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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 PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES
ALLOWING AND ADOPTING CONDITIONS FOR WIRELINE COMPETITION IN
SMALL LOCAL EXCHANGE CARRIER SERVICE TERRITORIES**

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 14.3(a) of the Rules of Practice and Procedure (“Rules”) of the California
3 Public Utilities Commission (“Commission”), the Independent Small LECs¹ hereby provide these
4 opening comments on the Proposed Decision of Commissioner Guzman Aceves Allowing and
5 Adopting Conditions for Wireline Competition in Small Local Exchange Carrier Service
6 Territories (“Proposed Decision”). The Proposed Decision addresses two subjects. First, it opens
7 rural telephone company service territories in California to wireline competition subject to certain
8 general conditions and location-specific conditions to be developed in specific applications by
9 potential competitors. Second, the Proposed Decision adjusts the timing and sequence of the next
10 round of rate cases under the 2015 rate case plan. For reasons that have been extensively briefed
11 in this proceeding, the Small LECs continue to disagree with the Proposed Decision’s conclusion
12 to open the Small LECs’ service territories to Competitive Local Exchange Carrier (“CLEC”)
13 competition. However, the Small LECs strongly support the second aspect of the Proposed
14 Decision, as the proposed adjustment to the upcoming rate cases will be essential to ensure a
15 streamlined implementation of any Phase 2 policy changes and avoid unnecessary uncertainty,
16 cost, and burden for all parties.

17 As they have expressed in previous comments, the Independent Small LEC maintain their
18 support for the Commission’s longstanding policy-based prohibition against CLEC competition in
19 their rural service areas. This policy remains appropriate as a matter of sound public policy, and
20 modifying it presents significant legal and procedural problems that are not addressed by this
21 Proposed Decision.² Nevertheless, these comments will not repeat these previous arguments.

22

23 ¹ The Independent Small LECs are the following carriers, each of whom is a small, rate-of-return regulated
24 telephone company serving rural and remote areas of California: Calaveras Telephone Company (U 1004
25 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co.
26 (U 1009 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa
27 Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone
28 Company (U 1017 C), and Volcano Telephone Company (U 1019 C).

² See D.14-12-084, at 45. As noted in previous comments, it is unlawful for the Commission to reverse a
policy reached following evidentiary hearings without holding new evidentiary hearings. See Pub. Util.
Code § 1708; *California Trucking Ass’n v. Pub. Util. Comm’n*, 19 Cal.3d 240, 245 (1997); see also *S.*
California Edison Co. v. Pub. Util. Comm’n, 101 Cal.App.4th 982, 994 (2002) (a Commission decision

1 Instead, the Independent Small LECs urge the Commission to focus on reasonable modifications
2 to the general conditions in the Proposed Decision to preserve and advance universal service,
3 protect the public safety and welfare, ensure the continued quality of telecommunications service,
4 and safeguard the rights of consumers. *See* Pub. Util. Code § 253(b).

5 In particular, the Commission should require a CLEC that seeks to compete in an
6 Independent Small LEC territory to: (1) provide voice service to the entirety of any exchange in
7 which they seek to serve a customer, or at a minimum, satisfy specific criteria to ensure that its
8 self-designated area is non-discriminatory and reflects the demographics of the Independent Small
9 LEC’s service territory, including a proportional number of residential to business customers, a
10 proportional number of low-income and non-low-income customers, and a proportional number of
11 Lifeline-eligible to non-LifeLine eligible customers; (2) fulfill all reasonable requests for
12 broadband-capable connections at levels that meet or exceed the Federal Communications
13 Commission’s (“FCC”) minimum broadband speeds, currently set at 25 Megabits per second
14 (“Mbps”) download and 3 Mbps upload; (3) submit all General Order (“G.O.”) 133-D reports that
15 the Small LECs submit; and (4) submit two-year service quality improvement plans and progress
16 reports on an annual basis, including the same elements as the reports mandated in the
17 Independent Small LECs’ Eligible Telecommunications Carrier (“ETC”) filings. These measures
18 are important to avoid discrimination in build-out, prevent cream-skimming, ensure a level
19 playing field with the Independent Small LECs, and fulfill critical regulatory oversight and
20 consumer protection functions.³ Regardless of the overall policy judgment and specific legal
21 arguments favoring competition in the Proposed Decision, rural areas continue to have unique

22
23 adopted through evidentiary hearings cannot be modified without hearings). While the Proposed Decision
24 claims that hearings are not required on purely legal or policy issues, opening the Independent Small LECs’
25 territories to CLEC competition also raises numerous disputed factual issues as explained in the
26 Independent Small LECs’ prior comments. *See, e.g., Reply Comments of Independent Small LECs on
27 Third Amended Scoping Memo* at 10-11. The disputed factual issues are also evident from the Proposed
28 Decision itself, which discusses which conditions are appropriate to adopt for CLEC competitive entry and
remarks upon disputed facts, including, *inter alia*, the facts surrounding Comcast Phone’s application to
compete in The Ponderosa Telephone Co.’s service area (A.19-01-003). *See Proposed Decision* at 19-32.

³ *Independent Small LECs Opening Comments on General Guidelines for Allowing Wireline Competition
in Areas Served by the Small Local Exchange Areas* at 4-8.

1 dynamics and consumer protection imperatives, and the Proposed Decision should ensure that
2 these factors are not overlooked even if individual applications seeking competitive entry are
3 permitted. The Independent Small LECs’ proposed changes to the Proposed Decision’s
4 conclusions of law are set forth in Appendix A. Conforming changes should also be made to the
5 body of the Proposed Decision and Appendix A thereto.

6 **II. THE PROPOSED DECISION ADOPTS IMPORTANT ADJUSTMENTS TO THE**
7 **TIMING AND SEQUENCING OF RATE CASES UNDER THE 2015 RATE CASE**
8 **PLAN.**

8 The Proposed Decision reaches an appropriate conclusion to grant the Independent Small
9 LECs’ motion for a one-year extension of general rate case filing deadlines adopted in D.15-06-
10 048, a freeze of the CHCF-A waterfall mechanism, and a resequencing of certain rate cases. As
11 the Proposed Decision correctly notes, this extension is needed as “the program and ratemaking
12 rule changes resulting from the pending Phase 2 decision will require time to implement.”⁴
13 Indeed, given that the anticipated proposed decision in Phase 2 has not yet been issued, the
14 “Group A” companies would have to make rate case filings without knowing what ratemaking
15 standards and procedural rules apply to their submissions. Extending all deadlines by one year
16 will allow the Commission to thoughtfully consider the record, craft a proposed decision on the
17 hearing issues in Phase 2, and implement any changes in an orderly manner.

18 An extension of a full year is appropriate for many reasons. Most importantly, a one-year
19 extension preserves the symmetry of the rate case plan and aligns the internal deadlines of the rate
20 cases with future test years. An extension of less than a year would risk using test years that are
21 either too far in the future or too soon. In the former case, the reliability of the future test year
22 would be reduced, and in the latter case, the rate cases would likely bleed into the test year and
23 result in confusing disconnects between projections and actual results. Especially in these times of
24 heightened uncertainty, both the companies and other stakeholders are adjusting to the “new
25 normal.” The Independent Small LECs hope that the current public health crisis will have
26 improved or stabilized by 2021, but even if it does not, the additional time will allow all parties

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28 ⁴ *Proposed Decision* at 37-38.

1 necessary time to adjust to the preparation and litigation of fact-intensive rate cases in the new
2 environment. For the same reasons, better data will exist to inform forward-looking projections if
3 a full year is provided before rate cases must commence.

4 The Proposed Decision does not adopt the exact sequencing that the Independent Small
5 LECs proposed in their motion, but the resequencing is reasonable in light of the one-year
6 extension provided. The resequencing will allow affiliates Foresthill and Kerman to proceed in
7 the same year, while aligning all of the companies subject to the Alternative Connect America
8 Fund Cost Model (“A-CAM”) mechanism in the same year. Sierra has been moved forward a
9 year, which Sierra would oppose if not for the one-year extension. However, this overall result
10 places Sierra on the same expected timeframe as the existing plan, just in a different group.
11 Calaveras has been moved back a year, which is also reasonable under this overall plan. This new
12 grouping of cases should allow for some additional efficiencies and balance the work flow for
13 Commission staff.

14 As the Commission considers the Proposed Decision, the Independent Small LECs note
15 that time is of the essence as to the extension on the rate case deadlines. The first deadline for the
16 “Group A” companies will take place before this Proposed Decision will be considered, on August
17 3, 2020. The Independent Small LECs brought a Rule 16.6 extension request to the Executive
18 Director to seek a one-month extension of this deadline to avoid it occurring before the Proposed
19 Decision can effectuate the extension. This limited extension was granted on July 23, 2020. For
20 similar reasons, it is important that the one-year extension be adopted at the August 6, 2020
21 meeting, before other deadlines for the “Group A” companies become due.

22 **III. THE PROPOSED DECISION SHOULD BE MODIFIED TO INCLUDE**
23 **ADDITIONAL GENERAL CONDITIONS THAT ARE NECESSARY TO**
24 **ADVANCE UNIVERSAL SERVICE AND ENSURE THE PROVISION OF SAFE**
AND RELIABLE SERVICE TO RURAL CONSUMERS IN THE SMALL LECS’
SERVICE TERRITORIES.

25 The Proposed Decision should be modified to include additional targeted and reasonable
26 conditions, which are consistent with the intent of the Proposed Decision and “Section 253(b)’s
27 mandated goals to preserve and advance universal service, protect the public safety and welfare,
28 ensure the continued quality of telecommunications services, and safeguard the rights of

1 consumers.”⁵ The Independent Small LECs proposed some of these conditions in their prior
2 comments, but certain adjustments have been made in response to the findings in the Proposed
3 Decision. Additional explanation and reasoning has also been supplied below.

4 **A. Competing CLECs Should Be Required to Provide Voice Service to an Entire**
5 **Exchange, or at a Minimum, Satisfy Specific Criteria Showing that the**
6 **CLEC’s Self-Designated Service Area Is Proportional to the Demographics of**
7 **the Small LEC Service Territory.**

7 The Proposed Decision rejects as unduly burdensome the Independent Small LECs’
8 recommendation that competing CLECs should be required to provide voice-grade service
9 throughout the entire local exchange area a CLEC proposes to serve.⁶ This condition, however, is
10 necessary to prevent “cream skimming,” at least at the exchange level. This proposal reflects a
11 balanced approach to ensuring that CLECs do not compete in a discriminatory manner but stops
12 short of requiring service of the whole “study areas,” as would be required for a Carrier of Last
13 Resort (“COLR”). Instead, the proposed requirement applies at the exchange level which ensures
14 that competitors are equitably serving all ratepayers within units that the Commission has
15 consistently used to meaningfully subdivide service territories.

16 The Proposed Decision correctly finds that “CLECs may tend to serve only portions of
17 Small LECs’ service areas that are profitable” and may “cream skim” only profitable customers.⁷
18 But the Proposed Decision’s adoption of a “must serve” requirement only in the CLEC’s self-
19 defined service area will not prevent these harmful and discriminatory outcomes unless specific
20 standards are established to prevent CLECs’ designating a discriminatory self-designated service
21 territory. The Proposed Decision concludes that “[i]t is reasonable for a CLEC to make a good
22 faith effort to serve a territory that reflects the proportional demographics of the Small LEC
23 territory it is entering because it supports non-discriminatory behavior” and “guard[s] against only
24 sub-sets of wealthy customers being served by the CLEC.”⁸ But it does not establish any specific

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⁵ *Proposed Decision* at 26-27.

26 ⁶ *Proposed Decision* at 19.

27 ⁷ *Id.* at 39 (F.O.F. 5-6).

28 ⁸ *Id.* at 41 (C.O.L. 13, 22).

1 parameters for evaluating whether a CLEC’s “good faith efforts” are effective. Specifically, the
2 Proposed Decision would require a CLEC to ensure that the self-designated service territory
3 represents the demographics of the Small LEC territory it seeks to serve by making a “good faith
4 effort” to serve “a proportional number of residential to commercial customers, and a proportional
5 number of low-income and non-low-income customers.”⁹ This “good faith effort” requirement
6 cannot be objectively measured and is not rigorous or specific enough to prevent harmful cream-
7 skimming practices by the CLECs.

8 Instead, the Proposed Decision should at least require a CLEC seeking entry to
9 demonstrate by a preponderance of evidence that its self-designated service area reflects the
10 demographics of the applicable Small LEC service territory by including a proportional number of
11 residential to business customers, a proportional number of low-income and non-low-income
12 customers, and a proportional number of Lifeline-eligible to non-LifeLine eligible customers. A
13 CLEC should be required to provide evidence that its self-designated area’s demographic and
14 socio-economic characteristics satisfy these proportionality requirements. In evaluating the self-
15 designated area, the Commission should also require information regarding whether the proposed
16 area includes Tribal areas and whether the proposed area is physically isolated or separated from
17 population centers where essential social, economic, and health services can be found. Requiring
18 this type of information will help ensure that CLECs are not selecting only the most profitable,
19 geographically dense, and easily accessible customers while ignoring the rest of the population.

20 **B. Competing CLECs Should Be Required to Fulfill all Reasonable Requests for**
21 **Broadband-Capable Connections at Levels that Meet the FCC’s Minimum**
22 **Broadband Speed Standards.**

23 The Proposed Decision notes that the Commission agrees “with TURN’s goal of
24 increasing broadband services. Competition by CLECs in the Small LECs’ service territories
25 should promote increased broadband deployment in remote areas and thereby offer rural
26 customers choices in voice and other broadband services that are already offered to their urban
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⁹ *Id.*, App. A at 1.

1 counterparts.”¹⁰ Despite this agreement, the Proposed Decision does not address the Independent
2 Small LECs’ proposal that the Commission require CLECs to fulfill all reasonable requests for
3 broadband-capable connections in their self-designated areas at levels that meet the FCC’s
4 evolving broadband standards, which include speed capabilities of 25/3 Mbps and latency
5 “suitable for real-time applications.”¹¹ This condition is needed to meet the Commission’s stated
6 goal of increasing broadband deployment to rural customers and will provide rural customers with
7 access to the speeds and capacity that are necessary to meet their needs, particularly given the
8 increasing reliance on broadband-based applications that require higher capacity and speed, such
9 as educational and health care applications, home security systems, and telecommuting. The
10 Independent Small LECs’ proposal to require CLECs to offer broadband access at the current FCC
11 broadband standards should be added to the general conditions that the Proposed Decision would
12 adopt.

13 **C. The Proposed Decision Should Clarify that Competing CLECs Must Submit**
14 **All G.O. 133-D Reports that the Small LECs Submit.**

15 The Proposed Decision agrees with the Independent Small LECs’ proposal that “CLEC
16 market entry into a Small LEC’s service territory should be conditioned on compliance with GO
17 133-D service quality rules”¹² The general conditions that the Proposed Decision would
18 adopt, however, do not specifically include the Independent Small LECs’ proposal that CLEC
19 market entry into a Small LEC’s service territory be conditioned on compliance with all G.O. 133-
20 D sections applicable to the Independent Small LECs.¹³ Rather, General Condition 12(d) requires
21 competing CLECs to provide to the Commission “[a]ll applicable reports required by GO 133-D
22 and any subsequent service quality rules established by the Commission.”¹⁴ As the Independent
23

24 ¹⁰ *Proposed Decision* at 35.

25 ¹¹ 47 C.F.R. § 54.313(f); *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order*, FCC 18-176 (rel. Dec. 13, 2018) at ¶ 3.

26 ¹² *Proposed Decision* at 28 (citing *Independent Small LECs Comments on Competition Ruling* at 6).

27 ¹³ *Independent Small LECs Opening Comments on Competition Ruling* at 6-7.

28 ¹⁴ *Proposed Decision* at 24.

1 Small LECs’ explained in prior comments, certain reporting requirements of G.O. 133-D do not
2 currently apply to CLECs, but apply to the Independent Small LECs.¹⁵ Therefore, the Proposed
3 Decision should revise General Condition 12(d) to clarify that CLECs that seek to serve in a Small
4 LEC service territory are required to submit “G.O. 133-D reports that satisfy all sections
5 applicable to the Independent Small LECs.” This clarification appears to be consistent with the
6 intent of the Proposed Decision and this information will aid the Commission in evaluating the
7 service quality provided by CLECs to rural customers in the Small LEC service areas.

8 **D. Competing CLECs Should Be Required to Submit Annual Two-Year Service**
9 **Quality Improvement Plans and Progress Reports.**

10 The Proposed Decision does not directly address the Independent Small LECs’ proposed
11 condition that competing CLECs be required to submit two-year service quality improvement
12 plans and progress reports on an annual basis, including the same elements as the reports
13 mandated in the Independent Small LECs’ Eligible Telecommunications Carrier (“ETC”) filings.¹⁶
14 The Proposed Decision does conclude that it will not impose COLR or ETC obligations on CLECs
15 because CLECs are ineligible to receive CHCF-A support to serve high cost areas.¹⁷ However, the
16 Proposed Decision does not address the Independent Small LECs’ specific proposal that the
17 Commission require CLECs to submit two-year service quality improvement plans and progress
18 reports. These are not tied to the receipt of CHCF-A funds. In light of the Proposed Decision’s
19 recognition of the importance of service quality and continued broadband deployment in the rural
20 areas served by the Independent Small LECs, it should require CLECs to submit to the
21 Commission two-year service quality improvement plans and progress reports as a general
22 condition of competing in the Small LECs’ service territories. This general condition will help

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24 ¹⁵ See G.O. 133-D, §§ 3.1 (Installation Interval), 3.2 (Installation Commitments).

25 ¹⁶ *Independent Small LECs Opening Comments on Competition Ruling* at 7; see Res. T-17002, Appendix B,
§ II.

26 ¹⁷ *Proposed Decision* at 31.

APPENDIX A

Proposed Revisions to Conclusions of Law
(Additions are underlined and deletions are in strikethrough).

Conclusions of Law

...

13. It is reasonable to require that a CLEC seeking to provide voice wireline service in a Small LEC territory demonstrate by a preponderance of evidence that its self-defined area is non-discriminatory and reflects the proportional demographics of the Small LEC's service territory it seeks to serve, including a proportional number of residential to business customers, a proportional number of low-income and non-low-income customers, and a proportional number of Lifeline-eligible to non-LifeLine eligible customers~~for a CLEC to make a good faith effort to serve a territory that reflects the proportional demographics of the Small LEC territory it is entering because it supports non-discriminatory behavior.~~

14. It is reasonable to require CLECs to comply with rules the Commission ultimately adopts in the Emergency Disaster Relief proceeding (R.18-03-011), including demonstrating in their applications for entry into the service territories of Small LECs that they have adequate back-up power to ensure reliability during a significant power outage in any new facilities that they build.

XX. It is reasonable to require CLECs to fulfill all reasonable requests for broadband-capable connections in their self-defined areas at levels that meet or exceed the Federal Communications Commission's ("FCC") minimum broadband speeds, currently set at 25 Megabits per second ("Mbps") download and 3 Mbps upload.

XX. It is reasonable to require CLECs to submit the Commission all General Order ("G.O.") 133-D reports that the Small LECs submit.

XX. It is reasonable to require CLECs to submit two-year service quality improvement plans and progress reports on an annual basis for their self-defined areas, including the same elements as the reports mandated in the Small LECs' Eligible Telecommunications Carrier ("ETC") filings.

...