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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

**FOURTH AMENDED ASSIGNED COMMISSIONER'S
SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

**1. Relevant Procedural History and
Background**

The Commission began a review of the California High Cost Fund-A (CHCF-A) program with the Order Instituting Rulemaking (OIR) Rulemaking 11-11-007. The CHCF-A program was first established in 1987. The A-Fund is available for telecommunications services provided by 13 rural telephone corporations (or Rural Local Exchange Carriers (RLECs or ILECs)) in California. In 2011, the Commission determined that a detailed review of the program was warranted in response to market, regulatory, and technological changes. This proceeding examines the appropriate regulatory framework to ensure the continued provision of safe, reliable telecommunications services to rural areas at just and reasonable rates. In examining this framework, the Commission seeks to balance investments from the High Cost Funds with appropriate contributions from RLEC customers, and maximize federal funding to leverage federal, state, and customer dollars to ensure high-quality service.

On December 18, 2014, the Commission issued Decision (D.) 14-12-084 which completed Phase 1 of the proceeding. The Decision also reiterated that there would be a Phase 2 in the proceeding¹ and added two additional issues for consideration in that phase: 1) a review of the Commissions' preliminary conclusion not to open the areas the Small RLECs serve to competition, to be informed by studies the Commission would conduct in Phase 2 on deployment of Broadband Networks and Universal Service; and (7) a review of whether imputation of broadband revenues is appropriate for General Rate Case (GRC) cycles following the first cycle approved after the Phase 2 decision. On June 25, 2015 the Commission issued D.15-06-048 adopting a Rate Case Plan for the Small RLECs.

The Third Amended Scoping Ruling in this proceeding was issued on April 4, 2017. Pursuant to that scoping ruling the current issues to be considered in Phase 2 of this proceeding are: (1) the applicability of rate of return as a regulatory framework for California's Small RLECs and the operation of the A-Fund; (2) alternative forms of regulation, including whether to introduce incentive-based regulation; (3) whether or not to continue the GRC process for the Small RLECs; (4) whether an evaluation of the presence of competition should include all technologies; (5) proposals to disqualify non-CHCF-A recipients from CHCF-A eligibility; (6) a review of our preliminary conclusion not to open the areas the Small RLECs serve to competition, informed by studies the Commission will conduct in Phase 2 on deployment of Broadband Networks and Universal Service; and (7) a review of whether imputation of broadband revenues is appropriate for GRC cycles following the first cycle approved after

¹ D.14-12-084, Ordering Paragraph no. 1.

the issuance of the Phase 2 decision. The Third Amended Scoping Ruling extended that statutory deadline for the instant proceeding until April 4, 2019.

2. Amended Scope for Phase 2 of Proceeding

The overall scope of this proceeding, as set forth above, remains unchanged. This ruling amends the Third Amended Scoping Memo and Ruling of the assigned Commissioner issued on April 4, 2017 (Ruling) by updating the schedule and identifying additional topics to consider, review and resolve for Phase 2 of the OIR.

As noted *supra* the Third Amended Scoping Ruling had included the following issues (*see* bulleted items below):

- Whether or not to continue the GRC process for the small Independent Local Exchange Companies or RLECs.
- A consideration of proposals to disqualify non CHCF-A recipients from CHCF-A eligibility.²

I have determined that there is sufficient information in the current record to resolve these two issues and have therefore not included them in this Ruling. In addition, the Ruling included the issue below:

- Whether an evaluation of the presence of competition should include all technologies.

Parties agreed this issue is not relevant to this rulemaking. For that reason, I am eliminating it from this Fourth Amended Scoping Memo and Ruling.

Parties to the OIR had raised the issue of whether the Commission should confirm that RLECs can use the “informal” rate case process, using advice letters,

² The three ILECs that do not currently draw from the CHCF-A fund are Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company. The 10 ILECs that draw revenue from the CHCF-A program are Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacle Telephone Company, Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company.

to submit rate cases to the Commission for review. This matter is currently being reviewed pursuant to the Commission's rehearing process and will not be addressed during Phase 2 of the OIR.

After considering the current record of the proceeding, I have determined the issues and schedule to be as set forth below in this scoping memo.

2.1. Issues:

(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.
- b. In light of the Study, should the Commission open the RLECs' service areas to wireline voice competition?
 - i. If yes, please respond in your answer as to whether the Commission should include all or some RLEC service areas.
 - ii. What are the factors that the Commission should consider in allowing competition?
- 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?

- f. Under Pub. Util. Code § 275.6(c)(6), the Small RLECs are authorized to include in their rate base all reasonable investments necessary to provide for the delivery of high-cost voice communications service and the deployment of broadband-capable facilities.
 - i. Should the Commission adopt broadband service measures or obligations on the Small RLECs as a condition of § 275.6(c)(6)?
 - ii. What measures or obligations 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?

(3) Low Income and Rural Tribal Communities³

Consistent with Pub. Util. Code § 275.6, if it is not already doing so, please comment on:

- a. Whether the Commission should investigate the penetration of the CHCF-A program in rural low-income and tribal communities, and
- b. Whether CHCF-A should fund wireline telephone and broadband services in tribal communities?
- c. Review whether participants are still considered “rural” under the federal law 47 U.S.C. § 153(44).⁴

³ Tribal communities, that may or may not reside in Indian country, in rural areas that typically are not adequately served by broadband. Indian country is defined in the 18 USC § 1151 as, *Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.* California has the highest population of Native Americans in the country. See

<https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010br-10.pdf> A significant portion of this population resides in Northern California, both within and outside of Indian country. California’s Native American population includes federally recognized and non-recognized tribal communities that are underserved by telephone and broadband (advanced) services. Tribal governments also require such services and often are in the position of providing necessary services such as medical, housing, primary economic development services and employment opportunities for community members. This proceeding will investigate how to better serve these communities; including tribal governments, businesses, and individuals.

⁴ The term “rural telephone company” means a local exchange carrier operating entity to the extent that such entity:

- (A) provides common carrier service to any local exchange carrier study area that does not include either –
 - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993.

Footnote continued on next page

- d. To the extent there may be specific federal programs that can serve these communities, how can the commission assist tribes, such as with CHCF-A funds, to help California tribal communities participate in federal programs?
 - e. Should certain RLECs be moved to another program such as CHCF- B if they are no longer considered rural?
- (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 property⁵ for easements, licenses, leases, assignments, permits for use or occupancy, or encumbrances?

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

⁵ Utility property means any part of utility-owned line, plant, system or other property, or any franchise or permit or any right thereunder directly or indirectly related to the provision of telecommunications, information or cable services.

- i. 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 (USF) used for operating expenses and plant investment? If yes, can reasonable estimates be made for the amount of USF 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?

Illustrative example – Company A has a GRC for Test Year 2020. In September 2019, Company A files an advice letter requesting adjustments to Calendar Year 2020 to the A-Fund amount that was authorized in the GRC for Test Year 2020.

- 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?

Illustrative example - Company B has a GRC for Test Year 2020. In September 2020, Company B files an advice letter requesting adjustments to the A-Fund amount that was authorized in 2020 GRC for Calendar Year 2021.

- 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?

2.2. Comments to the Amended Ruling

Comments should address each issue/question presented. It is not necessary to reproduce the question, but responses should be numbered to match the questions addressed, or otherwise clearly identify the issue being discussed. Comments should be as specific and precise as possible. Legal arguments should be supported with specific citations. Where appropriate and useful, quantitative examples should be provided. Comments should be complete in themselves and should not incorporate by reference any other materials. Other materials necessary to the response should be attached in clearly identified attachments, or, if the materials are available on a web site, the link to the materials should be given.

Preliminarily I find most of the questions above to be policy related. However, some questions may be a mix of policy and factual issues. Any party who requests a hearing must (a) identify the disputed material facts, (b) summarize the evidence that the party intends to offer at a hearing. All comments should use publicly available materials. Parties may identify and comment on issues that are not addressed in the questions above. Commenters doing so should clearly identify and explain the relevance of the additional issue(s).

Opening comments of not more than 30 pages may be filed and served not later than 60 days from the date the amended scoping memo was issued. Reply comments of not more than 20 pages may be filed and served not later than 45 days after the date that opening comments were filed.

2.3. Determination of Need for Evidentiary Hearing

Following receipt of comments and reply comments into the record, a determination will be made whether any issues are ripe for decision, or whether

there are any disputed issues of material fact that require evidentiary hearings. In addition, workshops to further develop policy issues may be necessary for this proceeding. If I determine evidentiary hearings or workshops are required, a prehearing conference will be scheduled to discuss their date, location, and time.

3. Schedule

The following schedule is preliminarily adopted here and may be modified by the Commissioner or Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the Rulemaking:

Opening Comments	Not more than 60 days from the date of the scoping memo.
Reply Comments (matter submitted after reply comments are filed if no other procedures are deemed necessary)	Not more than 45 days from the date of opening comments.
Prehearing Conference	TBD
Evidentiary hearing and/or workshops as necessary	TBD
Opening briefs (if evidentiary hearings are held)	TBD
Reply briefs (if evidentiary hearings are held then matter will be submitted with filing of reply briefs)	TBD
Workshop report (if workshops are determined to be necessary)	TBD
Comments and reply comments on workshop report (matter will be submitted after reply comments filed)	TBD
Proposed decision	No later than 90 days after submission.
Commission decision	No sooner than 30 days after the proposed decision.

The proceeding will stand submitted as indicated above unless I determine otherwise. Based on this schedule, the proceeding will be resolved within 24 months as required by Pub. Util. Code § 1701.5.

4. Category of Proceeding/*Ex Parte* Restrictions

This ruling confirms the Commission's preliminary determinations that this is a quasi-legislative proceeding. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

5. Oral Argument

In ratesetting and quasi-legislative proceedings, parties may request oral argument before the Commission, provided that the party makes such request by motion no later than the time for filing opening briefs (if such are required) or within the time and in the manner specified in the scoping memo or later ruling in the proceeding. Rule 13.13.

6. Public Outreach

Pursuant to Pub. Util. Code § 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

7. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by 30 days after the revised amended scoping memo issues.

We note that in accordance with Pub. Util. Code § 1804 (a)(1), which states: "In cases ... where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new ... notices of intent," this Ruling allows any parties wishing to do so to file a

new Notice of Intent to Claim Intervenor Compensation no later than 30 days after the revised amended scoping memo issues.

New Notices of Intent so filed must comply with Pub. Util. Code §§ 1801-1812 and Rule 17.1 of the Commission's Rules of Practice and Procedure.

8. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYT), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

10. Assignment of Proceeding

Pursuant to Rule 13.2(c) Commissioner Martha Guzman Aceves is the Presiding Officer in this proceeding; Hazlyn C. Fortune and Mary E. McKenzie are the assigned ALJs.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.

3. A determination of whether evidentiary hearings are needed will be made following submission of reply comments.

4. The presiding officers are Administrative Law Judge Hazlyn C. Fortune
Mary E. McKenzie.

5. The category of the proceeding is quasi-legislative.

Dated March 22, 2019, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner