories on a non-discriminatory basis but shall not be required to service the same territories as the Small LECs.
- 2) A CLEC shall avoid designing a discriminatory self-designated service territory by ensuring that the self-designated service territory represents the demographics of the Small LEC territory it is entering by making a good-faith effort to serve a proportional number of residential to commercial customers, and a proportional number of low-income<sup>59</sup> and non-low-income customers. These proportionality measures will guard against only sub-sets of wealthy customers being served by the CLEC.
- 3) CLECs shall file territory maps with the Commission that detail the area in which the CLECs seek to provide voice wireline service. The territory maps should include a network service map and geospatial data that detail the network architecture and displays each end-user location

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<sup>58</sup> The Proposal states: "These requirements shall be applicable to all companies owning, operating, or otherwise responsible for infrastructure that provide or otherwise carry 9-1-1, voice, text messages, or data." (*Id.* at Appendix A, at 2).

<sup>59</sup> A low-income household is defined as one with annual income of approximately 150% or less of the federal poverty guideline, consistent with the California LifeLine income limits. The California LifeLine income limits can be found at <https://www.cpuc.ca.gov/General.aspx?id=2752#qualify>

to which the CLECs are seeking authorization, the linear and/or point feature representations of the network, as well as the bounding polygons that contain all the end-user locations. This information should be provided in a map at the appropriate scale and in three geospatial files:

- 1) end-user point locations in a plain-text, comma separated values (CSV format) file that contains geo-located street addresses with latitude and longitude coordinates, 2) linear features representing wired network facilities and/or point features representing wireless facilities in an Esri shapefile or .KML file, and 3) the polygon boundaries that contain all end user locations in a polygon Esri shapefile or .KML file.
- 4) CLECs shall file annually a written description and a map that describe their existing physical facilities by April 1 of each year.
- 5) Facilities-based CLECs are required to make all telecommunications service offerings available for resale on a nondiscriminatory basis.
- 6) CLECs shall be subject to the obligations of public utilities under the Public Utilities Code, including but not limited to, Sections 451 and 453 regarding the provision of just and reasonable rates and charges.
- 7) CLECs shall provide California LifeLine services and discounts to eligible consumers.
- 8) CLECs must obtain Commission approval before discontinuing service in any part of their service area.
- 9) CLECs shall provide 911 and/or E911 service.
- 10) CLECs shall apply the rules ultimately adopted in the Emergency Disaster Relief proceeding (R.18-03-011). Such rules may include on-site emergency backup power to support all essential communications equipment, including, but not limited to, switching centers, central

offices, wire centers, head ends, network nodes, field cabinets, remote terminals, and cellular sites (or their functional equivalents) necessary to maintain service for a minimum of 72 hours immediately following a power outage. Service must be sufficient to maintain access for all customers to 9-1-1 service, to receive emergency notifications, and to access web browsing for emergency notices.

- 11) CLECs shall be subject to all applicable Commission consumer protection rules, including General Order (GO) 168, the Consumer Bill of Rights Governing Telecommunications Services<sup>60</sup>, and Appendix B (excluding Rules 2.9 and 2.10) attached to D.95-07-054 and this decision.
- 12) CLECs shall provide the following reports to the Commission:
  - (a) On a quarterly basis, a copy of all written notices provided to customers in accordance with Rules 1, 2 and 6 of the consumer protection rules set forth in Appendix B of D.95-07-054 and this decision;
  - (b) By April 1 of each year, a copy of the CLEC's annual report;
  - (c) Reports regarding major service interruptions, consistent with GO 133-D, FCC Part 4 rules, FCC's NORS reporting requirements, and the ETC outage report;

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<sup>60</sup> GO 168, Consumer Bill of Rights Governing Telecommunications Services, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K440/89440106.PDF>

- (d) All applicable reports required by GO 133-D<sup>61</sup> and any subsequent service quality rules established by the Commission; and
  - (e) Such other reports required by the Commission.
- 13) CLECs shall comply with all applicable affiliate transaction rules and reporting requirements.<sup>62</sup>
- 14) In their CPCN applications<sup>63</sup> to expand service to territories served by Small LECs, CLECs shall state which technological platform they intend to utilize to provide service. CLECs shall also comply with all other CPCN requirements.
- 15) CLECs shall comply with the Commission's public purpose program surcharge and user fee requirements.
- 16) CLECs shall submit all applicable Commission mandated bill insert notices, including annual notices of California LifeLine services consistent with GO 153 and California LifeLine Program Rules, to the Commission's Public Advisor's Office for review and approval.
- 3.5. Location-Specific Conditions to Be Developed in Individual CLEC Applications**
- 3.5.1. Positions of Parties**
- The Independent Small LECs recommend that CLECs should not be able to gain a competitive advantage by flexibly pricing their services when the

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<sup>61</sup> GO 133-D, Rules Governing Telecommunications Services (Service Quality), [https://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Proceedings/Proceedings\\_Rules/GO133D.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Proceedings/Proceedings_Rules/GO133D.pdf)

<sup>62</sup> See D. 93-02-019.

<sup>63</sup> See D. 13-05-035 for CPCN requirements.

Independent Small LECs are prohibited from dropping their prices.<sup>64</sup> To remedy this, the Independent Small LECs recommend that the CLECs provide 60 days advance notice of pricing changes, and allow the Small LECs to provide promotional tariff filings through Tier 2 advice letters with 30 days advance notice to customers.<sup>65</sup> Moreover, according to the Independent Small LECs, a critical element of avoiding “loss or degradation of service quality” is to ensure that sufficient CHCF-A funding is available in case the draws on the fund increase.<sup>66</sup>

In its opening comments, TURN proposes a minimum set of conditions that it believes the Commission should apply during the individual CLEC application review process to ensure that competitive entry will advance the Commission’s public policy principles of universal service, competitive access, and broadband access.<sup>67</sup> TURN points out that both federal and state regulations generally place limits on the nature and extent of exclusive arrangements. TURN also urges the Commission to adopt conditions on exclusive arrangements such as prohibiting agreements that place restrictions on marketing and advertising within a large development or multi-tenant building or requiring carriers that

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<sup>64</sup> Independent Small LECs’ Comments at 10.

<sup>65</sup> *Id.* at 11.

<sup>66</sup> *Ibid.*

<sup>67</sup> TURN Comments at 3-4.

enter into such exclusive arrangements to pay a surcharge to offset A-Fund draws.<sup>68</sup>

### **3.5.2. Discussion**

Many of the location-specific conditions proposed by TURN are adopted above as general conditions, including must-serve obligations within the defined service area of CLECs, compliance with existing service quality regulations and emergency calling services, and enforcement of an updated set of consumer protection rules based on D.95-07-054.<sup>69</sup> To the extent that TURN's proposed conditions are not included as general conditions listed above, we evaluate them based upon their furtherance of Section 253(b)'s mandated goals to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.<sup>70</sup> In addition, location-specific conditions must be nondiscriminatory and competitively neutral.

TURN's first recommended location-specific condition is to limit exclusivity agreements. The issue before us is whether allowing marketing and advertising by the Small LECs in areas served by an exclusive contract advances Section 253(b)'s goals of promoting universal service and safeguarding the rights of consumers through nondiscriminatory rules. The analysis involves both legal

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<sup>68</sup> *Id.* at 10.

<sup>69</sup> TURN Reply Comments at 7.

<sup>70</sup> TURN's goal of increased broadband service, while shared by the Commission, is not included within Section 253(b) because it is considered an information rather than telecommunications service.

and factual issues. It is not clear based on the citations provided by TURN whether the Commission has the legal authority to limit exclusive arrangements such as Tesoro Viejo.

Factual issues also exist because it is not clear whether retail services subject to this Commission's jurisdiction will be provided by the CLECs or by its affiliates. Further, TURN states that it has not been able to review the specific terms of Comcast Phone's agreement to serve the Tesoro Viejo area, but the language of Comcast Phone's application does not rule out the potential for an exclusive service arrangement between Comcast Phone and the developer in the new residential housing development in the Ponderosa service territory.<sup>71</sup> TURN's first proposed condition regarding restrictions on marketing and advertising needs more consideration in an individual application where all the appropriate facts concerning the terms of the arrangement can be considered before the Commission may decide on its applicability. Thus, TURN's first proposal to limit the exclusivity of service needs to be evaluated in the context of an individual application such as Comcast Phone's application in A.19-01-003.

TURN's second proposed location-specific condition would require carriers entering into an exclusive arrangement to pay a fee that would be used as a surcharge to offset A-Fund draws. As with TURN's first proposal, this proposed condition is more properly considered in the context of an individual application.

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<sup>71</sup> TURN Comments at 9.

As to the Independent Small LECs' proposed conditions, a number of them are reconfirmed and updated as general conditions for the CLECs as set forth above. For example, we agree that CLEC market entry into a Small LEC's service territory should be conditioned on compliance with GO 133-D service quality rules and all emergency service requirements.<sup>72</sup> We also agree with the Independent Small LECs and TURN that conditions on the entry by CLECs into the service territories of the Small LECs must ensure that customers continue to have robust and reliable communications, even in emergency situations. Therefore, we have set forth as a general condition above the requirement that CLECs apply the rules ultimately adopted in the Emergency Disaster Relief proceeding (R.18-03-011).

The Independent Small LECs' proposed requirements that CLECs comply with GO 77-M and provide information on management compensation and other financial information to the Commission cost allocation are unfounded because GO 77-M specifically states that it does not apply to CLECs. We agree with TURN that:

As rate-regulated entities with an opportunity to earn a reasonable rate of return and to receive millions of dollars in federal and state subsidies, it is appropriate that the Small LECs provide the Commission with information about their operations, management earnings, and executive functions to ensure that the carriers are meeting their obligations and properly accounting for ratepayer supported funding. The CLECs do not have these same benefits of incumbency and,

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<sup>72</sup> Independent Small LECs' Comments at 6.

therefore, such reporting requirements are wholly unnecessary.<sup>73</sup>

We also note that CLECs are responsible for affiliate transaction reporting under the general conditions set forth above.

Finally, the Independent Small LECs request authority from the Commission to offer pricing that parallels the CLECs' pricing through promotional tariff offerings. The Independent Small LECs request that they be allowed to offer promotions through Tier 2 Advice Letters with a 30-day notice.

TURN potentially supports consideration of specific proposals for limited promotional pricing flexibility and small changes in rate case filing and advice letter obligations on a case-by case basis in areas where CLECs seek to compete with the Small LECs for wireline customers. We agree that such requests for pricing flexibility for wireline service should be considered on a case-by-case and location-specific basis in individual applications to protect and benefit customers by mitigating the potential for cream skimming and increased draws from the A-Fund.

Our framework adopted today for evaluating individual CLEC applications and considering several location-specific conditions strikes an appropriate balance between meeting the policy goals of competition and protecting ratepayers pursuant to our authority under Section 253(b). At this time, we reject the TDS Companies' proposal to release these companies from many of their obligations to their customers to level the playing field with the

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<sup>73</sup> TURN Reply Comments at 10.

CLECs. The TDS Companies may renew their arguments in response to an application by a CLEC to expand service into one of their territories and explain to the Commission how their proposal to be released from any of their obligations to customers is in the public interest.

#### **4. Imposition of COLR Obligations on CLECs**

##### **4.1. Positions of Parties**

The Independent Small LECs state that one reasonable response to CLECs only offering service to the most profitable and easy-to-serve customers would be to require that any competing CLECs be both COLRs and ETCs.<sup>74</sup> TURN does not support placing COLR obligations on CLECs. TURN instead supports a framework that requires CLECs to file proposed service area maps that are nondiscriminatory and holds CLECs to a rebuttable presumption that the CLECs will serve all customers in their defined geographic serving area and for a specified time frame. CCTA objects to the Commission placing COLR obligations on CLECs entering Small LEC service territories as a pre-determined condition of entry because of a lack of competitive neutrality. CCTA argues that these obligations would only be imposed on CLECs that currently do not have such obligations.<sup>75</sup>

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<sup>74</sup> Independent Small LECs' Comments at 10.

<sup>75</sup> CCTA Comments at 18, citing *AVR L.P. d/b/a Hyperion of Tennessee L.P. Petition for Preemption* (1999) Memorandum Opinion and Order, 14 FCC Rcd. 11064, 11071, Para. 16, (in application of Section 253(a), FCC looks past superficial claims of equivalence to real impact of state or local policy).

#### **4.2. Discussion**

We agree with CCTA that imposing COLR obligations on CLECs entering Small LEC service territories as a pre-determined condition of entry may violate Section 253(b).<sup>76</sup> That condition would not be competitively neutral because it would only be imposed on CLECs competing in Small LEC service territories and not in Uniform Regulatory Framework (URF) service territories of large and mid-size LECs.

It may be difficult for CLECs to compete in some of the Small LEC service territories given the relatively small number of customers, the low incomes in some of the territories, and the difficult physical terrain. For these reasons, the Independent Small LECs receive subsidies from several federal and state universal service funds into which all California telephone customers pay through surcharges, including the federal Universal Service Fund and the A-Fund. To receive A-fund support, the Independent Small LECs must serve as COLRs. In a particular Independent Small LEC's territory, the A-Fund may subsidize any consequent revenue shortfalls incurred by the Independent Small LEC as a result of such competition.<sup>77</sup> In addition, each of the Independent Small LECs is an ETC under Section 214(e)(1). CCTA states that none of these funds is available to CLECs entering an Independent Small LEC's service territory.<sup>78</sup>

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<sup>76</sup> *Id.* at 18.

<sup>77</sup> While cream skimming was a fear raised by Pacific Bell in the 1990s in R.95-04-043, we note there was no A-Fund to make up any potential shortfalls in Pacific Bell's revenue due to competition as exists for the Independent Small LECs.

<sup>78</sup> *Id.* at 19.

While CLECs may obtain ETC designation, they will not be eligible to receive CHCF-A support. However, the CLECs may receive some federal USF and state public purpose fund support. For these reasons, we will not impose a COLR or ETC obligation on the CLECs, although they will be subject to the previously described nondiscriminatory and must serve obligations in their self-designated service territories.

Wireline competition by CLECs should not result in CLECs only serving the most profitable and easy-to-serve customers. However, any marginal loss of scale may require the A-Fund to be used to make up declining revenues. As TURN notes, "The regulatory compact the Small LECs have enjoyed for decades can, and should, continue within a competitive framework."<sup>79</sup> However, expanded competition into Small LEC service territories presents a challenge for regulators. Balancing the regulatory compact in a manner that is fair to all concerned is difficult in this circumstance because the CLECs operate under different rules than rate-of-return regulated Small LECs.<sup>80</sup>

## **5. A-Fund Changes from Competition by CLECs**

### **5.1. Positions of Parties**

The Small LECs contend that the rate case process needs reform now and should be replaced with both an informal advice letter process and the allowance of Small LEC flexibility in changing rates and bundling of services to respond to

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<sup>79</sup> TURN Comments at 6.

<sup>80</sup> This Commission may need to take a more global look at competition in the Small LECs' service territory and Pub. Util. Code Section 275.6 after we gain several years of experience with wireline competition by CLECs.

competition.<sup>81</sup> Otherwise, the Independent Small LECs argue, increased competition could threaten affordable and reliable service.<sup>82</sup> The TDS Companies propose imposing a cap on CLECs' basic local service rates based on the Small LECs' rates for the most recent test year. The TDS Companies also propose that, at least for companies that are not receiving A-Fund support, the Commission should grant comparable URF treatment at the same time it opens a Small LEC service territory to competition. According to the TDS Companies, this pricing flexibility and regulatory freedom will be necessary to meet competitive pressures and are consistent with the Commission's reasoning for adopting the URF framework for the larger and mid-sized incumbent LECs.<sup>83</sup>

TURN disagrees with the Independent Small LECs and the TDS Companies who urge that the approval of competition should automatically open the door to the substitution of advice letters for Small LEC rate cases.<sup>84</sup> TURN argues instead that the Commission should design the framework to meet the policy goal of competition while also advancing the goals of universal service, consumer protections, emergency services, and access to broadband.<sup>85</sup>

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<sup>81</sup> Independent Small LECs' Comments at 11; TDS Companies January 21, 2020 Reply Comments (TDS Companies' Reply Comments) at 3.

<sup>82</sup> Independent Small LECs' Comments at 13.

<sup>83</sup> TDS Companies' January 6, 2020 Comments at 4 (calling for Commission to provide Small LECs with pricing and contract flexibility and reporting similar to current LECs under minimal URF obligations.)

<sup>84</sup> TURN Reply Comments at 11.

<sup>85</sup> *Id.* at 12.

CCTA states that there is no basis to conclude that wireline voice competition from new CLEC competitors will have a negative impact. CCTA argues that it is premature to alter the A-Fund regulatory framework due to potential CLEC entry.<sup>86</sup>

### **5.2. Discussion**

We agree with CCTA that it is premature to alter the A-Fund framework due to potential entry by CLECs.<sup>87</sup> Given that there is already non-wireline competition in the service territories of the Small LECs, the impact of CLEC competition in any one service territory is not clear. The TDS Companies raise an important issue, however. Designing a workable framework to accommodate rate-regulated utilities competing for customers in providing wireline services raises many policy and legal issues regarding the CHCF-A fund. Those issues are beyond the scope of this proceeding and should be considered in a new proceeding.

## **6. Modification of CLEC Competition Rules Generally**

### **6.1. Positions of Parties**

TURN, CCTA and the Small LECs agree that this proceeding is not the appropriate venue to consider changes to the current CLEC rules that apply to all CLECs operating in the state.<sup>88</sup> The Independent Small LECs argue that the 1995

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<sup>86</sup> CCTA Comments at 21.

<sup>87</sup> *Ibid.*

<sup>88</sup> CCTA Comments at 21-23; Independent Small LECs' Comments at 14; TDS Companies' Reply Comments at 4; TURN Reply Comments at 12.

rules are outdated.<sup>89</sup> TURN agrees, but nonetheless contends that, with some changes to the current rules plus incorporation of additional, more relevant rules and conditions as discussed in TURN's opening comments, the Commission will have a framework and conditions to protect Small LEC customers and all ratepayers in a competitive environment.<sup>90</sup> TURN supports the use of the 1995 CLEC rules as the starting point of the rules the Commission should adopt here for reviewing individual CLEC applications for expanding service into a Small LEC service territory.

## **6.2. Discussion**

As noted above, we are adopting a revised version of the CLEC rules in Section 4F of Appendix A to D.95-07-054 for application to expansion by CLECs into Small LEC service territories. To the extent certain rules are no longer relevant, we do not include them. We are also adopting the CLEC rules in Appendix B to D.95-07-054, excluding Rules 2.9 and 2.10. The rules adopted today comply with Section 253(b) and provide necessary safeguards to promote universal service and safety and to protect consumers from unfettered competition by CLECs in service territories where the incumbent service provider is a rate-regulated entity receiving subsidies from both federal and state funds. We agree with TURN that it is appropriate to consider additional rules for competition by CLECs in these rural areas on a case-by-case basis. TURN states:

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<sup>89</sup> Independent Small LECs' Comments at 14.

<sup>90</sup> TURN Reply Comments at 12.

"[P]recisely because the Small LECs serve as COLRs in areas where wireless and other wireline competitors serve the most lucrative customers, authorization of wireline voice competition that will make it easier to compete for the Small LECs' basic service customers must be properly managed. Revising these 1995 rules is the most efficient and logical way to proceed." <sup>91</sup>

We will consider the need to adopt additional rules in individual CLEC applications. We do not agree with TURN that wholesale revisions to the 1995 rules are necessary at this time. Instead, as discussed above, we have appropriately updated the rules adopted for CLEC competition in D.95-07-054.

Finally, we agree with TURN's goal of increasing broadband services. Competition by CLECs in the Small LECs' service territories should promote increased broadband deployment in remote areas and thereby offer rural customers choices in voice and other broadband services that are already offered to their urban counterparts.

## **7. May 18, 2020 Independent Small LECs' Motion**

On May 18, 2020, the Independent Small LECs filed a motion with the Commission for a one-year extension of general rate case (GRC) filing deadlines adopted in D.15-06-048, a freeze of the CHCF-A waterfall mechanism, and a resequencing of certain rate cases. The Independent Small LECs refer to two core issues in making their request: the COVID-19 pandemic and the pending changes in CHCF-A program processes and ratemaking rules resulting from a pending Phase 2 Commission decision.

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<sup>91</sup> TURN Reply Comments at 13.

Specifically, the Independent Small LECs are requesting a GRC filing extension to October 1, 2021 for the current Group A companies (Volcano, Siskiyou, and Kerman). The current Group B companies (Cal-Ore, Calaveras, Ponderosa, and Sierra) would file their GRCs in October 2022 and the current Group C companies (Ducor, Pinnacles and Foresthill) would file their respective GRCs in October 2023. In addition, CHCF-A support would be frozen at the current waterfall levels for the collective Independent Small LECs. The CHCF-A support would continue to be adjusted for the means test and the “regulatory changes of industry-wide effect,” through the annual advice letter process in accordance with D.91-09-042. Also, the Independent Small LECs are requesting that they retain the ability to file an application for emergency rate relief as needed. Finally, the Independent Small LECs are requesting that Kerman and Foresthill be placed together in “Group B” and Cal-Ore be moved to “Group C”. On May 29, 2020, CCTA filed a response to the Independent Small LECs’ motion. On June 2, 2020, the Public Advocates Office filed a response to the Independent Small LECs’ motion.

### **7.1. Discussion**

The Commission agrees with the Independent Small LECs that the program and ratemaking rule changes resulting from the pending Phase 2 decision will require time to implement. Therefore, we grant the Independent Small LECs’ request to extend the filing deadlines for the GRC Group A companies to October 1, 2021, Group B companies to October 1, 2022, and Group C companies to October 1, 2023. After the first round of this modified rate case cycle, the second and further rate cycles will be modified accordingly. We agree

with some aspects of the request for resequencing of the companies currently included in Group A, Group B and Group C. We grant the request to include Kerman and Foresthill in the same group and make additional changes to maintain a more even distribution of carriers across all groups. Calaveras has been moved to Group C with the three smallest carriers. The following chart reflects the new grouping of the Independent Small LECs:

<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
Sierra	Kerman	Ducor
Siskiyou	Foresthill	Calaveras
Volcano	Ponderosa	Pinnacles
		Cal-Ore

All other deadlines associated with the GRC established in D. 15-06-048, including the deadline for the Notice of Intent, remain unchanged. The Independent Small LECs included in their motion a request to freeze the current waterfall mechanism and to retain the ability to file an application for emergency rate relief as needed; both requests are granted. Appendix C sets forth the GRC cycle for 2021 through 2030, including GRC filing deadlines and waterfall provisions.

## **8. Conclusion**

We allow voice wireline service by CLECs in the service territories of the Small LECs as required by Section 253(a) subject to the general conditions authorized by Section 253(b) and adopted in this decision. We will consider location-specific conditions in individual applications by CLECs to expand their wireline service into the service territories of the Small LECs. The May 18, 2020,

motion that the Independent Small LECs filed with the Commission for a one-year extension of GRC filing deadlines adopted in D.15-06-048, a freeze of the CHCF-A waterfall mechanism, and a resequencing of certain rate cases is granted. The freeze to the CHCF-A waterfall mechanism is temporary and shall continue while Groups A through C submit their respective first rounds of GRC applications under the revised schedule. The Independent Small LECs shall be subject to the waterfall provision beginning the year following their next GRC application deadline (*i.e.* beginning in 2022 for Group A carriers).

## **9. Comments on Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3. Comments were filed on July 27, 2020 by the Public Advocates Office (Cal Advocates), the Independent Small LECs, TURN, and CCTA. Reply comments were filed on August 3, 2020 by Cal Advocates, the Independent Small LECs, TURN, and CCTA.

Cal Advocates supports the proposed decision's conclusion that allows competition by CLECs in the service territories of the Small LECs. Cal Advocates disagrees with that part of the proposed decision that places Kerman and Foresthill into Group B because that regrouping would change the deadline for the filing of their GRC Applications from October 1, 2021 to October 1, 2022. We share Cal Advocates' view that a timely review of the reasonableness of an applicant's expenses in a GRC proceeding is important. However, we conclude that moving the deadline for filing the applications as proposed will not have any significantly measurable impact on our ability to conduct a thorough review

and properly evaluate the reasonableness of the applicants' expenses. Further, as Cal Advocates acknowledges, combining Kerman and Foresthill's GRCs into the same group "will streamline the GRC process and promote efficiency."<sup>92</sup> As a result, we retain the proposed decision's placement of Kerman and Foresthill into Group B.

The Independent Small LECs agree with the proposed decision's grant of a one-year extension of their GRC filing deadlines, a freeze of the CHCF-A waterfall mechanism, and a resequencing of certain GRCs. The Independent Small LECs reiterate their opposition expressed in previous comments in this proceeding to CLEC competition in their service areas. The proposed decision fully addresses the previous arguments made by the Independent Small LECs and properly concludes that CLEC competition is mandated by applicable federal and state law.

The Independent Small LECs also assert that a CLEC who is allowed to compete in their service areas should be required to provide voice-grade service throughout the exchange area that the CLEC proposes to serve to prevent "cream skimming."<sup>93</sup> As set forth above in the proposed decision, this requirement would be unduly burdensome, raises significant barriers of entry, and is inconsistent with Section 253(b). For those reasons, we again reject the inclusion of a requirement to provide service throughout an exchange area.

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<sup>92</sup> Cal Advocates Comments to Proposed Decision at 2.

<sup>93</sup> Small Independent LECs' Comments to Proposed Decision at 6.

As an alternative to a requirement for a competing CLEC to provide service throughout an exchange area, the Independent Small LECs propose modifications to General Condition 2 to provide “specific parameters for evaluating whether a CLEC’s ‘good faith efforts’ are effective.<sup>94</sup> Specifically, the Independent Small LECs would delete a “good faith efforts” standard as not being specific enough and would add a requirement of proportionality between LifeLine-eligible and non-LifeLine-eligible customers. However, California law has long recognized “good faith” as a standard of conduct.<sup>95</sup> In addition, given that General Condition 2 already contains a proportionality standard for low-income and non-low-income customers and that the definition of a low-income household is consistent with the income limits under the LifeLine program, there does not appear to be any quantifiable benefit in mandating both income and LifeLine proportionality.

The Independent Small LECs also propose that we require CLECs to provide information regarding whether a proposed service area includes Tribal areas. We are not persuaded that this proposed requirement should be imposed in this decision relating to competition, although we do not foreclose the possible relevance of Tribal area information in evaluating individual CPCN applications.

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<sup>94</sup> *Id.* at 5-6.

<sup>95</sup> See Pub. Util. Code Section 2893.5(d) (“A good faith effort to comply … shall be a defense ....”); Pub. Util. Code Section 6015 (“work … shall be prosecuted diligently and in good faith ....”); *Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4<sup>th</sup> 498, 528 (implied covenant of good faith and fair dealing in every contract); Government Code Section 19257 (standard of good faith in civil service appointments).

The Independent Small LECs would require competing CLECs to fulfill all reasonable requests for broadband-capable connections at levels that meet the Federal Communications Commission's minimum broadband speed standards. As stated in the proposed decision, we support the objective of increasing broadband services. However, the proposed requirement would violate Section 253(b) because it would only apply to those CLECs seeking to compete with the Independent Small LECs and therefore would be discriminatory and not competitively neutral.

The Independent Small LECs would modify General Condition 12(d) to require competing CLECs to submit all GO 133-D reports that the Independent Small LECs submit and would require CLECS to submit two-year service quality and improvement plans annually, including the same elements mandated in the Independent Small LECs' ETC filings. We decline these proposals because they would also impose requirements on CLECs seeking to compete with the Independent Small LECs that are not required of other CLECs.

TURN generally agrees with the proposed decision's opening of the Small LECs' service areas to competition and its general conditions. However, TURN would add requirements to General Condition 2 that a CLEC (1) will make service available throughout its self-designated service territory within a reasonable timeframe and (2) will provide the Commission with a buildout and service availability timeline and furnish semi-annual reports regarding its progress in meeting its buildout goals. We recognize TURN's concern that a CLEC could designate a large service area but then not act reasonably in achieving a full buildout of that area. However, we also recognize that the

circumstances of each CLEC application to compete in a Small LEC service territory will vary widely, and we believe the best way to address the implementation of CLEC service availability throughout a proposed service area is on a case by case basis in individual applications. Therefore, we decline to modify General Condition 2 as proposed by TURN.

In its comments, TURN repeats its earlier position that exclusivity of service agreements by CLECs should be limited. The proposed decision recognizes that exclusivity agreements are of concern, but we also recognize that the cases involve complex issues of fact and law that are often not amenable to a bright line rule. As with our decision against the setting of specific buildout timeframes in the general conditions, we believe it more appropriate to address the multifaceted issues relating to exclusivity agreements in the course of individual applications by CLECs.

CCTA favors the proposed decision's allowance of CLEC competition in the service territories of the Small LECs. CCTA disfavors the proposed decision's conditions on that competition, arguing that the conditions are outside the scope of the proceeding, are not supported by the record, violate due process by being arbitrary and capricious, and are unduly burdensome. CCTA's contentions are without merit. The November 8, 2019 ALJ Ruling specifically asked the parties to comment on whether the Commission should consider developing rules for CLECs to compete with Small LECs comparable to the CLEC competition rules set forth in Appendices A and B of D.95-07-054, and the rules in that 1995 decision were the backbone for the general conditions set forth in the proposed decision. The parties had notice and a full and fair opportunity

to comment on the matters that are the subject of the proposed decision, and therefore CCTA did receive the process that was due.

CCTA argues that the proposed decision is procedurally defective and violative of due process because the Commission did not provide CCTA the exact language of all general conditions before issuance of the proposed decision. CCTA's argument reflects a misunderstanding of due process and our deliberative function. The Commission has a fundamental responsibility to thoroughly consider the record, determine the applicable facts and law, and then exercise its reasonable discretion to craft appropriate remedies. That process does not require us to identify before issuance of a proposed decision every possible action that we might take. In this proceeding, the parties were fully notified of the issues being considered and, as reflected in this section of the proposed decision, the parties were given the opportunity to comment on the Commission's proposed actions before a final decision was issued. We have thoughtfully evaluated every submission of CCTA and the other parties before reaching a final decision. Therefore, due process was met.

CCTA also contends that the general conditions are discriminatory and not competitively neutral because wireless and over-the-top VOIP providers will not be subject to those obligations. As previously stated in this decision, the general conditions we adopt reflect a reasonable and balanced approach that both promote competition and protect telecommunications service quality and public safety. CCTA's position would also improperly bar the imposition of reasonable requirements under Section 253(b) necessary to preserve and advance universal

service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Finally, CCTA claims that the general conditions would be unduly burdensome. Although CCTA references administrative issues related to the conditions, its comments are notably absent in providing specifics regarding the time and expense required for compliance. Similarly, although CCTA complains about the resource burden related to the submission of maps with end-user location information, it fails to quantify in any measurable way what the burden would be. As a result, we do not modify the proposed decision based upon CCTA's comments.

## **10. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Hazlyn Fortune and Peter Wercinski are the assigned Administrative Law Judges in this proceeding.

### **Findings of Fact**

1. The Independent Small LECs receive subsidies from several federal and state funding sources.
2. The Independent Small LECs serve as Carriers of Last Resort (COLRs) as a condition of receiving California High Cost Fund-A (CHCF-A) support.
3. COLRS are obligated to serve all customers in their service areas that request wireline voice service.
4. California's 13 Small LEC service territories have widely varying terrain, levels of population and visitors, service costs, and service barriers, including lack of access to electricity.

5. CLECs may tend to serve only portions of Small LECs' service areas that are profitable.

6. CLECs may "cream skim" profitable customers rather than serve significant portions of Small LEC service territories, particularly customers whose costs to serve are high.

7. It is unlikely that any CLECs seeking to expand into a Small LEC's service territory would be willing to serve all customers in that territory through robust and reliable technologies suitable to the difficult terrain, population density, weather and other characteristics of Small LEC service territories.

8. To the extent CLEC competition causes a revenue shortfall to Small LECs, CHCF-A may be used to make up those lost revenues.

### **Conclusions of Law**

1. Wireline competition must be allowed in the service territories of the Small LECs as a matter of law pursuant to Section 253(a) of the Telecommunications Act of 1996.

2. Public Utilities Code Section 709.5(a) reflects a legislative intent to open telecommunications markets to competition and mandates that the "commission shall take steps to ensure that competition in the telecommunications market is fair and that the state's universal service policy is observed."

3. There are currently no petitions filed with the California Public Utilities Commission (Commission) under Section 251(f) of the Telecommunications Act of 1996.

4. The Commission has the authority under Section 253(b) of the Telecommunications Act of 1996 to impose conditions that preserve and advance

universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

5. The conditions adopted in this decision are nondiscriminatory and competitively neutral.

6. Because competition is required as a matter of law, the Commission does not need to hold further evidentiary hearings pursuant to Public Utilities Code Section 1708 regarding the allowance of competition in the service territories of the Small LECs.

7. The Commission may adopt rules involving purely policy or legal issues without hearings.

8. CLECs that supply voice wireline services in the service territories of the Small LECs should comply with applicable affiliate transaction rules and reporting requirements.

9. Imposition of COLR obligations on CLECs would not be competitively neutral.

10. It is reasonable to adopt general conditions applicable to all CLECs wishing to expand voice wireline service into service territories currently served by the Small LECs.

11. It is reasonable to apply the conditions adopted in D.95-07-054 as general conditions to CLECs that expand into the service areas of the Small LECs, with updates as necessary to reflect the passage of time.

12. A “must serve” requirement for voice wireline service in the CLEC service area as self-defined by a CLEC in its application for entry into a Small LEC service area is reasonable.

13. It is reasonable for a CLEC to make a good faith effort to serve a territory that reflects the proportional demographics of the Small LEC territory it is entering because it supports non-discriminatory behavior.

14. It is reasonable to require CLECs to comply with rules the Commission ultimately adopts in the Emergency Disaster Relief proceeding (R.18-03-011), including demonstrating in their applications for entry into the service territories of Small LECs that they have adequate back-up power to ensure reliability during a significant power outage in any new facilities that they build.

15. It is reasonable to require CLECs to serve all customers in their self-designated areas, which may be smaller than the exchange.

16. Location-specific conditions to protect ratepayers should be developed in individual CLEC applications to offer voice wireline service in the service territories of Small LECs.

17. It is reasonable for the Commission to grant a one-year extension of general rate case filing deadlines for the Independent Small LECs, impose a temporary freeze of the CHCF-A waterfall mechanism, and update the sequence of certain rate case application submissions.

## **O R D E R**

**IT IS ORDERED** that:

1. The territories of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company, Happy Valley Telephone Company, Hornitos Telephone

Company, and Winterhaven Telephone Company shall be opened to wireline competition from Competitive Local Exchange Carriers as required by Section 253(a) of the Telecommunications Act of 1996.

2. Competitive Local Exchange Carriers that seek to expand voice wireline service to the territories served by Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company shall comply with the applicable rules adopted in the Local Exchange Competition Proceeding (Rulemaking 95-04-043, Decision 95-07-054) as updated in Appendix A to this decision.

3. Competitive Local Exchange Carriers that seek to expand voice wireline service to the territories served by Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company shall be subject to all applicable Commission consumer protection rules, including the consumer protection rules contained in General Order 168, Consumer Bill of Rights Governing Telecommunications Services, Appendix B

(excluding Rules 2.9 and 2.10) to Decision 95-07-054, and Appendix B to this decision.

4. In individual location-specific applications, the Commission will consider waivers, exemptions or additions to general conditions adopted in this decision on a case-by-case basis.

5. The Commission reorders and replaces the groupings of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company for the purpose of general rate case application submission as follows: Group A: Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company; Group B: Kerman Telephone Company, Foresthill Telephone Company, and The Ponderosa Telephone Company; Group C: Calaveras Telephone Company, Pinnacles Telephone Company, Ducor Telephone Company, and Cal-Ore Telephone Company.

6. The Commission directs a temporary freeze to the waterfall mechanism for Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company (Independent Small LECs). This freeze shall continue while the Independent Small LECs submit their respective first rounds of general rate case (GRC) applications under the revised schedule. The Independent Small

LECs shall be subject to the waterfall provision beginning the year following their next GRC application deadline.

7. The Commission affirms that Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company retain the ability to file an application for emergency rate relief as needed.

8. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall comply with the following revised schedule for filing general rate case (GRC) applications with the Commission: Group A companies Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall file by October 1, 2021, Group B companies Kerman Telephone Company, Foresthill Telephone Company, and The Ponderosa Telephone Company shall file by October 1, 2022, and Group C companies Calaveras Telephone Company, Pinnacles Telephone Company, Ducor Telephone Company, and Cal-Ore Telephone Company shall file by October 1, 2023. This revised GRC filing schedule shall be repeated every five years thereafter and is reflected in Appendix C to this decision. All other deadlines associated with the GRC established in Decision 15-06-048 remain unchanged.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**

## APPENDIX A

This Appendix updates Decision 95-07-054, Appendix A, Section 4.F – Entry, Certification, and Regulation of CLECs, with changes redlined.

The following regulations shall apply to CLECs:

- (1) CLECs shall be required to serve customers requesting wireline voice service within their self-designated service territories on a non-discriminatory basis but shall not be required to service the same service territories as the Small LECs.
- (2) ~~Facilities based~~ CLCs shall at a minimum serve all customers who request service and whose premises are within 300 feet of the CLC's transmission facilities used to provide service so long as the CLC can reasonably obtain access to the point of demarcation on the customer's premises, but the CLC shall not be required to build out facilities beyond such 300 feet.
- (2) A CLEC shall avoid designing a discriminatory self-designed service territory by ensuring that the self-designed service territory represents the demographics of the Small LEC territory it is entering by making a good-faith effort to serve a proportional number of residential to commercial customers, and a proportional number of low-income<sup>96</sup> and non-low-income customers. These proportionality measures will guard against only sub-sets of wealthy customers being served by the CLEC.

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<sup>96</sup> A low-income household is defined as one with annual income of approximately 150% or less of the federal poverty guideline, consistent with the California LifeLine income limits. The California LifeLine income limits can be found at <https://www.cpuc.ca.gov/General.aspx?id=2752#qualify>

- (3) CLECs shall file service territory maps with the Commission that detail the area in which the CLECs seek is authorized to provide voice wireline service. The territory maps should include a network service map and geospatial data that detail the network architecture and displays each end-user location to which the CLECs are seeking authorization, the linear and/or point feature representations of the network, as well as the bounding polygons that contain all the end-user locations. This information should be provided in a map at the appropriate scale and in three geospatial files: 1) end-user point locations in a plain-text, comma separated values (CSV format) file that contains geo-located street addresses with latitude and longitude coordinates, 2) linear features representing wired network facilities and/or point features representing wireless facilities in an Esri shapefile or .KML file, and 3) the polygon boundaries that contain all end user locations in a polygon Esri shapefile or .KML file.
- (4) CLECs shall file annually quarterly a written description and or a map that describe their existing physical facilities by April 1 of each year.
- (5) ~~For any interexchange carrier which subscribes to a CLC's switched access services, the CLC is required to provide 1+ presubscription or 10XXX equal access consistent with the equal access rules of this Commission and of the Federal Communications Commission.~~
- (6) Facilities-based CLECs are required to make all telecommunications service offerings available for resale, ~~only within the same class of service,~~ on a nondiscriminatory basis.
- (7) CLECs shall be subject to the obligations of public utilities under the Public Utilities Code, including but not limited to, Sections 451 and 453

~~regarding dealing with the provision of just and reasonable rates and charges.~~

(7) CLECs shall provide California LifeLine services and discounts to eligible consumers.

(88) CLECs must obtain Commission approval before discontinuing service in any part of their service area.

(99) CLECs shall provide 911 and/or E911 service.

(10) To ensure that qualified customers are provided with TDDs or other telecommunications equipment under the DEAF program, a workshop shall be held with LECs, CLCs and other interested parties to determine how the DEAF program should be administered; how to coordinate operator, directory assistance and long distance access services for deaf and disabled customers; and how to accurately track, monitor and report equipment provided to deaf and disabled customers in an environment with more than one provider of local exchange service. Until such time as the Commission has time to act on the workshop report, the CLC shall work with the LEC to ensure that qualified customers are provided with TDDs or other telecommunications equipment under the DEAF program.

(11) LECs and CLCs shall develop a program to address the issues regarding access to repair service, i.e., 611, to ensure its integration in the environment of local exchange competition.

(1012) CLECs shall apply the rules ultimately adopted in the Emergency Disaster Relief proceeding (R.18-03-011). Such rules may include on-site emergency backup power to support all essential communications equipment, including, but not limited to, switching centers, central offices, wire centers, head ends, network nodes, field cabinets, remote terminals, and cellular sites (or their functional equivalents) necessary to maintain service for a minimum of 72 hours immediately following a power outage. Service must be sufficient to maintain access for all customers to 9-1-1 service, to receive emergency notifications, and to access web browsing for emergency notices.

(11) CLECs shall be subject to the all applicable consumer protection rules, including General Order (GO) 168, the Consumer Bill of Rights Governing Telecommunications Services, and contained in Appendix B (excluding Rules 2.9 and 2.10) to D.95-07-054 and this decision.

(1213) CLECs shall provide the following reports to the Commission:

- (a) On a quarterly basis, a copy of all written notices provided to customers in accordance with Rules 1, 2 and 6 of the consumer protection rules set forth in Appendix B of D.95-07-054 and this decision;
- (b) By April 1 of each year, a copy of the CLEC's annual report;
- (c) ~~On a monthly basis, r~~Reports regarding major service interruptions ~~outages~~, consistent with GO 133-D, FCC Part 4 rules, FCC's NORS reporting requirements, and the ETC outage report;
- (d) ~~All applicable R~~eports required by ~~in~~GO 133-DB and GO 152-A; and ~~any subsequent service quality rules established by the Commission; and~~
- (e) Such other reports required by the Commission.

(13) CLECs shall comply with all applicable affiliate transaction rules and reporting requirements.

(14) In their CPCN applications to expand service to territories served by the Small LECs, CLECs shall state which technological platform they intend to utilize to provide service. CLECs shall also comply with all other CPCN requirements.

(15) CLECs shall comply with the Commission's public purpose program surcharge and user fee requirements.

(166) CLECs shall submit all applicable Commission mandated bill insert notices, including annual notices of California LifeLine services consistent with GO 153 and California LifeLine Program Rules, notices of basic universal service rate increases, to the Commission's Public Advisor's Office for review and approval, and shall allow the Public Advisor's Office at least five working days to review and approve the proposed bill inserts prior to their issuance to customers.

**(End of Appendix A)**

**APPENDIX B**

**APPENDIX B**

**This Appendix updates Decision 95-07-054, Appendix B, with deletions redlined.**

**Consumer Protection and Consumer Information Rules for CLCs****1.0 PURPOSE AND APPLICABILITY****1.1 PURPOSE**

The purpose of these Consumer Protection Regulations is to establish consumer protection/ rules and responsibilities of current or potential customers who take service from CLCs registered to operate within the State of California as authorized by the California Public Utilities Commission.

**1.2 APPLICABILITY**

These Consumer Protection Regulations apply to CLCs and, where noted, to LECs.

The provisions here shall be observed subject to the jurisdiction of the California Public Utilities Commission, except if an exemption is made by the Commission, either on its own motion or after investigation of the facts and circumstances involved in a complaint.

In case of emergency where public interest requires immediate action, the rules shall not prevent immediate corrective action by the CLC; that action, however, shall be subject to review by the Commission.

**2.0 DEFINITION AND TERMS****2.1 APPLICANT (Customer)**

Any person, corporation or other entity that has applied for service.

**2.2 COMMISSION**

Public Utilities Commission of the State of California.

**2.3 INFORMAL COMPLAINT**

Informal request for assistance made to the Commission's Consumer Affairs Branch (CAB) with supporting documentation concerning a CLC's service, rates or other matters. CAB staff investigates and tries to arrive at an informal adjustment without public hearing or Commission order. Informal complaint files are not available for public inspection.

**2.4 FORMAL COMPLAINT**

A formal charge that a CLC has violated the Public Utilities Code or some order or regulation of the Commission. The complaint must be in writing, be in accordance with the Commission's Rules of Practice and Procedure and made under oath. The proceeding ordinarily requires public hearing and a Commission decision.

**2.5 COMPLETED CALL OR TELEPHONIC COMMUNICATION**

A call, or other telephonic communication, originated by a person or mechanical/electrical device from a number to another number which is answered by a person or mechanical/electrical device. The numbers may be located any distance apart within California; and the communication may consist of voice, data, the combination of both, or other transmission via a wire or wireless medium; and may be for any duration of time.

**2.6 CONSUMER AFFAIRS BRANCH (CAB)**

The Consumer Affairs Branch of the California Public Utilities Commission.

**2.7 DATE OF PRESENTATION**

Postmark date on billing envelope.

**2.8 AGENT**

A business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between a CLC and applicants or customers.

**2.9 MINOR RATE INCREASE**

~~Minor increases are those which are both less than 1% of the CLC's total California intrastate revenues and less than 5% of the affected service's rates. Increases shall be cumulative, such that if the sum of the proposed rate increase and rate increases that took effect during the preceding 12-month period for any service exceeds either parameter above, then the filing shall be treated as a major increase.~~

**2.10 MAJOR RATE INCREASES**

~~Major increases are increases which are greater than the increases described in Section 2.9 of these rules.~~

**3.0 RULES****RULE 1 - CLC INFORMATION**

CLCs shall, on request, provide each applicant for service or customer the following:

A. The California Public Utilities Commission identification number of its registration to operate as a telecommunications corporation within California.

B. The address and telephone number of the California Public Utilities Commission to verify its authority to operate.

C. A copy of these Consumer Protection Regulations.

D. A toll-free number to call for service or billing inquiries, along with an address where the customer may write the CLC.

E. A full disclosure of all fictitious i.e., "dba" names.

F. The names of billing agents it uses in place of performing the billing function itself.

G. Rate information as required by Rule 6(A).

#### RULE 2 - INITIATION OF SERVICE

During the initial contact all applicants for residential service must be given information regarding the Universal Lifeline program and its availability.

Service may be initiated based on a written or oral agreement between the CLC and the customer. In either case, prior to the agreement, the customer shall be informed of all rates and charges for the services the customer desires and any other rates or charges which will appear on the customer's first bill.

If the agreement is oral, within 10 days of initiating the service order, the CLC will provide a confirmation letter setting forth a brief description of the services ordered and itemizing all charges which will appear on the customer's bill. The letter must be in a language other than English if the sale was in another language.

Within 10 days of initiating service, the CLC shall state in writing for all new customers all material terms and conditions that could affect what the customer pays for telecommunications services provided by the CLC.

Potential customers who are denied service for failure to establish credit or pay deposit as described in Rule 12 must be given the reason for the denial in writing within 10 days of service denial.

#### RULE 3 - SPECIAL INFORMATION REQUIRED ON FORMS

##### A. Customer Bills

The CLC shall be identified on each bill. Each bill must prominently display a toll-free number for service or billing inquiries, along with an address where the customer may write. If the CLC uses a billing agent, the carrier must also include the name of the billing agent it uses. Each bill for telephone service will contain notations concerning the following areas:

- (1) When to pay your bill;
- (2) Billing detail including the period of service covered by the bill;
- (3) Late payment charge and when applied;
- (4) How to pay your bill;
- (5) Questions about your bill;
- (6) Network access for interstate calling;
- (7) In addition to the above, each bill shall include the following statement:

"This bill is now due and payable; it becomes subject to a late payment charge if not paid within 15 [15 days is the minimum number of days in which the CLC can require payment; a CLC may elect to allow customers a longer time to pay the bill.] calendar days of presentation date. Should you question this bill, please request an explanation from (name of CLC)."

If you believe you have been billed incorrectly you may file a complaint with the California Public Utilities Commission, Consumer Affairs Branch, 505 Van Ness Avenue, San Francisco, CA 94102, or 107 South Broadway, Room 5109, Los Angeles, CA 90012. To avoid having service disconnected, payment of the disputed bill should be made "under protest" to the CPUC or payment arrangements should be made agreeable to the CLC pending the outcome of the Commission's Consumer Affairs Branch review. The Consumer Affairs Branch shall review the basis of the billed

amount, communicate the results of its review to the parties and inform you of your recourse to pursue the matter further with the Commission."

#### B. Deposit Receipts

Each deposit receipt shall contain the following provisions:

"This deposit, less the amount of any unpaid bills for service furnished by (name of CLC), shall be refunded, together with any interest due, within 30 calendar days after the discontinuance of service, or after 12 months of service, whichever comes first. However, deposits may not receive interest if the customer has received a minimum of two notices of discontinuance of service for nonpayment of bills in a 12-month period.

### RULE 4 - CREDIT ESTABLISHMENT

Each applicant for service shall provide credit information satisfactory to the CLC or pay a deposit. Deposits shall not be required if the applicant:

A. Provides credit history acceptable to the CLC. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, name of employer, employer's address, customer's driver's license number or other acceptable personal identification, billing name, and location of current and previous service. Credit cannot be denied for failure to provide social security number.

B. A cosigner or guarantor may be used providing the cosigner or guarantor has acceptable credit history with the serving CLC or another acceptable local carrier.

C. A CLC cannot refuse a deposit to establish credit for service. However, it may request the deposit to be in cash or other acceptable form of payment (e.g., cashier's check, money order, bond, letter of credit).

### RULE 5 DEPOSITS

In the event the customer fails to establish a satisfactory credit history, deposits are a form of security that shall be required from customers to ensure payment of bills.

Deposits shall be no greater than twice the estimated average monthly bill for the class of service applied for.

In the event a customer requests services in addition to basic service, the average bill will **[\*101]** reflect the aggregate services requested by the customer. Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first. Interest will be added to the deposit using the 3-month commercial paper rate published by the Federal Reserve Board, except under the following conditions: no interest shall be given if the customer has received a minimum of two notices in a 12-month period as provided under Rule No. 6(B)(2).

**RULE 6 - NOTICES**

Notices provided to the customer by the CLC shall be as follows:

**A. Rate Information**

(1) Rate information and information regarding the terms and conditions of service shall be provided in writing upon request by a current or potential customer. Notice of major increases in rates shall be provided in writing to customers and postmarked at least 30 days prior to the effective date of the change. No customer notice shall be required for minor rate increases or for rate decreases. Customers shall be advised of optional service plans in writing as they become available. In addition, customers shall be advised of changes to the terms and conditions of service no later than the company's next periodic billing cycle.

(2) When a CLC provides information to a consumer which is allegedly in violation of its tariffs, the consumer shall have the right to bring a complaint against the CLC.

**B. Discontinuance of Service Notice****(1) Notice by customers**

Customers are responsible for notifying the CLC of their desire to discontinue service on or before the date of disconnection. Such notice may be either verbal or written.

**2) Notice by CLC**

Rules in Commission Decision 91188, regarding discontinuance of service related to criminal prosecution, will remain in effect for CLCs.

Notices to discontinue service for nonpayment of bills shall be provided in writing by first class mail to the customer not less than 7 calendar days prior to termination. Each notice shall include all of the following information:

1. The name and address of the customer whose account is delinquent.
2. The amount that is delinquent.
3. The date when payment or arrangements for payment are required in order to avoid termination.
4. The procedure the customer may use to initiate a complaint or to request an investigation concerning service or charges.
5. The procedure the customer may use to request amortization of the unpaid charges.
6. The telephone number of a representative of the CLC, who can provide additional information or institute arrangements for payment.
7. The telephone number of the Commission's Consumer Affairs Branch (CAB) where the customer may direct inquiries.
8. Local service may not be discontinued for nonpayment of Category III or other unregulated competitive services.

**C. Change in Ownership or Identity Notice**

CLCs shall notify their customers in writing of a change in ownership or identity of the customer's service provider on the customers' next monthly billing cycle.

**D. Rules for CLC Notices**

Notices the CLC sends to customers, or the Commission, shall be a legible size and printed in a minimum point size type of 10 and are deemed made on date of presentation (Sec. 2.7).

#### **RULE 7 - PRORATING OF BILLS**

Any prorated bill shall use a 30-day month to calculate the pro-rata amount. Prorating shall apply only to recurring charges. All nonrecurring and usage charges incurred during the billing period shall be billed in addition to prorated amounts.

#### **RULE 8 - DISPUTED BILLS**

In case of a billing dispute between the customer and the CLC as to the correct amount of a bill, which cannot be adjusted with mutual satisfaction, the customer can make the following arrangement:

A. First, the customer may make a request, and the CLC will comply with the request, for an investigation and review of the disputed amount.

B. The undisputed portion of the bill must be paid by the Due By Date (No sooner than 15 days of the date of presentation) shown on the bill or the service will be subject to disconnection if the CLC has notified the customer by written notice of such delinquency and impending termination.

C. If there is still disagreement after the investigation and review by a manager of the CLC, the customer may appeal to CAB for its investigation and decision. To avoid disconnection of service, the customer must submit the claim and, if the bill has not be paid, deposit the amount in dispute with CAB within 7 calendar days after the date the CLC notifies the customer that the investigation and review are completed and that such deposit must be made or service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

D. The CLC may not disconnect the customer's service for nonpayment as long as the customer complies with (B) and (C) above.

E. The CLC shall respond to CAB's requests for information within 10 business days.

F. CAB will review the claim of the disputed amount, communicate the results of its review to the customer and CLC and make disbursement of the deposited amount.

G. After the investigation and review are completed by the CLC as noted in (A) above, if the customer elects not to deposit the amount in dispute with CAB, such amount becomes due and payable at once. In order to avoid disconnection of service, such amount must be paid within 7 calendar days after the date the CLC notifies the customer that the investigation and review are completed and that such payment must be made or service will be interrupted. However, the service will not be disconnected prior to the Due By Date shown on the bill.

#### **RULE 9 - BILLS PAST DUE**

Bills are due and payable on the date of presentation. A late payment charge may be applied if payment is not received by the utility on or before the late payment date which date will be prominently displayed on the customer's bill. The late payment date will be at least 15 days after the date of presentation on the billing envelope. CLCs shall credit payments within 24 hours of receipt to avoid assessing late payment charges incorrectly.

**RULE 10 - DISCONTINUANCE OF SERVICE**

A. Service may be discontinued for nonpayment of bills provided:

1. The bill has not been paid by the due date shown on the bill.
2. Notice of the proposed discontinuance is provided pursuant to Rule 6 (B) (2).
3. Service is not initially discontinued on any Saturday, Sunday, legal holiday, or any other day CLC service representatives are not available to serve customers.

B. Fraud

The CLC shall have the right to refuse or discontinue service without advance notice if the acts of the customer are such as to indicate intention to defraud the CLC. This includes fraudulently placing and receiving calls and/or providing false credit information.

C. For residence services disconnected for nonpayment, the CLC must continue to provide access to 911 services to the customer.

**RULE 11 - CHANGE OF SERVICE PROVIDER**

A. Solicitation of customer authorization for service termination and transfer.

Solicitations by LECs, CLCs, or their agents, of customer authorization for termination of service with an existing carrier and the subsequent transfer to a new carrier must include current rate information on the new carrier and information regarding the terms and conditions of service with the new carrier. Solicitations by LECs, CLCs, or their agents, must conform with [California Public Utilities Code Section 289.5](#). All solicitations sent by LECs, CLCs or their agents to customers must be legible and printed in a minimum point size type of at least 10 points. A penalty or fine of up to \$ 500 may apply for each violation of this Rule.

B. Unauthorized service termination and transfer ("Slamming")

A LEC or CLC will be held liable for both the unauthorized termination of service with an existing carrier and the subsequent unauthorized transfer to their own service. LECs and CLCs are responsible for the actions of their agents that solicit unauthorized service termination and transfers. A carrier who engages in such unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. All billings during the unauthorized service period shall be refunded to the applicant or customer. A penalty or fine of up to \$ 500 payable to the Commission may apply to each violation of this Rule. As prescribed under [PU Code Section 2108](#), each day of a continuing violation shall constitute a separate and distinct offense. The LEC or CLC responsible for the unauthorized transfer will reimburse the original carrier for reestablishing service at the tariff rate of the original carrier.

**RULE 12 - FAILURE TO ESTABLISH CREDIT OR PAY DEPOSIT**

The CLC may refuse service if credit is not established satisfactory to the CLC and may deny or disconnect service if a deposit is not paid as required in Rule 5.

**RULE 13 - LIABILITY OF CLC**

The CLC shall not be liable for any failure of performance due to causes beyond its control, including, without limitation to, acts of God, fires, floods or other catastrophes, national emergencies,

insurrections, riots or wars, strikes, lockouts, work stoppage or other labor difficulties, and any order, regulation or other action of any governing authority or agency thereof.

**RULE 14 - PRIVACY**

CLCs are restricted from releasing nonpublic customer information in accordance with *PU Code Sections 2891, 2891.1, and 2893*. For each new customer, and on an annual basis for continuing customers, CLCs shall provide in writing a description of how the carrier handles the customer's private information and a disclosure of any ways that such information might be used or transferred that would not be obvious to the customer. CLCs are subject to the credit information and calling record privacy rules set forth in Appendix B of Decision Nos. 92860 and 93361, except as modified by Decision Nos. 83-06-066, 83-06-073, and 83-09-061.

**RULE 15 - BLOCKING ACCESS TO 900 AND 976 INFORMATION SERVICES**

At the request of a customer, CLCs shall block that customer's access to 900 and 976 pay-per call telephone information services. CLCs shall inform their customers of the availability of this service at the time service is ordered. This blocking service shall be made available free of charge to residential customers, although CLCs may impose a charge if the customer asks for deactivation of blocking.

**(END OF APPENDIX B)**

**APPENDIX C**

**APPENDIX C**

2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
<b>Group A Files for GRC by 10/1/21</b>	GRC Work; 80% CHCF-A payment if no GRC filed	Test Year for Group A; 50% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	<b>Group A Files for GRC by 10/1/26</b>	GRC Work; 80% CHCF-A payment if no GRC filed	Test Year for Group A; 50% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed
100%	<b>Group B Files for GRC by 10/1/22</b>	GRC Work; 80% CHCF-A payment if no GRC filed	Test Year for Group B; 50% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	<b>Group B Files for GRC by 10/1/27</b>	GRC Work; 80% CHCF-A payment if no GRC filed	Test Year for Group B; 50% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed
100%	100%	<b>Group C Files for GRC by 10/1/23</b>	GRC Work; 80% CHCF-A payment if no GRC filed	Test Year for Group C; 50% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	0% CHCF-A payment if no GRC filed	<b>Group C Files for GRC by 10/1/28</b>	GRC Work; 80% CHCF-A payment if no GRC filed	Test Year for Group C; 50% CHCF-A payment if no GRC filed

Group A: Sierra Telephone Company, Siskiyou Telephone Company, Volcano Telephone Company

Group B: Kerman Telephone Company, Foresthill Telephone Company, Ponderosa Telephone Company

Group C: Ducor Telephone Company, Calaveras Telephone Company, Pinacles Telephone Company, Cal-Ore Telephone Company

**(END OF APPENDIX C)**