

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

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

R.11-11-007

**REPLY COMMENTS OF  
CALAVERAS TELEPHONE COMPANY (U 1004 C)  
CAL-ORE TELEPHONE CO. (U 1006 C)  
DUCOR TELEPHONE COMPANY (U 1007 C)  
FORESTHILL TELEPHONE CO. (U 1009 C)  
KERMAN TELEPHONE CO. (U 1012 C)  
PINNACLES TELEPHONE CO. (U 1013 C)  
THE PONDEROSA TELEPHONE CO. (U 1014 C)  
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)  
THE SISKIYOU TELEPHONE COMPANY (U 1017 C) AND  
VOLCANO TELEPHONE COMPANY (U 1019 C)  
("INDEPENDENT SMALL LECS")**

**ON THE PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES  
ALLOWING AND ADOPTING CONDITIONS FOR WIRELINE COMPETITION IN  
SMALL LOCAL EXCHANGE CARRIER SERVICE TERRITORIES**

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## **I. INTRODUCTION.**

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), the Independent Small LECs<sup>1</sup> submit these reply comments addressing certain positions of the Public Advocates Office (“Cal PA”), The Utility Reform Network (“TURN”) and the California Cable & Telecommunications Association (“CCTA”) in their comments on the Proposed Decision Allowing and Adopting Conditions for Wireline Competition in Small Local Exchange Carrier Service Territories (“PD”). None of the parties oppose the PD’s one-year rate case extension, and the Commission should adopt it. Cal PA’s suggested re-sequencing of the rate cases should be rejected because it would inflict undue harm on Foresthill and result in inefficiencies.

Regarding the PD’s approach to expanding competition from Competitive Local Exchange Carriers (“CLECs”), TURN and the Independent Small LECs have identified general conditions that should be added to advance universal service and safeguard rural consumers. CCTA opposes all of the PD’s conditions, but fails to explain how their removal would serve the interests of rural consumers in the Small LEC service territories CCTA’s members seek to serve.

## **II. THE COMMISSION SHOULD RETAIN THE PD’S RATE CASE SEQUENCING TO PRESERVE FAIRNESS AND EFFICIENCY.**

Cal PA again urges the Commission to adopt its proposed rate case sequencing.<sup>2</sup> Specifically, Cal PA argues that Kerman and Foresthill should be placed in Group A because Kerman’s last rate case was resolved in 2016.<sup>3</sup> Cal PA also argues that Calaveras should remain in Group B, with Ponderosa and Sierra, which it claims would result in “an even distribution of GRC applications. . . .”<sup>4</sup> Contrary to Cal PA’s claims, its proposed re-sequencing would decrease efficiencies created by the PD’s rate case groupings and would create a fundamentally inequitable result for Foresthill, which completed an extensive rate case just 15 months ago.

The PD’s grouping of Kerman and Foresthill in Group B is a more reasonable and judicious way to streamline their rate cases. Foresthill is currently in Group C (scheduled to file in 2022), and Kerman is currently in Group A (scheduled to file this year, in the absence of any extension). The balance of equities supports the PD’s placing of these companies in Group B, splitting the difference. In its most

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<sup>1</sup> The Independent Small LECs are the following carriers: Calaveras Telephone Company (U 1004 C) (“Calaveras”), Cal-Ore Telephone Co. (U 1006 C) (“Cal-Ore”), Ducor Telephone Company (U 1007 C) (“Ducor”), Foresthill Telephone Co. (U 1009 C) (“Foresthill”), Kerman Telephone Co. (U 1012 C) (“Kerman”), Pinnacles Telephone Co. (U 1013 C) (“Pinnacles”), The Ponderosa Telephone Co. (U 1014 C) (“Ponderosa”), Sierra Telephone Company, Inc. (U 1016 C) (“Sierra”), The Siskiyou Telephone Company (U 1017 C) (“Siskiyou”), and Volcano Telephone Company (U 1019 C) (“Volcano”).

<sup>2</sup> *Cal PA Comments* at 1-2.

<sup>3</sup> *Id.* at 2-4.

<sup>4</sup> *Id.* at 4-5.

recent rate case, Foresthill had to respond to over 500 data requests and attend five days of hearings in a heavily-litigated process, which persisted from before Foresthill filed its application in October 2017 to the final decision in May 2019.<sup>5</sup> Cal PA's proposal would be unfair to Foresthill, as it would single Foresthill out from every other company in denying it a reasonable opportunity to conform its operations to the results of the rate case, and would undo the efficacy of work that Foresthill has undertaken in reliance on its rate case outcome. Requiring Foresthill to prematurely litigate another rate case would also risk consumer harm by stifling investment and piling further rate increases on Foresthill's recently-increased rates. Placing Kerman and Foresthill in Group B achieves a more equitable result.

Moving Sierra to Group A with Siskiyou and Volcano also promotes a more reasonable and efficient processing of the rate cases. Sierra and Volcano are the two largest Small LECs and it is more reasonable for the new ratemaking rules that will be adopted in the Phase 2 decision to be implemented for the first time in their rate cases, which will have the largest impact on the CHCF-A fund.

Moving Calaveras from Group B to C also promotes a reasonable and efficient grouping of the rate cases as Group C consists of the three smallest Independent Small LECs. Calaveras is also one of the smaller companies and its last rate case was relatively non-contentious and resulted in the earliest settlement in the recent rate case cycle.<sup>6</sup> One group must necessarily include four companies, and it is more reasonable for it to be four of the smallest companies. Under Cal PA's proposal, Group A would consist of four companies, including one of the largest companies, Volcano. It would be unreasonable to process four cases together in the first round of rate cases under the new ratemaking rules.

### **III. THE PD SHOULD INCORPORATE TURN'S PROPOSED GENERAL CONDITIONS.**

TURN recommends two general conditions that will help advance universal service and ensure fair competition. First, TURN proposes the Commission require CLECs to identify reasonable timeframes for deployment and service availability with progress reporting requirements.<sup>7</sup> TURN suggests that the Commission revoke a CLEC's Certificate of Public Convenience and Necessity ("CPCN") if it does not meet its timelines.<sup>8</sup> Second, TURN proposes the Commission ban exclusivity agreements that preclude or limit competition from the Small LECs or other providers.<sup>9</sup>

The Independent Small LECs support both proposals. TURN's first proposal is consistent with the Independent Small LECs' proposal that competing CLECs submit two-year service quality

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<sup>5</sup> See Docket of A.17-10-004; Exh. FTC-22 (Reuter Rebuttal) at 10:1-6.

<sup>6</sup> See A.16-10-002, 4/18/17 *Joint Motion for Adoption of All Party Settlement*; see also D.18-04-006.

<sup>7</sup> *TURN Comments* at 2-3.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 3-4.

improvement plans and progress reports.<sup>10</sup> These proposals help ensure that competing CLECs are meeting their deployment commitments and is consistent with the Commission's goals of expanding broadband to these rural service areas. TURN's second proposal is also needed to ensure that CLEC entry will promote competition.<sup>11</sup> As TURN notes, exclusive agreements deter investment in rural areas and prevent competition.<sup>12</sup> TURN properly raises a concern that the pending Comcast application to enter Ponderosa's territory, which does not rule out the potential for an exclusive service arrangement between Comcast and the Tesoro Viejo developer. CCTA does not dispute this fact.<sup>13</sup>

#### **IV. TURN'S PROPOSAL FOR A NEW PROCEEDING IS PREMATURE AND UNNECESSARY.**

TURN proposes that the Commission immediately commence a proceeding to consider how the Small LECs will be allowed to respond to CLEC entry and changes to "prevent the Small LECs from utilizing CHCF-A as the sole mechanism to address negative financial impacts. . . ."<sup>14</sup> TURN does not specify what "changes" should be considered and does not justify its proposal. TURN urges the Commission to consider impacts prior to the next round of rate cases, which are set to begin in October 2021 if the PD is adopted.<sup>15</sup> A new proceeding is unnecessary to address pricing flexibility.<sup>16</sup> TURN's proposal, however, is much broader and is premature, as the PD notes, because it will likely take at least a year after the issuance of a decision on CLEC competition before the impacts can be objectively evaluated.<sup>17</sup> To the extent TURN is suggesting that the Commission consider additional efficiency measures in administering the CHCF-A program,<sup>18</sup> TURN's proposal is untimely as the scope of Phase 2 already includes a consideration of measures the Commission should adopt to increase efficiency.<sup>19</sup>

TURN also proposes that a new proceeding address the need for non-discriminatory broadband deployment based on its speculative and unsupported concern that CLEC competition may diminish incentives for Small LEC investment in areas where CLECs do not offer service.<sup>20</sup> Again, this proposal

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<sup>10</sup> *Independent Small LECs Comments* at 8-9.

<sup>11</sup> *TURN Comments* at 3.

<sup>12</sup> *Id.*; see also 47 U.S.C. § 253(b).

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> *Id.* at 4-5.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Independent Small LECs Opening Comments on Competition Ruling* at 10-11.

<sup>17</sup> PD at 33-34. Individual CLEC application proceedings can also address the anticipated impacts on a case-by-case basis, which TURN acknowledges is appropriate. *TURN Comments* at 5 (explaining that the results of CLEC competitive entry "remain to be seen, and a case-by-case evaluation is appropriate.").

<sup>18</sup> *TURN Comments* at 5 (stating that "[t]he Commission must ensure that increases in CHCF-A draws both reflect the impact of CLEC entry and also provide incentives to the Small LECs to improve their operational profiles to reduce the need for increased CHCF-A support.").

<sup>19</sup> See *Fourth Amended Scoping Memo* at 5. Commission Rule 13.14(a). It would be procedurally improper and create harmful uncertainty to open up a new proceeding to address issues TURN failed to timely raise.

<sup>20</sup> *TURN Comments* at 6.

is premature and unnecessary. Not only does TURN fail to provide any evidence to support its claim, but it also lacks merit in light of the Federal Communication Commission's buildout requirements that the companies must meet to receive Connect America Fund-Broadband Loop Support ("CAF-BLS") or Alternative Connect America Cost Model ("A-CAM") support.<sup>21</sup>

**V. THE COMMISSION SHOULD REJECT CCTA'S PROPOSAL TO REMOVE ALL GENERAL CONDITIONS TO CLEC COMPETITIVE ENTRY.**

CCTA opposes all of the PD's general conditions by arguing that they are procedurally improper, discriminatory, overly burdensome and deterrent to competitive entry.<sup>22</sup> However, these general conditions are necessary to achieve the Commission's goals to advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications service, and safeguard the rights of consumers.<sup>23</sup> Contrary to CCTA's claim, the general conditions are squarely within the scope of this proceeding.<sup>24</sup> In support of its position, CCTA points to language in the PD stating that the Commission is "updating CLEC rules due to the passage of time."<sup>25</sup> It appears from the rest of the PD that the Commission is modifying the rules only for CLECs seeking competitive entry to the Small LECs' service areas to achieve the Commission's goals under Section 253(b) of the Telecommunications Act of 1996. The Independent Small LECs do not oppose revisions to the PD to clarify this issue.

CCTA also argues that many general conditions are not based on record evidence because no party proposed them.<sup>26</sup> The vast majority of the general conditions that CCTA identifies, however, were proposed by the Independent Small LECs or TURN.<sup>27</sup> In any event, the Commission has authority to propose general conditions to competitive entry under 47 U.S.C Section 253(b).

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<sup>21</sup> See *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order*, et al., FCC 18-176 (rel. Dec. 13, 2018) ("Rate of Return Reform Order"), at ¶¶ 101-112, 14-30 (imposing requirements to deploy broadband capabilities to a specific number of locations over a five-year period); see also 47 C.F.R. § 54.308.

<sup>22</sup> *CCTA Comments* at 1-2.

<sup>23</sup> See 47 U.S.C. § 253(b). Although CCTA fails to brief this issue, its proposed revision to the Conclusions of Law would strike the development of location-specific conditions through individual CLEC applications. The PD properly concludes that "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 the Commission's authority under Section 253(b)." PD at 29.

<sup>24</sup> *ALJs' Competition Ruling* at 3-4, Questions 1, 3, 7 (inviting comments on what conditions are appropriate to impose on CLECs in the Small LEC service areas and whether rules in D.95-07-054 should be updated).

<sup>25</sup> *CCTA Comments* at 3.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.*; Compare *TURN Opening Comments on ALJs' Competition Ruling* at 13 (proposing to update CLEC rules in D.95-07-054); *Id.* at 6-7, 14 (proposing mapping requirement); *Independent Small LECs Opening Comments on ALJs' Competition Ruling* at 8:6-18 (proposing compliance with disaster relief, emergency response and safety requirements); *TURN Opening Comments on ALJs' Competition Ruling* at 15-16 (proposing application of G.O. 168); *Independent Small LECs' Opening Comments on ALJs' Competition Ruling* at 7:22-8:25 (proposing compliance with affiliate transaction rules); *Id.* at 12:25-27 (proposing CLECs identify the platform to be used).

CCTA further claims that the conditions are discriminatory and not technologically neutral as they would apply only to CLECs entering Small LEC areas and wireline voice providers.<sup>28</sup> CCTA's claims lack merit, as the general conditions apply equally to the Small LECs and would likewise apply to similarly situated CLEC wireline providers who seek to serve in these areas.

Finally, CCTA argues that the proposed general conditions are unduly burdensome and would deter competition because CLECs would have to apply separate rules to their operations in Small LEC areas and the mapping condition, in particular, is burdensome and would pose a security threat.<sup>29</sup> The Independent Small LECs already comply with the applicable general conditions and CCTA fails to explain why it would be unduly burdensome for CCTA's much larger carrier members to follow them. While CCTA claims that the mapping requirement is onerous and a "regulatory outlier," geographic information system maps are already used to meet Digital Infrastructure and Video Competition Act ("DIVCA") application requirements.<sup>30</sup> The mapping requirement should not be unduly burdensome, especially for CCTA's members, who are state video franchise holders under DIVCA.

## **VI. CONCLUSION.**

For the reasons set forth above and in the Independent Small LECs' Opening Comments, the PD's reasonable conclusions regarding the rate case extension and re-sequencing should be adopted without modification. The PD should be modified to include the general conditions identified in the Independent Small LECs' and TURN's Opening Comments, which will help advance universal service, safeguard rural consumers and prevent the CLECs from engaging in harmful competitive practices.

Dated this 3rd of August, 2020 at San Francisco, California.

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<sup>28</sup> CCTA Comments at 5.

<sup>29</sup> Id. at 5-7.

<sup>30</sup> G.O. 169 at § IV(A)(2)(a) (directing DIVCA applicants to use Commission application); DIVCA Appl. at B-5; see also Pub. Util. Code § 5840(e).