

**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
(Filed November 10, 2011)

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK ON PROPOSED
DECISION ALLOWING AND ADOPTING CONDITIONS FOR WIRELINE
COMPETITION IN SMALL LOCAL EXCHANGE CARRIER TERRITORIES**

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I. INTRODUCTION

The Utility Reform Network (“TURN”) hereby provides comments on the July 6, 2020 Proposed Decision Allowing and Adopting Conditions for Wireline Competition in Small Local Exchange Carrier Territories. The Proposed Decision adopts general conditions that will govern competitive local exchange carriers (CLECs) who seek to expand their service area to compete for wireline services in the service territories of the Small LECs. The Proposed Decision also adopts a case-by-case approach that will consider “waivers, exemptions or additions to these general conditions.”¹ TURN generally agrees with the approach adopted in the Proposed Decision as it will remove entry barriers that currently prevent CLECs from expanding into the service areas of the Small LECs, while at the same time including appropriate protections to ensure that the benefits of competition are not so narrow as to undermine the public interest. TURN believes that general conditions (1) and (2), requiring CLECs to serve all customers in its self-designated area and to design that serving area in a non-discriminatory manner, is a useful first step to promote benefits of competition in the communities that the Small LECs service.² This requirement appropriately promotes the availability of competitive services to a larger group of customers than would likely have occurred if CLECs were allowed to service only low-cost and high revenue (or high income) customers. As will be discussed further in the following section, however, TURN believes that general condition (2) can be improved upon.

TURN is also pleased to see that the Proposed Decision appropriately addresses the future requirements associated with the Commission’s Emergency Disaster Relief proceeding

¹ Proposed Decision, p. 19.

² Proposed Decision, p. 22.

R.18-03-011. It is essential that any new service providers operating in Small LEC service areas be able to deliver resilient and reliable communications services.

II. DISCUSSION

A. Timelines for Service Availability

The Proposed Decision's general conditions (1) through (3) address the establishment of a CLEC's self-designated service area, including requirements for non-discrimination and mapping. TURN is concerned that the lack of a timeline for CLEC service availability opens the door for potential CLEC gaming of these requirements. A CLEC could, for example, designate a relatively broad service area which encompassed a "proportional number of residential to commercial customers, and a proportional number of low-income and non-low-income customers" but limit its build-out within that service area in a manner that did not result in the fulfillment of this condition. In opening comments TURN proposed that the CLEC entry framework should hold the CLEC to a rebuttable presumption that it will service all customers within its proposed geographic service area *within a specified timeframe*.³ TURN believes that the final decision should include a requirement for CLECs to identify the expected timeframe for facilities deployment and service availability. The CLEC should be required to explain how the rollout of facilities and services will take place, and establish milestones that identify expected deployment and service availability dates. The CLEC should also be required to report its progress on achieving the milestones. Should the CLEC fail to meet milestones, resulting in a de facto service territory that is not consistent with the requirements of general condition (2), the Commission should revoke the CLEC's Certificate of Public Convenience and Necessity. In

³ TURN Opening Comments on ALJ Ruling Seeking Comment on General Guidelines for Allowing Wireline Competition in Areas Service by Small Local Exchange Carriers, January 6, 2020, p. 6, emphasis added.

light of this recommendation, TURN believes that general condition (2) should be revised in the final decision to read as follows (proposed new language underlined):

2) A CLEC shall avoid designing a discriminatory self-designated service territory by ensuring that the self-designated service territory represents the demographics of the Small LEC territory it is entering by making a good-faith effort to serve a proportional number of residential to commercial customers, and a proportional number of low-income and non-low-income customers within a reasonable timeframe. The CLEC shall provide the Commission with a timeline for its buildout and service availability and report semi-annually on progress to meeting its buildout goals. These proportionality and buildout measures will guard against only sub-sets of wealthy customers being served by the CLEC.

This revision to general condition (2) will better advance the Commission's goals for competition and universal service.

B. Issues Shifted to Individual Applications

TURN recognizes that the Commission will not be able to anticipate every issue when forming its general rules for CLEC entry into Small LEC service areas, and that fact-specific analysis associated with each application is necessary to establish the final conditions associated with each CLEC application.⁴ However, TURN believes that the final decision should not ignore the opportunity to establish a comprehensive foundation for future case-by-case analysis. For example, the Proposed Decision indicates that limits on the exclusivity of service should be addressed in case-by-case proceedings.⁵ TURN believes that the exclusivity of service issue rises to the level of a general condition. CLEC "competition" should not result in a new monopoly for customers who reside in Small LEC service areas. Comcast's Tesoro Viejo application is instructive.⁶ In that application, Comcast proposes to serve a new subdivision located in Ponderosa Telephone's service area. As noted in the Proposed Decision, TURN still

⁴ TURN Opening Comments, p. 10.

⁵ Proposed Decision, pp. 27-28.

⁶ See, Application 19-01-003, Comcast request for an amended CPCN to serve parts of Ponderosa territory including a new housing development called Tesoro Viejo.

believes that the language in the Comcast Phone application does not rule out the potential for an exclusive service arrangement between Comcast Phone and the developer.⁷ TURN fails to see how the introduction of an unregulated monopoly, likely targeted at the most lucrative and easiest to serve customers in the area, improves the situation for consumers who reside in the Small LECs' service areas. Thus, TURN urges the Commission to modify general condition (1) to read:

- 1) CLECs shall be required to serve customers requesting wireline voice service within their self-designated service territories on a non-discriminatory basis but shall not be required to service the same territories as the Small LECs. [CLECs may not enter into exclusive agreements that preclude competition from the Small LECs or other service providers.](#)

The ostensible purpose of permitting CLEC entry is to promote competition. As noted by CCTA, "Increased competition in their markets will spur the Small ILECs to upgrade their networks, improve their service offerings, and make them more efficient operators, which will result in consumer benefits."⁸ However, if CLECs enter into agreements that exclude Small LEC (or other) competitors, then the "spur" for increased investment is removed. It is appropriate for this Commission to encourage competition in this proceeding by banning exclusive agreements that would foreclose competition.

C. Changes to the Rate-Case Process and Pricing Flexibility for the Small LECs

TURN is concerned that the introduction of CLEC entry does not undermine this Commission's efforts to date regarding goals associated with universal service, consumer protection, provision of emergency services, network reliability, and access to broadband.⁹ The Proposed Decision is correct that the process of designing a workable framework to

⁷ Proposed Decision, p. 27.

⁸ CCTA Opening Comments, January 6, 2020, p. 2.

⁹ TURN Reply Comment, December 21, 2019, p. 12.

accommodate rate-regulated utilities competing for customers in light of new CLEC entry is beyond the scope of this proceeding and the Commission lacks data regarding the impact of this entry to properly construct such a framework. However, TURN is also concerned that by leaving the task of accounting for the impact of CLEC entry until a later date, that the full appreciation of the impact of CLEC entry on the *ratepayers* of the Small LECs will be hidden until the next round of general rate cases, thus risking significant increases in rates and surcharges.¹⁰ TURN urges the Commission to immediately commence a proceeding to address how the Small LECs will be allowed to respond to CLEC entry, and to also consider any changes that may be appropriate to prevent the Small LECs from utilizing CHCF-A as the *sole* mechanism to address negative financial impacts of CLEC entry. While the Small LECs will necessarily have costs associated with their COLR obligations to serve the entire service territory, increased competition even in just a portion of their serving area *should* result in incentives for the Small LECs to improve efficiency, although the results remain to be seen, and a case-by-case evaluation is appropriate. The existence of CHCF-A may undermine these incentives if the Small LECs will be made whole automatically when facing CLEC entrants. The 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.

D. Broadband Deployment

TURN believes that the competition by CLECs in the Small LECs' service areas should promote increased broadband deployment in remote areas that will reflect choices available in

¹⁰ Proposed Decision at p. 36-37, Appendix C (The next round of GRCs will not begin until October of 2021 and will take at least until 2024 to complete).

urban areas of the state.¹¹ TURN notes that while there has been some improvement in broadband deployment in Small LEC service areas, service levels are still far below broadband services available in California's urban areas, with broadband prices well above those available in urban areas.¹² While TURN is pleased that the Proposed Decision agrees with TURN's goal of increasing broadband services,¹³ TURN is concerned that CLEC competition will diminish incentives for Small LEC investment in the areas of their territories where CLECs do not offer service. It is reasonable to imagine that the Small LECs will be motivated to make network improvements in areas where CLECs enter. However, given limited resources and potentially reduced revenue due to competition, those improvements may come at the expense of investments in the portions of an exchange where CLECs do not serve. Here too, this issue is beyond the scope of this proceeding, but ensuring non-discriminatory broadband infrastructure deployment and investment is a significant priority of this Commission.¹⁴ Therefore, TURN urges the Commission to address the obligations of market participants in Small LEC areas to invest in robust and affordable broadband deployment in the proceeding envisioned by the Proposed Decision to address ratemaking issues in light of CLEC entry. Small LEC investment in an environment of CLEC entry is a key policy issue that should be addressed sooner rather than later.

III. CONCLUSION

TURN appreciates this opportunity to provide input into the issue competitive entry for wireline voice services in Small LEC areas. TURN remains concerned regarding the impact of competitive entry on the Small LECs' ability to provide reliable and affordable services in high

¹¹ *Id.*

¹² See, for example, Direct Testimony of Trevor R. Roycroft, Ph.D. in R.11-07-07, November 20th, 2019, pp. 28-53.

¹³ Proposed Decision, p. 35.

¹⁴ See, Fifth Amended Scoping Memo R.11-11-007, December 13, 2019.

cost areas. However, as discussed above, a regulatory framework designed to support universal service, broadband access, and meaningful competitive choices for residential and small business customers, has the potential to benefit consumers in Small LEC service areas. The Commission must also address a comprehensive rate setting process to ensure just and reasonable rates, while minimizing the size of CHCF-A. The Commission should ensure that Small LECs continue to meet their COLR obligations and should also impose specific conditions addressing unique elements of CLEC applications. With the proper framework in place, competitive entry could benefit customers who reside in Small LEC service areas.

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Respectfully submitted,

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