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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

REPLY 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 The Independent Small LECs¹ offer these reply comments addressing the opening
3 comments of the interested parties on the Fifth Amended Assigned Commissioner's Scoping
4 Memo and Ruling ("Ruling"). In addition to the Independent Small LECs, three parties offered
5 comments on the Ruling: the Public Advocates Office ("Cal PA"), The Utility Reform Network
6 ("TURN"), and the California Cable and Television Association ("CCTA"). The comments of the
7 consumer groups and the Independent Small LECs reflect many areas of agreement, including a
8 shared interest in promoting broadband deployment in tribal areas and a common observation that
9 the California High Cost Fund-B ("CHCF-B") offers the Commission more flexibility in
10 addressing this issue. Especially given the ramifications of the ongoing health crisis, keeping rural
11 communities connected is of utmost importance. The Commission should continue to promote
12 policies that prioritize this value, both in tribal areas and in other rural areas of California.

13 Given the high-level of agreement in the opening comments regarding the overall policy
14 objectives and statutory framework, these reply comments focus on correcting misimpressions that
15 may be created by specific factual propositions in Cal PA's and TURN's comments. The
16 Commission should ensure that information about the location of underserved tribal communities
17 and information about broadband deployment in California is properly contextualized. In
18 addition, these comments oppose CCTA's improper attempt to leverage this comment cycle to
19 promote its positions regarding competition in Independent Small LEC territories, an issue that
20 exceeds the scope of this Ruling.

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25 ¹ The Independent Small LECs are the following small, rural Incumbent Local Exchange Carriers, each of
26 which 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 **II. INFORMATION ABOUT THE LOCATION OF UNDERSERVED TRIBAL**
2 **COMMUNITIES AND THE EXTENT OF URBAN BROADBAND DEPLOYMENT**
3 **SHOULD BE PUT IN PROPER CONTEXT TO AVOID MISUNDERSTANDINGS.**

4 The Independent Small LECs are concerned that certain information in the opening
5 comments from Cal PA and TURN may be misleading. Clarifications should be noted to avoid
6 mischaracterizations of the Independent Small LECs' service quality or creating false comparisons
7 to the companies' broadband capabilities.

8 The Independent Small LECs agree with Cal PA that deploying broadband internet to
9 tribal communities without any broadband access should be a priority for the Commission.²
10 However, Cal PA makes the imprecise statement that "[t]here are several tribal communities
11 located in CHCF-A or CHCF-B territories that do not have broadband access." On the contrary,
12 Cal PA's own data tables demonstrate that none of the tribal communities that lack access to
13 broadband fall within CHCF-A territory.³ Thus, a more appropriate statement would be that while
14 there are 15 tribal communities located in CHCF-B territory that lack broadband access, there are
15 no tribal communities located in CHCF-A territory that lack broadband access. As with many
16 rural areas, including significant portions of Independent Small LEC territories, broadband
17 capabilities must continue to improve to meet evolving federal speed benchmarks and satisfy
18 growing customer demand, but it is not true that tribal areas in Independent Small LEC territories
19 are without access to broadband.⁴

20 Similarly, the Independent Small LECs concur with TURN that a "digital divide" exists in
21 California between high-income, urban and suburban areas and low-income, tribal and rural
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24 ² Opening Comments of the Public Advocates Office on the Assigned Commissioner's Fifth Amended
Scoping Memo and Ruling ("Cal PA Opening Comments") at 5.

25 ³ *Id.*, Appendix 1, at A-1.

26 ⁴ It should also be noted that Cal PA mistakenly lists the territory of the Jackson Rancheria of Me-Wuk
27 Indians of California as being within Volcano Telephone Company's service territory when it is actually in
AT&T's service territory, which is adjacent to Volcano's service territory. *Id.*, Appendix 1, at A-4.
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1 areas.⁵ However, some of the data offered by TURN in support of their arguments is of
2 questionable reliability. In particular, TURN's claim that "the average broadband speeds for the
3 entire state of California are 101 Mbps downstream and 26.89 upstream for 2018" is highly
4 suspect.⁶ These data were gathered by the Speedtest.net website and does not represent an
5 accurate cross-section of California's population since it was not gathered using proper sampling
6 techniques. Additionally, although TURN presents this information as the "average" broadband
7 speed, it is more appropriately described as the mean internet speed for Speedtest.net's users.
8 Using the mean does not provide the best measure of central tendency in this instance since that
9 number is artificially inflated because of a small group of businesses and households with
10 extremely high internet speeds. A more accurate measure of central tendency would likely be the
11 median, a number which is not offered in the source cited by TURN. This is of consequence
12 because TURN later uses this 100 Mbps speed as a threshold to criticize the speeds being offered
13 in rural areas, even though this number lacks foundation.⁷

14 To properly contextualize the Independent Small LECs' broadband deployment, it would
15 also be appropriate to compare deployment between Independent Small LEC territories and the
16 rural portions of larger company territories. No data of this sort appears in TURN's discussion,
17 and such data may be difficult to obtain, but the Independent Small LECs believe that they have
18 been effective in deploying broadband-capable networks to some of the most rural areas in the
19 state despite the difficulties of rugged terrain and long distances between customer locations.

20 **III. CCTA IMPROPERLY ARGUES THAT LIFTING THE BAN ON CLEC ENTRY**
21 **INTO INDEPENDENT SMALL LEC TERRITORY WILL ASSIST LOW-INCOME**
22 **AND TRIBAL COMMUNITIES, A TOPIC WHICH IS OUTSIDE OF THE SCOPE**
23 **OF THIS RULING.**

24 The Commission should disregard CCTA's request that "the CPUC expeditiously issue a

25 ⁵ Response of The Utility Reform Network to the Fifth Amended Assigned Commissioner's Scoping Memo
and Ruling ("TURN Opening Comments") at 4.

26 ⁶ *Id.* at 8.

27 ⁷ *Id.* at 10.

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1 Proposed Decision removing the ban on competitive local exchange carrier (“CLEC”) operations
2 in the rural incumbent service territories” because it exceeds the scope of the Fifth Amended
3 Scoping Memo and instead attempts to provide additional argument on issues covered in detail in
4 the Fourth Amended Scoping Memo through a separate comment cycle.⁸ The entirety of CCTA's
5 opening and reply comments to the Fourth Amended Scoping Memo provide argument on this
6 specific issue, and the Commission should reject CCTA’s attempt to divert the discussion of tribal
7 issues toward its separate policy agenda.

8 The substantive flaws in CCTA's argument are addressed in detail in the Independent
9 Small LECs' opening and reply comments on the Fourth Amended Scoping Memo, as well as in
10 their opening and reply comments on the November 8, 2019 Ruling.⁹ The Independent Small
11 LECs will not repeat all of the problems with CCTA’s position here, but the record already shows
12 that: (1) if allowed to enter Independent Small LEC territories, CLECs are likely to engage in
13 creamskimming and ignore the most vulnerable populations in each area; (2) the Commission
14 already rejected CCTA’s arguments when they were advanced by the California Association of
15 Competitive Telecommunications Companies ("CALTEL") in Phase 1 of this proceeding; (3) the
16 Competition Study is deeply flawed, was widely criticized by all the parties, and does not support
17 CCTA’s claims; (4) CCTA's statutory argument from its reply comments fails because CCTA
18 conflates the statute governing interconnection with whether competition should be allowed in a
19 particular territory;¹⁰ and (5) the decisions that CCTA proffers as precedent fail to reach CCTA's

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22 ⁸ Opening Comments of the California Cable & Telecommunications Association on Fifth Amended
23 Assigned Commissioner's Scoping Memo and Ruling ("CCTA Opening Comments") at 2. Questions about
24 CLEC competition in Independent Small LEC territories were already the subject of comments on the
25 Fourth Amended Scoping Memo and in comments responsive to the November 8, 2019 Ruling.

26 ⁹ See Opening Comments of the Independent Small LECs on the Fourth Amended Scoping Memo at 26-50;
27 Reply Comments of the Independent Small LECs on the Fourth Amended Scoping Memo at 16-18;
28 Opening Comments of the Independent Small LECs on the ALJ's Ruling at 5:18-15:3; Reply Comments of
the Independent Small LECs on the ALJ's Ruling at 4:16-11:11.

¹⁰ CCTA incorrectly asserts that Communications Act Section 251(f)(2), rather than Section 253(b),
establishes the process for evaluating whether competition should be allowed.

1 stated conclusion that Communications Act Section 251(f)(2) precludes Section 253.¹¹ Given that
2 CCTA's contentions are factually incorrect, legally unsupported, and outside of the scope of the
3 Fifth Amended Scoping Memo, its opening comments should be ignored.

4 CCTA's attempt to bootstrap the competition issue into the discussion about tribal needs
5 also fails based on the sheer weight of the practical and statistical evidence. As identified by Cal
6 PA, over 93% of California's tribal communities do not fall within Independent Small LEC
7 territory and none of the 15 tribal communities that lack all access to broadband fall into those
8 areas.¹² Thus, opening Independent Small LEC territory to CLEC competition would do nothing
9 for 95 out of the 102 federally-recognized tribal communities.¹³ Furthermore, each of the tribal
10 communities in Independent Small LEC territory already have broadband access as demonstrated
11 by Cal PA's own data.¹⁴ Given that there is nothing stopping CLECs from entering the over 93%
12 of tribal territories outside of Independent Small LEC service area, the fact that they have not
13 already done so is further evidence that CLECs have no interest in entering these territories, and
14 instead are likely to engage in creamskimming of the most profitable, high-income customers.
15 Indeed, instead of bolstering their argument, CLEC absence from tribal communities merely
16 serves as another reminder of why the prohibition on competition in Independent Small LEC
17 territories should remain.

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¹¹ CCTA erroneously argues that the ability of an Independent Small LEC to petition the Commission to prevent interexchange requirements with competitors precludes the Commission from regulating entry into a rural telephone carrier's territory.

¹² Cal PA Opening Comments, Appendix, at A1-A6.

¹³ As pointed out in footnote 4, Cal PA mistakenly lists the territory of the Jackson Rancheria of Me-Wuk Indians of California as being within Volcano Telephone Company's service territory.

¹⁴ Id. at A1-A2.

