

CJS/ek4 3/18/2014



FILED
3-18-14
01:22 PM

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)

AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Table of Contents

Title	Page
AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER.....	1
1. Background.....	2
2. Procedural History	3
3. Revised Scope of Proceeding	10
3.1. Should the Broadband Revenues or Profits Count Towards the Intrastate Revenue Requirement?	10
3.2. Should the Small ILEC Territory be Opened to Wireline Competition?	11
3.3. How Should the Commission Account for Federal Subsidy Changes?	11
3.4. What Metrics Should Be Used to Develop Basic Rates?	11
3.5. Are Additional Safeguards Needed to Evaluate Investments in Broadband Capable Facilities to Ensure They Are Reasonable?	11
3.6. Proposals to Establish “Fair-Market Rates” for Affiliate Use of Regulated Networks.....	12
3.7. Changes to Procedural Rules	12
3.8. California Public Utilities Code Issues	12
4. Issues Eliminated from the Proceeding.....	12
5. Issues to be Addressed in Phase II of the Proceeding.....	13
6. Schedule	13
7. Parties and Service List.....	14
8. Presiding Officer	15
9. Proceeding Category and Need for Hearings.....	15
10. <i>Ex parte</i> Communications	15

**AMENDED SCOPING MEMO AND RULING OF
ASSIGNED COMMISSIONER**

1. Background

Pursuant to Rule 7.3¹ this Scoping Memo and Ruling sets forth the procedural schedule and addresses the scope of this proceeding, as well as other procedural matters. With the Order Instituting Rulemaking (OIR), 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 10-02-016. The Commission has determined that a detailed review of the 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 will examine how the program can more efficiently and effectively meet its stated goals. To the extent deficiencies are identified in the CHCF-A program, the Commission will consider program modifications.

This ruling revises the scope of this proceeding to address additional matters, modifications, and issues. The Commission has received numerous comments and responses based on questions initially posed in the Preliminary Scoping Memo and the Scoping Memo. This Amended Scoping Memo revises the scope set forth in that earlier Scoping Memo, identifies issues in light of the opening comments, the initial Prehearing Conference (PHC) and second PHC held in the instant proceeding as well as the passage of Senate Bill 379, and seeks additional comments from the Parties.

¹ All references to Rules are to the Commission's Rules of Practice and Procedure.

2. Procedural History

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), and that reply comments be due 91 days after issuance. On January 3, 2012 (via e-mail), The Utility Reform Network (TURN), a party in the proceeding, requested an extension of time to file initial comments pursuant to Rule 16.6. In a ruling issued on January 17, 2012, the 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 March 2, 2012.

On February 17, 2012 (via e-mail), the Commission's Division of Ratepayer Advocates requested an extension of time to file reply comments. In a ruling issued on February 23, 2012, an extension, allowing reply comments to be filed and served on March 16, 2012, was granted.

On March 8, 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, Independent Local Exchange Carriers or Small ILECs) filed a Motion to Disqualify Current Carrier Oversight and Programs Branch Advisors from Further Advisory Roles in the instant proceeding (Motion to Disqualify). Contemporaneously, the Small ILECs filed a Motion to Strike the Opening Comments of Tyler Werrin (Motion to Strike). Attached to the motion was the Declaration of Patrick Rosvall (Rosvall Declaration), counsel for the Independent Small ILECs. Also on March 8, the

Small ILECs sent a letter to Commission President Michael R. Peevey requesting that the Commission initiate an investigation into the Communications Division's conduct in connection with the instant proceeding (Request for Investigation). On March 9, 2012, the Small ILECs filed a Motion to Hold the Proceeding in Abeyance or Extend Time for Reply Comments (Motion to Hold in Abeyance).

On June 4, 2012, a PHC was held in the instant proceeding. The assigned Commissioner and the assigned Administrative Law Judge (ALJ) were both present at the hearing. The parties discussed how the OIR should proceed, including the possible need for hearings and/or workshops,² as well as the need to clearly define the issues at play in the proceeding.

On June 29, 2012, the assigned ALJ issued a ruling denying the motion to disqualify current Carrier Oversight and Programs Branch advisors from further advisory roles in this proceeding, denying the motion to strike the opening comments of Tyler Werrin and affirming the ruling denying motion to hold proceeding in abeyance.

On October 15, 2012, the Small ILECs filed a motion for a Proposed Decision adopting a one-year stay in the CHCF-A General Rate Case Schedule (GRC) and "Waterfall Mechanism." Various parties filed Responses on October 30, 2012. The Small ILECs filed a Reply to the Responses, on November 5, 2012. On January 11, 2013, Commissioner Sandoval issued a Proposed Interim Decision (PD) adopting a one-year stay in the GRC Schedule of the Small ILECs with the exception of Kerman and a one-year freeze in the

² PHC Transcript 17:12-28, 19:15-28, 21:17-28.

Waterfall Mechanism.³ The PD also allowed the stay and freeze to be extended for six months by the assigned ALJ. Various parties filed initial comments on January 31, 2013, and reply comments on February 5, 2013. The Commission adopted the Interim Decision⁴ on February 13, 2013. On March 22, 2013 the Small ILECs filed an Application for Rehearing.

On May 22, 2013, the Assigned Commissioner issued a Scoping Memo and Ruling and solicited additional comments on ten issues: (1) CHCF-A support evaluation; (2) review of program implementation rules; (3) implementing a cap on the CHCF-A; (4) basis for urban rate caps; (5) standardizing accepted costs among carriers; (6) per access line subsidy; (7) monitoring affiliate transactions; (8) opening Small ILEC territories to competition; (9) alternative models to considers; and (10) general issues. Parties were instructed to file and serve additional comments by June 28, 2013, with additional reply comments filed and served by July 11, 2013. Parties were instructed to request evidentiary hearings, if necessary, within ten days after reply comments were due. Later, an extension of time was granted by the Assigned ALJ, allowing for submission of the additional reply comments on August 16, 2013.

On July 19, 2013, the California Cable & Telecommunications Association (CCTA), the Office of Ratepayer Advocates (ORA).⁵ TURN, Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company (TDS Telecom), and the Small ILECs filed reply comments

³ Retroactive to January 1, 2013 and extending to December 31, 2013.

⁴ Decision 13-02-005.

⁵ The Office of Ratepayer Advocates was formerly known as the Division of Ratepayer Advocates (DRA). *See* Stats. 2013, Ch. 356, Sec. 42.

on the Scoping Memo and Ruling. TDS Telecom proposed a new optional framework for Small ILECs. Many of TURN's comments dealt with the deployment of broadband capable facilities and how the Commission should consider revenue from non-regulated services and affiliates. ORA offered strategies to increase the cost-effectiveness of the program, while meeting or exceeding the universal service goals in the areas served by the Small ILECs. In addition, ORA recommended a move to incentive-based subsidies and the further use of workshops to address technical issues in the proceeding. CCTA suggested adjustments to the CHCF-A program to ensure that the program is efficient and appropriately sized, without imposing excessive burdens on ratepayers.

On August 1, 2013, the Small ILECs filed a Motion for a Protective Order in this proceeding in order to prevent the public disclosure of sensitive information. Responses to the motion were allowed until August 30, 2013. ORA opposed the motion and TURN, while not opposing the motion, sought to limit its scope. The Small ILECs offered their Reply to the Responses on September 9, 2013.

On August 16, 2013, ORA, TDS Telecom, TURN, and the Small ILECs submitted reply comments on the Scoping Memo Ruling. TDS Telecom proposed that: (1) the Commission should adopt the Small Rural Uniform Regulatory Framework (SURF) plan as an option for the Small ILECs seeking to transition from rate-of-return regulation; (2) fundamental changes to the CHCF-A program that are inconsistent with rate-of-return regulation should not be adopted for those carriers who do not elect to participate in the SURF plan; (3) the Commission should not regulate broadband rates, impute broadband revenues into regulated revenue requirements, or adopt a model which

confiscates broadband investment for public purposes without just compensation; and (4) rate-of-return should not be amended in this proceeding.

ORA commented that Section 257.6 does not limit the CPUC to rate-of-return regulation, as argued by the Small ILECs, and that the Commission has authority to determine reasonable revenue requirements for each Small ILEC, through its ratesetting authority. ORA additionally stated that CHCF-A subsidies do not need to increase if federal subsidies decrease and that the consideration of revenues from other sources would not deny the Small ILECs the opportunity to earn a reasonable rate of return. ORA disagreed with the Small ILECs plan to adjust annual inflation on the grounds that it would prejudice the outcome of the proceeding's implementation phase. In order to increase the efficiency of the program, ORA suggested the use of an incentive-based regulatory approach. ORA opposed the implementation of portions of TDS Telecom's SURF plan and urged the Commission to consider cost containment incentives should it retain rate of return regulation for the Small ILECs.

The Small ILECs reply comments highlighted seven main issues: (1) that the Commission's review of the CHCF-A should focus on preserving the benefits of rate support and broadband access for the customers of rural telephone companies; (2) that significant areas of agreement between TURN and the Independent Small ILECs should form the basis for further narrowing the issues in the proceeding; (3) that the opening comments did not properly interpret the statutes governing the CHCF-A program and contained misstatements of fact, unsupported inferences, and mischaracterizations of the record; (4) that rate of return should not be addressed in the present proceeding; (5) ORA's proposed changes to the CHCF-A program are unsupported, ambiguous, and overly

complicated; (6) TURN's proposal for a CHCF-A reform would result in perverse incentives for broadband deployment and internet access service availability; and (7) CCTA's proposal to reduce funding in areas served by unsubsidized competitors is misleading and overbroad.

TURN, in response to the Small ILECs' comments, stated that the Commission has the authority to take broadband revenue into account when determining the revenue requirement and the CHCF-A funding requirement, and that the Small ILECs' takings argument is misapplied. TURN additionally stressed that the Commission should not adopt a per-access line subsidy for CHCF-A and that any consideration of incentive regulation for Small ILECs would be premature.

On August 30, 2013, the Small ILECs submitted a Motion for Evidentiary Hearings. Material issues of fact remained at issue. And additional issues, presented in the scoping memo, should be eliminated or addressed through testimony and hearings. The Small ILECs also listed other potential issues. On September 16, 2013 ORA, TURN, and CCTA filed responses to the Small ILEC's motion. CCTA stated that further evidence was unnecessary to develop the record and that hearings would not help to resolve the issues. While TURN disagreed with some of the issues listed by the Small ILECs in their motion, TURN agreed that hearings may be necessary. TURN supported a workshop process for the proceeding, but indicated that public participation hearings may not be required. In addition, TURN disagreed in part, and agreed in part, with the Small ILECs regarding the importance of certain issues and how issues should be addressed in the present proceeding. ORA recommended that the Commission not order evidentiary hearings until it issued a determination on the policy issues raised in the Scoping Memo. ORA reiterated that only material

issues of fact should be the subject of evidentiary hearings and that the Small ILECs' motion contained numerous policy issues and speculations on future outcomes that would best be addressed through other, non-evidentiary, approaches. In Reply to the Responses submitted on September 25, 2013, the Small ILECs agreed with TURN and ORA that further scoping direction from the Commission should occur prior to the scheduling of hearings and reiterated their contention that public participation hearings may be required.

On October 24, 2013, the Small ILECs and ORA submitted a Joint Motion for a limited extension of the General Rate Case schedules and a freeze of the Waterfall Mechanism for CHCF-A recipients. On December 20, 2013, in an Administrative Law Judge Ruling issued by the assigned ALJ, the requests in the Joint Motion were approved.

On January 6, 2014, a second PHC was scheduled for January 23, 2014. ALJ Colbert and Commissioner Sandoval co-presided over the conference. During the second prehearing conference, discussion occurred regarding possible revisions to the scoping memo.⁶ Commissioner Sandoval suggested motions be submitted to refine and recalibrate the scope of the proceeding.

On January 27, 2014, the Small ILECs submitted their Motion for Revisions to Scoping Memo, Inclusion of all Material Factual Disputes in Evidentiary Hearings, and Establishment of Schedule for Phase I of this proceeding. On February 11, 2014, TDS Telecom and TURN responded to this Motion. ORA's response followed on February 13, 2014. The Small ILECs issued a reply to the responses on February 20, 2014. The suggestions and recommendations found in

⁶ See Second PHC Transcript at 192-198.

the Motion, Responses, and Reply were helpful in revising the scope of this proceeding, discussed in Section 3 below.

On February 25, 2014, ALJ Colbert issued a Ruling Noticing Public Participation Hearings, which scheduled three public participation hearings (PPHs). The PPHs are schedule to occur in North Fork, CA on April 17, 2014, in Jackson, CA on April 21, 2014, and in Yreka, CA on May 8, 2014. Such hearings will allow the public to comment on the OIR Rulemaking 11-11-007.

On February 28, 2014, the Commission issued an Order Denying Rehearing of Decision 13-02-005.

3. Revised Scope of Proceeding

Having heard from the Parties, the Amended Scoping Memo adopts and incorporates portions of the scoping proposals set forth through these supplemental briefings, motions, and comments of the parties. Eight main issues emerge. For each of the issues, information will be solicited via hearings, briefs, and/or workshops. Hearings are not appropriate for every issue.

3.1. Should the Broadband Revenues or Profits Count Towards the Intrastate Revenue Requirement?

Issues to be addressed in a Hearing:

- (A) Should the Broadband Revenues or Profits Count Towards the Intrastate Revenue Requirement?
- (B) Can and should the Commission standardize costs in considering the Small ILEC's revenue requirement?
- (C) Waterfall Adjustment Issues

Issues to be addressed through Briefs and Workshops:

- (A) Should the Broadband Revenues or Profits Count Towards the Intrastate Revenue Requirement?
- (B) Can and should other state funding sources play a role in fulfilling the Small ILECs' revenue requirements?

3.2. Should the Small ILEC Territory be Opened to Wireline Competition?

Issue to be addressed in a Hearing:

- (A) Can and should the Commission open Small ILEC territories to wireline CLEC competition?

3.3. How Should the Commission Account for Federal Subsidy Changes?

Issue to be addressed in a Hearing:

- (A) Relationship with federal funding: can and should the Commission modify the mechanism for adjusting CHCF-A based on changes in federal funding and/or implementing changes in federal policy?

3.4 What Metrics Should Be Used to Develop Basic Rates?

Issues to be addressed in a Hearing:

- (A) Proposals to establish metrics for basic service rates.
- (B) How should basic rates be determined if parties agree that rates can no longer be based on AT&T rates?

3.5. Are Additional Safeguards Needed to Evaluate Investments in Broadband Capable Facilities to Ensure They Are Reasonable?

Issues to be addressed through Briefs and Workshops:

- (A) Should CPUC determine how much of the investment costs may be recovered through Small ILECS from ratepayers for high quality voice communication and the deployment of broadband capable facilities?
- (B) What standards should be used to evaluate investment in broadband capable facilities?

3.6. Proposals to Establish “Fair-Market Rates” for Affiliate Use of Regulated Networks

Issues to be addressed through Briefs:

- (A) Proposal to establish “fair-market rates” for affiliated use of regulated networks.
- (B) Should adjustments be made to affiliate transaction rules for the Small ILECs?

3.7. Changes to Procedural Rules

Issue to be addressed through Briefs:

- (A) Are changes needed to the procedural rules surrounding CHCF-A which would render the program more efficient?

3.8. California Public Utilities Code Issues

Issues to be addressed through Briefs:

- (A) What is the impact of Section 710 on A-fund carrier regulatory obligations?
- (B) Should A-Fund carriers receive subsidy money if they change basic service offerings to rely on IP-Enabled technologies? What is the appropriate relationship between Section 275.6 and Section 710 of the Public Utilities Code?

4. Issues Eliminated from the Proceeding

The following issues have been eliminated from the proceeding:

- (1) eliminating the A-fund all-together; (2) revising the definition of rural

telephone companies; (3) capping or consolidating the A-fund; and (4) adopting per-access line support caps. Such issues are not appropriate for this proceeding and are outside of its scope at this time. These issues may be addressed in future CPUC proceedings.

5. Issues to be Addressed in Phase II of the Proceeding

Due to the complexity of the proceeding, a second phase will be required. In Phase II, the following issues will be addressed: (1) the applicability of rate of return as a regulatory framework for California’s rural ILECs and the operation of the A-Fund; (2) alternative forms of regulation, including whether to introduce incentive based regulation; (3) whether or not to continue the GRC process for the Small ILECs; (4) whether an evaluation of the presence of competition should include all technologies; and (5) proposals to disqualify non-CHCF-A recipients from CHCF-A eligibility.

6. Schedule

As set forth in this Amended Scoping Memo, hearings, workshops, and briefs will be required in this proceeding. In a separate ruling, the assigned ALJ and/or the assigned Commissioner will set a PHC in order to finalize the specific dates and times for the hearings and workshops and for the submission of briefs and comments.

Event	Date
Additional Comments Filed and Served	April 8, 2014
Additional Reply Comments Filed and Served	April 22, 2014
Evidentiary Hearings	August 2014
Workshops	September 2014

Briefs	October 2014
Reply Briefs	October 2014
Anticipated Date of Proposed Decision	December 2014
Phase II Commences	February 2015

7. Parties and Service List

The current service list for this proceeding remains in effect and valid. Any person who wishes to become a party to this proceeding shall, within fifteen (15) days after the issuance of this Ruling, send a request to the Commission's Process Office via electronic mail (process_office@cpuc.ca.gov) or by postal mail (Process Office, CPUC, 505 Van Ness Avenue, San Francisco, California 94102) to be placed on the official service list in this proceeding. Parties who only wish to monitor the proceedings, but not participate as an active party, shall indicate that they be added to the "Information Only" section of the service list. The service list will be posted on the Commission's website: www.cpuc.ca.gov shortly thereafter.

Any person or party interested in participating in this rulemaking but who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY-toll free) or (415) 703-5282 (TTY) or send an e-mail to public.advisor@cpuc.ca.gov.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Commission Rule 2.3.1, available on our website at <http://www.cpuc.ca.gov/PUC/efiling>. All parties shall comply with the requirements of this rule.

8. Presiding Officer

Pursuant to Rule 13.2(c) Commissioner Catherine J.K. Sandoval is the Presiding Officer in this proceeding; Anthony Colbert is the assigned ALJ.

9. Proceeding Category and Need for Hearings

The Commission preliminarily categorized this rulemaking to be “quasi-legislative” and preliminarily determined that hearings are unnecessary. As mentioned above, and for the reasons indicated, hearings will be necessary for this proceeding and their date, location, and time will be finalized at an upcoming PHC. The designation of quasi-legislative remains.

10. Ex parte Communications

Per Rule 8.3(a) of the Commission’s Rules of Practice and Procedure, *ex parte* communications are allowed without restriction or reporting requirement.

IT IS RULED that:

1. The amended scope, issues, and schedule are set forth in the body of this ruling until amended by a subsequent ruling or order of the assigned Commissioner or Administrative Law Judge.
2. Commissioner Catherine J. K. Sandoval is the Presiding Officer in this proceeding.
3. This is a quasi-legislative proceeding, and hearings will be needed.
4. Four hearings will occur in this proceeding, with dates to be finalized at an upcoming Prehearing Conference.
5. Two workshops will occur in this proceeding, with dates to be finalized at an upcoming Prehearing Conference.
6. Briefs and replies will be required in this proceeding, with dates for submission to be finalized at an upcoming Prehearing Conference.
7. Ex Parte communications are allowed per Rule 8.3(a).

8. Any person who wishes to become a party to this proceeding shall, within fifteen (15) days after the issuance of this ruling, send a request to the Commission's Process Office via electronic mail (process_office@cpuc.ca.gov) or by postal mail (Process Office, CPUC, 505 Van Ness Avenue, San Francisco, California 94102) to be placed on the official service list in this proceeding. Parties who only wish to monitor the proceedings, but not participate as an active party shall indicate that they be added to the "Information Only" section of the service list.

9. All parties shall abide by the Commission's electronic service rules contained in Rule 1.10 of the Commission's Rules of Practice and Procedure.

Dated March 18, 2014, at San Francisco, California.

/s/ CATHERINE J.K. SANDOVAL
Catherine J.K. Sandoval
Assigned Commissioner