

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

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

Rulemaking 11-11-007
(Filed November 10, 2011)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK 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

The Utility Reform Network (“TURN”) hereby provides reply comments on the *Proposed Decision of Commissioner Guzman Aceves Allowing and Adopting Conditions for Competition in Small Local Exchange Carrier Service Territories* (“Proposed Decision”). As discussed in Opening Comments, TURN supports the Proposed Decision and its framework that attempts to balance the policy interests to remove barriers to entry for competitive carriers in Small LEC territory and to adopt measures to support affordable and reliable service for customers in these unique serving areas. In opening comments, TURN recommended some clarifications and changes to strengthen the Proposed Decision and we continue to support those changes. Not surprisingly, both CCTA and the Small LECs find fault with various aspects of the Proposed Decision and make recommendations that reflect the tension between the two parties’ interests. TURN urges the Commission to reject these changes and adopt the Proposed Decision with TURN’s recommendations.

II. DISCUSSION

A. CCTA’s Procedural and Policy Concerns are Self-Serving and Miss the Mark

CCTA raises both procedural and policy concerns that belie its self-interest in competitive entry into the Small LEC serving area. In an attempt to support its claim that the Commission should not impose conditions on competitive entry, CCTA includes a litany of questionable procedural arguments, including that the new rules are beyond the scope of this proceeding and that the framework in the Proposed Decision is not supported by record evidence, which is clearly not the case.¹ CCTA’s arguments ignore the eight years of litigation in this proceeding wherein parties have submitted testimony and comments on the issues of competitive entry in Small LEC areas, including conditions on that CLEC entry to protect end users from the potential negative consequences of competitive entry that have been documented over the past thirty years of competition policy, such as cream skimming of high margin service areas, cherry picking of critical lower cost service territory, red lining of service territories, and discriminatory pricing practices.²

¹ CCTA Opening Comments on the PD, at pp.3-6.

² TURN Opening Comments on Competition Issues, January 6, 2020, at p. 9-10 (discussing risks of exclusivity, and citing TURN comments and Roycroft Declaration on Fourth Amended Scoping Ruling, May 21, 2019 at pp. 25-26); See, also, findings in D.14-12-084 at p. 45 (citing customer concerns that competitive

Indeed, the Scoping Memo, ALJ Ruling, and parties' latest set of comments focused directly on the efficacy and need to impose strict conditions on CLEC entry in these unique territories, including value in updating the 1995 CLEC Rules.³ While TURN agreed that applying updated CLEC Rules outside of the Small LEC serving areas would be beyond the scope of this proceeding, parties to this proceeding clearly had notice and an opportunity to comment on proposals to update and apply the CLEC Rules that would be tailored for entry into Small LEC territory.⁴ The Proposed Decision does not create any procedural or due process problems.

CCTA also makes policy arguments that suggest that the conditions set out in the Proposed Decision, including the updated CLEC Rules, could serve as a barrier to further CLEC entry and could be discriminatory for CLECs in these areas.⁵ TURN's comments acknowledge that the Commission must strike a balance between encouraging and facilitating competition that could benefit Small LEC customers and, at the same time, protecting these consumers from the CLECs' potentially discriminatory practices when designing service areas in these high-cost territories.⁶ CCTA has not demonstrated that these conditions are unreasonable or unnecessary, except to suggest that *any* attempt to "impos[e] additional rules exclusively on CLECs" would be discriminatory.⁷ The Commission should reject CCTA's position. CCTA's argument goes against decades of Commission decisions that attempt to bring a balance to these critical policy issues. The Proposed Decision represents policy that is consistent with the Commission's longstanding goals of encouraging competitive entry while supporting Carriers of Last Resort and protecting consumers.⁸

market would favor larger business customers and incentivize service degradation and finding competition not in the public interest); Small LEC Opening Comments on the Proposed Decision at p. 2.

³ Fourth Amended Scoping Memo (March 22, 2019) at p. 4 (asking if competition should be allowed and, "if yes, include the factors the Commission should consider in allowing competition."); ALJ Ruling (November 8, 2019) at p. 3-4 (asking for comments on conditions of entry and whether the Commission should adopt rules comparable to the 1995 Rules for Small LEC areas); TURN Opening Comments on Competition Issues, January 6, 2020, at p. 6-9, 13-16.

⁴ *Id.* CCTA, at p. 5, not only complains about the imposition of the rules, but also seems to take issue with the Commission's attempt to narrowly tailor the rules to apply to Small LEC areas complaining that this results in CLECs having to comply with two different sets of rules, suggesting that CCTA would not support any specific rules to govern CLEC entry in Small LEC areas.

⁵ CCTA Opening on the Proposed Decision at p. 6-7.

⁶ TURN Opening Comments on the Proposed Decision at p. 1, 4-5; TURN Opening Comments on Competition Issues, January 6, 2020, at p. 3-4, 9-16.

⁷ CCTA Opening on the Proposed Decision at p. 5.

⁸ TURN Opening Comments on Competition Policy, January 6, 2020 at p. 3 (For several decades, the Commission has pursued policies and regulations that assume competition benefits ratepayers...imposing

CCTA acknowledges that “Voice telephony competition has flourished over the past 25 years” in California. Yet, this competition has co-existed with these CLEC rules, in addition to many other rules and decisions regulating entry and offerings and placing consumer protections on CLEC, wireless and cable services.⁹ While CCTA complains about additional resources needed to implement some of these new requirements and asserts that these requirements may discourage competition,¹⁰ it has not provided specific evidence to demonstrate that these asserted burdens outweigh the counterbalancing purpose to protect higher cost and lower margin parts of the Small LEC areas from irreparable harm by competitive entry.

Finally, CCTA fails to note that this preliminary set of rules will serve as a minimum set of standards that can be further refined in each Application proceeding. This will allow the CLEC, the relevant Small LEC, and the Commission to determine the appropriate set of conditions to avoid a one-size fits all solution for these unique areas.

B. Small LECs Propose Additional Conditions that Should be Set Aside for Individual Application Proceedings or Once the Commission Has Gathered Data from CLEC Entry

The Small LECs also raise both procedural and policy issues but appear to be more supportive of the Proposed Decision general framework for CLEC entry.¹¹ TURN agrees with the Proposed Decision’s determination that hearings are unnecessary in light of the focus on the legal issues in this Proposed Decision. The Commission had hearings on the issue of competitive entry in 2014 and that record continues to support these findings.¹² Finally, as the Proposed Decision notes, this proposed framework provides for the possibility of hearings regarding factual disputes that may arise from an Application for competitive entry into specific parts of the various Small LECs’ serving areas.

guidelines and frameworks that support competition); See also, D.14-12-084 at p. 48 (acknowledging Legislative goal since mid-1990s of opening up state to competition but allowing Commission guidance to determine if competition is appropriate and can be subject to conditions and protections, citing D.95-07-054 and D.97-09-115).

⁹ TURN Opening Comments on Competition Policy, January 6, 2020, at p. 6-7 (citing various consumer protections rules that apply to CLECs and wireless providers including in-language and cramming; see also recent discussions on emergency calling protections).

¹⁰ CCTA Opening on the Proposed Decision at p. 6.

¹¹ Small LEC Opening on the Proposed Decision at p. 1-2.

¹² D.14-12-084 at p. 58 (Commission has considered the pleadings, hearings, and arguments about competition in RLEC areas).

TURN agrees with the Small LECs that these rural areas have “unique dynamics and consumer protection imperatives” that require a specific set of minimum standards for CLEC entry that will mitigate potential risks to consumers and support transparency.¹³ However, the Small LECs’ calls for additional conditions go too far and risk creating insurmountable barriers for fair and meaningful CLEC competitive entry.

For example, the Small LECs’ suggestion that every CLEC applying for competitive entry must provide broadband at speeds no less than 25/3 Mbps is premature and may serve as a disincentive for CLECs to serve some of the more vulnerable and high cost areas of the Small LEC territory.¹⁴ TURN anticipates that most new broadband deployment either by incumbents or competitors, including in these high-cost serving areas, will provide significant improvements in broadband capabilities that exceed minimum standards set by either this Commission or the FCC.¹⁵ However, instead of a premature blanket requirement as proposed by the Small LECs, TURN recommends that CLECs be required to make a showing of its planned broadband deployment and offerings in its Application and that the Commission make a determination of reasonableness, including, terms and conditions, speed, and affordability, at that time.

The Small LECs make other proposals that would require the CLEC to not only file reports regarding network design and related service quality and emergency services performance, but to comply with the Small LEC G.O. 133 D rules and detailed improvement plans required under the ETC rules.¹⁶ TURN believes this goes too far and does not comply with the intent of the Commission in D. 16-08-012 and prior decisions, wherein it adopted different service quality rules for competitors and incumbents. While transparency is critical, and TURN supports outage reporting and service quality reporting requirements for all carriers that serve these areas, TURN believes that at least initially carriers should be competing on service quality. If the CLEC cannot provide sufficient service quality in competition with Small LEC services, then presumably, customers will move back to the Small LECs who must offer COLR services. If, however, neither the CLEC or the Small LEC are complying with GO 133 D, then the Commission should address

¹³ Small LEC Opening Comments on Proposed Decision at p. 2-3.

¹⁴ Small LEC Opening Comments on Proposed Decision at p. 7.

¹⁵ TURN Opening Comments on Competition Issues, January 6, 2020 at p. 4, 7 (Support robust broadband access but no proposal to set blanket minimum standards and noting network buildout will be “lumpy”)

¹⁶ Small LEC Opening Comments on Proposed Decision at p. 7-9.

the failure of both companies in a separate proceeding to ensure that customers have access to affordable and reliable service. TURN, however, does support the Proposed Decision requirement that all CLECs must comply with emergency services and back up requirements as well as plans for power shut offs.¹⁷ Customers in these parts of the state are vulnerable and must have access to services that support redundant and resilient networks that protect consumers in emergency situations.

Finally, TURN believes that the call for more detailed information and additional non-discriminatory criteria also goes too far.¹⁸ If, after the Commission has some experience with CLEC entry into these areas, and the Small LECs or the Commission believe that CLECs are engaging in harmful or discriminatory practices, TURN would support further proceedings to address these concerns. The current conditions, along with the more detailed review in each CLEC application, should ensure that customers in these areas have access to affordable, reliable, and resilient services, including light of natural disasters that may occur in the rural and insular areas currently served by the Small LECs.

III. CONCLUSION

CLEC entry must be consistent with universal service, emergency protections, broadband access, and enable meaningful competitive choices for residential and small business customers. However, as CLEC entry occurs, the Commission must also maintain a comprehensive rate setting process to ensure just and reasonable rates for Small LEC customers while allowing the Small LECs to continue to meet their COLR obligations.

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Respectfully submitted,

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¹⁷ Proposed Decision at p. 14.

¹⁸ Small LEC Opening Comments on Proposed Decision at p. 5-6.