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SAN FRANCISCO, CALIFORNIA  
FEBRUARY 28, 2019 - 1:00 p.m.  
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ADMINISTRATIVE LAW JUDGE ZHANG: Let's go on the record.

Good afternoon everyone. My name is Zhen Zhang. I am the administrative law judge for this proceeding. The assigned commissioner is Commissioner Randolph. Commissioner Randolph could not be here today, but I will update her and her office after the prehearing conference.

We identified three people on the phone, Henry Weissmann for Ponderosa, Suzanne Toller for Comcast, and Michael Sloan, also for Comcast.

To ensure that the record is clear, people on the phone, please mute your phone if you're not speaking. Please do not interrupt. I will ask whether people on the phone have any comments at the appropriate times. So at this time I'm going to just make sure that there's no feedback. So I will -- I think need to press star 4.

Okay. So I believe people on the phone can still hear me, and I will take the phone off silent mode when we are ready to hear from the people on the phone.

1           This is the time and place for the  
2 prehearing conference for Application  
3 A.19-01-003, Application of Comcast Phone of  
4 California to expand its existing Certificate  
5 of Public Convenience and Necessity to  
6 provide limited facilities-based  
7 telecommunications services in the service  
8 territory of Ponderosa Telephone Company.

9 During the prehearing conference I will refer  
10 to Comcast Phone of California as Comcast and  
11 Ponderosa Telephone Company as Ponderosa.

12           We will first go over the service  
13 list and then discuss the categorization of  
14 this proceeding followed by the scope of the  
15 issues and then the need for hearings and the  
16 schedule.

17           Nothing will be decided today. The  
18 topics that we discuss today will be  
19 finalized in the scoping memo issued by  
20 Commissioner Randolph's office.

21           There is also an outstanding motion  
22 to stay or hold in abeyance Comcast's  
23 application. The parties will have an  
24 opportunity to speak as well.

25           Just as a background, the  
26 application was filed on January 4th, 2019,  
27 and noticed on the daily calendar on January  
28 9th, 2019. On February 8th Ponderosa filed a

1 protest and a motion to stay Comcast's  
2 application.

3 In the application Comcast seeks  
4 expansion of its CPCN granted via Commission  
5 Decision 08-04-042. Comcast seeks authority  
6 to provide limited facilities-based and  
7 resold local exchange and interexchange  
8 telecommunications services in California.  
9 In particular, Comcast requests to expand the  
10 scope of the CPCN into the service territory  
11 of Ponderosa Telephone Company.

12 Comcast will enable its wholesale  
13 customers to offer IP-based, IP-enabled and  
14 voice over IP services. Comcast will provide  
15 local interconnection services to its  
16 interconnected voice over IP provider  
17 affiliate. Comcast will serve interexchange  
18 carriers seeking to terminate calls to  
19 Comcast's interconnected voice over IP  
20 provider affiliates' customers.

21 Before we move on, are there any  
22 additional comments to this background I just  
23 provided in the courtroom?

24 No. Okay. Is there anyone on the  
25 phone who wished to add to this background  
26 information?

27 Okay. Hearing none, we will go on  
28 to the service list. I thought I heard

1 something from the phone. No?

2 MS. TOLLER: No, your Honor.

3 ALJ ZHANG: Okay. So regarding the  
4 service list, I have Mr. Weissmann of Munger,  
5 Tolles & Olson located at 350 South Grand  
6 Avenue, Suite 5000, in L.A. for Ponderosa  
7 Telephone Company.

8 Mr. Weissmann, is that who you wish  
9 to be identified as the party on the service  
10 list?

11 MR. WEISSMANN: If it's acceptable to  
12 your Honor, I think the official party could  
13 be my colleague Mr. Segall, who is before  
14 you, and I could be information only.

15 ALJ ZHANG: Okay. We will make that  
16 change. I believe Mr. Segall filled out a  
17 form, so that we will replace you with him as  
18 the party. And for Comcast I have Suzanne  
19 Toller of Davis Wright Tremaine located at  
20 505 Montgomery Street, Suite 800, San  
21 Francisco. Is that correct, Ms. Toller?

22 MS. TOLLER: It is correct. Although  
23 similarly, if you could replace Mr. Zankel  
24 with me as the primary service list contact  
25 as the party representative, that would be  
26 great. And I can also move to information  
27 only.

28 ALJ ZHANG: Okay.

1 MS. TOLLER: Thank you.

2 ALJ ZHANG: I thought I was saying Mr.  
3 Zankel's name correctly this whole time, but  
4 maybe it's Mr. Zankel?

5 MR. ZANKEL: No. I think you're saying  
6 it right. You got it.

7 ALJ ZHANG: Well, let's move on to the  
8 categorization. In its application Comcast  
9 proposes to categorize this proceeding as  
10 ratesetting. Resolution ALJ 176-3431 issued  
11 on January 31st, 2019, also categorizes this  
12 proceeding as ratesetting. There has been no  
13 objections to this proposed category.  
14 Accordingly, we will recommend the  
15 ratesetting categorization to Commissioner  
16 Randolph's office.

17 I am in receipt of an ex parte  
18 notice which was filed on February 21st,  
19 2019, and it noticed a meeting that took  
20 place on February 15th. I didn't see a  
21 pre-meeting notice and --

22 MR. ZANKEL: We definitely filed a  
23 pre-meeting notice, your Honor.

24 ALJ ZHANG: Okay. Great. I will look  
25 for that.

26 MR. ZANKEL: And if you can't find it,  
27 I'm happy to forward it to you.

28 ALJ ZHANG: Okay. Why don't you make a

1 note and please do that when you have a  
2 moment.

3 MR. ZANKEL: Okay.

4 ALJ ZHANG: I also want to mention that  
5 Rule 8.4 requires filing of a post-meeting  
6 notice no more than three days. That means  
7 three working days after the communication,  
8 which means that the post-meeting notice in  
9 this case should have been filed on February  
10 20th.

11 MR. ZANKEL: Could I explain, your  
12 Honor?

13 ALJ ZHANG: Sure.

14 MR. ZANKEL: The meeting was on  
15 February 15th. The Monday was a holiday. So  
16 we started the counting on that Tuesday and  
17 we filed on Thursday. So in fact it was  
18 three working days in keeping with the rule.

19 ALJ ZHANG: Okay. Great. So that's  
20 great. I just wanted to remind the parties  
21 that we need to follow the ex parte rules and  
22 to ensure that illegal ex parte  
23 communications do not occur.

24 Moving on to the scope, I have  
25 identified the following issue to be within  
26 scope of this proceeding. Number one, and  
27 this is the only issue I have right now,  
28 whether Comcast meets Commission requirements

1 to expands its existing Certificate of Public  
2 Convenience and Necessity to provide limited  
3 based -- excuse me -- limited facilities-  
4 based telecommunications services in the  
5 service territory of Ponderosa Telephone  
6 Company.

7           And this leads me to the question of  
8 Ponderosa's motion. I understand that  
9 Comcast did not respond to the motion in  
10 writing. So what I have is the protest that  
11 was filed with the motion to hold the  
12 application in abeyance, both filed on  
13 February 8th, and according to our rules, a  
14 response to the motion is available.

15           MR. ZANKEL: Your Honor, we did file a  
16 motion, a response to the motion as well as a  
17 reply to the protest. Both were filed on --  
18 excuse me. Both were filed within the  
19 timeframe on February 19th, which was -- for  
20 the response to the motion was well within  
21 the timeframe of responding to the motion.  
22 And the reply was on the final date of the  
23 deadline. So both the reply and the response  
24 were filed the same day.

25           ALJ ZHANG: Okay. Let me go -- let's  
26 go off the record so I can look for these  
27 documents.

28                           (Off the record.)



1 ALJ ZHANG: Let's go back on the  
2 record.

3 We're back on the record. Even  
4 though the Docket Office has not formally  
5 uploaded the reply and response of Comcast, I  
6 have received the document via email on  
7 February 19th.

8 I believe that another issue within  
9 this case, which would be Number 2, would be  
10 whether Comcast is able to become a service  
11 provider in the territory of Ponderosa  
12 Telephone Company based on existing law and  
13 Commission decisions. If the parties will  
14 like to speak to that issue right now, I'm  
15 happy to give you the opportunity.

16 MR. SEGALL: Yes, your Honor. If I  
17 could address that briefly. I think perhaps  
18 more accurately the second issue here is, it  
19 would be premature to say that the issue is  
20 whether Comcast should be permitted to  
21 compete within Ponderosa's territory, but  
22 rather, whether Comcast's application should  
23 be held in abeyance consistent with the Phase  
24 1 decision in the CHCF-A proceeding, which  
25 specified that requests to expand CPCNs into  
26 the territory of incumbent local exchange  
27 carriers would be held in abeyance until  
28 after the completion of Phase 2.

1 ALJ ZHANG: Mr. Zankel.

2 MR. ZANKEL: And I disagree with that  
3 characterization of the issue. You know, for  
4 one, there is a motion to held in abeyance.  
5 I don't think that motion needs to be  
6 addressed through the scope of an issue.  
7 That could be addressed through your Honor's  
8 ruling on that motion whenever your Honor  
9 deems it timely to rule on that issue.

10 And I would like to address the fact  
11 that that motion doesn't meet the legal  
12 standard of motions before this Commission,  
13 which is to, in order to hold a motion in  
14 abeyance, there must be a showing that it's,  
15 one, the party will suffer imminent reparable  
16 harm, and two, likely to prevail on the  
17 merits. In fact, Ponderosa didn't show  
18 either of those two in the motion. So that's  
19 one issue is the motion to be held in  
20 abeyance. I don't think that should be a  
21 part of the scope.

22 You know, as to the way you  
23 characterized the issue, your Honor, about  
24 whether Comcast is able to become a party in  
25 light of the 2014 decision, we think the 2014  
26 decision is inapplicable here for a variety  
27 of reasons that are set forth in our reply to  
28 the protest. But just to give you a high

1 level summary since, your Honor, I don't know  
2 if you've been able to read that document,  
3 but you know, for one, we're not seeking to  
4 draw from the A fund. We're not seeking to  
5 change the rules of the A funds. We're not  
6 seeking to open up all small ILEC  
7 territories. In fact, we're not even seeking  
8 to open up Ponderosa's territory other than  
9 Comcast's own operation in that market.

10           So that's an initial matter, and  
11 probably more importantly is the findings  
12 under -- that led to the Commission's order  
13 that Ponderosa just mentioned about deferment  
14 of CPCN applications were based on facts that  
15 have now changed. And among those facts are  
16 a competition study was issued. That  
17 competition study said, and I want to quote  
18 it accurately. "Voice competition is not  
19 expected to have a significant direct impact  
20 on small ILECs and their customers" and then  
21 goes on to say "The impact on the A fund is  
22 unknown." So that's one fact that's changed  
23 since then.

24           Another piece of it is the  
25 Commission based its order to defer review of  
26 CPCN applications saying essentially that it  
27 was not ripe for review because the requisite  
28 filings had not been submitted, requisite

1 filings meaning filings regarding  
2 interconnection negotiation filings for CPCN  
3 applications. That fact has changed. We  
4 have both Comcast has a CPCN application that  
5 it submitted, one. And two, it's requested  
6 interconnection with Ponderosa.

7           There's also several other facts  
8 that aren't in line from -- that are set  
9 forth in the 2015 decision that aren't in  
10 line with Comcast's efforts. One is the 2014  
11 decision was based on a finding that CLECs  
12 would be seeking to provide its services to  
13 larger business customers and that they would  
14 be doing cherry picking. But in fact, it's  
15 the reverse in this situation. Comcast was  
16 cherry picked. It didn't intentionally seek  
17 this market. The market sought it. The  
18 developers Tesoro Viejo reached out to  
19 Comcast and asked them. And in fact, this  
20 development is residential. These are not  
21 large scale businesses. And Comcast wishes  
22 to serve those businesses.

23           Also the policy has changed since  
24 2014. The Commission had issued the  
25 competition OII in which the Commission  
26 doubled down on its commitment for  
27 facilities-based competition. And in fact,  
28 Comcast does seek to do exactly that, offer

1 its voice services through its own  
2 facilities. And so I think for a whole  
3 variety of reasons we would oppose an attempt  
4 to have the scope broadened to any  
5 consideration of the 2014 decision vis-a-vis  
6 this application.

7           And on one final note I'd say this  
8 would be highly unusual to expand the  
9 analysis of a CPCN application. The  
10 Commission when it reviews CPCN applications  
11 bases those grants on an understanding that  
12 competition is good for the state and more  
13 importantly it's good for consumers. And we  
14 think that should be the same sort of  
15 analysis done in this docket.

16           ALJ ZHANG: Mr. Zankel, I just want to  
17 make sure I heard you correctly. In my  
18 reading of the application on page 4 there's  
19 a pretty minimal description of what Comcast  
20 would be offering.

21           MR. ZANKEL: Sure.

22           ALJ ZHANG: And so what it says is  
23 IP-enabled voice over -- voice over internet  
24 protocol services, but then in the courtroom  
25 you just said that Comcast is requesting  
26 interconnection. So does that mean Comcast  
27 is requesting use of existing facilities  
28 that's probably owned by Ponderosa in the

1 territory?

2 MR. ZANKEL: To clarify, your Honor,  
3 Comcast would not be using the facilities of  
4 Ponderosa. To be more clear, and this is  
5 laid out a little more clearly in the reply  
6 to the protest than it is in the application,  
7 but to dig into the detail, Comcast's VoIP  
8 affiliate will be offering voice services  
9 through Comcast affiliates' facilities. And  
10 Comcast Phone's business or part of their --  
11 what they're trying to seek in this territory  
12 is to provide local interconnection services  
13 in order to enable and provide those services  
14 to its VoIP affiliate in order to -- for that  
15 VoIP affiliate to offer voice service. In  
16 addition to right now an indeterminate number  
17 of interexchange carriers Comcast would  
18 provide that local interexchange service as  
19 well.

20 And so I think the answer to your  
21 question is whether it's using Ponderosa's  
22 facilities. The answer is no. But it would  
23 need things from Ponderosa such as number  
24 portability in order to offer its services,  
25 its local interconnection services.

26 ALJ ZHANG: Thank you.

27 Mr. Segall, would you like to  
28 respond?

1           MR. SEGALL: Yes, your Honor. I  
2 understand that Comcast has a variety of  
3 reasons why it considers its application  
4 meritorious, some of which Mr. Zankel just  
5 summarized for you. But from the perspective  
6 of the scoping issue that we're talking about  
7 now, I think the issue is somewhat simpler.

8           Comcast's application seeks a CPCN  
9 expansion into Ponderosa's service territory  
10 that would allow it to compete with Ponderosa  
11 for offering wireline services in that  
12 territory. In the Phase 1 decision, which is  
13 D.14-12-084, the Commission made a  
14 determination that the small incumbent local  
15 exchange carriers' territories would not be  
16 open to wireline competition and further  
17 stated that whether wireline competition  
18 should be permitted in some or all of those  
19 areas will be determined in Phase 2 of this  
20 proceeding and then went on at ordering  
21 paragraph 7 of that decision on page 101 to  
22 state that any request filed and received  
23 subsequent to this Phase 1 decision to amend  
24 Certificates of Public Convenience and  
25 Necessity to include small incumbent local  
26 exchange carrier areas, which is exactly what  
27 Comcast has done here, will be deferred until  
28 Phase 2 of the proceeding is effectively

1 complete, until certain studies were  
2 completed and until the competition question  
3 was reevaluated in light of the studies.

4           So you know, while we also have a  
5 motion to hold the application in abeyance,  
6 from the perspective of scoping, I think the  
7 question of whether -- of whether the  
8 application can be considered at this time  
9 consistent with the Commission's prior  
10 decision is inherent in the application and  
11 should be included in its scope.

12           ALJ ZHANG: Do you have a response as  
13 to the assertion that the 2014 decision is  
14 not applicable in this situation?

15           MR. SEGALL: Yes. Ponderosa clearly  
16 disagrees that the 2014 decision is not  
17 applicable. I don't think there's any  
18 question that the 2014 decision that the  
19 small ILEC territories would not be opened up  
20 remains in effect, that there has been no  
21 reconsideration of that decision yet in Phase  
22 2 of the proceeding. And what Comcast is  
23 essentially arguing is that the Commission  
24 should go ahead at this time and decide to  
25 open up competition in the small ILEC  
26 territories.

27           MR. ZANKEL: I respectfully disagree.  
28 That's a misrepresentation. We have never



1 said that in our application.

2 ALJ ZHANG: Hold on for a second.

3 Mr. Segall.

4 MR. ZANKEL: Sorry to interrupt.

5 MR. SEGALL: I'm not sure exactly what  
6 Mr. Zankel is saying is a misrepresentation,  
7 but by seeking a CPCN to offer -- to compete  
8 in Ponderosa's service territory, the effect  
9 of the application, you know, the Commission  
10 couldn't expand the CPCN without concluding  
11 in contradiction of its earlier decision that  
12 competition in Ponderosa's service territory  
13 is appropriate.

14 So Ponderosa's position is that  
15 there's an established proceeding in which  
16 issues of competition in rural ILEC  
17 territories will be decided. The 2014  
18 decision made that very clear.

19 And beyond that, on the merits, you  
20 know, I think it's clear that the issue  
21 raised -- that the issue of competition in  
22 the small ILEC service territories presents  
23 policy questions about the universal service  
24 obligation and about draws on the CHCF-A fund  
25 that affect all of the small ILECs who are  
26 carriers of last resort and who draw from the  
27 CHCF-A fund. Both the Phase 1 decision that  
28 we've been discussing and the Mission

1 Consulting study, which is the study that was  
2 commissioned after Phase 1 in preparation for  
3 the Phase 2 of the CHCF-A proceeding,  
4 recognized that opening up the small ILECs  
5 territories to competition from CLECs like  
6 Comcast would result or could result in  
7 significant consequences, in particular,  
8 cherry picking of the most profitable and  
9 easiest to serve customers in those service  
10 areas. And in turn, the Mission Consulting  
11 study recognized that the cherry picking  
12 could increase the pressure on the CHCF-A  
13 fund and the ratepayers.

14 And so those policy questions about  
15 whether the public interest is well served by  
16 competition even in light of the negative  
17 impacts of cherry picking that would obtain  
18 if the small ILEC territories were opened to  
19 competition is one that affects all of the  
20 small ILECs equally. And it's Ponderosa's  
21 position that it should be resolved globally  
22 in the context of the CHCF-A proceeding with  
23 all of the small ILECs being afforded an  
24 opportunity to participate and offer comments  
25 on that proceeding. And then only once the  
26 Commission decides in Phase 2 whether to  
27 permit any competition, in other words,  
28 whether to revisit its earlier conclusion

1 that no competition in these territories  
2 would be permitted, then it can proceed with  
3 the sort of territory-specific analysis  
4 contemplated in Comcast's request here to  
5 expand its CPCN which involves a particular  
6 development in a particular small ILEC  
7 territory.

8           So again, you know, Ponderosa sees  
9 the 2014 decision as directly relevant here.  
10 It's controlling. It says that whether to  
11 open wireline competition will be determined  
12 in Phase 2 of the proceeding. And we believe  
13 that it's appropriate to decide the issues  
14 raised in this application after Phase 2 is  
15 complete as the Commission contemplated.

16           MR. ZANKEL: Your Honor, may I respond?

17           ALJ ZHANG: Yes.

18           MR. ZANKEL: Sorry for interrupting you  
19 earlier.

20           So I just want to pick up on a few  
21 things Ponderosa's counsel said. One, that  
22 this is controlling. That is not true.  
23 This -- no Commission decision is binding.  
24 In fact, the 2014 decision said of a prior  
25 1995 decision, which that 1995 decision, 95 I  
26 believe 07-054 said the Commission will open  
27 up all territories, and named Ponderosa  
28 explicitly, would open up that area to

1 competition by 1997, which was 21 years ago.

2 In the 2014 decision they said that  
3 prior decision is not binding. So now what  
4 we have before us, the Commission has before  
5 us is two competing decisions. One decision  
6 that says the competition would be opened in  
7 Ponderosa in 1997 and one that says we'll  
8 defer consideration of these -- of CPCNs.

9 Now, I don't believe Ponderosa's  
10 counsel has actually addressed the issues I  
11 put forward, but I still stand behind the  
12 five or six points that I mentioned, the  
13 applicability, the inapplicability of the  
14 2014 decision.

15 I also want to reemphasize that  
16 we're not seeking to open up all small ILEC  
17 territories to competition. And in fact, the  
18 Commission by granting the CPCN does not need  
19 to do that in this and should not do that  
20 necessarily in this proceeding. And in fact,  
21 the Commission doesn't need to open up  
22 Ponderosa's territory officially to  
23 competition. All it seeks is for Comcast to  
24 compete in this territory.

25 And in fact, that competition as  
26 explained in the reply to the protest will be  
27 very limited. As of now we only seek one  
28 rate center or one small area of Ponderosa.

1 This is what we've calculated initially to be  
2 less than 10 percent of Ponderosa's service  
3 territory where we've been invited and asked  
4 to provide our service offering.

5 So we think even to the extent that,  
6 even if competition weren't a good thing,  
7 which the Commission has always said  
8 competition improves service offerings, helps  
9 pricing, etcetera, even if it weren't a good  
10 thing, we think any impact of competition is  
11 going to be very limited in this territory.  
12 And so I don't see the need to dive into A  
13 fund issues given that limited impact.

14 And so for your scope, your second  
15 scoping question, Comcast Phone remains  
16 opposed to expanding the scope beyond what  
17 the majority of the time the Commission views  
18 in these CPCN applications, which is whether,  
19 as you've said, the applicant has met the  
20 requirements for a CPCN application.

21 ALJ ZHANG: Mr. Segall.

22 MR. SEGALL: Briefly, your Honor. If  
23 you look at page 1 of the application that  
24 Comcast filed, you know, I appreciate that  
25 this application was spurred by a particular  
26 request that Comcast received related to a  
27 particular development in Ponderosa's service  
28 territory. But Comcast is submitting this

1 application to, quote, "expand the  
2 territorial scope of its Certificate of  
3 Public Convenience and Necessity to include  
4 the service territory of Ponderosa Telephone  
5 Company."

6           The Commission has never authorized  
7 competition in the service territory of the  
8 small ILECs. This would reflect a sea  
9 change. They didn't do so in 1997, and they  
10 didn't do so in 2014. What Comcast is  
11 seeking would reflect a fundamental reversal  
12 of what was decided in 2014 that at least on  
13 a provisional basis no competition would be  
14 permitted. It's fairly straightforward,  
15 right, in the application that what Comcast  
16 is seeking to do is open the entirety of  
17 Ponderosa's service territory to competition.

18           Again, the problem here is that you  
19 can't open a single territory to competition  
20 without raising the problems with cherry  
21 picking and an adverse impact on the CHCF-A  
22 fund for all small ILECs all of which draw  
23 from the fund. To the extent that  
24 competition had negative consequences for  
25 Ponderosa, for instance, caused Ponderosa to  
26 experience a decline in revenues and  
27 increased its CHCF-A draws, those  
28 consequences would implicate all of the other

1 small ILECs that are at issue. That's why in  
2 the CHCF-A proceeding the Commission is  
3 considering the competition question as a  
4 whole with respect to all of the small ILECs  
5 and why in 2014 when it issued its  
6 provisional decision that there would be no  
7 competition in those service areas it did so  
8 in the context of a proceeding in which all  
9 of the small ILECs and all of the potential  
10 competitors were allowed to contribute.

11 So again, we see this as putting the  
12 cart before the horse because before -- you  
13 know, because opening any ILEC territory to  
14 competition could potentially impact all of  
15 the ILECs who draw on the fund. And so  
16 really the global competition issue should be  
17 decided first before individual territories  
18 are considered, much less individual  
19 developments.

20 MR. ZANKEL: Your Honor, I'd like to  
21 make two points. I think they should be  
22 brief. One is that I don't think -- it's  
23 still not clear to me based on what  
24 Ponderosa's counsel just said how Comcast  
25 entering Ponderosa's territory would impact  
26 the remaining 12 RLEC and I guess remaining 9  
27 small ILEC territories. You know, for one,  
28 we don't think it will have an impact on

1 revenue, but even if it did have an impact on  
2 revenue, that would be squarely an issue for  
3 Ponderosa. And I don't see any relationship  
4 to the other territories.

5           The second point that I want to make  
6 is there's -- as to the competition issue and  
7 decrease in revenue, what we've made clear in  
8 our reply to protest is that Ponderosa has  
9 actually had increased competition from  
10 wireless over the top and satellite carriers  
11 over the last ten years. And that's  
12 documented both in the competition study  
13 generally, not to Ponderosa specific. But  
14 generally the Commission and these  
15 consultants have noted increased competition.  
16 And there's been decreased draw from the A  
17 fund during that time.

18           So any implication that, you know,  
19 this increased competition will have, you  
20 know, severe deleterious effects on revenue  
21 and draw on A fund simply has not been shown  
22 yet for Ponderosa. And again, Comcast is not  
23 concerned with the remainder of that small  
24 ILEC territory. All we are seeking is entry  
25 into Ponderosa's service territory.

26           ALJ ZHANG: I just want to make sure I  
27 understand what your point is about how the  
28 application that Comcast filed is only



1 allowing competition in one small area and  
2 the impact will be very small. But isn't  
3 that still competition?

4 MR. ZANKEL: Yes. So we are filing an  
5 application or we filed an application to the  
6 entire Ponderosa service territory. And we  
7 have shown our initial plans, business plans  
8 in that territory which are mostly Tesoro  
9 Viejo and there's mention of Friant as well,  
10 which we've calculated to be a very small  
11 portion of the Ponderosa service territory.  
12 There would be competition in that limited  
13 portion of the Ponderosa service territory in  
14 the foreseeable future, meaning the vast  
15 majority, at least in the foreseeable future  
16 the vast majority of competition would be in  
17 that area. And so that area would get to  
18 experience the benefits, meaning consumers  
19 would have additional choice in that area.  
20 And we would expect to see pricing  
21 competition. We would expect to see all the  
22 benefits that the Commission has  
23 traditionally pointed out happen when there  
24 is facilities-based competition in that  
25 limited portion of the Ponderosa service  
26 territory.

27 ALJ ZHANG: You believe that the  
28 application can be granted without

1 considering the rulemaking, without  
2 considering the 2014 decision?

3 MR. ZANKEL: Yes, your Honor. To that  
4 point, the Commission's historic procedure  
5 when opening up areas to competition is to  
6 first open the area to competition and then  
7 to address subsidy issues. And that would  
8 happen in 1990 -- in the B fund. The  
9 Commission first opened up the major ILEC  
10 territories to competition and later resolved  
11 the subsidy issues with the B fund.

12 We believe that this -- the  
13 Commission could grant this application and  
14 then at its own pace further address issues  
15 related to the A fund and competition as it  
16 relates to the A fund in a separate  
17 proceeding. We don't see those as  
18 diametrically opposed especially given the  
19 fact that, as I mentioned before, both the  
20 factual and policy foundations underlying the  
21 decisions to defer CPCN applications have  
22 changed since 2014 over the last five years.  
23 And it's changed to the extent that that  
24 decision is no longer applicable as it  
25 relates to the Comcast CPCN application.

26 ALJ ZHANG: Mr. Segall.

27 MR. SEGALL: A few points I want to  
28 make. First of all, I understand that it is

1 in Comcast's interest for them to stress here  
2 that there will be no impact on Ponderosa's  
3 revenue and that their activities in the  
4 territory will be small. But you know, I  
5 think it's premature to make any definitive  
6 statements about those things before there's  
7 discovery. Those issue really go to merits  
8 of the specific application here.

9           The broader question that we're  
10 discussing right now is whether the question  
11 of opening up these territories to  
12 competition at all should be considered in  
13 the context of Phase 2 of the CHCF-A  
14 proceeding as the Commission has stated its  
15 intention to do. And I think that they  
16 clearly should.

17           The Commission has clearly stated  
18 that these rural territories are different  
19 than other territories and require special  
20 considerations. They're different because  
21 they have unique characteristics that make  
22 customers in them expensive to serve.  
23 They're different because the small ILECs  
24 have carrier of last resort obligations that  
25 require them to provide a robust level of  
26 service to all their customers. And they're  
27 different because they pose a unique risk of  
28 cherry picking. And I think this is a good

1 example of that where you have large rural  
2 territories that vary considerably in  
3 terms -- across the territory in terms of how  
4 dense they are and how expensive customers  
5 are to serve in particular territories.

6           Here you have, you know, a pretty  
7 high end housing project that is going up in  
8 part of the territory that is going to be  
9 cherry picked off by Comcast. So you know,  
10 to confidently opine that this won't have any  
11 effect on Ponderosa's revenues and in turn  
12 wouldn't have any effect on the larger CHCF-A  
13 structure that has been set up precisely to  
14 ensure that people in these rural territories  
15 can enjoy robust service and high quality is  
16 presumptuous in a way that isn't supported by  
17 the evidence and really should be, you know,  
18 to the extent it's Comcast's position that  
19 the facts on the ground have changed since  
20 2014 in a way that justifies competition now,  
21 those arguments should be made in the context  
22 of Phase 2 where the Commission has already  
23 committed itself to reevaluating the  
24 competition question in these territories and  
25 coming up with a final decision on those  
26 informed by the study it already undertook  
27 and informed by the very argument that  
28 Comcast is making here that it should make in

1 Phase 2 of the CH -- of the CHCF-A  
2 proceeding.

3 MR. ZANKEL: Your Honor, as to the, you  
4 know, they keep on bringing up this  
5 cherry-picking issue. By the way, we'd like  
6 to point out that Comcast has done rural  
7 market entry throughout the country. In  
8 every single instance this is the same  
9 argument those rural carriers bring up. In  
10 every instance those deleterious effects of  
11 cherry picking never come to light after  
12 Comcast enters the territory. So this is  
13 just a part of a broader I think trope that  
14 is simply untrue.

15 And more importantly, as I've shown,  
16 we didn't reach out. We didn't pick.  
17 Comcast did not pick. We were picked. And  
18 we were picked presumably because Comcast has  
19 service offerings that presumably Tesoro  
20 Viejo just sought its service offerings in  
21 addition to Ponderosa, as it should.  
22 Consumers should have choice. So I think  
23 this repeated allegation of cherry picking is  
24 simply untrue.

25 The second part is Ponderosa's  
26 counsel mentioned several times about this  
27 fact-specific finding that's mentioned in the  
28 2014 decision. I think that's really

1 important because while we don't think the  
2 2014 decision is applicable here both because  
3 state and federal law favors grant of  
4 Comcast's application but also because 2014  
5 decision is inapplicable for the reasons I've  
6 mentioned. We don't think it applies. If it  
7 did apply, there would need to be some sort  
8 of fact-specific analysis as set forth in  
9 that 2014 decision.

10           The competition study that was  
11 called for in that 2014 decision has already  
12 been completed and said that there would be  
13 no significant harms to small ILECs as a  
14 result of competition.

15           And then the only further step that  
16 needs to happen would be a fact-specific  
17 analysis. Again, we don't think this is  
18 necessary given the inapplicability of that  
19 decision. But if it were, then it would make  
20 sense to do that fact-specific analysis in  
21 the context of this proceeding rather than a  
22 large proceeding where there's many  
23 participants who have nothing to do with the  
24 Ponderosa territory.

25           In this particular proceeding both  
26 Comcast and Ponderosa have a deep interest in  
27 the service quality in Ponderosa, public  
28 safety, things of that nature, the very same

1 elements that were called forth in that fact-  
2 specific study. So I think from an  
3 administrative efficiency perspective at the  
4 very least, even if the 2014 decision is  
5 applicable, that fact-specific finding would  
6 need to be done here, and as Ponderosa's  
7 counsel has mentioned, through that discovery  
8 and that sort of process.

9 ALJ ZHANG: Mr. Segall.

10 MR. SEGALL: Your Honor, I actually  
11 think the reverse is true. I think it's  
12 plainly more efficient and plainly more  
13 sensible to proceed with the sort of global  
14 or macro question of whether competition  
15 should be permitted at all, which is the  
16 purpose of Phase 2 of the CHCF-A study, and  
17 then proceed. If the Commission decides that  
18 some competition should be permitted, then  
19 individual questions of whether that  
20 determination should vary by territory based  
21 on the individualized factors can proceed at  
22 that point.

23 And the reason why is the Commission  
24 has already made a preliminary finding that  
25 competition would not serve the public  
26 interest and then commissioned a study that  
27 at best resulted in highly inconclusive  
28 findings about whether that remains the case.

1 The study the Commission says that opening  
2 small ILEC markets to competitors may pose  
3 new challenges for the CHCF-A fund, and the  
4 level of subsidies should be examined more  
5 closely before implementation. If and when a  
6 process for opening a market in small ILEC  
7 service areas is undertaken, the CPUC should  
8 consider proposals to implement this new  
9 direction.

10 So there's nothing definitive about  
11 the Mission Consulting study. Hopefully the  
12 Commission will find the fact-finding that  
13 the Mission Consulting study engaged in  
14 helpful as it proceeds to decide the question  
15 of whether to revisit its determination that  
16 competition in these areas is not in the  
17 public interest.

18 But that is, as I've argued, I think  
19 that's a determination that needs to happen  
20 first because it implicates all of the small  
21 ILECs collectively. And then second, once  
22 the question of whether any competition will  
23 happen at all is resolved, then it makes  
24 sense to raise these more individualized and  
25 fact-intensive questions about whether it  
26 should vary from service territory to service  
27 territory. There's no reason to allow  
28 Comcast to sort of jump the queue.



1 MR. ZANKEL: I'm sorry, your Honor.

2 ALJ ZHANG: Mr. Segall, is your  
3 argument that if Comcast receives the CPCN  
4 then that would open the door to other CPCN  
5 applications and other grants of  
6 authorization in other ILEC service  
7 territories?

8 MR. SEGALL: I mean I think it's very  
9 likely it would of course because in order to  
10 grant the CPCN here into Ponderosa's  
11 territory the Commission would on a -- at  
12 least as a de facto matter have to conclude  
13 that competition in the small ILECs  
14 territories was in the public interest, which  
15 is not what it's concluded in the past.

16 But my argument here is slightly  
17 different. It is not the risk that it might  
18 affect other territories, but it's that all  
19 of these things are linked because all of  
20 these companies are at risk of cherry picking  
21 by competitors because all of the ILECs are  
22 unique as compared to other types of service  
23 territories. And because all of them are  
24 carriers of last resort subsidized by the  
25 CHCF-A fund, any -- opening up any territory  
26 necessarily implicates all of the small ILECs  
27 territories because, you know, if you drive  
28 down Ponderosa's revenue via cherry picking

1 of its most profitable, potentially most  
2 profitable customers, then what you get is  
3 you impact the CHCF-A fund as a whole, and  
4 that implicates the other small ILECs.

5           And so the argument is not that this  
6 is, you know, that this is a gateway to  
7 expansion even though it almost certainly  
8 would be, but rather, that whether to expand,  
9 whether to allow competition at all in these  
10 territories is a threshold question that the  
11 Commission ought to consider that has  
12 committed itself to considering in Phase 2,  
13 and there's no reason to interrupt that  
14 process.

15           ALJ ZHANG: I believe Comcast said that  
16 providing its service in Ponderosa's  
17 territory is so minimal that there would be  
18 no impact on the fund. Do you have a  
19 response to that?

20           MR. SEGALL: Our response is at this  
21 point we don't know exactly what it would be.  
22 We haven't received any discovery. We know a  
23 little bit about what the specific  
24 arrangement is between the Tesoro Viejo  
25 development and Comcast. But you know, at  
26 this juncture I think it's very hard to  
27 confidently say that it would have no impact  
28 on Ponderosa. That's an empirical question

1 that requires a degree of discovery and is  
2 the sort of thing that if the Commission  
3 proceeded with its Phase 2 process in the  
4 CHCF-A proceeding it would consider potential  
5 impacts like this in the broader context of  
6 considering whether to permit competition.  
7 But those empirical questions require  
8 discovery and analysis and can't be  
9 adjudicated on the basis of lawyer statements  
10 in an application.

11 ALJ ZHANG: So you haven't seen any  
12 numbers that discuss the impact on the fund  
13 as a whole?

14 MR. SEGALL: No. We have done no -- we  
15 don't have the requisite information to  
16 attempt to model the impact that it might  
17 have either on Ponderosa's revenues or on the  
18 CHCF-A as a whole.

19 ALJ ZHANG: Mr. Zankel.

20 MR. ZANKEL: I just want to speak to  
21 Ponderosa counsel's comment on what he thinks  
22 is the process for the A fund decision. I  
23 don't know where he got that process, but  
24 in -- at least in the decision, which again  
25 we think is inapplicable -- I'm sorry, mixing  
26 my words -- inapplicable here, in that  
27 decision it sets forth a two-step process.  
28 Competition study, step one. Step two, fact-

1 specific finding analysis. It doesn't say  
2 Step 1, competition study. Step 2, make a  
3 decision whether there's competition. Step  
4 3, fact specific. That's not what it says.  
5 And so while he thinks that should be the  
6 policy, that's not the policy stated in the  
7 2014 decision. And so I think, again, we  
8 don't think there needs to be a fact-finding  
9 given that the Commission, it would be highly  
10 unusual for the Commission to not rule in  
11 favor of competition. But if there was, then  
12 the fact-specific analysis contemplated in  
13 the 2014 decision would be both  
14 administratively efficient and appropriate in  
15 the context of this proceeding.

16 MR. SEGALL: Your Honor, can I just  
17 make one very quick response?

18 ALJ ZHANG: Yes.

19 MR. SEGALL: I would here direct you to  
20 ordering paragraph 5 of the 2014 decision,  
21 which is on page 101. And it says:

22 Whether wireline  
23 competition should be  
24 permitted in some or all of  
25 the small incumbent local  
26 exchange carriers'  
27 territories will be  
28 determined in Phase 2 of

1           this proceeding.

2           It doesn't say will be determined in the  
3 context of CPCN applications. It says "will be  
4 determined in Phase 2 of this proceeding." So you  
5 know, as a procedural matter, I think the Commission  
6 was fairly unambiguous about what it understood would  
7 be the procedure.

8           ALJ ZHANG: Are there any other  
9 comments from counsel in the courtroom?

10          MR. ZANKEL: No, your Honor.

11          ALJ ZHANG: Mr. Weissmann on the phone,  
12 do you have any comments?

13          MR. WEISSMANN: No, your Honor. Thank  
14 you.

15          ALJ ZHANG: Ms. Toller, do you have any  
16 comments?

17          MS. TOLLER: Your Honor, all that I  
18 would say maybe by way of closing is that  
19 I've heard several references about  
20 competition and whether or not there is  
21 competition in the small LEC territory. In  
22 fact, as Mr. Zankel said earlier, there's  
23 tons of competition in all the small LEC  
24 territories today from wireless, from over  
25 the top VoIP. There's only one category of  
26 provider today that's not providing  
27 competitive service, and that's wireline  
28 CLECs. So I just don't want anybody to have

1 the misimpression that there isn't  
2 competition, that that doesn't already exist,  
3 because it is there.

4           And I'd also direct your Honor's  
5 attention to page 46 of the 2014 decision.  
6 As counsel for Ponderosa noted several times,  
7 the sort of uniqueness, right, of the various  
8 small LECs and their different territories.  
9 And the decision reflects that very clearly  
10 and talks about a location-specific fact-  
11 finding. And they talk about it happening in  
12 the individual particular area kind of noting  
13 the variations in all of the different areas.

14           So again, to the extent the  
15 Commission believes that there needs to be a  
16 specific look at each territory, right, this  
17 case now is ripe for that consideration.

18           The other prerequisite that the  
19 decisions have been met. An application for  
20 interconnection has been made. A CPCN  
21 modification application has been filed. The  
22 study has been done, the broader study has  
23 been done. And now to the extent that there  
24 is a need for location-specific fact-finding,  
25 you know, this is the place to do it where we  
26 can look at the unique requirements and the  
27 unique nature of Ponderosa to evaluate  
28 whether or not Comcast's entry will have any

1 impact in that. And to the extent that  
2 Ponderosa needs discovery to be able to  
3 figure that out, obviously that's available  
4 to them.

5 ALJ ZHANG: Well, I look forward to  
6 reading the reply because the application is  
7 not very specific on why Ponderosa itself is  
8 special and should be opened to Comcast  
9 services.

10 Okay. Let's see. I think the next  
11 item is the need for a hearing and schedule.  
12 The applicant did not include the need for  
13 hearings. However, Resolution ALJ 176-3430  
14 indicated that an evidentiary hearing would  
15 be necessary.

16 What do the parties think about  
17 picking a hearing date right now so that we  
18 can reserve that, and if things turn out to  
19 be a situation where we don't need an  
20 evidentiary hearing, we can cancel that?

21 MR. ZANKEL: Your Honor, you know,  
22 Comcast opposes having hearings. We think  
23 this would be highly unusual for in the  
24 context of a CPCN application. I'm not aware  
25 of any hearings in a CPCN application. But  
26 in -- if for some reason the Commission  
27 decides to go that direction, which we would  
28 oppose, we would -- mid-May would be a

1 timeframe assuming that there would be  
2 prepared testimony submitted before that.  
3 And I'm happy to give you dates or proposed  
4 dates for other portions when it comes to  
5 that.

6 ALJ ZHANG: Mr. Segall.

7 MR. SEGALL: We would be fine with  
8 setting a hearing. We tend to think one is  
9 likely going to be required, though we would  
10 be willing to revisit that at a later time.  
11 But I think we'll need considerably more time  
12 than May. We anticipated at least a couple  
13 of months of discovery plus a period of time  
14 for submission of written testimony. You  
15 know, it's already March. So I think May  
16 would be a pretty aggressive schedule.

17 ALJ ZHANG: Okay. So do you have your  
18 calendars? If May is not a good time, how  
19 about July for a hearing?

20 MR. ZANKEL: Your Honor, would it be  
21 possible to split the baby and say June?  
22 That would give from the time of this  
23 hearing, March and April and May. So at  
24 least two and a half months of discovery. We  
25 think that -- I don't see how given the  
26 Commission's tradition of ten days response  
27 for discovery, and that that would allow for,  
28 you know, many, many rounds of discovery,



1 that it would have to go much longer than  
2 that.

3 ALJ ZHANG: Mr. Segall.

4 MR. SEGALL: I think something like  
5 July makes sense. It's a two to three-month  
6 discovery period. And again, we continue to  
7 think that this, that the entire application  
8 should be stayed. We're discussing this in  
9 the event that it is not stayed. But we  
10 think it's pretty reasonable to do two to  
11 three months of discovery followed by a  
12 60-day period or so for written testimony,  
13 which would put us into July. So I think  
14 that's a reasonable schedule.

15 ALJ ZHANG: Mr. Zankel.

16 MR. ZANKEL: Yeah. Can you hold on one  
17 second.

18 ALJ ZHANG: Sure.

19 Let's go off the record.

20 (Off the record.)

21 ALJ ZHANG: Let's go back on the  
22 record.

23 While we were off the record we  
24 discussed the schedule for this proceeding.  
25 Out of -- just to be cautious, we decided  
26 that an evidentiary hearing should take place  
27 on July 15th and July 16th. We will schedule  
28 concurrent opening testimony on May 17th and

1 then concurrent rebuttal testimony on June  
2 21st. The schedule is -- it's possible that  
3 it will be amended depending on how this case  
4 proceeds. A scoping ruling will be issued in  
5 the next few weeks. And a proposed decision  
6 will be issued after we resolve the motion.  
7 And there will definitely have to be some  
8 coordination between me and the other judges.  
9 I do plan on speaking to the judges in the  
10 rulemaking proceeding.

11 Are there any other matters before  
12 we conclude today?

13 MR. ZANKEL: I know you just mentioned  
14 the motion. And I just want to reiterate a  
15 point from -- that I said at the very  
16 beginning, which is, I want to reemphasize  
17 that Ponderosa did not meet the legal  
18 standard. They didn't even mention in their  
19 application a motion regarding a motion for  
20 stay, which is, you know, required to show  
21 that both that there would be imminent  
22 irreparable harm and that they would prevail  
23 on the merits. That's the only point I'd  
24 like to make.

25 ALJ ZHANG: Could you refer me to the  
26 specific rule? Because they I think filed a  
27 motion according to the general rule.

28 MR. ZANKEL: Yeah. So this is -- it's

1 actually a state court precedent. I can give  
2 you that case number. This is a case that's  
3 cited in many different rulings on motions.  
4 And I could give you a decision, for example,  
5 when it's cited. Decision 01-08-028. But I  
6 could probably give you another dozen you if  
7 needed it. It's a pretty common legal  
8 standard.

9 MR. WEISSMANN: Your Honor, may I be  
10 heard on that? This is Henry Weissmann  
11 speaking.

12 ALJ ZHANG: Yes, Mr. Weissmann.

13 MR. WEISSMANN: This was not discussed  
14 in their papers. There is a distinction to  
15 be drawn between a motion for a stay of a  
16 Commission decision or a motion for  
17 affirmative injunctive relief which does  
18 require a showing, as Mr. Zankel has  
19 indicated, of irreparable injury and  
20 likelihood of success.

21 That is a distinct situation from  
22 that which we are presented with here where  
23 as a matter of administrative efficiency the  
24 Commission has the discretion, and we submit  
25 ought to exercise its discretion, to put this  
26 case in abeyance mode pending the resolution  
27 of Phase 2. That type of motion is not  
28 subject to the same standards.

1           MR. ZANKEL: I would just add that as a  
2 matter of efficiency, as I said before, much  
3 more efficient to conduct fact-specific  
4 finding in this case rather than hold this  
5 case, which would cause delay for consumer  
6 choice.

7           ALJ ZHANG: Mr. Weissmann, do you have  
8 a response?

9           MR. WEISSMANN: I think Mr. Segall has  
10 covered that point quite thoroughly in his  
11 prior remarks, which essentially is that the  
12 Commission contemplated that that factual  
13 investigation would be undertaken in Phase 2  
14 in the context of the Mission Consulting  
15 report.

16           ALJ ZHANG: Thank you.

17                   Okay. Seeing that there are no  
18 other comments or matters at this time, we  
19 are adjourned. Thanks everyone for coming  
20 and participating.

21                   (Whereupon, at the hour of 2:12  
22 p.m., this prehearing conference having  
23 been concluded, the Commission then  
24 adjourned.)

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING  
I, THOMAS C. BRENNEMAN, CERTIFIED SHORTHAND  
REPORTER NO. 9554, IN AND FOR THE STATE OF CALIFORNIA  
DO HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT  
PREPARED BY ME COMPRISE A FULL, TRUE, AND CORRECT  
TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD IN  
THIS MATTER ON FEBRUARY 28, 2019.

I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE  
EVENTS OF THE MATTER OR THE OUTCOME OF THE PROCEEDING.

EXECUTED THIS MARCH 01, 2019.



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THOMAS C. BRENNEMAN  
CSR NO. 9554

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