



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of
Calaveras Telephone Company (U 1004 C)
Cal-Ore Telephone Co. (U 1006 C)
Ducor Telephone Company (U 1007 C)
Foresthill Telephone Company (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)
Volcano Telephone Company (U 1019 C)
for a Determination of Applicants' Cost of Capital
for Ratemaking Purposes

A.15-09-005
(Filed September 1, 2015)

REQUEST OF

**CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE COMPANY (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)
VOLCANO TELEPHONE COMPANY (U 1019 C)
("INDEPENDENT SMALL LECS")**

FOR OFFICIAL NOTICE PURSUANT TO RULE 13.9

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June 24, 2016

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1 **I. INTRODUCTION**

2 Pursuant to Rule 13.9 of the California Public Utilities Commission's ("Commission")
3 Rules of Practice and Procedure ("Rules"), Calaveras Telephone Company (U 1004 C)
4 ("Calaveras"), Cal-Ore Telephone Co. (U 1006 C) ("Cal-Ore"), Ducor Telephone Company (U
5 1007 C) ("Ducor"), Foresthill Telephone Co. (U 1009 C) ("Foresthill"), Kerman Telephone Co. (U
6 1012 C) ("Kerman"), Pinnacles Telephone Company (U 1013 C) ("Pinnacles"), The Ponderosa
7 Telephone Co. (U 1014 C) ("Ponderosa"), Sierra Telephone Company, Inc. (U 1016 C) ("Sierra"),
8 The Siskiyou Telephone Company (U 1017 C) ("Siskiyou") and Volcano Telephone Company (U
9 1019 C) ("Volcano") (collectively, the "Independent Small LECs") request that the Commission
10 take official notice of the attached document in connection with its pending determination of the
11 cost of capital in this proceeding: An "open letter" dated May 10, 2016¹ from the Assistant
12 Administrator of the Rural Utilities Service ("RUS") of the Department of Agriculture to all
13 telecommunications loan applicants and borrowers, attached hereto as Attachment A (the "RUS
14 Letter"), and available at http://www.rd.usda.gov/files/OpenLetter_AAT.pdf.

15 **II. BACKGROUND REGARDING RUS LETTER**

16 The RUS Letter sets forth new requirements and conditions of RUS for loan applicants and
17 existing borrowers with the RUS in light of the FCC's March 30, 2016 Report and Order, Order
18 and Order on Reconsideration, and Further Notice of Proposed Rulemaking, reforming the
19 universal service program for rate-of return carriers (the "FCC Re-Prescription Order"). *See In the*
20 *Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order*, FCC 16-33 (rel.
21 March 30, 2016). In recognizing that the FCC Re-Prescription Order "may have a significant
22 impact on the revenues for loan applicants and existing borrowers," the RUS Letter sets forth
23 detailed requirements for all new loan applicants under the Infrastructure Loan Program and the
24 Broadband Loan Program, and for any existing borrowers that fail to meet the TIER requirements
25 in their loan documents or experience any other material adverse effects that necessitate the

26
27 ¹ The letter was issued after the evidentiary hearings in this case and the Independent Small LECs
28 only recently learned of it. The Independent Small LECs were therefore unable to seek to
introduce this letter as an exhibit at the hearings.

1 preparation of corrective action plans and/or pro-forma financial forecasts. RUS Letter at pp. 1-2.
2 These new requirements were enacted by the RUS to address the impact of the FCC Re-
3 Prescription Order on projections of network access revenues. *Id.* at pp. 1-2. The RUS Letter
4 further imposes a condition on any new approved loans, which allows "the RUS to require updates
5 of the financial forecast prior to the expiration date of the loan. RUS may limit advances if these
6 updates indicate a material adverse effect in the financial condition of the borrower." *Id.* at p. 2.

7 **III. LEGAL ARGUMENT**

8 Rule 13.9 states that the Commission may take official notice "of such matters as may be
9 judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 *et*
10 *seq.*" California Evidence Code Section 452 provides that judicial notice is appropriate for: "(c)
11 Official acts of the legislative, executive, and judicial departments of the United States and of any
12 state of the United States." Evidence Code Section 453 requires judicial notice "of any matter
13 specified in Section 452, if a party requests it and (a) gives the adverse party notice of the request
14 and (b) furnishes the court with sufficient information to take judicial notice of the matter." As
15 described below, the attached RUS Letter is an official pronouncement of the RUS and within the
16 scope of Section 452(c) and directly relevant to the cost of capital consideration in this proceeding.

17 **A. The RUS Letter is Properly Subject to Official Notice.**

18 The RUS Letter is an official act of the RUS, a division within the U.S. Department of
19 Agriculture's Rural Development agency. The letter is an official pronouncement that defines and
20 explains the new policies and procedures of RUS for loan applicants and borrowers with the RUS
21 in light of the FCC Re-Prescription Order. As such, it is subject to judicial notice under Evidence
22 Code section 452(c). *See* Cal. Evid. C. sec. 452(c), Comment-Assembly Committee on Judiciary
23 (Under subdivision c, "California courts have taken judicial notice of a wide variety of
24 administrative and executive acts, such as proceedings and reports of the House Committee on
25 Un-American Activities, records of the State Board of Education, and records of a county planning
26 commission."); *see also In re Soc. Servs. Payment Cases* (2008) 166 Cal.App.4th 1249, 1271-72
27 (finding trial court properly took judicial notice under Evidence Code section 452(c) of "All
28 County Letters" sent by the Department of Social Services to county welfare directors and other

1 local officials to provide further information and instructions to counties regarding the
2 implementation of a statute and to inform them of certain eligibility and funding requirements for
3 community care facilities); *San Mateo County Coastal Landowners' Assn. v. County of San Mateo*,
4 38 Cal.App.4th 523, 552–553 (1995) (the court upheld the taking of judicial notice of a letter sent
5 from the California Secretary of Resources to the executive director of the California Coastal
6 Commission).

7 **B. The RUS Letter is Directly Relevant to the Cost of Capital Determination.**

8 The RUS Letter is directly relevant to the cost of capital determination on several grounds.
9 First, it is undisputed that the impact of the FCC Re-Prescription Order, as addressed in the RUS
10 Letter, is directly relevant to the cost of capital determination in this proceeding. It was placed at
11 issue by both parties in briefing and at the evidentiary hearings. *See, e.g.*, ORA Opening Br. at pp.
12 12-14, 17; ORA Reply Br. at pp. 2, 12-13, 15-16; Independent Small LECs' Opening Br. at pp. 14,
13 19; Independent Small LECs' Reply Br. at pp. 14-15; Hr'g Tr. at pp. 20-32. Indeed, the FCC Re-
14 Prescription Order was admitted as an exhibit at the hearings. App. Exh. 5-FCC 16-33A1; ORA
15 Exh. 3-FCC 16-33. Second, the availability of debt is relevant to the Commission's determination
16 of the Independent Small LECs' cost of debt in this proceeding. The RUS's official actions in
17 response to the anticipated impact of the FCC's Re-Prescription Order and its implementation of
18 stringent requirements and conditions for RUS loans is particularly relevant to the Commission's
19 consideration of cost of debt. Third, the RUS Letter is relevant to the Commission's determination
20 of capital structure because if debt is less available or more difficult to obtain, the Independent
21 Small LECs will need to rely more on equity.

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1 **IV. CONCLUSION**

2 The Commission should take official notice of the RUS Letter. It is an official
3 pronouncement of a federal executive agency, and it is directly relevant to the issues in this
4 proceeding. The Independent Small LECs urge the Commission to take official notice of this
5 letter so that its contents can be considered as the Commission prepares a Proposed Decision in
6 this proceeding.

7 Respectfully submitted this 24th of June, 2016

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By: _____ /s/
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ATTACHMENT A



United States Department of Agriculture

Rural Development

Rural Utilities Service

Telecommunications
Program

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OPEN LETTER FROM THE ASSISTANT ADMINISTRATOR

May 10, 2016

To all Telecommunications Loan Applicants and Borrowers:

On March 30, 2016, the FCC released a Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, reforming the universal service program for rate-of return carriers (the "Order"). The Rural Utilities Service (RUS) recognizes that this may have a significant impact on the revenues for loan applicants and existing borrowers.

In order to consider applications for the remainder of this calendar year, RUS will require that applicants under the Infrastructure Loan Program and the Broadband Loan Program take the impact of the Order into consideration in preparing their projections of network access revenues, whether found on the Schedule "S" (for those using the pro-forma workbook) or in the Income Statement section of the application (for those using the online application system, "RDApply"). RUS already requires a detailed narrative which supports the projections. The narrative should now also include details on the following:

- Explain if A-CAM appears to be advantageous for the applicant and whether the projections were based on model-based support or the legacy approach. If the projections were based on legacy but the applicant is inclined to elect model-based support, estimated changes to the revenues as a result of that election should be provided as well.
- If the applicant expects to remain on legacy support, which values for the Rate of Return were assumed in the revenue projections? Have any budgetary control scenarios been considered?
- Identify any unsubsidized competitors in the applicant's area, with a special focus on any that meet or exceed the 85% overlap threshold in one or more census blocks. Where appropriate, discuss the expected loss of revenues due to the competition, both customer revenue and universal service support.

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 680-7442 or email at program.intake@usda.gov.

- Discuss any expected impacts on revenues of the Opex or Capex limitations.
- Discuss the ways in which the Loan Design addresses the Broadband Deployment Obligations required by the Order.
- Identify any other impacts of the Order that the applicant considers noteworthy that have not been addressed above.

RUS recognizes that the full impact of the Order may not be known for some time. Accordingly, for the time being any new loans approved will include a condition allowing RUS to require updates of the financial forecast prior to the expiration date of the loan. RUS may limit advances if these updates indicate a material adverse effect in the financial condition of the borrower. In addition, in accordance with our practice since early 2012, quarterly financial reports will be required as a condition on all new loans, so that RUS may closely monitor the financial situation of our borrowers.

For any existing borrowers that fail to meet the TIER requirements in their loan documents or experience any other material adverse effects that necessitate the preparation of corrective action plans and/or pro-forma financial forecasts, those plans and forecasts will also need to address all of the items listed above.

We look forward to working with all of our borrowers during this transition period. We are committed to our mission of funding the provision of new and improved telecommunications service in rural areas, and these steps will allow us to continue to process loans and advance funds to meet that mission.



KEITH B. ADAMS
Assistant Administrator
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