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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.

Rulemaking 11-11-007  
(Filed November 10, 2011)

**ADMINISTRATIVE LAW JUDGE'S RULING APPROVING JOINT MOTION FOR A LIMITED EXTENSION OF THE STAY IN GENERAL RATE CASE SCHEDULES AND A FREEZE OF THE WATERFALL MECHANISM FOR CALIFORNIA HIGH COST FUND-A RECIPIENTS**

**Summary**

This Ruling approves a joint request for an extension of the current stay of the general rate case schedules and freeze of the waterfall provisions for California High Cost Fund-A recipients adopted in Decision 13-02-005 on February 13, 2013. The current stay and freeze are set to expire on December 31, 2013<sup>1</sup> and are hereby extended until June 30, 2014.

**1. Background and Relevant Procedural History**

With the Order Instituting Rulemaking (OIR) (R.11-11-007), the Commission began a review of the California High Cost Fund-A (CHCF-A) program. The OIR was issued pursuant to the Commission's Decision (D.) 10-02-016. The Commission has determined that a detailed review of the

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<sup>1</sup> In an email ruling issued on December 2, 2013, the assigned Administrative Law Judge granted the motion.

program is warranted in response to market, regulatory, and technological changes since the CHCF-A program was first established in 1987. In this OIR, the Commission seeks comment on how the program can more efficiently and effectively meet its stated goals. To the extent deficiencies are identified, the Commission will solicit constructive proposals on whether the program should continue and if so, how should it be modified.

The CHCF-A rules are summarized in Appendix, Section D to D.91-09-042. Pursuant to these rules Small Local Exchange Carriers wishing to receive CHCF-A support must periodically file General Rate Cases (GRCs) with the Commission. Under this procedure recipients of CHCF-A subsidies are subject to a six-year phase down cycle. The cycle begins on January 1st of the year after a GRC decision is issued. A company receives full (100%) funding for three years following the GRC decision. In the fourth year the company receives funding at 80% of the GRC decision; in the fifth year 50% and in the sixth year 0%, unless a new rate case is filed. The cycle begins again with the filing and approval of a GRC application. This six-year cycle with reduced funding levels after three years is referred to as the “waterfall.” GRCs are only required to be filed by CHCF-A eligible companies who wish to avail themselves of the A-fund subsidies.

The OIR was approved on November 10, 2011, and issued on November 18, 2011. The preliminary schedule mandated that the initial comments be filed and served 61 days after issuance (January 18, 2012),<sup>2</sup> and that reply comments be due 91 days after issuance. In a ruling issued on January 17,

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<sup>2</sup> All dates are 2012 unless authorize noted.

2012, a request for extension was granted. By that ruling the proceeding schedule was revised so that initial comments were to be filed and served by February 1, 2012 and reply comments were to be filed and served by February 12, 2012.

On January 18, 2012, the Commission's Division of Ratepayer Advocates (DRA) filed a Motion to Freeze the 2012 "Waterfall" Provisions of the California High Cost Fund A; Stay Application (A.) 11-12-001 of Kerman Telephone Company and Suspend Processing of all A-Fund Company Applications for Review of Rates, Charges and Rates of Return. In an email ruling issued on January 23, 2012, the assigned Administrative Law Judge (ALJ) denied the request to stay A.11-12-011 (Kerman) as the request was more properly considered by the assigned ALJ in that proceeding. Parties were given until February 2, 2012 to respond to the portions of DRA's Motion regarding the freeze of the waterfall provisions of the CHCF-A and suspension of processing of all A-Fund company applications (with the exception of A.11-12-011).

On February 2, 2012, Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company and Volcano Telephone Company (collectively, Small Local Exchange Carriers (LECs) or Incumbent Local Exchange Carriers (ILECs)) filed a response in opposition to the DRA's motion to freeze. On February 13, 2012, DRA filed a reply to the response.

On June 4, 2012, a prehearing conference (PHC) was held in the instant proceeding. The assigned Commissioner and the assigned ALJ were both present at the hearing. The Assigned ALJ indicated that he could not address

DRA's motion to freeze in a ruling, that it was for the Commission to decide whether to freeze the pending GRCs of the Small ILECs.<sup>3</sup>

On October 13, 2012, counsel for the Small ILECs sent a letter to the Commission's Executive Director requesting a 90-day extension of time of the January 1, 2013 deadline for CHCF-A recipients to file a rate case to prevent operation of the "waterfall" mechanism, as required by D.91-09-042, Section D of the Appendix. The letter requested that the extension of time be granted until April 1, 2013. In a letter dated October 22, 2012, the Executive Director granted the request for a 90-day extension.

On October 15, 2012, the Small ILECs filed a motion for a Proposed Decision adopting a one-year freeze in the CHCF-A Rate Case Schedule and "Waterfall Mechanism." On October 30, 2012, DRA, The Utility Reform Network, and other parties filed responses to the Small ILECs' motion. The assigned ALJ allowed the Small ILECs to file a Reply to the Responses, which was done on November 5, 2012.

On February 20, 2013, the Commission issued D.13-02-005. The interim decision implemented a one-year freeze in GRC schedules and waterfall provisions for CHCF-A recipients. The interim decision also provided that the stay and freeze could be extended for six months by a ruling of the assigned ALJ if the instant proceeding is not completed by December 31, 2013.

On March 22, 2013, the Small ILEC's filed a motion for rehearing of D.13-02-005. On October 24, 2013, the Commission's Office of Ratepayer Advocates (ORA), formerly the Division of Ratepayer Advocates (DRA), and the

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<sup>3</sup> PHC Transcript 10:12-22.

Small ILECs filed a Joint Motion for a Limited Extension on the Stay in the CHCF-A Rate Case Schedule and the Freeze on the Waterfall Mechanism ("Joint Motion").

**2. Proposed Extension of the current GRC Stay and Waterfall Rate Freeze**

In the Joint Motion ORA and the Small ILECs have agreed to limited extension of the current stay and freeze as follows:

- 1) The freeze on the waterfall mechanism should be extended from December 31, 2013 and should be in effect until June 30, 2014, subject to the same limitations as the original freeze imposed by the Interim Decision (D.13-02-005);
- 2) The stay on the rate case filings should be extended from December 31, 2013 and should be in effect until June 23, 2014, subject to the same limitations as the original stay imposed by the Interim Decision;
- 3) The status of Kerman's ongoing rate case should be unaffected by the Joint Motion, and both ORA and Kerman reserve the right to address a possible stay of Kerman's rate case in A.11-12-011;
- 4) The Joint Motion, and the agreement reflected therein, in no way bind either the Independent Small LECs or ORA to any position regarding a stay or freeze longer than that recommended in the motion;
- 5) The Joint Motion, and the agreement reflected therein, do not prevent either the Independent Small LECs, ORA, or any other party from requesting that the Commission adopt a second six-month extension until December 31, 2014, if this proceeding does not conclude by June 30, 2014;
- 6) The Joint Motion and agreement do not limit the rights of the Independent Small LECs or the rights of ORA to oppose any Commission ruling or decision that does not adopt in full the relief that this Joint Motion proposes, nor does this Joint Motion and agreement limit the parties in any way regarding their

advocacy or positions on any substantive or procedural issues in this case, except as to the specific relief requested therein; and

- 7) The Joint Motion, and the agreement reflected therein, would not bind the Commission in any way in its consideration of further stays or freezes, nor would it bind the Commission in its examination of any of the substantive issues in this case.

The proposed extension as set forth in the Joint Motion reflects a reasonable agreement between the Independent Small LECs and ORA. The Joint Motion has not been opposed by any other active parties in the instant proceeding. Therefore, the Joint Motion, extending the stay and freeze in accordance with the dates specifically identified above, subject to the limitations and clarifications outlined therein should be granted.

**IT IS RULED that:**

1. The joint motion for an extension of the current stay of the general rate case schedules and freeze of the waterfall provisions for California High Cost Fund-A recipients adopted in Decision 13-02-005 is granted.
2. The current freeze on the waterfall provisions is hereby extended until June 30, 2014.
3. The current stay of the general rate case schedules is hereby extended until June 23, 2014.
4. The terms and conditions of the extension are set forth in Section 2 of this Ruling.

Dated December 20, 2013, at San Francisco, California.

/s/ W. ANTHONY COLBERT  
W. Anthony Colbert  
Administrative Law Judge