



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

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Application of Comcast Phone of California, LLC (U-5698-C) to expand its existing Certificate of Public Convenience and Necessity to provide limited facilities-based telecommunication service in the service territory of Ponderosa Telephone Co.

A.19-01-003

**PROTEST OF THE PONDEROSA TELEPHONE CO. TO THE APPLICATION
OF COMCAST PHONE OF CALIFORNIA, LLC TO EXPAND THE
TERRITORIAL SCOPE OF ITS CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

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I. INTRODUCTION

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the Public Utilities Commission (the “Commission”), The Ponderosa Telephone Co. (“Ponderosa”) protests the Application filed on January 4, 2019¹ by Comcast Phone of California, LLC (“Comcast”).

For the past eight years, the Commission has been engaged in a comprehensive proceeding to review the California High Cost Fund-A program (“CHCF-A”). One of the questions presented in that proceeding has been whether to open the territories of small ILECs like Ponderosa to wireline voice competition. Following Phase 1 of the proceeding, the Commission made a preliminary finding that the public interest did not

¹ Comcast’s application appeared in the Daily Calendar on January 9, 2019. This Protest is therefore timely under Rules of Practice and Procedure, Rule 2.6(a).

warrant opening the Small ILECs' service territory to competition, but that it would revisit the question in Phase 2, which is not yet complete.

Because Phase 2 is not yet complete, Comcast's Application is premature. In its Phase 1 decision, the Commission concluded that all requests to amend the service area of a CPCN to include Small ILEC territories, such as this Application, should be held in abeyance until the Commission finally determines whether and which territories, if any, should be opened to competition in Phase 2. The Application does not provide any reason why the Commission should prejudge the outcome of its own CHCF-A proceeding by acting on such an application now.

Comcast's Application also fails to marshal sufficient facts showing that public convenience and necessity require the proposed expansion.² Comcast argues that the public-benefit concerns that animated the Commission's decision against opening the Small ILECs' territory to competition following Phase 1 no longer apply because a study conducted by the Commission in advance of Phase 2 allegedly found that the CHCF-A program would insulate the Small ILECs from harm caused by competition. In fact, the study confirmed what the Commission found about competition in Phase 1: that competition for wireline voice services could decrease Small ILEC customer revenues, particularly if CLECs—who, unlike ILECs, are not carriers of last resort—engage in “cherry picking” the most profitable customers in a given territory. The fact-intensive and territory-specific question whether competition in Small ILECs' service areas is in

² See Rules of Practice and Procedure, Rule 3.1(e).

the public interest despite these risks is precisely what the Commission will consider in Phase 2 of the CHCF-A proceeding.

II. BACKGROUND

A. The CHCF-A Rulemaking Proceeding

On November 18, 2011, the Commission issued an Order Instituting Rulemaking instituting a review of the CHCF-A program (the “CHCF-A Rulemaking Proceeding”).³ In the course of that proceeding, the assigned Commissioner issued an Amended Scoping Memo and Ruling that, *inter alia*, divided the proceeding into two phases, Phase 1 and Phase 2.⁴ One of the issues the Commission determined it would address in Phase 1 of the proceeding was whether Small ILEC territories should be opened to wireline competition from CLECs.⁵

After extensive workshops, hearings, and briefing, the Commission issued a decision adopting rules and regulations in Phase 1 of the CHCF-A Rulemaking Proceeding.⁶ The decision concluded, on a preliminary basis, that opening the Small ILECs’ service territory to wireline competition “is not dictated by either federal or state law and is not supported by the evidentiary record in this proceeding.”⁷ Specifically,

³ R.11-11-007.

⁴ R.11-11-007, Amended Scoping Memo and Ruling of Assigned Commissioner (Mar. 18, 2014), at 13.

⁵ *Id.* at 11.

⁶ D.14-12-084.

⁷ *Id.* at 39.

based on the Commission’s “findings about the rural territories the RLECS serve, and ... customer concerns about the potential for service degradation in a competitive market that would primarily favor larger business customers,” the Commission made a “preliminary finding that it is not in the public interest to open the Small ILECs’ territories to wireline competition at this time.”⁸

Concurrently with this finding, the Commission held that, in Phase 2 of the CHCF-A Rulemaking Proceeding, it would review its preliminary conclusion not to open the Small ILECs’ territory to competition, and that its analysis would be informed by commissioned studies analyzing the potential impact of competition in each Small ILEC territory on “universal service, reliability, safety, just and reasonable rates, deployment of broadband capable networks, deployment and maintenance of high-quality voice networks, on the economic impact on users of telecommunications services, and on the High Cost A Fund.”⁹ Review of these studies in Phase 2 of the proceeding, the Commission explained, would “provide the facts necessary to evaluate the effect of potential CLEC competition in specific areas served by Small ILECs.”¹⁰ For that reason, the Commission concluded that it would defer consideration of any request filed after its Phase 1 decision to amend a CPCN to include Small ILEC areas until the studies were

⁸ *Id.* at 45; see also *id.* at 53 (“We make a preliminary finding, subject to analysis of the Broadband Networks and Universal Service studies to be conducted in Phase 2 of this proceeding, that areas served by the CHCF-A carriers are still not ripe for wireline competition.”).

⁹ *Ibid.*

¹⁰ *Id.* at 45–46.

completed “and the Commission has evaluated [them] to determine whether or not that area should be opened to CLEC competition.”¹¹ The Commission emphasized that its analysis in Phase 2 of whether to open particular territories to competition would be a fact-intensive one in light of the substantial differences between the 13 Small ILECs’ territories in terms of terrain, population, barriers to service, and other characteristics.¹²

B. The Broadband Internet and Wireline Voice Competition Study

Following the Phase 1 decision, Commission staff contracted with Mission Consulting to conduct the study contemplated by the decision, which would assist the Commission in deciding, in Phase 2, whether to open Small ILEC territories to wireline voice competition. Mission Consulting published that study in September 2018.¹³ The study evaluated “the potential impact of opening Small ILEC territories to wireline voice competition” assuming, among other things, that “[t]he CLECs choosing to compete in a Small ILEC territory will primarily serve as resellers of Small ILEC wireline voice services over Small ILEC wireline facilities,” which would mitigate revenue losses to the Small ILECs as owners of those facilities.¹⁴ The study concluded that opening the Small

¹¹ *Id.* at 46.

¹² *Id.* at 46–47.

¹³ Mission Consulting, LLC, *Broadband Internet and Wireline Voice Competition Study in Service Territories of Small Incumbent Local Exchange Carriers* (commissioned by D.14-12-084) (“Mission Consulting Study”).

¹⁴ *Id.* at 40, Assumption No. 2.

ILECs' territory to wireline competition from CLECs would have deleterious impacts of an uncertain magnitude:

Competition for wireline voice services is expected to result in some customers transferring from Small ILECs to CLECs, resulting in a decrease in Small ILEC customer revenues. This decrease will be more pronounced if CLECs engage in cherry picking the most profitable customers in each territory. Because Small ILECs will retain their COLR and rate-setting obligations, their ability to decrease expenses are limited, and the financial burden of offsetting decreased revenues is likely to fall on the CHCF-A and its ratepayers. The extent of the potential impact is unknown.¹⁵

The study further concluded that opening Small ILEC territories to wireline voice competition would not be expected to affect rates for Small ILEC end-user customers, but only because the CHCF-A requires Small ILECs to offer rates that are just and reasonable compared to those in urban areas.¹⁶

Despite the Commission's conclusion in the Phase 1 ruling that any decision to open a Small ILEC service territory to competition would require a fact-intensive consideration of the specific characteristics of each ILEC's service territory, the portion of the Mission Consulting Study addressing wireline competition did not conduct a territory-specific analysis of the impact of competition, but rather only evaluated the potential impact of opening all Small ILEC territories to wireline voice competition simultaneously.¹⁷ Also, the study did not reach a final conclusion about the advisability

¹⁵ *Id.* at 47.

¹⁶ *Ibid.*

¹⁷ *Id.* at 37–48.

of opening all Small ILEC territories to competition, but rather recommended that the Commission proceed cautiously:

Overall, opening Small ILEC markets to competitors may pose new challenge[s] for the CHCF-A fund and the level of subsidies should be examined more closely before implementation. If and when a process [] for opening the market in Small ILECs service areas is undertaken, the CPUC should consider[] specific proposals to implement this new direction.¹⁸

C. Phase 2 of the CHCF-A Rulemaking Proceeding and Comcast’s Application

On April 4, 2017, the assigned Commissioner in the CHCF-A Rulemaking Proceeding issued a Third Amended Scoping Memo outlining Phase 2 of the proceeding.¹⁹ The Scoping Memo explained that Phase 2 could not be completed until the studies commissioned by D.14-12-084 were complete, and also contemplated evidentiary hearings and briefs following the completion of the study, and preceding a proposed decision.²⁰ At this point, only the study has been completed.

On January 4, 2019, Comcast filed an Application to expand the territorial scope of its CPCN to include Ponderosa’s service territory.²¹ Comcast intends to offer customers in Ponderosa’s service territory “IP-enabled and voice over Internet protocol services.”²² Contrary to the Mission Consulting Study’s assumption that CLECs that

¹⁸ *Id.* at 48.

¹⁹ R.11-11-007, Third Amended Scoping Memo and Ruling of Assigned Commissioner (April 4, 2017).

²⁰ *Id.* at 9.

²¹ A.19-01-003 (“Application”) at 1.

²² *Id.* at 4.

choose to compete in a Small ILEC territory would primarily serve as resellers of services over the Small ILEC's wireline facilities, the Application proposes that Comcast enter Ponderosa's service territory using "the facilities of its cable service provider affiliate to provide services."²³

The Application acknowledges that the Commission "has historically insulated rural local exchange carriers ... from wireline competition based on the concern that [they] might be financially injured by competition."²⁴ But it argues that the Mission Consulting Study "should allay that concern," because (on Comcast's view) it concluded that opening Small ILEC territories to wireline voice competition "is not expected to have a significant direct impact on Small ILECs and their customers."²⁵ Comcast argues that no hearings are necessary to address the matters raised in the Application because "the Application is non-controversial and does not raise any material issues of fact."²⁶

III. BASIS OF PROTEST

A. Comcast's Application Is Premature and Should Be Abated

Comcast's Application is premature and should be abated until a decision is issued regarding competition in the Small ILEC territories in Phase 2 of the CHCF-A Rulemaking Proceeding. In its decision following Phase 1 of that proceeding, the Commission expressly held that it would defer consideration of "*any* request filed and

²³ *Id.* at 2.

²⁴ *Ibid.* (citing D.14-12-084 at 101–102).

²⁵ *Ibid.*

²⁶ *Id.* at 8.

received subsequent to this Phase 1 decision to amend CPCNs to include Small ILEC areas”—i.e., requests like Comcast’s here—until (1) a study of the competition issue was completed *and* (2) the Commission “evaluated the study” to determine whether or not to open particular Small ILEC territories to competition.²⁷ By design, this evaluative process will take place in Phase 2, when the Commission will engage in “location-specific fact-finding” to determine whether to revisit its Phase 1 finding that the Small ILECs’ territories are not ripe for competition.

Consistent with the Commission’s Phase 1 decision, Comcast’s Application should be held in abeyance until the Commission issues a decision regarding competition in Phase 2 of the CHCF-A Rulemaking Proceeding.²⁸ The Application urges the Commission to “endorse” the conclusions of the Mission Consulting Study by granting Comcast’s request to enter Ponderosa’s service territory now.²⁹ That request invites the Commission to predetermine the outcome of Phase 2 based on the conclusions of the Mission Consulting Study (which in any case Comcast mischaracterizes, as discussed below). The Commission should decline the invitation. The purpose of the Mission Consulting Study was not to make policy recommendations, but rather to “provide the facts necessary to evaluate the effect of potential CLEC competition” in the Small ILECs’ territories and assist the Commission in reaching an informed policy decision in

²⁷ D.14-12-084 at 46; see also *id.* at 101–102 (order no. 7).

²⁸ Concurrently with this Protest, Ponderosa is filing a motion to stay or hold in abeyance the Application during the pendency of Phase 2 of the CHCF-A Rulemaking Proceeding.

²⁹ Application at 4.

Phase 2.³⁰ The Commission should therefore defer consideration of the Application until a determination regarding competition in ILEC territories is made in Phase 2.

B. Comcast Is Wrong that the Mission Consulting Study Allays Concerns About Harm to the Small ILECs from Cherry-Picking

Opening Ponderosa’s service areas to competition from Comcast would be contrary to the public interest because, as the Commission found in Phase 1, wireline competition will undermine universal service principles by increasing the cost to Ponderosa of fulfilling its COLR obligation within its service territory. The COLR obligation requires Ponderosa to maintain a robust network capable of providing reliable voice service for all its current and prospective customers. Comcast, by contrast, is not a COLR. Rather than offer competing universal service within Ponderosa’s territory, Comcast is likely to focus on business customers or target more densely populated areas to maximize revenues and limit costs. This concern about CLECs cherry picking more profitable customers led the Commission to conclude that wireline competition would “leave behind residential, small business, and community anchor institution customers in more scattered and harder to serve areas of the rural carrier’s territory”; would “adversely affect the bulk of the hard-to-serve and high cost customers”; and would “result in the Small ILECs losing revenue and needing to seek a larger draw from the CHCF-A program.”³¹

³⁰ D.14-12-084 at 45–46.

³¹ D.14-12-084 at 53.

Comcast's Application argues that these concerns should be "allay[ed]" by the Mission Consulting study because the study "concluded that '[o]pening Small ILEC territories to wireline voice competition is not expected to have a significant direct impact on Small ILECs and their customers.'"³² But the Application quotes selectively from the study's findings. The study concluded that competition for wireline voice services *would* "result in some customers transferring from Small ILECs to CLECs, resulting in a decrease in Small ILEC customer revenues," and that those losses would be compounded by the very "cherry picking [of] the most profitable customers in each territory" that would likely occur if Comcast's Application were granted.³³ To the extent the study concluded that opening the Small ILECs' territory to wireline voice competition "is not expected to have a significant direct impact on Small ILECs," as Comcast argues, it did so only because the Small ILECs "are largely insulated by the CHCF-A Program."³⁴ The study went on to observe that competition could increase demand for CHCF-A funds "to offset the revenue shortfall experienced by Small ILECs whose customers transfer to CLECs," and that the "full impact of this is unknown."³⁵ Concerns about the Small ILECs "needing to seek a larger draw from the CHCF-A program" to make up for losses in revenue caused by CLEC cherry picking was one of the factors that led the

³² Application at 4.

³³ Mission Consulting Study at 47.

³⁴ *Ibid.*

³⁵ *Id.* at 48.

Commission to find against opening Small ILEC areas to competition following Phase 1.³⁶ And that issue will likely pose a bigger problem here than the Mission Consulting Study anticipated, because Comcast's proposal is inconsistent with Mission Consulting's assumption that CLECs choosing to compete in a Small ILEC territory would act primarily as resellers of services of Small ILEC wireline facilities. Because Comcast will compete in Ponderosa's territory using its own facilities, the cherry-picking problem will be exacerbated.

For these reasons, Comcast's assertion that its Application serves the public interest because Small ILECs and their customers will be insulated from harm by the CHCF-A is an exercise in question-begging. Whether the benefits of competition outweigh the costs is a fact-intensive question that should be taken up in Phase 2 of the CHCF-A Rulemaking Proceeding as required by the Phase 1 Decision.

IV. CONCLUSION

In its Phase 1 decision, the Commission established the process for making a reasoned and fully informed decision about whether to open any Small ILEC's service area to competition and, if so, which ones. The process in Phase 2 of the CHCF-A Rulemaking Proceeding will afford the opportunity to conduct a comprehensive review of the policy issues at stake informed by public input from all affected stakeholders. In its Phase 1 decision, the Commission also directed that all requests filed subsequent to the Phase 1 decision to amend certificates of public convenience and necessity to include

³⁶ D.14-12-084 at 53.

Small ILEC territories will be deferred until a determination is made in Phase 2.

Comcast's brief discussion of public convenience and necessity in its Application cannot substitute for that process, and this Application is an inappropriate forum to conduct the detailed and territory-specific competition analysis contemplated by the Commission's Phase 1 decision. Also, the application is the type of filing the Commission ordered be deferred until a determination is made in Phase 2.

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Respectfully submitted,

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