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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.

R.11-11-007

**OPENING COMMENTS OF  
CALAVERAS TELEPHONE COMPANY (U 1004 C)  
CAL-ORE TELEPHONE CO. (U 1006 C)  
DUCOR TELEPHONE COMPANY (U 1007 C)  
FORESTHILL TELEPHONE CO. (U 1009 C)  
KERMAN TELEPHONE CO. (U 1012 C)  
PINNACLES TELEPHONE CO. (U 1013 C)  
THE PONDEROSA TELEPHONE CO. (U 1014 C)  
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)  
THE SISKIYOU TELEPHONE COMPANY (U 1017 C) AND  
VOLCANO TELEPHONE COMPANY (U 1019 C)  
("INDEPENDENT SMALL LECS")**

**ON THE FIFTH AMENDED SCOPING MEMO AND RULING SEEKING COMMENT  
ON FUNDING LOW-INCOME AND TRIBAL COMMUNITIES**

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1 **I. INTRODUCTION.**

2 Pursuant to the Fifth Amended Assigned Commissioner's Scoping Memo and Ruling  
3 (“Ruling”), issued on December 13, 2019, the Independent Small LECs<sup>1</sup> offer these opening  
4 comments on the additional issues identified in the Ruling. Building on Issue 3 from the Fourth  
5 Amended Scoping Memo, the Ruling seeks additional input on the potential use of the California  
6 High-Cost Fund-A (“CHCF-A”) and/or the California High-Cost Fund-B (“CHCF-B”) in  
7 facilitating deployment and advancing resiliency in “tribal, rural, low-income, and underserved  
8 areas.” *See Ruling* at 3. The Independent Small LECs hereby comment on the expansion of the  
9 proceeding, the eligibility requirements of the respective high-cost programs, and the merits of the  
10 social objectives identified in the Ruling.

11 As rural telephone companies, the Independent Small LECs are familiar with the types of  
12 areas where many tribal groups reside, and the Independent Small LECs appreciate that there is a  
13 need to build capacity for communications services in these areas, as well as an imperative to  
14 enhance network redundancy and resiliency for public safety purposes. *See Ruling* at 3. The  
15 Independent Small LECs support these goals, and the CHCF-A has been an important tool for  
16 helping achieve these objectives within the companies’ current service territories, including in  
17 tribal areas. Likewise, the CHCF-A could be available to tribal groups who wish to abide by the  
18 associated statutory requirements, including obtaining a Certificate of Public Convenience and  
19 Necessity (“CPCN”), operating as a Carrier of Last Resort (“COLR”), qualifying as a “rural  
20 telephone company,” and submitting to be a regulated as a rate-of-return carrier. The CHCF-B  
21 presents a more flexible option, as its statutory requirements are far less prescriptive. To the  
22 extent that the Commission wishes to pursue solutions such as “pilot” programs or “grants,” the  
23 CHCF-B would be better suited to accommodate such proposals, provided that they meet the

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25 <sup>1</sup> The Independent Small LECs are the following small, rural Incumbent Local Exchange Carriers, each of  
26 whom is a recipient of California High Cost Fund-A support and each of which is regulated as a rate-of-  
27 return carrier by the California Public Utilities Commission (“Commission”): Calaveras Telephone  
28 Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C),  
Foresthill Telephone Co. (U 1009 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U  
1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The  
Siskiyou Telephone Company (U 1017 C), and Volcano Telephone Company (U 1019 C).

1 terms of the CHCF-B statute and are designed to advance universal service and reduce rate  
2 disparities in high-cost areas.

3 **II. THE PHASE 2 TRIBAL WORKSHOPS DEMONSTRATED THAT THE**  
4 **INDEPENDENT SMALL LECs ARE MEETING THEIR OBLIGATIONS AS**  
5 **CARRIERS OF LAST RESORT AND FULFILLING CUSTOMER NEEDS**  
6 **WITHIN THEIR SERVICE TERRITORIES.**

7 The Independent Small LECs are concerned with the portrayal of “COLR service” in the  
8 Ruling, as it incorrectly implies that the tribal workshops generated concerns about the  
9 Independent Small LECs’ service in tribal areas.<sup>2</sup> The Ruling offers the blanket statement that  
10 “[i]n short, COLR service is not adequately meeting community needs,” but, as to Independent  
11 Small LECs, this is not a correct statement. *Ruling* at 3. While there was some concern expressed  
12 by the tribal representatives with the service offered by larger providers, none of the comments  
13 made by the tribes during the Phase 2 tribal workshops indicated that they had problems or  
14 concerns with the service offered by the Independent Small LECs. Four of the Independent Small  
15 LECs serve tribal areas, and there is no evidence of a material service problem in these areas.  
16 Siskiyou in particular has strong, longstanding relationships with the tribes in its service territory.  
17 Indeed, Siskiyou has partnered with the Karuk tribe in advancing broadband connectivity in the  
18 area, and there have even been suggestions that Siskiyou should expand beyond its territory to  
19 serve additional tribal areas.

20 As this proceeding moves forward, it will be important for the Commission to correct any  
21 potential misimpression that the Independent Small LECs have failed the tribal communities. The  
22 Independent Small LECs remain committed to serving the tribal interests in their territories, and  
23 the Independent Small LECs would welcome participation by tribes in the CHCF-A if they choose  
24 to become rate-of-return carriers and meet the other statutory prerequisites for participation.  
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26 <sup>2</sup> These workshops consisted of: (1) the September 16, 2019 Central California Tribal Workshop and  
27 Consultation hosted by the Tuolumne Me-Wuk; (2) the September 30, 2019 Northern California Tribal  
28 Workshop and Consultation hosted by the Blue Lake Rancheria; and (3) the October 11, 2019 Southern  
California Tribal Workshop and Consultation hosted by the Pechanga Band of the Luiseño.

1 **III. CONTINUED SUPPORT FROM THE CHCF-A REMAINS A CRITICAL TOOL IN**  
2 **ENSURING THAT THE INDEPENDENT SMALL LECs CAN MEET THE NEEDS**  
3 **OF TRIBAL AND LOW-INCOME COMMUNITIES WITHIN THEIR SERVICE**  
4 **TERRITORIES.**

5 The Independent Small LECs play a critical role in providing high-quality service to rural,  
6 low-income, and tribal communities that are be located in their service territories. Indeed, given  
7 that each of the Independent Small LECs is a COLR, each must engineer its network to serve all  
8 households in its territory. Additionally, given the demographic nature of the service territories of  
9 the Independent Small LECs, each serves an almost entirely rural population as well as a  
10 significant number of low-income individuals who qualify for assistance under the California  
11 LifeLine program. Three of the Independent Small LECs have customer bases with more than  
12 30% Lifeline subscribership, and even those who are not on LifeLine are predominantly low-  
13 income and middle-income households. Support from the CHCF-A to the Independent Small  
14 LECs plays a pivotal role in achieving the goal of "assuring the continued affordability and  
15 widespread availability of high-quality telecommunications services to all Californians," as the  
16 Ruling suggests. *Ruling* at 2.

17 The Independent Small LECs appreciate the Commission's concerns about future Public  
18 Safety Power Shutoffs ("PSPS"), bridging the "digital divide," and ensuring universal service. *Id.*  
19 at 3-4. These are all critical goals, and the Independent Small LECs have been investing toward  
20 upgrading their networks to ensure continued access to high-quality voice service over reliable  
21 broadband-capable networks that will meet the Federal Communication Commission's 25/3  
22 Megabit per second ("Mbps") standard and beyond. In administering the CHCF-A, it is essential  
23 that the Commission continue to include broadband-capable investments in rate base. Similarly,  
24 given the appropriate emphasis placed by the Commission on the PSPS events, climate change,  
25 wildfires, and emergency preparedness efforts, it is crucial that the Commission account for the  
26 costs of these types of events when considering expense projections in Independent Small LEC  
27 rate cases. *Id.* The confluence of these events is becoming the "new normal" and can no longer be  
28 regarded as unexpected, so it is imperative that the Commission allow recovery for these types of  
events to account for the actual cost of providing service in California. Ultimately, the success of

1 the CHCF-A, and the preservation of the benefits that it provides to tribal, rural, and low-income  
2 communities, depends on reasonable decisions from the Commission in Independent Small LEC  
3 rate cases.

4 **IV. CHCF-A SUPPORT COULD BE AVAILABLE TO NEW PROVIDERS,**  
5 **INCLUDING TRIBAL-OWNED ENTITIES, IF THEY MEET STATUTORY**  
6 **CRITERIA.**

7 The CHCF-A is available to all small independent telephone corporations that meet each of  
8 the statutory requirements of the Public Utilities Code. The criteria for participation are set forth  
9 in Section 275.6(d), which states that:

10 In order to participate in the CHCF-A program, a small independent telephone  
11 corporation shall meet all of the following requirements:

- 12 (1) Be subject to rate-of-return regulation.
- 13 (2) Be subject to the commission's regulation of telephone corporations  
14 pursuant to this division.
- 15 (3) Be a carrier of last resort in their service territory.
- 16 (4) Qualify as a rural telephone company under federal law (47 U.S.C.  
17 Sec. 153(44)).

18 The first prerequisite is that a carrier agree to be subject to "rate-of-return regulation."  
19 This term is defined in statute as "a regulatory structure whereby the commission establishes a  
20 telephone corporation's revenue requirements, and then fashions a rate design to provide the  
21 company a fair opportunity to meet the revenue requirement." Pub. Util. Code § 275.6(b)(4). In  
22 practice, this standard means that companies must participate in periodic rate cases and be subject  
23 to the mandatory CHCF-A annual advice letter process, as well as abide by annual reporting  
24 requirements applicable to rate of return carriers or "GRC ILECs," as they are sometimes termed.

25 The second requirement, being subject to the Commission's regulations for telephone  
26 corporations, involves obtaining a CPCN from the Commission. "Telephone corporation" is  
27 defined in Public Utilities Code Section 234 such that it "includes every corporation or person  
28 owning, controlling, operating, or managing any telephone line for compensation within this  
state." Pub. Util. Code § 234. In general, obtaining a CPCN from the Commission involves  
meeting minimum financial standards, demonstrating managerial and technical expertise in the  
telecommunications industry, satisfying all requirements under the California Environmental  
Quality Act, fulfilling tariffing or detariffing requirements, provide a map of the service area the

1 provider intends to serve, filing a statement meeting the requirements of General Order 104-A,  
2 Section 2,<sup>3</sup> and satisfying basic safety requirements. *See* Pub. Util. Code § 1001; D.95-12-056;  
3 D.91-10-041; D.13-05-035; Commission Rule 2.4; D.07-09-018; D.95-12-056, Appendix C, Rule  
4 4.E; *see also* July 10, 2014 Safety Policy Statement of the California Public Utilities Commission.  
5 In seeking a CPCN, a prospective CHCF-A recipient would also have to request designation as an  
6 Incumbent Local Exchange Carrier (“ILEC”) so that it could meet the definition of “small  
7 independent telephone company” in statute. *See* Pub. Util. Code § 275.6(b)(6). These are all  
8 requirements that could be met by a willing provider, and, indeed, the Karuk tribe has successfully  
9 obtained such a CPCN. *See* D.12-08-026.

10 Third, the company must be a COLR in its service territory. A COLR is defined as "a  
11 telephone corporation that is required to fulfill all reasonable requests for service within its service  
12 territory." Pub. Util. Code § 275.6(b)(1). In the past, CLECs have operated as COLRs, so this  
13 status is not reserved for incumbent carriers.<sup>4</sup>

14 The fourth and final requirement is that the company qualify as a rural telephone company  
15 under federal law. Federal law defines a rural telephone company as follows:

16 The term “rural telephone company” means a local exchange carrier operating  
17 entity to the extent that such entity—

- 18 (A) provides common carrier service to any local exchange carrier study  
19 area that does not include either—  
20 (i) any incorporated place of 10,000 inhabitants or more, or any  
21 part thereof, based on the most recently available population  
22 statistics of the Bureau of the Census; or  
23 (ii) any territory, incorporated or unincorporated, included in an  
24 urbanized area, as defined by the Bureau of the Census as of  
25 August 10, 1993;  
26 (B) provides telephone exchange service, including exchange access, to  
27 fewer than 50,000 access lines;  
28 (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.

<sup>3</sup> A "statement of any material financial interest, as hereinafter defined, of the following persons [directors, officers, owners] in any transaction involving the purchase of materials and equipment or the contracting, arranging or paying for construction, maintenance work or service of any kind to which the utility has been a party during the year covered by the annual report, or to which the utility proposed, at the conclusion of such year, to become a party."

<sup>4</sup> *See, e.g.*, Resolution T-17526 (approving Cox California Telecom, LLC's request to opt out of COLR responsibilities after serving as a COLR from 1999 to 2016).

1 47 U.S.C. § 153(44). Some of these definitions are backward-looking, and necessarily include  
2 each of the Independent Small LECs. However, others are reflective of present circumstances, and  
3 would likely include many tribal areas, depending on how a requesting tribe chose to frame its  
4 service territory.

5 The CHCF-A is not only specific in its eligibility requirements; it prescribes specific  
6 funding mechanisms grounded in rate-of-return regulatory principles. These include the  
7 identification of a “revenue requirement” reflecting the company’s costs, and the fashioning of a  
8 rate design to meet that revenue requirement through intrastate regulated revenue sources. *See*  
9 Pub. Util. Code §§ 275.6(c), 275.6(b)(3), (4), (5). This regulatory apparatus would be inconsistent  
10 with the development of “pilots,” “grants,” or other alternative funding distribution mechanisms  
11 that the Ruling identifies. *Ruling* at 3.

12 Given that each of these eligibility requirements to receive money from the CHCF-A  
13 program are codified in statute, the Commission must ensure that qualifications for the program  
14 and the usage of its funds is consistent with those directives. However, despite this, if any new  
15 providers wished to become eligible to receive funds under the CHCF-A, they certainly could do  
16 so if they followed each of the above criteria. Additionally, it is also important to note that new  
17 providers would only be able to qualify for funds in areas outside of territories served by the  
18 Independent Small LECs, since the Independent Small LECs are already fulfilling this role in their  
19 discrete service territories.

20 **V. ALTERNATE USES OF CHCF-B SUPPORT COULD BE CONSIDERED**  
21 **PROVIDED THAT THEY ARE CONSISTENT WITH STATUTORY**  
22 **REQUIREMENTS.**

23 The CHCF-B may be a more viable option for exploring alternative uses of high-cost  
24 support. Public Utilities Code Sections 276 and 276.5<sup>5</sup> govern the administration of CHCF-B  
25 program. Unlike the CHCF-A, the statute governing the CHCF-B specifically states that it "does  
26 not limit the manner in which the commission collects and disburses funds, and does not limit the

27 <sup>5</sup> As pointed out in the Fifth Amended Scoping Memo, this was formerly Public Utilities Code Section  
28 739.3.

1 manner in which it may include or exclude the revenue of contributing entities in structuring the  
2 program." Pub. Util. Code § 276.5(a). This platform is significantly different from Section 275.6,  
3 which governs the administration of the CHCF-A program and sets out strict requirements for  
4 eligibility and disbursements of program funds, as described above. Indeed, the statutory  
5 language regulating the CHCF-B is relatively flexible:

6         The commission shall develop, implement, and maintain a suitable, competitively  
7         neutral, and broad-based program to establish a fair and equitable local rate support  
8         structure aided by universal service rate support to telephone corporations serving  
9         areas where the cost of providing services exceeds rates charged by providers, as  
10         determined by the commission.

11 *Id.* As this language demonstrates, the statute vests in the Commission full authority to "*develop,*  
12 *implement, and maintain*" the CHCF-B program as long as it "establish[es] a fair and equitable  
13 local rate support structure." *Id.* (emphasis added). This is in contrast to the statute governing the  
14 CHCF-A program, which only allows that "[t]he commission shall exercise its regulatory authority  
15 to *maintain* the California High Cost Fund-A." Pub. Util. Code § 275.6(a) (emphasis added).

16         Despite the CHCF-B's broader statutory foundation, there are still statutory requirements  
17 to use CHCF-B. A provider must: (1) operate as a "telephone corporation;" (2) operate in an area  
18 "where the cost of providing services exceeds rates charged by providers, as determined by the  
19 Commission;" and (3) serve as a COLR "offer[ing] basic service to all residential customers  
20 within a designated service area." Pub. Util. Code § 276.5(a); D.14-06-008 at 2. Money from the  
21 CHCF-B program is currently dispensed through a high cost proxy funding mechanism created by  
22 the Commission, and if the Commission wished to modify or expand upon that mechanism, it  
23 would have to take proper steps to navigate the administrative process and change the rules. D.14-  
24 06-008 at 4. Under the statutory framework, the Commission has authority to alter the funding  
25 mechanism when necessary, as it did in 2007, when the mechanism was updated under the  
26 Hatfield Model (HM 5.3) to reflect changes in costs and demographic data in the years since the  
27 inception of the program. D.07-09-020 at 109. Thus, if the Commission sought to add new  
28 elements to the CHCF-B program, such as pilot or grant programs, the Commission may be able  
to do so, as long as these programs fulfill the same statutory goals of the CHCF-B, which is  
designed to promote universal service in high cost areas.



