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

Order Instituting Rulemaking to Consider
Modifications to the California Advanced
Services Fund.

R. 12-10-012
(Filed October 25, 2012)

OPENING 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)**
- HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)**
- HORNITOS TELEPHONE COMPANY (U 1011 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)**
- VOLCANO TELEPHONE COMPANY (U 1019 C)**
- WINTERHAVEN TELEPHONE COMPANY (U 1021 C)**
- (the "SMALL LECs")**

**ON ADMINISTRATIVE LAW JUDGE'S RULING SOLICITING
ADDITIONAL COMMENTS ON ISSUES IDENTIFIED IN
ORDER INSTITUTING RULEMAKING 12-10-012**

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April 9, 2013

Attorneys for the Small LECs

1 **I. INTRODUCTION.**

2 Pursuant to the schedule for comment outlined in the Administrative Law Judge's Ruling
3 ("Ruling") Soliciting Additional Comments on Issues Identified in Order Instituting Rulemaking
4 12-10-012 ("OIR"), Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co.
5 (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy
6 Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman
7 Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co.
8 (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company
9 (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company
10 (U 1021 C) (the "Small LECs") hereby address the issues identified for comment in the Ruling.
11 The Ruling was issued on March 18, 2013, and called for the submission of opening comments
12 within 15 business days. Excluding weekends and the Cesar Chavez holiday, 15 business days
13 places the deadline for these comments at April 9, 2013.

14 The Small LECs appreciate the Commission's thoughtful analysis of the comments
15 presented on the OIR and the Commission's specific consideration of issues that the Small LECs
16 raised in those comments. The Ruling seeks further input on three questions, each related to
17 concerns that the Commission might not have sufficient oversight over unregistered providers who
18 may seek to participate in the California Advanced Services Fund ("CASF") program if it is
19 expanded as proposed in the OIR. Specifically, the Ruling requests comment on the following:

- 20 1. If the Commission requires a performance bond for non-registered CASF awardees,
21 should the amount of the required bond be decreased once the project is completed?
Ruling, pp. 3-7.
- 22 2. If a liquidity requirement is imposed upon unregistered applicants, what amount
23 should be imposed, and to what extent should the amount be relative to the total
project costs? *Ruling*, at pp. 7-9.
- 24 3. To what extent should the Commission's enforcement authority apply to
25 unregistered providers who seek and/or obtain CASF funding? *Ruling*, at pp. 9-10.

26 As the Small LECs discussed in comments on the OIR, it will be critical for the Commission to
27 maintain adequate oversight of any unregistered providers who apply for public funding. The

1 Small LECs agree that these are important considerations, and urge the Commission to move
2 forward with the proposals in the Ruling, with certain refinements and clarifications outlined in
3 these comments.

4 **II. THE COMMISSION SHOULD ADOPT PERFORMANCE BOND, LIQUIDITY,
5 AND ENFORCEMENT REQUIREMENTS FOR UNREGISTERED PROVIDERS
6 IF THE CASF PROGRAM IS EXPANDED TO PERMIT APPLICATIONS BY
7 ENTITIES OTHER THAN HOLDERS OF CPCNS AND REGISTERED
8 WIRELESS PROVIDERS.**

8 Each of the proposals in the Ruling have merit, and, with certain modifications, each
9 should be adopted. These requirements would give the Commission critical oversight tools over
10 unregistered entities who seek to benefit from public funding available through the CASF
11 program. If the Commission pursues these measures, however, it should modify the proposals in
12 certain key respects, as discussed below.

13 **A. The Commission Should Impose a Performance Bond Requirement for the Full
14 Amount of the CASF Project, and Reduce the Bond Amount to \$25,000 Following
15 Completion of the Project.**

15 The Ruling seeks comment on the amount of a performance bond that should be required
16 in advance of completing a CASF project, and whether that amount should be decreased at a later
17 time. The Small LECs do not necessarily accept the premise in the Ruling that "few, if any,
18 unregulated providers will be able to obtain a performance bond" if the Commission requires
19 performance bonds in the amount of the entire project amount.¹ *Ruling*, at p. 6. Nevertheless, the
20 Small LECs agree that the purpose of the bond would be more limited once construction of a
21 CASF-funded project is complete.

22 Upon completion of a CASF project, it would be reasonable to reduce the performance
23 bond requirement to the "minimum performance bond" level currently imposed upon Non-

24
25 ¹ The Ruling notes that certain prior CASF applicants who were subject to performance bond requirements
26 were unable to obtain bonds required under the CASF rules in effect during the American Reinvestment and Recovery
27 Act ("ARRA") matching phase of the CASF program. The Small LECs will review any comments submitted in
28 response to the Ruling by other providers who may be able to confirm the stated difficulty in obtaining bonds. The
Small LECs understand that if a bond is specific enough regarding the items that would trigger the bond, and the bond
is for a reasonably defined term, it should be possible for any entity to obtain the necessary bond.

1 Dominant Inter-Exchange Carriers ("NDIECs") who relied on the "registration" process. Under
2 D.10-09-017, NDIEC registrants are subject to a performance bond requirement in the amount of
3 \$25,000 or 10% of their intrastate revenues, whichever is greater. D.10-09-017, at p. 58 (Ordering
4 Paragraph ("O.P.") 5). Since much of the revenue derived from services provided over CASF-
5 funded infrastructure may be from interstate or unregulated services that are beyond the
6 Commission's jurisdiction, it is not appropriate in this context to base the amount of the
7 performance bond upon a contingency linked to intrastate revenue. The \$25,000 alternative
8 amount included in the recent NDIEC performance bond decision (D.10-09-017) is an appropriate
9 proxy for the level of bond that a CASF applicant should retain following completion of a project.

10 **B. The Proposed Liquidity Requirement Should Match the Requirement for CLEC**
11 **Applicants, Which Requires Applicants to Maintain At Least \$100,000 in**
12 **Unencumbered Cash.**

12 The Ruling also seeks comment on whether to adopt a liquidity requirement for CASF
13 grantees. If the Commission requires a performance bond during construction of a CASF-funded
14 project, it does not need to impose a separate liquidity requirement for that time period. However,
15 if the amount of the required bond is reduced to \$25,000 or another lower amount upon project
16 completion, as suggested above, the Commission should impose an ongoing liquidity requirement
17 by which a CASF grant recipient should maintain at least \$100,000 in unencumbered cash for a
18 minimum of one year following completion of its grant project. This would track the
19 Commission's current practice of requiring CLEC applicants to commit to holding at least
20 \$100,000 in unencumbered cash for at least one year following issuance of a Certificate of Public
21 Convenience and Necessity ("CPCN"). *See, e.g.,* D.12-05-009, at p. 18 (O.P. 2) (requiring
22 Ponderosa Cablevision to maintain \$150,000 in unencumbered cash, including \$50,000 to cover
23 deposits). Once a CASF project is constructed, the Commission should continue to exercise some
24 oversight over the project, and retention of \$100,000 in unencumbered cash would be sufficient to
25 provide assurances that the provider will be in a position to continue providing services via the
26 facilities that it has constructed using public funds.

27

1 **C. All Unregistered Applicants for CASF Funding Should Submit to the**
2 **Commission's Enforcement Authority to the Extent Necessary to Enforce the**
3 **CASF Application Rules and the Terms of Grant Awards.**

4 The final issue raised by the Ruling is whether and to what extent CASF applicants and
5 grant awardees should be subject to the Commission's enforcement authority. The Small LECs
6 agree that it will be critically important for the Commission to have the ability to enforce both the
7 CASF rules and the terms of grant proposals against unregistered entities, should the program be
8 expanded to permit their participation. The Ruling suggests that "as a condition for accepting
9 CASF grants, receiving entities be contractually obligated to comply with Commission rules and
10 statutes." *Ruling*, at p. 9. This articulation of the Commission's enforcement authority over CASF
11 grantees is both over-inclusive and under-inclusive, and should be refined in two key respects.

12 First, the Commission should clarify that the Commission's enforcement authority applies
13 to CASF applicants, not just to grantees. It is vital to the Commission's assessment of CASF
14 eligibility that applicants abide by the rules and provide truthful information to the Commission.
15 Absent a statement that unregistered applicants are subject to the Commission's jurisdiction in
16 connection with their applications, there is no guarantee that the Commission would have the
17 ability to punish an entity who makes false representations in connection with a CASF application.
18 Compliance with the CASF rules should not attach only upon "accepting CASF grants." *Id.*

19 Second, it would expand the Commission's jurisdiction beyond reasonable bounds to state
20 that "as a condition for accepting CASF," providers must "comply with Commission rules and
21 statutes." *Id.* By definition, if the Commission expands the CASF program to unregulated and
22 unregistered providers, those providers would not be subject to all Commission "rules and
23 statutes" by virtue of participating in the CASF program. It should be sufficient that these entities
24 abide by the CASF rules and the terms of any Commission resolutions or decisions awarding them
25 CASF funding.

26 **III. CONCLUSION.**

27 The Small LECs appreciate the Commission's attention to concerns that the Small LECs,
28 TURN, CCTA, and Frontier raised during comments on the OIR regarding the Commission's

1 ability to ensure sufficient accountability relative to unregistered providers who might participate
2 in the CASF program. These are important issues, and subject to the revisions set forth above, the
3 Small LECs support the direction of the Ruling in adopting performance bond, liquidity, and
4 enforcement requirements.

5 Dated this April 9th, 2013 at San Francisco, California.

6 Respectfully submitted,

7
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