BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

OPENING BRIEF OF THE PUBLIC ADVOCATES OFFICE ON THE ASSIGNED COMMISSIONER'S FOURTH AMENDED SCOPING MEMO AND RULING

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I. INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules) and the direction of Administrative Law Judges McKenzie and Fortune in their March 17, 2020 Ruling,[1] the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) submits this opening brief in response to Commissioner Guzman Aceves' March 22, 2019 Fourth Amended Scoping Memo and Ruling (Fourth Amended Scoping Memo) and the issues raised in the September 12, 2019 Administrative Law Judges' Ruling Setting Hearing Dates and Issues for Hearing (September 12 Ruling).

A. Recommendations

The Commission should make the following changes to reform the California High Cost Fund-A (CHCF-A) program:

1. Require Small Independent Local Exchange Companies (Small ILECs) to annually provide accurate broadband subscribership and availability data using the Commission's definition of availability;
2. Approve broadband deployment projects in the Small ILECs' General Rate Case (GRC) application only if the Small ILEC has an 87% or greater broadband adoption rate in its service territory and it is the sole provider of broadband access service within its service territory;
3. Require Small ILECs or its affiliated Internet service provider (ISP) to offer an affordable broadband plan to low-income customers;
4. Impute the Small ILECs' retail and wholesale broadband revenues when calculating their CHCF-A subsidies;
5. Maintain the Corporate Operations Expense Account cap and eliminate the ability to rebut the presumption of reasonableness of the Corporate Operations Expense Account cap;
6. Affirm that rate case expenses are subject to the Corporate Operations Expense Account cap;
7. Adopt an operating expense cap that is presumed reasonable and does not permit parties to rebut that presumption of reasonableness;

[1] Ruling of ALJs McKenzie and Fortune granting extension, March 17, 2020; initial deadline set in evidentiary hearings, Reporters Transcript (RT) Vol. 13, 2346:6-10 (ALJ McKenzie).

8. Use the most recent National Exchange Carrier Association (NECA) cost study to forecast each Small ILEC's intrastate Test Year (TY) ratebase in general rate cases (GRCs); and
9. Regularly increase local rates to reflect inflation and gradually make rates comparable to urban rates, as required by Public Utilities (PU) Code §275.6(c)(3).

B. Jurisdiction

The issues raised by the Fourth Amended Scoping Memo and September 12 Ruling are well within the jurisdiction of the Commission. The Commission is required to administer the CHCF-A to provide subsidies utilizing rate-of-return regulation over the designated rural carriers under PU code § 275.6(a). This includes regulating the Small ILECs' "reasonable" investments in broadband-capable facilities, as well as ensuring that the Small ILECs' A-Fund subsidies are not "excessive."[2] The Small ILECs are further required to provide information to the Commission specifically regarding the generation of revenues from the provision of Internet access service by either the Small ILEC or its broadband-related affiliate.[3]

As a condition of participating in the CHCF-A program, carriers are required to subject themselves to rate-of-return regulation and to the Commission's full authority to regulate telephone corporations under the PU code, and to be the carrier of last resort.[4] Rate-of-return regulation means the Commission must determine the carriers' revenue requirement, which is the amount necessary for the carriers to recover reasonable expenses and to have an opportunity to earn a Commission-determined rate of return on its rate base.[5] Rate base includes all the plant and equipment reasonably necessary to offer voice service as well "advanced services" (i.e., broadband).[6] A necessary part of the revenue requirement analysis includes all sources of revenue.

[2] PU Code §275.6(e).

[3] PU Code §275.6(e).

[4] PU Code §275.6(d).

[5] PU Code §275.6(b).

[6] PU Code §275.6(b)(2).

Furthermore, the Commission may regulate every public utility and do all things, whether specifically designated or not, which are necessary and convenient in the exercise of its jurisdiction.[7] The Commission is generally authorized to calculate the revenue requirement and utilize rate-of-return regulation to design a rate structure that affords the carriers a "fair opportunity" to recover their revenue requirement from ratepayers. The Legislature has delegated to the Commission the responsibility to determine exactly how it will carry out its mandate to calculate rate base and revenue requirements.[8] In the process of making this calculation, the Commission is authorized to obtain and consider information regarding broadband revenues from the carriers or their affiliates.[9]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Current Phase (Phase 2) Of the Rulemaking

On April 4, 2017, the assigned Commissioner issued the Third Amended Scoping Ruling and Memo (Third Scoping Memo) that determined the issues that would be considered in Phase 2 of this proceeding. However, the Third Amended Scoping Memo found that the issues identified for Phase 2 could not be resolved until the comprehensive Broadband Network and Competition Study (Broadband Study) was completed by the Communications Division or its contractor.[10] Specifically, the Third Amended Scoping Memo found that the Broadband Study was necessary to make decisions regarding imputation of broadband revenues and whether the Small ILECs' territories should be opened to voice competition.[11] The Broadband Study was to evaluate a variety of factors that affect deployment and availability of broadband capable and high quality voice networks, the extent of broadband capable network build-out in the Small ILECs' service

[7] PU Code §701.

[8] PU Code §275.6.

[9] PU Code §275.6(e).

[10] Third Amended Scoping Memo and Ruling, R.11-11-007 at 6, http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=182363479.

[11] Third Amended Scoping Memo, R.11-11-007 at 8.

territories, and barriers to broadband capable networks and high quality voice build-out.[12] The Commission also stated that the Broadband Study would inform the Commission about factors relevant to investment in broadband capable networks and future requests for competition in Small ILEC areas.[13]

In September 2018, Mission Consulting, LLC, the contractor hired by the Communications Division, released the Broadband Study.[14] On March 22, 2019 the assigned Commissioner issued a Fourth Amended Scoping Memo and Ruling (Fourth Scoping Memo) that updated the schedule and identified additional topics for consideration in Phase 2. During the prehearing conference held on August 7, 2019 Administrative Law Judge McKenzie clarified that the Broadband Study would not be a part of the evidentiary record.[15] Later, the September 12 Ruling posed additional questions regarding broadband deployment that parties should address in evidentiary hearings. The September 12 Ruling also clarified that issues related to voice competition in the Small ILECs' territories and broadband availability and adoption in tribal and low-income communities would not be addressed in this part of the proceeding.[16]

The Fourth Amended Scoping Memo included the issues below as within the scope of Phase 2 of the proceeding. Issue 1(b) related to competition and Issue 3 related to broadband availability and adoption in tribal communities are not listed below because they are no longer included in this part of the proceeding.

(1) (Broadband Internet and Wireline Voice Competition Study – Wireline Competition and Broadband Revenues. In accordance with D.14-12-084, the Communications Division, in September 2018, released the Broadband Internet and Wireline Voice Competition Study (Study), attached to this ruling.

a. Parties are invited to comment on the attached Study.

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[12] Third Amended Scoping Memo, R.11-11-007 at 6-7.

[13] Third Amended Scoping Memo, R.11-11-007 at 6.

[14] Fourth Amended Scoping Memo, Attachment A, March 26, 2019.

[15] RT Prehearing Conference 5, 383-384: 14-9 (ALJ McKenzie).

[16] The Fifth Amended Scoping Memo and Ruling issued on December 13, 2019 raised issues related to the adoption of broadband access services in tribal and low-income communities.

c. In light of the Study and subsidies for broadband deployment, should the Commission impute broadband revenues towards the intrastate revenue requirement?

d. What impact does the FCC's recent reclassification of broadband as an information service have on the Commission's authority to impute broadband revenues for intrastate revenue requirement?

e. Is more information needed in addition to the Study? If so, what information should the Commission consider?

(2) Rate of Return framework:

a. Under Pub. Util. Code § 275.6, I have preliminarily determined that being subject to rate-of-return regulation is a prerequisite for CHCF-A eligibility. If you disagree, please explain the legal basis for your position.

b. If rate-of-return regulation is required for the CHCF-A eligibility, how can the Commission continue to improve the program in furtherance of the statutory goals?

i. What measures should the Commission adopt to reduce costs and increase efficiency?

ii. What measures should the Commission adopt to ensure that recovery of costs and investments is reasonable?

iii. Should the Commission adopt an operating expense limitation? If yes, should the Commission adopt the FCC 11-161 limitation or develop new metrics or formulas?

iv. Are there other measures or changes that the Commission should consider?

(4) Basic Service Rates:

a. Should the Commission re-examine basic service rates to ensure the rates are just and reasonable and reasonably comparable to the rates of urban customers? Specifically:

i. Should the Commission develop new metrics or formula to determine the basic service rates?

ii. If no, should the Commission keep the rate range of $30-$37 adopted in D.14-12-084? Should the rate range be modified to a different rate range?

b. Should the Commission continue to use the federal access recovery charge as a benchmark for basic service rates?

(5) Accounting treatment for miscellaneous revenues:

a. What is the proper ratemaking treatment for revenues derived from the use of regulated utility property for easements, licenses, leases, assignments, permits for use or occupancy, or encumbrances? Should the revenues be booked as regulated revenues or non-regulated revenues? Please identify applicable federal or state accounting rules.

ii. Should the revenues be shared with ratepayers? If so, what sharing mechanism should apply?

b. Explain the applicability of § 851 and General Order 69(c) to any agreements/transactions identified in your answer to Question 5a.

(6) Use of federal Universal Service support for investments in Plant and Facilities and operating expenses:

a. Please identify each federal Universal Service support program and describe how each program operates.

b. Describe the federal accounting and ratemaking treatment for each federal Universal Service support program.

c. Are federal universal service funds used for operating expenses and plant investment? If yes, can reasonable estimates be made for the amount of universal service fund support used for operating expenses and the amount of USF support used for plant investment in a given period?

d. Should the federal USF amounts estimated to be used for plant investment be included in plant-in-service accounts and earn a rate of return?

(7) CHCF-A program rules established in D.91-05-016 and clarified by D.91-09-042:

a. Should the Commission reevaluate what types of adjustments are recoverable through the annual advice letter filing?

b. Should the Commission allow adjustments to the CHCF-A fund amount in the same year in which a company is undergoing a GRC?

c. Should the Commission allow adjustments to the CHCF-A fund amount in the 12 months immediately after a general rate case? If so, should the Commission apply a means test to ensure the company is not earning over its authorized rate of return?

d. Should the Commission apply a means test to adjustments requested in non-GRC years to ensure that the ILEC is not earning over its authorized rate of return?

e. Should the Commission restate the Implementation Rules from D.91-05-016; which was further clarified in D.91-09-042? The CHCF-A implementation rules were originally adopted in D.91-05-016 and further clarified in D.91-09-042. Since the Phase 2 decision may make changes to these decisions, this amended scoping memo will be served on the service list in D.91-05-016 and D.91-09-042.

(8) Financial and Operations Reports (Results of Operations):

a. What financial and operations reports and tables should the companies be required to submit in a general rate case?

(9) Are there other issues that the Commission should examine in Phase 2?

The Public Advocates Office, The Utility Reform Network (TURN), the Small ILECs, the California Association of Competitive Telecommunications Companies (CCTA), and Mr. Stephen Kalish filed Opening Comments on May 21, 2019 and Reply Comments on July 5, 2019.

On September 12, 2019, the assigned Administrative Law Judges issued the September 12 Ruling setting hearing dates and raising additional issues for evidentiary hearings. The following were included as hearing issues:

1) What is considered the maturity level of broadband deployment, at what speed, in each small ILEC service territory? Given the differences between the deployment data reported to the FCC and the Commission, is the FCC's Form 477 reporting used to establish federal high cost support determinative or is the Commission's Broadband Submission data, as validated by the Commission, determinative?

2) Which of the small ILECs have affiliate broadband revenues and how much has each affiliate earned in a) total revenues and b) net revenues (net earnings) over each of the past five years.

3) Referring to Table 3, p.18 of the Mission Consulting Study dated September 2018 (study), Customer Access to Broadband Standards Speeds, for each small ILEC, state what number and percentage of customers can receive broadband speed of at least 6 megabits per second (Mbps) downstream and 1 Mbps upstream (6Mbps/1 Mbps); 10 Mbps/1 Mbps; 25 Mbps/3 Mbps or better; and "no access" for 2018, replicating the information shown on Table 3.

4) Referring to the study, Tables 1 and 2 at p. 10, replicate for each Small ILEC for Table 1 the updated household information and for Table 2 updated Census Blocks by number of households data.

5) What other standards should the Commission adopt to assess the maturity of broadband development in the ILECs' service areas. Information should be provided for each ILEC regarding:

   a. When the ILEC's affiliate began offering broadband service.

   b. For each ILEC what percentage of customers receive broadband service from the affiliated broadband provider and at what speeds (6 Mbps/1 Mbps, 10 Mbps /1 Mbps ,25 Mbps /3 Mbps).

   c. Are there plans for future build out of broadband facilities placement, and if yes, provide details.

   d. What percentage of your customers are residential and what percentage of your customers are non-residential such as community anchor institution-type customers; for each small ILEC, is the affiliated broadband provider the only broadband provider in that ILEC's service area.

   f. Regarding the study's Tables 4, 5, 6, and 12, provide updated information as to any data that has changed in these tables.

   g. What broadband pricing plans by speed are offered by each small ILEC.

   h. What is the history of each small ILEC's pricing plan over the past three years.

The Public Advocates Office, TURN, the Small ILECs, and Mr. Stephen Kalish served Opening Testimony on November 15, 2019 and Reply Testimony on December 20, 2019. Evidentiary hearings were held on January 27 – 31 and February 4-5, 2020. On February 5, 2020, the parties agreed to the common briefing outline used below to address the issues and questions raised by the Fourth Amended Scoping Memo and the September 12 Ruling.[17]

B. Prior Procedural History

This Rulemaking was opened in 2011 and led to a Phase 1 decision in 2014 as well as a round of GRC proceedings. The Commission's previous findings are relevant to this Phase of the proceeding.

[17] RT Vol. 13, 2343-2345: 22-21 (Rosvall, Choe, Fortune).

1. 2011 Rulemaking

In 2011, the Commission determined that the instant Rulemaking was "warranted in response to market, regulatory, and technological changes since the California High Cost Fund program was first established in 1987."[18] The Commission sought comment on how the CHCF-A program could be reformed to be the most appropriate, efficient, and effective means of minimizing rate disparity and promoting California's goal of providing universal service.[19] The market, regulatory, and technological changes that were the impetus for this rulemaking are more pronounced today in 2020 than they were in 2011 and requires reform of the CHCF-A.

Universal service, under both federal and state legislation, seeks to ensure that consumers in rural or small metropolitan areas and high cost areas have access to telecommunications services at rates that are comparable to rates charged for similar services in urban areas.[20] For example, the 1996 Federal Telecommunications Act included a number of principles that the Federal Communications Commission (FCC) would use to inform policies that preserve and advance universal service, including just, reasonable, and affordable rates as well as comparability of access and rates between urban and rural areas.[21] Notably, the 1996 Federal Telecommunications Act defined the nature of "universal service" as "an evolving level of telecommunications services" that

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[18] Order Instituting Rulemaking Regarding California High Cost Fund-A Program (R.11-11-007), Nov. 18. 2011 at 2, http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=568989.

[19] R.11-11-007 at 4.

[20] R.11-11-007 at 5-7.

[21] 47 U.S.C. § 254(b) (1)-(7). The principles are (1) Quality services should be available at just, reasonable, and affordable rates; (2) Access to advanced telecommunications and information services should be provided in all regions of the nation; (3) Consumers in all regions of the state should have access to telecommunications and information services, including advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and reasonably comparable to rates charged for similar services in urban areas; (4) All providers of telecommunications services should contribute in an equitable and nondiscriminatory manner; (5) Federal and State support mechanisms must be specific, predictable and sufficient to preserve and advance universal service; (6) Schools, libraries, and rural health care providers should have discounted access to advanced telecommunication services; and (7) Any other principles as the Joint Board and the FCC determine are necessary and appropriate. See also R.11-11-007 at 5.

takes into account telecommunications service advancements.[22] Additionally, since 1987 the goal of California's high cost fund program has been to promote universal service and reduce the disparity between urban and rural rates.[23]

In 2011, in recognition of the advancements made in telecommunications, the FCC created the Connect America Fund (CAF) to help extend high speed Internet service to unserved Americans. The FCC also reformed its Universal Service Fund (USF) and intercarrier compensation systems with a commitment to fiscal responsibility, including caps on reimbursements for certain expenses and elimination of certain subsidies.[24] In that same year, the Commission opened the instant Rulemaking to align the CHCF-A program with the FCC's changes, including ensuring the cost effective use of CHCF-A funds to achieve universal service goals.[25]

2. SB 379

In 2012, the Legislature passed Senate Bill (SB) 379.[26] SB 379 required the Commission to include the cost of "all reasonable investments necessary to provide voice services and deployment of broadband capable facilities" in the rate base of companies accepting subsidies through the CHCF-A program.[27] The Commission and other stakeholders raised concerns that this revision could result in an increase to the surcharge paid by all ratepayers to support the CHCF-A program and that it would provide subsidies for broadband facilities without giving the Commission the authority to consider the revenues earned from broadband facilities. Therefore, the Legislature added Public Utilities (PU) code § 275.6(c)(7) and §275.6(e) to SB 379 specifically to address these concerns.[28] These statutes require the Commission to ensure that (1) "CHCF-A

[22] R.11-11-007 at 5.

[23] R.11-11-007 at 6-7.

[24] R.11-11-007 at 12.

[25] R.11-11-007 at 12-15.

[26] Ch. 729, Stats. 2012.

[27] PU Code § 275.6(c)(6).

[28] SB 379, Senate Energy, Utilities, and Communications Analysis, Aug. 28, 2012 at 3, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201120120SB379#.

subsidy is not excessive and the burden on contributors to the fund is limited," and (2) that the Commission may collect revenue information from the CHCF-A recipients. After SB 379 was enacted into law, the Assigned Commissioner issued a Scoping Memo and Ruling soliciting comments on additional issues.[29] Subsequently, the Assigned Commissioner issued a revised Scoping Memo and Ruling which revised the scope of issues and established a second phase of the proceeding to address SB 379's revisions to the CHCF-A program.[30]

3. 2014 Phase 1 Decision

In 2014, the Commission resolved Phase 1 of this proceeding. In that decision the Commission established that its primary goal was to determine how the CHCF-A program can more efficiently and effectively meet its stated universal service goals of providing affordable, widely available, safe, reliable and high quality communications services for rural areas of the state.[31] Additionally, due to SB 379, the Commission included the following as goals for the CHCF-A: (1)promote investment in broadband-capable networks, and (2) balance impacts to ratepayers who fund the CHCF-A program.[32]

In Phase 1 the Commission found the following: (1) The Commission has the authority to impute broadband revenues,[33] but deferred consideration of imputation to Phase 2;[34] (2) The FCC's corporate expense cap is a rational mechanism to calculate and determine a reasonable level of corporate expenses for carriers receiving subsidies from

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[29] Comments were solicited on ten issues (1) CHCF-A support evaluation; (2) review of program implementation rules; (3) implementing a cap on the CHCF-A; (4) basis for urban rate caps; (5) standardizing accepted costs among carriers; (6) per access line subsidy; (7) monitoring affiliate transactions; (8) opening Small ILEC territories to competition; (9) alternative models to consider; and (10) general issues. Assigned Commissioner's Scoping Memo and Ruling, May 22, 2013 at 1-2.

[30] Assigned Commissioner's Scoping Memo and Ruling, March 18, 2014, at 10-13.

[31] Phase 1 Decision, D.14-12-084 at 2, http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M143/K638/143638287.pdf.

[32] Phase 1 Decision, D.14-12-084 at 4, 28.

[33] D.14-12-084 at 89, Finding of Fact (FOF) 15; 93, Conclusion of Law (COL) 2 &3.

[34] D.14-12-084 at 89-90, FOF 19.

the CHCF-A;[35] (3) Whether the Small ILECs' territories should be opened to voice competition should be deferred to Phase 2;[36] (4) It is reasonable to set residential basic rates, inclusive of surcharges, in the range of $30 - $37;[37] (5) Certain factors should be considered when evaluating the reasonableness of the Small ILECs' investment into broadband;[38] (6) The record was not adequate on the issue of whether to establish fair market rates for the Small ILEC's affiliate ISPs use of the regulated network;[39] and (7) Certain procedural rules regarding the administration of the CHCF-A program should be revised.[40]

4. 2015 Rate Case Plan

In 2015, the Commission issued D.15-06-048 which adopted a rate case plan to be applied to the GRC applications filed by CHCF-A recipients pursuant to then Governor Brown's encouragement to create a GRC plan to spur timely completion of the Small ILECs' GRCs.[41] The Small ILECs' GRCs determine the level of reasonable expenses and the amount of CHCF-A subsidy they will receive. Since the issuance of D.15-06-048, all Small ILECs have undergone one round of GRCs and that experience is instructive in determining how the Commission can further streamline the CHCF-A process.[42]

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[35] D.14-12-084 at 90, FOF 23.

[36] D.14-12-084 at 94-95, COL 9; 100, COL 43

[37] D.14-12-084 at 95, COL 11.

[38] Specifically, the presence of anchor institutions, redundancy, public safety, service quality, regulatory requirements, and customer demand. D.14-12-084 at 95, COL 12.

[39] D.14-12-084 at 73.

[40] Revisions included clarifying requirements and supporting documentation for requesting funding adjustments, and the requirement for carriers to provide accurate estimates of bookings to rate base in December when providing the initial nine month actual numbers during the rate case process as well as changing the annual CHCF-A advice letter filing date from October 1 to September 15. D.14-12-084 at 95 -96, COL 15, COL 16.

[41] Decision Adopting a GRC Plan for CHCF-A recipients, June 26, 2015 (D.15-06-048) at 3, http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M152/K904/152904301.PDF.

[42] D.15-06-048 at Appendix A, p. 1-2.

III. BROADBAND DEPLOYMENT AND SUBSCRIPTION IN THE SMALL ILECS' TERRITORIES [SCOPING MEMO, ISSUES (1)(A), (1)(E), 1(F), (9); HEARING ISSUES (1), (3), (4), (5)]

In the Phase 1 Decision, the Commission determined it would consider the availability of broadband and the maturity of broadband deployment in the Small ILECs' territories before it begins imputation of broadband revenues.[43] Therefore, the Fourth Amended Scoping Memo and the September 12 Ruling made a series of requests for factual information regarding the maturity level of broadband deployment in the Small ILECs' service territories, including:

(1) the number of customers that can receive broadband at speeds of 6 Mbps download/1 Mbps upload (6/1), 10 Mbps download/1 Mbps upload (10/1), and 25 Mbps download/3 Mbps upload (25/3) or better, or have no access at all,

(2) household and census block information,

(3) information regarding future build out plans,

(4) the percentage of nonresidential and residential customers or subscribers in each Small ILECs' service territory,

(5) whether the Small ILEC's ISP affiliate or the Small ILEC is the only broadband provider in the Small ILEC's service territory,

(6) broadband pricing plans by speed, and

(7) the history of each Small ILEC's pricing plan.[44]

Even though the Small ILECs possess the factual information requested by the Fourth Scoping Memo and the September 12 Ruling, they did not present this data in their opening testimony. Rather, the Small ILECs' opening testimony referenced their data request responses to TURN which they expected would be included in TURN's opening testimony.[45] Even though TURN did include some of the Small ILECs' data request responses, the Small ILECs' data request responses to TURN did not include all

[43] D.14-12-084 at 22-23.

[44] September 12 Ruling at 1-2.

[45] LEC – 1 at 83: 1-4.

of the data that was requested by the Commission, such as subscribership data.[46] Additionally, the data request responses to TURN were provided using a definition of availability that is not used by either the Commission or the FCC. This makes it impossible to compare the availability and subscribership data to that of other Internet service providers in the state as required under PU code §275.6 (c)(5). The Public Advocates Office gathered availability data, from existing submissions and through data requests, using the Commission's definition of availability and organized and presented that data in its testimony. The Commission should rely on the Public Advocates Office's data in this Rulemaking.

The Commission, in the California Advanced Services Fund (CASF) program, determined that CASF applicants are only eligible for grants if their proposed project will deploy infrastructure capable of providing broadband access at speeds of a least 10/1 to unserved households.[47] Thus, the Public Advocates Office used this speed as the threshold metric for determining whether adequate broadband speeds were available in the Small ILECs' service territory.[48]

A. The Small ILECs Should Annually Provide Accurate Broadband Subscribership and Availability Figures Using the Commission's Definition Of Broadband Availability.

The Small ILECs should provide accurate broadband subscribership and availability figures using the Commission's definition of availability which is the number of residential locations to which the Small ILEC can provide service within 10 business days of receiving a service order.[49] The FCC also defines availability as a location to which a provider can provide service within 10 business days of receiving a service order when it collects annual availability and subscribership data.[50] The Commission should

[46] September 12 Ruling at 1.

[47] Decision Implementing SB 1040 (CASF) (D.12-03-031) at Appendix 1, p. 3; Cal Adv – 1 at 1-4:7-8.

[48] RT Vol. 8, 1151: 2-7 (Ahlstedt).

[49] Cal Adv – 4, Exhibit B-1 CPUC CA Broadband Wireline Consumer Data December 31, 2017; Cal Adv – 4, Exhibit B-2 CPUC CA Broadband Fixed Wireless Data December 31, 2017.

[50] Cal Adv – 4, Exhibit B-4 – Form 477.

continue to collect and use broadband availability data using its current definition to make policy decisions because it can be used to make historical comparisons among the Small ILECs and between the Small ILECs and other providers in the state as required under §275.6(c)(5).

Instead of using the Commission's definition of availability, the Small ILECs suggests that that availability should be determined by counting the number of locations, both residential and business, to which a service drop is installed.[51] The Small ILECs define a service drop as a home or business within its service territory that has a broadband-capable service drop at the location.[52] A drop is a facility that runs from the "curb" to the customer premise.[53] It determines whether a location has a physical connection to the available network.[54]

Using the Small ILECs' definition of broadband availability may underestimate the number of households that can access broadband within 10 business days of a service order and would underestimate the amount of broadband infrastructure already present in the Small ILECs service territory. Additionally, the Commission and the FCC currently track availability by households or residential locations, rather than combining residential and business locations.[55]

Using the Small ILECs' definition would also make it impossible to compare their broadband availability with other service providers, which is required under PU code §275.6 (c)(5). Section 275.6(c)(5) requires the Commission to "Promote customer access to advanced services and deployment of broadband-capable facilities in rural areas that is reasonably comparable to that in urban areas, consistent with national communications

[51] LEC-3 at 3-4:26-1

[52] Cal Adv – 4 at 1-5: 13-15.

[53] Cal Adv – 4 at 1-5: fn 17.

[54] Cal Adv – 4 at 1-5: fn 17.

[55] It also appears that some Small ILECs included both residential and commercial locations, while others only count residential locations ,in their response to TURN's request for availability data based on service drops. This further supports the use of the FCC and Commission's definition to track availability. RT Vol. 10, 1846: 13-24 (Choe, Roycroft).

policy." Furthermore, while at least one Small ILEC states that it has been collecting service drop data for some time,[56] there is no regulatory requirement that requires reporting of service drop data. This was evident when Mr. McNally stated that the FCC's Form 477 data required Sierra Telephone Company (Sierra) to report availability using the locations to which Sierra could deploy service to within 10 days and that the FCC has never required reporting using a different definition.[57] Thus, using the Small ILECs' definition may make it difficult to compare among Small ILECs or consider historical trends for a single Small ILEC.[58] The Small ILECs do not identify how long they have each collected data using the service drop definition. Thus, the Commission should continue to require Small ILECs to report broadband availability data using the number of households to which service providers can provide broadband service to a customer within 10 business days of a service order. The Commission may choose to collect broadband availability based on locations (residential and business) where a service drop is installed as an additional data point, but it should not rely on that data to make policy decisions.

B. The Commission Should Only Approve Broadband Deployment Projects in the Small ILEC's GRC If the Small ILEC Has 87% Or Greater Overall Broadband Adoption Rates In Its Territory And It Is The Sole Provider Of Broadband Service.

In the Small ILECs' GRCs, the Commission should only approve broadband infrastructure deployment projects where the Small ILECs' broadband subscription at any speed is 87% or higher where the Small ILEC (or its affiliated ISP), is the only broadband provider. The Commission should use the threshold of 87% subscription

[56] RT Vol. 8, 1342: 6-16 (Choe, McNally), See also Cal Adv – 4C at Exhibit B-10; "R.11-11-007 PHH-005 Meet and Confer Re Calaveras, Q6 and Attachment J, "Email from William Charley 10/4/19" stating that Calaveras' only method of counting deployment is through the billing system.

[57] RT Vol. 8, 1338: 5-17 (Choe, McNally).

[58] For those that do not already track using service drops, this would require additional costs. RT Vol. 8, 1336-1337: 18-14 (McNally), stating that it takes additional costs to track availability by service drops because in some cases it requires visiting the specific location. In contrast, the Small ILECs have been providing availability data using the FCC and Commission definition for years and would not require additional costs beyond what is require meeting the FCC and Commission reporting requirements.

because the FCC states that overall, 87% of Californians subscribed to broadband service as of December 31, 2017, and as of May 8, 2018, 76.8% subscribed to 10 Mbps, 64.5% subscribed to 25 Mbps, and 61.8% subscribed to 50 Mbps.[59]

The CHCF-A program provides subsidies to the Small ILECs to provide affordable, widely available, safe, reliable, and high quality communications services for rural areas of the state.[60] Statewide ratepayers fund the CHCF-A through surcharges to meet these goals because the state has recognized the benefits of a robust broadband network. For example, broadband increases economic opportunities for people in rural areas, which also improves the state's economy as a whole and enhances public safety.[61] However, these benefits cannot be realized unless customers subscribe to available broadband service. Meeting the goals of the CHCF-A requires the Commission to promote increased broadband subscribership rather than solely focusing on broadband availability. Both the FCC and the Commission have already provided millions of dollars in subsidies to the Small ILECs to promote deployment of broadband infrastructure and increase broadband availability. For example, in 2018 alone, the FCC provided over $41 million dollars in USF subsidies and the Commission provided over $37 million in CHCF-A subsidies.[62] The Commission should now make broadband adoption a priority.

The Small ILECs have deployed broadband at speeds of at least 10/1 to much of their service territory.[63] Specifically, 76%-98% of households in the Small ILECs' service territory have access to speeds of 10/1.[64] And, several Small ILECs, specifically, Sierra Telephone Company, Inc., Volcano Telephone Company, Ponderosa Telephone Co., Foresthill Telephone Co., and Cal-Ore Telephone Co. have already met their federal obligations to deploy speeds of at least 25/3 by the year 2023 to the minimum number of

[59] Cal Adv 4 at 1-2: 1-3.

[60] D.14-12-084 at 2, see also PU Code §275.6(a).

[61] D.14-12-084 at 3.

[62] Cal Adv – 1 at 4-4: 1-5.

[63] Cal Adv – 4C at 1-8.

[64] Cal Adv – 4C at 1-8.

locations as required under the CAF-Broadband Loop Support (BLS) grant program.[65] However, broadband adoption overall continues to be low with only 30%-72% of customers in Small ILECs' service territory subscribing to broadband at any speed.[66] In contrast, broadband adoption overall in the rest of the state is an average of 87%.[67]

C. The Commission Should Require Small ILECs Or Their ISP Affiliate to Offer an Affordable Broadband Option For Low-Income Customers

The Commission should require the Small ILECs or their ISP affiliate to offer a standalone, affordable broadband Internet service plan for LifeLine customers and other low-income customers who meet the eligibility requirements for LifeLine. The Commission has an obligation to ensure the affordability of voice and broadband service that is provisioned through subsidies granted under the CHCF-A program.[68]

In 2012, the Legislature amended PU Code § 275.6 to require the Commission to administer the CHCF-A to "[i]nclude all reasonable investments necessary to provide for the delivery of high-quality voice communications services and the deployment of broadband-capable facilities in the ratebase of small independent telephone corporations." At the same time, the Legislature included PU Code §275.6(c)(5) which states that the CHCF-A program should "promote customer access to advanced services and deployment of broadband-capable facilities…" Furthermore, under PU Code §275.6 (c)(3), the Commission must ensure that rates charged to customers of Small ILECs are just and reasonable and reasonably comparable to rates charged to customers of urban telephone corporations. Based on these statutory amendments, the 2011 Rulemaking stated that "[a] primary goal of the instant OIR is for the Commission to determine how the CHCF-A program can cost effectively meet its stated goals of providing affordable, widely available, safe, reliable and high quality communications services for rural areas

[65] Cal Adv – 15C, RT Vol. 12, 1946-1948: 2-8 (Choe, Duval).

[66] Cal Adv – 4C at 1-12.

[67] Cal Adv – 4 at 1-2:1-3.

[68] PU Code §275.6 (a).

of the state."[69] Therefore, the Commission may take measures necessary to ensure affordable or low-cost broadband service is available to customers in the Small ILECs' service territory. It is reasonable for the Commission to require CHCF-A participants to offer an affordable broadband plan to low-income customers. The CHCF-A is not a mandatory program and in fact, there are other rural local exchange carriers in California that do not request CHCF-A subsidies.[70]

Other telecommunications companies offering service in urban areas of California offer affordable or low-cost broadband plans for low-income customers.[71] However, none of the Small ILECs offer a low-income broadband plan. The existing subscription rates in the Small ILECs territories suggest that a low-income broadband plan could increase subscription rates. Of the 33,517 non-LifeLine residential voice customers in the participating Small ILEC service territories, 84% subscribe to broadband services from the Small ILEC or its ISP affiliate.[72] Conversely, of the 6,159 LifeLine customers in the Small ILEC service territories, only 66% also subscribe to broadband service from the Small LEC or its ISP affiliate, almost 20 percentage points lower than non-LifeLine customers.[73] The gulf in subscription to broadband service between Non-LifeLine and LifeLine customers indicates that broadband service is unaffordable for many low-income customers in the Small ILECs' service territories. [74] The Commission should require the Small ILECs or their ISP affiliate to offer an affordable low-cost broadband service plan for low income customers who qualify for California's LifeLine program.[75]

The low-cost broadband plan should not require the purchase of any additional service. Currently, most Small ILECs require their customers to purchase voice service

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[69] D.14-12-084 at 28.

[70] These include the TDS companies, also known as Winterhaven, Hornitos, and Happy Valley Telephone Companies.

[71] Cal Adv – 1 at 2-5.

[72] Cal Adv – 1C at 2-4.

[73] Cal Adv – 1C at 2-4.

[74] Cal Adv – 1 at 2-4: 11-13.

[75] Cal Adv – 1 at 2-2: 26-27.

in order to receive broadband service.[76] Although the Small ILECs argue that this is not a "bundled" service, customers that purchase standalone broadband pay more than when the two services are purchased together.[77] The Small ILECs assert that this higher price is due to the fact that the NECA tariff rate which sets the price for wholesale access to the Small ILECs' broadband network for the consumer broadband only line (CBOL) is higher than the rate for a combined broadband and voice line.[78] However, the Small ILECs admit that an ISP that purchases access from the Small ILEC may not pay the full cost of the CBOL loop. Rather, the CBOL rate of $42 is subsidized by other federal funds.[79] Low-income customers who already have to make difficult decisions about which services and goods they can afford each month should not be forced to purchase services they will not use. While the Small ILECs generally support an broadband discounts for low-income customers, they argue that offering an affordable broadband plan for low income customers would require their businesses to operate at a loss.[80] However, the Small ILECs did not show any financial information that demonstrated that such an offering for low income customers would have a negative impact on their finances. To the contrary, the Small ILECs agreed that if prices for broadband service were lower, it would result in more customers purchasing the service.[81] If more customers purchase broadband service, overall broadband revenues may also increase despite a lower price.

IV. BROADBAND IMPUTATION [SCOPING MEMO, ISSUES (1)(C), (1)(D), HEARING ISSUE (2)]

The Commission has the authority to impute broadband revenues and that authority is not in dispute in this phase of the proceeding.[82] Rather, in deciding whether

[76] Cal Adv – 1 at 2-6:1-2; RT Vol. 10, 1691-1692:22-25 (Choe, Aron).

[77] RT Vol. 10, 1692-1693:5-14 (Kalish, Aron).

[78] LEC – 2 at 20:12.

[79] RT Vol. 7, 975: 15-25 (Mailloux, Duval).

[80] LEC – 5 at 23:10-11; LEC – 8 at 10: 9-12.

[81] RT Vol. 10, 1679: 25-27 (Aron).

[82] D.14-12-084 at 93, COL 1-3; See also RT Vol. 7, 1119:2-6 (McKenzie)

to impute broadband revenues the Commission must consider the goals of the CHCF-A program and the Commission's role as the administrator of that program. The Commission should impute both retail and wholesale broadband revenues.

A. Retail Imputation

1. The Commission Should Impute Retail Broadband Revenues To Ensure That CHCF-A Support Is Not Excessive.

As required under PU Code §275.6(c) (7), the Commission should impute retail broadband revenues to ensure that CHCF-A subsidies are not excessive. Specifically, the Commission must "administer the CHCF-A to ensure that support is not excessive so that the burden on all contributors to the CHCF-A is limited."[83] Legislative intent also indicates that since CHCF-A subsidies were used to construct broadband facilities, the Commission should be able to consider the revenues earned from those same broadband facilities.[84]

As stated previously, the Legislature added §275.6(c) (7) to address the Commission's concerns that allowing Small ILECs to invest in broadband deployment with CHCF-A funds coupled with decreased federal funding could result in increased surcharges to ratepayers statewide.[85] Additionally, the Legislature added §275.6(e) permitting the Commission to collect information on broadband revenues to address concerns from the Commission and other stakeholders that SB 379 would provide ratepayer-funded subsidies without giving the Commission the authority to consider revenue that a Small ILEC earned from unregulated services delivered with the same broadband facilities that the CHCF-A would subsidize.[86] Thus, the Commission has the authority to limit the amount that ratepayers statewide are required to contribute to the

[83] PU Code §275.6(c)(7).

[84] SB 379, Senate Energy, Utilities and Communications Committee Analysis, August 28, 2012 at 3.

[85] SB 379, Senate Utilities and Communications Committee Analysis, August 28, 2012 at 3.

[86] SB 379, Senate Utilities and Communications Committee Analysis, August 28, 2012, at 3.

CHCF-A and may consider the revenues earned from broadband facilities when determining whether CHCF-A funding is excessive.[87]

Despite the fact that revenues are comingled, parties, including the Small ILECs, agree that CHCF-A subsidies have been used to invest in the Small ILECs' broadband capable network.[88] Furthermore, the Small ILECs and their ISP affiliates operate as one company from their owners' perspective.[89] Therefore, the Commission should consider the profits that the ISP affiliates receive when determining the Small ILECs' CHCF-A subsidy amount because those revenues were derived from the use of the broadband capable network which was funded by the CHCF-A program. Providing CHCF-A subsidies to the Small ILECs without considering broadband revenues is unreasonable and would result in statewide ratepayers providing "excessive support."

2. Broadband Deployment Data Indicates That The Commission Should Impute Broadband Revenues.

The Commission should impute broadband revenues because of the maturity of the Small ILECs' broadband capable networks. In Phase 1, the Commission refrained from imputing broadband revenues because it believed that the time was not ripe for imputation. Specifically, it concluded that because the provisions of SB 379 allowing for investment of CHCF-A subsidies in broadband capable networks had only been in place for two years, and some ISPs were only just beginning to deploy broadband, it should delay consideration of imputation.[90] The Commission also noted that a study to evaluate broadband build out, including speed levels, as well as future GRCs, would help the Commission evaluate investment needs.[91]

The Small ILECs have used CHCF-A subsidies to invest in broadband capable networks for the past eight years. The Public Advocates Office reviewed broadband

[87] SB 379, Senate Utilities and Communications Committee Analysis, August 28, 2012, at 3.

[88] RT Vol. 7, 1082: 10-15 (Fortune, Duval); see RT Vol. 9, 1407: 4-24 (Boos, Choe).

[89] RT Vol. 10, 1776:22-28 (Rosvall, Roycroft); RT Vol. 10, 1817:13-22 (Rosvall, Roycroft).

[90] D.14-12-084 at 22-23.

[91] D.14-12-084 at 24.

deployment in the Small ILECs' service territory. When using the FCC's and the Commission's definition of broadband availability, the Small ILECs have successfully deployed their broadband capable networks and offer speeds of 10 Mbps download or higher to an average of 93% of households in their service territories and over 50% of households have access to 25 Mbps download speeds.[92] Broadband is now widely available and therefore it is appropriate to impute broadband revenues when calculating the Small ILECs' CHCF-A subsidies.

3. The Commission Should Impute Net Retail Broadband Revenues

The Commission should impute net retail broadband revenues from the Small ILECs' ISP affiliates. Net revenue is calculated by taking gross revenue net of all reasonable expenses related to the provision of the broadband related services.[93] Imputing net revenues will allow the Small ILECs to recover expenses that they may incur in providing service to the customer, ensuring that the Small ILECs are able to recover a reasonable amount of costs.[94] The Commission should determine imputable revenues by requiring Small ILECs and their ISP affiliates to submit financial statements that have been reviewed by an independent auditor. If the Small ILECs' ISP affiliates find that they cannot efficiently control expenses or are not successful in achieving greater subscription to broadband, the Small ILECs could offer retail broadband services to customers directly rather than through an affiliated company.[95]

The Commission should only impute positive net revenues into the intrastate revenue requirement. Allowing imputation of negative net revenues would give the Small ILECs' ISP affiliates a perverse incentive to not control expenses since they would otherwise be recoverable through CHCF-A subsidies.[96] Furthermore, imputing negative

[92] Cal Adv – 4 at 1-8.

[93] Cal Adv – 1 at 1-5: 12-13.

[94] Cal Adv – 1 at 1-5: 14-16.

[95] Cal Adv – 2 at 1-5: 16-19; RT Vol. 10, 1855: 4-11 (ALJ McKenzie, Roycroft).

[96] Cal Adv – 1 at 1-7: 8-10.

net revenues could incentivize the ISP affiliates to be less efficient, cost effective, or undercut the price of broadband service offered by a competitor.[97]

B. Wholesale Imputation

1. The Commission Should Impute Wholesale Broadband Revenues.

The Commission should impute wholesale broadband revenues. Imputing wholesale broadband revenues aligns with PU Code §275.6(c)(7)'s requirement to ensure CHCF-A subsidies are not excessive. Like retail broadband revenues, wholesale revenues are derived from the sale of wholesale access to the Small ILECs' broadband capable network which California ratepayers fund through the CHCF-A subsidy.[98] Imputing wholesale broadband revenues is equitable because California ratepayers have funded the Small ILECs' broadband capable networks through the CHCF-A program.[99]

ISP affiliates pay a wholesale access rate under NECA tariff 5 to access the Small ILECs' broadband capable network.[100] However, intrastate ratepayers are forced to pay for a share of the Small ILECs' broadband loop costs because of the Small ILECs' practice of requiring customers to purchase voice service when they subscribe to broadband service. Furthermore, interstate/intrastate allocation of costs for a broadband plus voice loop also supports the imputation of wholesale revenues. Currently, the FCC's Part 36 allocation factors require that the Small ILECs allocate 75% of the cost of broadband plus voice loops to the intrastate jurisdiction with the remaining 25% of the cost allocated to the interstate jurisdiction.[101] In contrast, if a loop is designated as a broadband only loop, 100% of the costs would be assigned to the interstate jurisdiction. Only a very small percentage of the Small ILECs' loops are designated as broadband

[97] Cal Adv – 1 at 1-7: 10-12.

[98] Cal Adv – 1 at 1-7-1-8: 20-1.

[99] Cal Adv – 1 at 1-8: 1-2.

[100] LEC – 2 at 20: 8-11.

[101] RT Vol 7, 945:21-28 (Choe, Duval); RT Vol. 7, 968:18-26 (Choe, Duval) agreeing that the Part 36 allocation factors were developed when voice service was more prevalent than it is today.

only loops.[102] As stated above, some Small ILECs require their customers to purchase a voice line in order to receive broadband service. However, by requiring the purchase of the voice line, the Small ILEC ensures that 75% of the cost is assigned to the intrastate jurisdiction. Thus, requiring the purchase of voice service ensures that more of the loop costs are borne by California ratepayers. Even for the broadband only loop, where 100% of costs are assigned to the interstate jurisdiction, the primary cost is that of the electronics that go onto the loop in order for the ISP to offer broadband, not the cost of the loop itself.[103] Thus, imputing wholesale broadband revenues would be fair for intrastate ratepayers that bear a disproportionate amount of the cost of broadband plus voice loops.

V. ROLE OF FEDERAL FUNDING IN RATEMAKING [SCOPING MEMO, ISSUE (6)]

A. It Is Difficult to Determine How Much of Federal USF Subsidies Are Used for Plant Investment

The Small ILECs' comingling of revenue makes it difficult to determine how much of federal USF subsidies are used for plant investment. The Fourth Amended Scoping Memo sought to understand whether federal USF dollars are used for the Small ILECs' operating expenses and investment and, if so, whether a reasonable estimate could be made as to the amount of support used in a given period.[104] The Fourth Amended Scoping Memo also asked whether federal USF amounts estimated to be used for plant investment should be included in plant-in-service accounts and earn a rate of return.[105] Federal USF subsidies are intended to be used for operating expenses and plant investment.[106] However, because those dollars are comingled with other sources of revenues it is difficult to determine how USF subsidies are utilized.[107] The Commission

[102] RT Vol. 7, 943-944: 24-2 (Choe, Duval).

[103] RT Vol. 7, 978:19-28 (Mailloux, Duval).

[104] Fourth Amended Scoping Memo at 8.

[105] Fourth Amended Scoping Memo at 8.

[106] LEC – 1 at 63-64: 25-5.

[107] Cal Adv – 9 at 1-2:6-17.

should focus on ensuring that double recovery of plant investment (and corresponding rate of return) is not occurring. Please see Section VII – Ratemaking Treatment of Investments below.

VI. RATEMAKING TREATMENT OF EXPENSES

A. Corporate Expense Cap. [Scoping Memo, Issues (2)(b)(i), (2)(b)(ii), (2)(b)(iv)]

1. The Commission Should Eliminate Parties' Ability to Rebut the Presumption of Reasonableness of The Corporate Operations Expense Account Cap

The Commission should affirm that the Corporate Operations Expense Account cap is reasonable and eliminate parties' ability to rebut the presumption of reasonableness of the Corporate Operations Expense Account cap in GRCs. Allowing parties to rebut the presumption of reasonableness of the Corporate Operations Expense Account cap has resulted in a substantial increase in corporate expenses when litigating rate cases,[108] which is counter to the Commission's goal of reducing rate case litigation costs.[109] Furthermore, permitting parties to rebut the presumption of reasonableness has allowed the Small ILECs to relitigate the imposition of a Corporate Operations Expense Account cap in general, even though the Commission deemed the Corporate Operations Expense Account cap appropriate in the Phase 1 decision. Pursuant to PU Code §1709 and the principle of res judicata, the Small ILECs were barred from further litigating the imposition of a Corporate Operations Expense Account cap in GRCs.

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[108] See Cal Adv – 11 at 1-2, Table 1 noting that all Small ILEC Applications included rebuttable presumption. For an example of costs incurred looking only at testimony submitted in the Ducor GRC: expert witnesses Chad Duval, Dale Lehman and JoAnne Reuter all provide opening and reply testimony on the rebuttable presumption, while Ducor CEO Eric Votaw also provided reply testimony on the rebuttable presumption. Mr. Duval's hourly rate is approximately $435 (See RT Vol. 7, 923:6-13) and Dr. Lehman's rate is $300 per hour (see RT Vol. 11, 1983:12-14). Mr. Votaw is an exempt employee, but his contribution to rebutting the cap consumed his time and resources. In addition to writing testimony, witnesses typically help in responding to data requests responses and may participate in hearings. Many costs are also incurred for legal representation. This list does not include the costs of the five attorney that litigate the Ducor case.

[109] See D.14-12-084 at 29, "Adopting and applying the FCC Corporate Expense Caps will cap the amount of corporate expenditures that can be recovered from the CHCF-A program, and create incentives to align expenditures with the cap to reduce rate case litigation costs."

In D.14-12-084, the Commission adopted the FCC's Corporate Operations Expense Account cap.[110] The Commission determined that "[t]he FCC's Corporate Expense Caps are a rationale [sic] mechanism for calculating and determining a reasonable level of corporate expenses for those carriers drawing from the CHCF-A."[111] In implementing the Corporate Operations Expense Account cap, the Commission determined that the Small ILECs would be permitted to rebut the presumption that expenses above the cap are unreasonable (referred to as a rebuttable presumption).[112] The rebuttable presumption also allows for expenses below the cap to be rebutted by intervenors.[113]

The Small ILECs unsuccessfully argued that the FCC's calculation in determining the Corporate Operations Expense Account cap is flawed.[114] This argument was litigated in the first phase of R.11-11-007[115] and the Commission determined in D.14-12-084 that "[t]he FCC's Corporate Expense Caps are a rationale [sic] mechanism for calculating and determining a reasonable level of corporate expenses for those carriers drawing from the CHCF-A."[116] The Small ILECs were barred by res judicata from raising this argument again in GRCs. Under res judicata, parties are barred from relitigating a cause of action that has been finally resolved in a prior proceeding.[117] The Small ILECs ignored this and reintroduced their claim in the Kerman Telephone Company (Kerman) GRC in the first phase of GRCs following D.14-12-084. The Commission did not allow Kerman to rebut the presumption of reasonableness of the Corporate Operations Expense Account cap and, additionally, the testimony of Kerman's expert witness disputing the validity of the

[110] D.14-12-084, at 100, Ordering Paragraph 2,

[111] D.14-12-084 at 94, COL 4.

[112] D.14-12-084 at 101, Ordering Paragraph 3.

[113] D.14-12-084 at 101, Ordering Paragraph 3.

[114] D.14-12-084, at 28-29.

[115] D.14-12-084, See also Small ILECs Opening Brief in Phase 1, Sept. 26, 2014 at 94-98.

[116] D.14-12-084 at 94, COL 4.

[117] *Thibideau v. Crumb* (1992) 4 Cal.App.4th 749, 754. See also PU Code §1709.

FCC's Corporate Operations Expense Account cap was stricken from the record.[118] Despite these rulings, and despite the same expert witness' claims of flaws in the Corporate Operations Expense Account cap again being stricken in the second phase of GRCs,[119] the Small ILECs continued to make this claim through all three phases of GRC proceedings[120] accumulating litigation costs regardless of the fact that the Small ILECs have never prevailed on this argument. As the Small ILECs admitted "the Commission did not make any adjustments based on the rebuttals to the corporate expense cap" and "[i]n the end, the Commission stood firm on the application of the FCC's corporate expense cap."[121]

Since the adoption of the Corporate Operations Expense Account cap, the Small ILECs have rebutted the Corporate Operations Expense Account cap in all 10 of the GRCs, each to no avail.[122] This includes two rate cases where the Small ILEC's Corporate Operations Expense Account total was below the cap, yet these Small ILECs chose to expend resources arguing against the Corporate Operations Expense Account cap, in general.[123] In rebutting the Corporate Operations Expense Account cap, the Small ILECs hired numerous outside expert witnesses at rates ranging from $300 per hour to over $400 per hour.[124] The Commission has rejected the Small ILECs' arguments rebutting the Corporate Operations Expense Account cap, including the argument that the cap itself is flawed, and their continued attempts to raise this issue contradict the goal of

[118] Cal Adv – 10 at Exhibit D-1: A.11-12-011, Kerman GRC, Evidentiary Hearings Reporter Transcripts, dated April 28, 2015 at pp. 11-12:19-1.

[119] A.16-10-001, Ruling Granting ORA's Motion to Strike Portions of Dale Lehman's Opening Testimony, Dec. 12, 2016, http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M170/K773/170773915.PDF.

[120] Cal Adv – 13 at 1-7: 11-16.

[121] LEC – 1 at 44: 9-14.

[122] Cal Adv – 11 at 1-2: Table 1.

[123] Cal Adv – 11 at 1-2: Table 1. The two Small ILECs, Calaveras (A.16-10-002) and Pinnacles (A.17-12-004) provided testimony rebutting the cap despite their Corporate Operations Expenses Account totals being below the cap.

[124] RT Vol. 11, 1983:12-14 (Choe, Lehman); RT Vol. 7, 923: 6-13(Choe, Duval).

D.14-12-084 to reduce rate case litigation costs.[125] In addition to the numerous expert witnesses hired by the Small ILECs to litigate the rebuttable presumption, time and resources were also devoted to discovery, comments, motions, hearings, and briefs litigating the rebuttable presumption.

The Commission should eliminate the ability of parties to rebut the presumption of reasonableness of the Corporate Operations Expense cap because it has increased litigation costs for all Small ILE GRC parties and permitted the Small ILECs to raise issues barred by res judicata. Eliminating the wasteful expenditure of time and resources litigating the rebuttable presumption will also eliminate the undue burden on California ratepayers.[126]

B. Rate Case Expenses. [Scoping Memo, Issues (2)(b)(i), (2)(b)(ii), (2)(b)(iv)]

1. The Commission Should Affirm That Rate Case Litigation Costs Are Subject to The Corporate Operations Expense Account Cap

Under the FCC's Uniform System of Accounts (USAC), rate case litigation expenses are recorded in the Corporate Operations Expense Account (account 6720)[127] and are subject to the Corporate Operations Expense Account cap.[128] The Commission should definitively find that rate case litigation costs are part of the Corporate Operations Expense Account cap and prohibit the Small ILECs from recording rate case litigation expenses in rate base in future GRCs. In past GRCs the Small ILECs have repeatedly

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[125] "Adopting a uniform standard for determining a reasonable level of corporate operations expenses for carriers receiving subsidies from the CHCF-A program allows the program to achieve its goals while ensuring that the level of support is not excessive or wildly disparate across companies, and avoids imposing an undue burden on California ratepayers who contribute to the fund." D.14-12-084 at 28.

[126] D.14-12-084 at 28.

[127] See the FCC Uniform Systems of Accounts for Telecommunications Companies, Title 47 CFR §32.6720(g) at: https://www.ecfr.gov/cgi-bin/text-idx?SID=f7456c981f0a13231a9e70f051262b1d&mc=true&node=se47.2.32_16720&rgn=div8.

[128] D.14-12-084 at 100, Ordering Paragraph 2. Also, "Total Corporate Operations Expense for purposes of calculating high-cost loop support payments beginning January 1, 2012 shall be limited to the lesser of §54.1308(a)(4)(i) or (ii). Title 47 CFR §54.1308(a)(4). §54.1308(a)(4)(i) and (ii) are the Corporate Operations Expense Account cap formulas.

attempted to not only include rate expenses in the Corporate Operations Expense Account, but also record rate case litigation expenses in rate base (Account 1500)[129] so that these expenses would be amortized and earn a rate of return.[130] In each case, the Commission has determined, consistent with federal rules, that rate case litigation expenses must remain under the Corporate Operations Expense Account cap.[131]

It is consistent with federal regulations, the Commission's own precedent, and PU Code §275.6(c)(7) to consider the Small ILECs' rate case litigation costs as part of the Corporate Operations Expense Account cap. When the FCC implemented its Corporate Operations Expense Account cap, it stated its intent to limit the amount of corporate operations expense that could be recovered through high cost loop support to ensure "prudent facility investment and maintenance."[132] Part 32 of the Uniform System of Accounts for Telecommunications Companies sets forth the expenses that are included in the corporate operations accounts. Specifically, it states that costs incurred in the provision of general and administrative services including providing legal services should be recorded in Part 32.6720(g) – Part 32.6720 (Account 6720). According to the FCC, "[t]his includes conducting and coordinating litigation, providing guidance on regulatory and labor matters, preparing, reviewing and filing patents and contracts and interpreting legislation. Also included are court costs, filing fees, and the costs of outside counsel, depositions, transcripts and witnesses."[133]

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[129] RT Vol. 11, 2061-2062:10-5 (Choe, Duval).

[130] Cal Adv – 11 at 1-2, Table 1.

[131] Decision Approving Pinnacles GRC TY 2019, December 5, 2019 (D.19-12-011) at 17-18, http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M321/K514/321514031.PDF. See also, LEC – 1 at 44:9-14; RT Vol. 11, 2036:23-28 (Choe, Duval). Small ILECs contend that they were permitted to record rate case expenses in rate base for the Pinnacles GRC. However, this is contrary to the Pinnacles GRC Decision. See D. 19-12-011 at 33, COL 14.

[132] FCC 97-157, May 7, 1997 at para. 283, https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1997/fcc97157.pdf.

[133] See the FCC Uniform Systems of Accounts for Telecommunications Companies, Title 47 CFR §32.6720(g) at: https://www.ecfr.gov/cgi-bin/text-idx?SID=f7456c981f0a13231a9e70f051262b1d&mc=true&node=se47.2.32_16720&rgn=div8.

The Commission previously found in its Phase 1 decision of this Rulemaking that Small ILECs that receive funds from the CHCF-A must adhere to the FCC's standards for corporate expense limits in their GRCs.[134] The Commission reasoned that adopting and applying the FCC's corporate expense cap will create incentives to align expenditures with the cap to reduce rate case litigation costs.[135] Allowing the Small ILECs to remove rate case litigation costs from the Corporate Operations Expense Account (6720), place them in rate base (1500), and earn a rate of return on those expenses, is contrary to the Commission's intent. Furthermore, it would give the Small ILECs the perverse incentive to increase rate case litigation costs. And, any excess support that results from permitting Small ILECs to record rate case expenses in rate base unfairly shifts costs to ratepayers in violation of PU Code §275.6(c)(7).[136]

Lastly, the corporate operations cap varies for each company because it is based on the size of the company and the number of loops it owns.[137] Before establishing the formula, the FCC conducted a cost study that took into account the Corporate Operations Expense Accounts, which includes rate case expenses, of incumbent local exchange carriers in rural areas.[138] Thus, permitting Small ILECs to record rate case costs in rate base (Account 1500) would mean that rase case expenses would be considered twice, first through the corporate operations cap formula and again as a part of rate base.

To prevent the Small ILECs from continuing to waste time and resources litigating the treatment of rate case litigation costs and to ensure consistency with FCC and Commission orders, as well as §275.6(c)(7), the Small ILECs must record rate case expenses in the Corporate Operations Expense Account (Account 6720) and not as rate base. The Commission should apply the Corporate Operations Expense Account cap without a rebuttable presumption.

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[134] D.14-12-084 at 100, Ordering Paragraph 2.

[135] D.14-12-084 at 29.

[136] See also D.14-12-084 at 28.

[137] 47 CFR §54.1308.

[138] FCC 11-161, at para. 231.

C. Operating Expenses. [Scoping Memo, Issue (2)(b)(iii)]

1. The Commission Should Adopt an Operating Expense Cap

In Phase 1 of this proceeding, the Commission adopted a Corporate Operations Expense Account cap to reduce litigation costs and increase efficiency.[139] Similarly, the Commission should further increase the efficiency of the Small ILECs' GRC process by adopting an operating expense cap, in accordance with the FCC's existing methodology, without a rebuttable presumption of reasonableness.[140] Operating expenses include four major expense groups: plant specific operations, plant nonspecific operations, customer operations and corporate operations. In accordance with the FCC Part 32 Uniform System of Accounts: "Expenses to be recorded in Plant Specific and Plant Nonspecific Operations expense groups generally reflect cost associated with the various kinds of equipment identified in the plant asset accounts while expenses to be recorded in Customer Operations and Corporate Operations accounts reflect costs of, or are associated with, functions performed by people, irrespective of the organization in which any particular function is performed."[141] See Attachment B of Ms. Montero's testimony for a list of operating expenses included under the operating expense cap.[142]

Additionally, the Commission should use the financial data contained in the cost studies that the Small ILECs submit to the FCC each year to project Test Year operating expenses in GRC proceedings. The FCC's inflation adjustment factors and NECA's jurisdictional separation factors can be applied to the financial data in the cost studies to derive the Test Year intrastate operating expenses.[143]

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[139] D. 14-12-084 at 94, COL 4.

[140] FCC-16-33 at para. 96.

[141] Part 32 – Uniform System of Accounts for Telecommunication Companies, Subpart E. (https://www.govinfo.gov/content/pkg/CFR-2009-title47-vol2/pdf/CFR-2009-title47-vol2-part32.pdf).

[142] Cal Adv – 7 at B-1 – B-2.

[143] Cal Adv – 7 at 1-4-1-5.

2. Adopting an Operating Expense Cap Would Streamline the GRC Process

The FCC currently uses an operating expense cap to limit High Cost Loop Support.[144] The financial data that the FCC relies on to determine High Cost Loop Support is also used in the Small ILECs' GRCs.[145] Therefore, this same data can be used to derive the Small ILECs' intrastate operations expenses. Applying the FCCs formulas and utilizing the Small ILECs' cost studies submitted to NECA would reduce the number of data requests related to operations expenses and would reduce litigation costs regarding the amount of operating expenses included in the Small ILECs' intrastate revenue requirement.

3. The Commission Should Not Permit the Small ILECs To Rebut the Reasonableness Of The Operations Expense Cap

As discussed above in Section V – Ratemaking treatment of expenses, the Commission implemented a Corporate Operations Expense Account cap to increase efficiency and reduce unnecessary expenses. However, the Commission previously permitted parties to rebut the presumption of reasonableness of the Corporate Operations Expense Account cap. A rebuttable presumption has only led to increased litigation and rate case expenses, contrary to the intent of the Corporate Operations Expense Account cap. The rebuttable presumption also allowed the Small ILECs to dispute the legitimacy of the Corporate Operations Expense Account cap in GRCs even though that issue was resolved in the Phase 1 Decision. To prevent further litigation regarding the operating expense cap after it is established the Commission should adopt an operating expense cap without a rebuttable presumption.

[144] FCC-16-33 at para. 96.

[145] Cal Adv – 7 at 1-4: 7-12; RT Vol. 11, 2000:1-5 (Duval).

VII. RATEMAKING TREATMENT OF INVESTMENTS

A. The Commission Should Use the Most Recent Annual NECA Cost Study to Forecast Intrastate Ratebase

Federal USF subsidies support the Small ILECs' operating expenses and plant investment.[146] However, because the Small ILECs comingle USF subsidies with other sources of revenue including CHCF-A subsidies, it is difficult to determine how the Small ILECs are spending USF subsidies.[147] The Commission should ensure that double recovery of plant investment is not occurring. The Small ILECs state that "[i]f costs are properly allocated, cost recovery-and ultimately revenue-will be properly assigned." To prevent double recovery, the Commission should use the most recent annual NECA cost study recorded rate base amount to forecast each Small ILEC's California GRC Test Year rate base.[148] The NECA cost study includes total company rate base and then allocates that amount between the inter and intrastate jurisdictions. Utilizing the NECA cost study data will ensure that the Commission allocates the same amount of rate base to the intrastate jurisdiction as the FCC allocated. This will avoid double recovery, ensure proper jurisdictional allocation, and streamline the GRC process.

VIII. MODIFICATIONS TO THE RATE CASE PROCESS. [SCOPING MEMO, ISSUES (2)(B)(I), (2)(B)(IV), (8)]

A. The Commission Should Hold Public Participation Hearings Before the Public Advocates Office Serves Testimony

The Commission should hold Public Participation Hearings (PPHs) before the Public Advocates Office serves testimony. The Commission has found that it is most favorable to have PPHs early and before testimony so that the Public Advocates Office can incorporate information it receives at the PPH in its testimony and the administrative law judge can request additional utility testimony and/ or exhibits in evidentiary

[146] Cal Adv – 9 at 1-2:1-5.

[147] Cal Adv – 9 at 1-2: 6-17.

[148] RT Vol. 12, 2275-2276: 26-4 (Rosvall, Hoglund).

hearings.[149] In the recent Ducor Telephone Company GRC, the Assigned Commissioner agreed and required the PPH to be held before the Public Advocates Office testimony, as proposed by the Public Advocates Office.[150]

B. The Commission Should Not Require Parties to Meet And Confer Before Any Motion Is Filed

The Small ILECs propose requiring parties to meet and confer before any motion is filed.[151] The Commission's Rules of Practice and Procedure already specify the instances in which a meet and confer is required before a motion is filed.[152] If the Commission intended to require a meet and confer in every instance a motion is filed, it could have done so.[153] Furthermore, as a practical matter, requiring a meet and confer will burden the Public Advocates Office and other intervenor's resources and add additional time to the schedule of all GRCs. Motions are generally filed after the parties could not resolve a dispute on their own and require resolution by the administrative law judge. Thus, requiring a meet and confer in every instance would not support efficiency and would instead require increased litigation expenses for all parties, including the Small ILECs.

C. The Commission Should Not Limit Discovery

The Commission should not limit discovery in GRCs. The Small ILECs propose limiting data requests to 300 questions including sub-parts.[154] This would violate the Public Advocates Office's statutory discovery rights under P.U. Code §309.5(e) and

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[149] Public Advocates Office Reply Comments to Fourth Amended Scoping Memo at 18.

[150] See Assigned Commissioner's Scoping Memo and Ruling scheduling PPH before testimony. A.17-10-003, Scoping Memo, March 13, 2018 at 9, http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=212071656; See also ALJ's ruling that the PPH should be held before testimony because ratepayers' concerns inform what the Commission, including decisionmakers and the Public Advocates Office, should focus on. A.17-10-003, RT prehearing conference, January 18, 2018, 33:4-8.

[151] LEC -7 at 25:4-6.

[152] E.g. Commission Rules of Practice and Procedure Rule 11.3.

[153] *Russello v. United States* (1983) 464 U.S. 16, 23 (quoting *United States v. Wong Kim Bo* (1972) 472 F.2d 720, 722).

[154] LEC – 4 at 35:16-17; LEC – 7 at 22:1-3.

314.[155] Specifically, PU Code § 309.5(e) permits the Public Advocates Office to compel the production or disclosure of any information it deems necessary from regulated utilities, with no limitation. Additionally, it would also violate the Public Advocates Office's due process rights which provide it an "opportunity to be heard."[156] The above is true even if the Public Advocates Office were required to submit a motion to the ALJ for any additional minimum data requests (MDRs) beyond the suggested amount of 300 because it would place an unfair burden on the Public Advocates Office to make a motion before it could exercise its due process rights.[157] Furthermore, requiring additional motions would only prolong the GRC process, contrary to the Commission's intent to streamline the GRC process. Lastly, limiting discovery also gives the Small ILECs a perverse incentive not to be forthcoming in responses to the MDRs and as a result would require the Public Advocates Office to issue more data requests to pursue the information required to participate in GRCs.

The Small ILECs previously argued that the Commission should limit the Public Advocates Office's statutory discovery rights and the Commission dismissed their argument. In D.15-06-048, establishing MDRs, the Small ILECs argued that the MDRs included more information than was necessary. The Commission rejected these arguments and required MDRs without any limitation.[158]

D. The Commission Should Not Make Mediation Compulsory in Rate Cases

The Small ILECs propose that the Commission require compulsory mediation in rate cases.[159] The Commission should reject this proposal. The Commission has opined

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[155] P.U. Code §314 stating, in part, "The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility…"

[156] *Mathews v. Eldridge* (1976) 424 U.S. 319, 333.

[157] *California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 338, stating that statute which chilled the exercise of a right to hearing violated due process.

[158] D.15-06-048 at 13-14, 19.

[159] LEC – 4 at 35 :12-14; LEC – 7 at 22:6-8.

that mediation is limited to willing participants.[160] This is because when one party has refused to mediate, it only expends time and resources with little or no chance for successful compromise.[161] Additionally, the willingness of both parties to mediate is an underlying assumption in the Commission's normal practice in conducting mediations wherein a *joint* request is made to the Chief Administrative Law Judge for mediation.[162] This practice was also affirmed in Resolution ALJ-185 which expanded the opportunities to use the alternative dispute resolution processes. The Commission stated that, "Generally, participation in ADR processes should be voluntary. Disputing parties cannot be forced to agree. "[163] Lastly, settlement is always an option and the Public Advocates Office actively engages in settlement negotiations when it is in ratepayers' best interest.

IX. BASIC SERVICE RATES AND OTHER END USER RATE PROPOSALS [SCOPING MEMO, ISSUE (4)]

A. The Commissions Should Increase Local Rates at The Same Rate as Inflation to Gradually Make Rates Comparable to Urban Rates, As Required By PU Code §275.6(C)(3).

The Commission should increase local rates at the same rate as inflation to gradually make rates comparable to urban rates as required by PU Code §275.6(c)(3). Local rates include rates for services such as basic residential and business voice service, custom calling features, and voice mail services.[164] Inflation-based rate adjustments conducted on a regular basis are predictable and can be communicated well in advance to allow customers time to adjust.[165] Furthermore, the inflation-based rate adjustment

[160] C.00-08-012 ALJ Ruling Denying Compulsory Mediation at 1-2, http://docs.cpuc.ca.gov/PublishedDocs/PUBLISHED/RULINGS/3205.htm.

[161] C.00-08-012 ALJ Ruling Denying Compulsory Mediation at 1-2.

[162] C.00-08-012 ALJ Ruling Denying Compulsory Mediation at 1-2. Emphasis added.

[163] Resolution ALJ-185 at 5, http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/49129.pdf.

[164] Cal Adv – 1 at 3-1:27-18.

[165] The Commission should choose an inflation-based methodology such as NECA's annual GDP-CPI factor and a regular schedule for rate adjustments. While annual rate adjustments are relatively simple to calculate and avoid having to account for compounding interest, the Commission could choose to adopt a

mechanism smooths out the "peaks" in rate increases and prevents rate shock.[166] This type of gradual rate increase would be more successful at preventing rate shock in comparison to a much greater rate increase that occurs less frequently. Additionally, in D.14-06-048, the Commission determined that rates are presumptively reasonable if they fall within the $30-$37 range.[167] The Small ILECs rates should remain within this range of reasonableness for approximately six to ten years depending on how the all-inclusive rate is calculated.[168] Lastly, this method of adjusting rates would streamline the GRC process and reduce litigation costs.[169]

B. There Is No Evidence That Rate Increases Based on Inflation Would Result in A Decline In Subscribership

There is no evidence that rate increases based on inflation would result in a decline in subscribership. The Small ILECs have argued that local rate increases based on inflation would result in a decline in subscribership.[170] However, their analysis is based on the most recent increase in rates which resulted in a one-time increase rather than the gradual increase in rates that would have occurred using a regular inflationary increase in rates. Additionally, the Small ILECs' statements and analysis regarding the relationship between local rate increases and subscribership fail to account for other factors that could impact subscribership.[171] For example, Ducor did not conduct a thorough analysis to determine that any decline in subscribership was linked to rate increases.[172] Additionally, Ducor did not account for any outside factors which may have caused a decline in subscribership. One factor that Ducor failed to consider was whether a decline in subscribership may have been due to fluctuations attributable to people who own

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multi-year cycle for rate adjustments.

[166] Cal Adv – 3 at 3-2:9.

[167] D.14-06-048 at 66; 102, Ordering Paragraph 9.

[168] Cal Adv – 1 at 3-5: 4-7.

[169] Cal Adv – 1 at 3-3: 2-4.

[170] LEC – 4 at 32: 24-25; LEC – 7 at 18: 25-26; LEC – 11 at 20:9-14.

[171] LEC – 12 at 7: 14-19.

[172] RT Vol. 11, 1887:2-6 (Choe , Votaw).

vacation homes in Ducor's service territory.[173] Ducor also failed to acknowledge that prior to the observed decline in subscribership, there was an increase in subscribership which may have inflated any decrease that occurred after the rate increase.[174] Ducor did not determine the cause of that increase in subscribership.[175]

Small ILECs' witness, Dr. Lehman, also attempted to determine whether rate increases are correlated with subscribership. However, Dr. Lehman did not collect data on certain factors that he admits would be relevant to determining a relationship between subscribership and rate increases.[176] Nor did the analysis control for any other factor that could have affected subscribership.[177] Analyses that show a causal relationship should control or hold constant other variables to isolate the effect of the variable at interest. Lastly, the actual decline in subscribership shown in Dr. Lehman's analysis falls within the confidence interval of the projected line.[178] This means that the actual collected data, which purports to show a decrease in subscribership following a rate increase, is not meaningfully different than the projected subscribership numbers that would have occurred but for the rate increase.[179]

C. NECA's GDP-CPI Is A Reasonable Inflation Factor to Use to Calculate Rate Adjustments

NECA's GDP-CPI Inflation factor is already in use by the Small ILECs and is publicly available, so it is an appropriate factor to use to adjust local rates.[180]

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[173] RT Vol. 11, 1932:14-26 (Rosvall, Votaw).

[174] RT Vol. 11, 1930-1931:21-3 (Salas, Votaw).

[175] RT Vol. 11, 1930-1931:21-3 (Salas, Votaw).

[176] For example, Dr. Lehman did not collect data on "income, employment, migration, cell phone availability, and the age distribution of the population." LEC -12 at 7-8: 24-4.

[177] LEC -12 at 7-8: 24-4.

[178] RT Vol. 11, 1988-1989:11-2 (Choe, Lehman).

[179] RT Vol. 11, 1988-1989:11-2 (Choe, Lehman); LEC 12 at 9:11-28.

[180] Cal Adv – 1 at 3-3: 7-15.

X. RATEMAKING TREATMENT OF MISCELLANEOUS REVENUES [SCOPING MEMO, ISSUE (5)]

The Public Advocates Office does not comment on this topic.

XI. CHCF-A Annual Filing Process [Scoping Memo, Issue (7)]

A. Inflation Based Rate Adjustments Could Be Implemented Through the Annual Advice Letter Process

As discussed in Section IX – Basic Service Rates, the Commission should implement inflation-based rate adjustments. If these inflation-based adjustments are conducted annually, they could be implemented through the CHCF-A annual filing process.

XII. CONCLUSION

Phase 2 of this proceeding affords the Commission with the opportunity to further reform the CHCF-A in response to the market, regulatory, and technological changes that have occurred since the inception of the CHCF-A. The Commission should take this opportunity to incorporate broadband availability and subscribership data as well as the experience of the last round of GRCs into its regulations regarding the CHCF-A. Based on this information the Commission should reform the CHCF-A as follows:

1. Require Small Independent Local Exchange Companies Small ILECs to annually provide accurate broadband subscribership and availability data using the Commission's definition of availability;
2. Approve broadband deployment projects in the Small ILECs' GRC application only if the Small ILEC has 87% or greater broadband adoption rate in its service territory and it is the sole provider of broadband access service;
3. Require Small ILECs or its affiliated ISP to offer an affordable broadband plan to low-income customers;
4. Impute the Small ILECs' retail and wholesale broadband revenues when calculating their CHCF-A subsidies;
5. Maintain the Corporate Operations Expense Account cap and eliminate the ability to rebut the presumption of reasonableness of the Corporate Operations Expense Account cap;
6. Affirm that rate case expenses are subject to the Corporate Operations Expense Account cap;

7. Adopt an operating expense cap that is presumed reasonable and does not permit parties to rebut that presumption of reasonableness;
8. Use the most recent NECA cost study to forecast each Small ILEC's intrastate TY ratebase in GRCs; and
9. Regularly increase local rates to reflect inflation and gradually make rates comparable to urban rates, as required by PU code §275.6(c)(3).

Respectfully submitted,

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