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

Order Instituting Rulemaking into the) R. 11-11-007
Review of the California High Cost)
Fund-A Program.) (Filed November 10, 2011)
_____)

**OPENING COMMENTS OF
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
(the "TDS Companies")
ON THE ADMINISTRATIVE LAW JUDGES' RULING SEEKING COMMENT ON
GENERAL GUIDELINES FOR ALLOWING WIRELINE COMPETITION IN AREAS
SERVED THE SMALL LOCAL EXCHANGE CARRIERS**

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January 6, 2020

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c. Ensuring the continued quality of telecommunications services; and . 2

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7. Appendices A and B to D.95-07-054 set forth rules that the Commission adopted for CLEC competition in the territories of respondents in that proceeding. Should the Commission consider developing comparable rules for CLECs wishing to compete in small LEC service territories? Are additional consumer protections necessary requiring revision to Appendix B? In the alternative, should the Commission consider revising or updating the local competition CLEC rules in Appendices A and B to D.95-07-054, and apply those to all CLECs operating in the state? 4

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1 **I. INTRODUCTION.**

2 Pursuant to the instructions in the Administrative Law Judges’ (“ALJs”) Ruling Seeking
3 Comment on General Guidelines for Allowing Wireline Competition in Areas Served by Small
4 Local Exchange Carriers (“Competition Ruling”) dated November 8, 2019, and ALJ McKenzie’s
5 November 18, 2019 email granting the Independent Small LECs’ Motion for Extension of Time to
6 File Opening Comments and Reply Comments to January 6 and January 21, 2020, respectively,
7 Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), and
8 Winterhaven Telephone Company (U 1021 C) (collectively, the “TDS Companies”) hereby
9 provide these opening comments on the Competition Ruling.

10 In compliance with the ALJs’ directions in the Competition Ruling, the TDS Companies’
11 Comments address each of the questions presented in the order they are listed in the Competition
12 Ruling. Because the TDS Companies have not received California High Cost Fund A (“CHCF-
13 A”) support in nearly two decades and they have been reclassified as “interested parties” in this
14 proceeding, these comments focus on the limited issues that are most important to the TDS
15 Companies. As explained further below, if competition is authorized by Competitive Local
16 Exchange Carriers (“CLECs”) in rural telephone company service territories, the Commission
17 should adopt measures to ensure that rural telephone companies can compete on equal footing
18 with CLECs. In particular, the Commission should relax pricing regulations to allow full pricing
19 flexibility, at least for companies who are not receiving CHCF-A support. As discussed herein,
20 the Commission should also provide for a level playing field for competition in these areas by
21 reducing regulatory requirements for the rural telephone companies to better match the
22 requirements that their competitors face.

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1 **II. QUESTIONS FOR COMMENT.**

2 **1. What, if any, conditions are appropriate for the Commission to consider**
3 **imposing on both CLECs and small LECs in the small LEC service areas**
4 **under Section 253(b) of the Federal Telecommunications Act of 1996?**
5 **Specifically, please consider conditions related to:**

- 6 a) **Requirements necessary to preserve and advance universal service;**
- 7 b) **Protecting the public safety and welfare;**
- 8 c) **Ensuring the continued quality of telecommunications services; and**
- 9 d) **Safeguarding the rights of consumers.**

10 To the extent the Commission allows competition in the rural telephone companies’
11 service territories, the TDS Companies do not believe that it is necessary for the Commission to
12 impose any additional uniform requirements on CLECs or the rural telephone companies under
13 Section 253(b) of the Federal Telecommunications Act of 1996.

14 **2. What impact will CLEC competition have on the small LEC COLR**
15 **responsibilities? What, if any, conditions should the Commission impose on**
16 **the CLECs to prevent potential negative impact? For example, should the**
17 **CLECs in the small LEC service areas provide COLR protections in order to**
18 **compete?**

19 The TDS Companies need to retain their Eligible Telecommunications Carrier (“ETC”)
20 designation so that they remain eligible to continue to receive federal universal service support,
21 which is necessary to ensure they can expand their broadband-capable networks. The TDS
22 Companies do not believe it is critical for CLECs to have COLR responsibilities provided they are
23 required to serve all customers upon request in their designated service territories. To prevent
24 potential negative impacts of unfair competition and cream-skimming, however, the TDS
25 Companies believe it is critical that they have certain regulatory parity with the CLECs. Because
26 the TDS Companies understand that the Commission is considering allowing competition in
27 specific small LEC service areas on a case-by-case basis through individual applications for a
28 certificate of public convenience and necessity (“CPCN”), the TDS Companies believe it would be
appropriate in those contexts to consider adopting tailored protective measures to prevent CLECs
from “cream-skimming” the high-revenue, lower-cost accounts at the expense of more vulnerable
customers. For example, the Commission should require CLECs seeking to offer services only in
selective higher income areas to also offer services in adjacent lower income areas.

1 **3. What, if any, conditions are appropriate for the Commission to consider**
2 **imposing on CLECs that would allow the small LECs to continue providing**
3 **high quality and affordable service and to protect their customers from loss or**
4 **degradation of service quality when faced with revenue losses from CLEC**
5 **competition?**

6 Instead of imposing conditions on CLECs if competition is authorized in the small LECs’
7 service areas, the Commission should provide the small LECs with pricing and contract flexibility
8 and reporting requirements comparable to that of the Uniform Regulatory Framework (“URF”)
9 carriers simultaneously with a Commission decision opening up a small LEC service territory to
10 competition. *See* D.06-08-030 and Section II.7, *infra*. Providing this regulatory parity will help
11 minimize unfair competition by the CLECs and allow the TDS Companies the opportunity to
12 continue providing high quality and affordable service. It will also better protect vulnerable rural
13 consumers from loss or degradation of service quality.

14 **4. What would be the short-term and long-term impacts of allowing CLEC**
15 **competition in small LEC territories? How could these be mitigated?**

16 Cream-skimming is one likely impact of allowing CLEC competition in the small LEC
17 territories, which could result in higher prices for vulnerable, low-income small LEC customers if
18 the CLECs do not offer service to them. In addition to attempting to adopt measures in individual
19 CPCN applications to reduce the impact of cream-skimming, pricing flexibility would allow the
20 TDS Companies to compete on price and to offer customers competitively priced bundles of
21 services that are not available in California today. The TDS Companies would then be able to
22 offer new services and respond to competitors more quickly using market-based pricing, which
23 would provide all consumers with more choice and potentially better pricing. If pricing flexibility
24 is not allowed, then there would be no opportunity for the TDS Companies to fairly compete with
25 competitors and more market share would be lost. This could lead to a decline in the quality and
26 availability of services to small LEC customers.

27 **5. For each individual small LEC service territory, what area and fact specific**
28 **data should the Commission consider in evaluating competitive entry?**

 To the extent CLEC competition is authorized in the TDS Companies’ territories, then the
Commission should consider the potential impacts on the entire service area and small LEC

1 customer base in evaluating competitive entry. To reduce cream-skimming, the Commission
2 should not authorize competitive entry only in very selective areas of the small LECs' service
3 territories, such as newer and high-end subdivisions and concentrations of business customers.

4 **6. Considering the potential impacts of CLEC competition, should the**
5 **Commission consider changing the California High Cost Fund-A framework?**
6 **Specifically, what adjustments, if any, to the rate setting process and A-Fund**
7 **regulatory framework could ensure customers in these areas continue to**
8 **receive affordable and reliable services?**

9 To help ensure affordable service, the Commission should consider imposing a cap on
10 CLECs' basic local service rates for residential and small business customers that shall not exceed
11 the rates authorized in the rate cases of the Independent Small LECs for the most recent test year.

12 **7. Appendices A and B to D.95-07-054 set forth rules that the Commission**
13 **adopted for CLEC competition in the territories of respondents in that**
14 **proceeding. Should the Commission consider developing comparable rules for**
15 **CLECs wishing to compete in small LEC service territories? Are additional**
16 **consumer protections necessary requiring revision to Appendix B? In the**
17 **alternative, should the Commission consider revising or updating the local**
18 **competition CLEC rules in Appendices A and B to D.95-07-054, and apply**
19 **those to all CLECs operating in the state?**

20 Comparable pricing and tariff flexibility and reporting requirements in Appendix A of
21 D.95-07-054 should apply to the small LECs to the extent that competition by CLECs is
22 authorized in the small LECs' service territories. *See* App. A, § 4(E), (F)(13)-(14). Specifically,
23 the TDS Companies propose that at least for companies that are not receiving CHCF-A support,
24 the Commission should grant the same URF treatment granted to three smaller Frontier Incumbent
25 Local Exchange Carriers ("ILECs") in the Commission's 2008 merger proceeding. *See* D.08-10-
26 010. Comparable URF treatment should be granted simultaneously with a Commission decision
27 opening a small LEC service territory to competition. This pricing flexibility and regulatory
28 freedom will be necessary to meet the market demands caused by competition and are consistent
with the Commission's reasoning for adopting the URF framework for the larger and mid-sized
ILECs. *See* D.06-08-030, at pp. 3, 265 (Findings 49-50) (finding presence of increased
competition by CLECs and other providers in ILECs' service territory resulting in ILECs' lack of
market power), 267 (Findings 67-68) (these market conditions support pricing freedoms for basic
residential rates not subject to CHCF-B and removal of pricing controls).

