

Decision 13-10-051 October 31, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Kerman Telephone Co. (U1012C) d/b/a Sebastian, to Review Intrastate Rates and Charges and Rate of Return for Telephone Service Furnished within the State of California, and to Modify Selected Rates.

Application 11-12-011
(Filed December 28, 2011)

**DECISION DENYING MOTION FOR AN INTERIM RATE INCREASE
AND STAYING GENERAL RATE CASE**

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**DECISION DENYING MOTION FOR AN INTERIM RATE INCREASE
AND STAYING GENERAL RATE CASE**

1. Summary

This decision denies the Motion of Kerman Telephone Co. d/b/a Sebastian (Kerman) for interim rate relief for calendar year 2013. This decision also stays Application 11-12-011, and extends the associated freeze in the “waterfall” provisions of the California High Cost Fund-A during the pendency of Order Instituting Rulemaking 11-11-007, the Commission’s review of the California High Cost Fund-A program. As this Commission determined in Decision (D.) 12-12-003, “Given the pending CHCF-A Rulemaking and outstanding motions in that docket to freeze CHCF-A draws at existing levels and stay rate case applications until December 2013, we find it premature to allow an increase in the CHCF-A draw for Kerman at this time.”¹ Kerman’s request for interim relief would result in an even larger CHCF-A draw than that rejected in D.12-12-003 and should be denied.

2. Background

Decision (D.) 12-12-003 sets forth the background of Kerman’s General Rate Case (GRC) application and the Order Instituting Rulemaking (OIR) as follows:

“Kerman Telephone Company d/b/a Sebastian (Kerman) is a small local exchange carrier (LEC) subject to rate of return regulation and serving customers in the vicinity of the City of Kerman in rural Fresno County. The California High Cost Fund-A (CHCF-A) is a statutorily established public purpose program, the purpose of which is to assist small independent

¹ D.12-12-003 at 9.

telephone corporations serving rural and small metropolitan areas. (Pub. Util. Code. §§ 275, 275.6, 739.3)² As set by statute:

The Commission shall develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone corporations servicing rural and small metropolitan areas. The purpose of the program shall be to promote the goals of universal telephone service and to reduce the disparity in the rates charged by those companies. (Section 739.3(a).)

The CHCF-A is funded by a surcharge on the end-user California intrastate jurisdictional revenues (other than Lifeline) of all telecommunications carriers under the Commission's jurisdiction including, for this purpose, all interconnected Voice over Internet Protocol (VoIP) providers. (See Pub. Util. Code 285.) It was most recently set by Resolution T-17357, effective July 1, 2012 at 0.40%.³

In order to withdraw funds from the CHCF-A, a small LEC is required to file a general rate case (GRC). If, after a GRC review, the Commission determines that revenue from customers is insufficient to maintain rates no higher than 150% of the rates for comparable services in urban areas, the CHCF-A subsidy is utilized to cover the shortfall. A small LEC's CHCF-A subsidy is then subjected to a "waterfall" by which the subsidy is phased down over a six-year period.⁴ It

² All statutory references are to the California Public Utilities Code.

³ D.12-12-003 at 2.

⁴ D.88-07-022, Appendix B, Part D, discusses the phase-down. The "waterfall" process was formalized in D.91-05-016 and finalized in D.91-09-042 in the Appendix, Implementation Rules, Section D.

is maintained at 100% of the authorized amount for three years, 80% the fourth year, 50% the fifth year, and then 0%.⁵

On December 28, 2011, Kerman filed GRC Application (A.) 11-12-011 for test year 2013. In A.11-12-011, Kerman requested a test year increase in its CHCF-A draw of \$2,957,321, for total CHCF-A support of \$6,490,000. Kerman's request, if granted, would result in an increase of 88% from its recorded CHCF-A draw for 2011. Kerman proposed to retain basic service rates at current levels, while other service charges would increase. Division of Ratepayer Advocates (DRA) protested Kerman's GRC application requesting that it be stayed during the pendency of Rulemaking (R.) 11-11-007.

Following two prehearing conferences (PHCs), where parties provided input on the scope and schedule for the proceeding, the assigned Commissioner and Administrative Law Judge (ALJ) issued a Scoping Memo and Ruling on June 15, 2012, (June 15 Scoping Memo) that reflected the discussion at the PHCs, and stated that there were certain threshold issues that should be briefed and decided prior to commencing with testimony and evidentiary hearings.

The two "threshold" issues identified included: 1) whether to freeze Kerman's revenue requirement and CHCF-A draw at current levels until the Commission concludes or reaches a decision on draws from the CHCF-A in R.11-11-007, and 2) when Kerman would make a future GRC filing if its CHCF-A draw was frozen.

Upon request by the parties, the ALJ moved the date for briefing the "threshold" issues twice, first to June 28, 2012, and then to July 2, 2012. On June 29, 2012, Kerman and DRA submitted a Joint Motion for adoption of an all-party

⁵ D.12-12-003 at 3.

settlement and advised the ALJ that hearings would not be necessary. The Settlement Agreement would have increased Kerman's CHCF-A draw by \$831,735 for test year 2013, a nearly 25% increase from its current CHCF-A draw.

The Commission rejected the settlement proposal in D.12-12-003, finding that it did not meet all of the requirements for approval. The Commission found that the proposed settlement was not reasonable in light of the whole record, and that it was not in the public interest.⁶

The Commission stated that the next steps in the Kerman GRC would be to address the two threshold issues raised in the June 15 Scoping Memo, whereby the ALJ would issue a Proposed Decision on the threshold question of whether to freeze Kerman's CHCF-A subsidy and the current GRC.

3. Order Instituting Rulemaking 11-11-007

D.12-12-003 also explained that in November, 2011, this Commission initiated R.11-11-007 (CHCF-A Rulemaking) with the express purpose of undertaking a comprehensive review of the purposes, operations and benefits of the CHCF-A. Specifically, the Commission stated:

A detailed review of the program is warranted in response to market, regulatory, and technological changes since the California High Cost Fund program was first established in 1987. In this OIR, we seek comment on how the program can more efficiently and effectively meet its stated goals. To the extent deficiencies are identified, we seek constructive proposals on whether the program should continue and if so, how it should be modified. (OIR.11-11-007 at 2.)

The CHCF-A Rulemaking noted the many technological changes in the telecommunications industry, such as the

⁶ D.12-12-003, Conclusion of Law 4 at 15, line 1.

decline in predominantly landline telephones when the CHCF-A was adopted to the current prevalence of wireless communications and growth of internet based VoIP services. Significant regulatory changes, produced by these technology changes and competitive forces, have also occurred, e.g., the deregulation of incumbent local exchange carrier rates for all carriers other than the small LECs. (OIR.11-11-007 at 2-3.)

On January 18, 2012, DRA filed a motion in R.11-11-007 to freeze the “waterfall” provisions of the CHCF-A; stay A.11-12-011 of Kerman, and suspend processing of all A-Fund Company GRC Applications. The ALJ assigned to R.11-11-007 denied the request to stay A.11-12-011, finding that the request to stay should be dealt with by the Commission in A.11-12-011, but scheduled comment on DRA’s other requests. Subsequently, on October 15, 2012, the Small LECs⁷ filed a Motion for a Proposed Decision adopting a one-year freeze in the CHCF-A Rate Case Schedule and “Waterfall Mechanism.”

In D.13-02-005, the Commission found that a stay of the Small LECs pending GRC proceedings until December 31, 2013 along with a one-year freeze in the CHCF-A waterfall provisions was in the public interest. The decision did not address Kerman’s GRC, finding that Kerman’s GRC request would be addressed in the instant proceeding. The decision further found that the parties would review the status of the Rulemaking in September 2013, and if it appeared that the Rulemaking would not be concluded by December 31, 2013, any party may request an extension of the freeze for an additional six months. D.13-02-005

⁷ The Small LECs include Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Kerman Telephone Company, Pinnacles Telephone Company, the Ponderosa Telephone Company, Sierra Telephone Company, Inc., the Siskiyou Telephone Company, and Volcano Telephone Company.

also concluded that the Small LECs retained the right to file for emergency rate relief through the existing process.

On May 22, 2013, the assigned Commissioner in R.11-11-007 issued a Scoping Memo and Ruling (Rulemaking Scoping Memo) adopting and confirming the initial scope set forth in the OIR, and identifying additional issues based on the comments, the results of the PHC and the passage of Senate Bill 379. The Rulemaking Scoping Memo adopted a procedural schedule that anticipates a Proposed Decision in the fourth quarter of 2013.

4. Kerman Motion for Interim Relief

On January 9, 2013, Kerman filed a motion requesting that the Commission award Kerman immediate interim rate relief for calendar year 2013, and continuing until A.11-12-011 is fully adjudicated. Kerman requests that the Commission issue a proposed decision finding that Kerman is entitled to an additional \$1,969,907 in CHCF-A funding for calendar year 2013 (for a total of \$5,412,943) through interim rates, subject to true-up when a final decision is issued in this case.⁸ Kerman's request equates to a 56% increase in its A-fund subsidy.⁹

Kerman argues that it is entitled to interim relief due to the significant procedural delays that have occurred in this proceeding. Kerman claims that absent interim relief, it will be forced to earn less than its authorized 10% rate of return for an indefinite period of time, jeopardizing its ability to provide reliable, high-quality voice services and access to advanced services to its ratepayers.

⁸ Kerman Motion at 10, line 14.

⁹ Kerman Motion at 10, line 14.

Kerman maintains that this Commission must, as a matter of law, adjudicate the case, alleging that imposing a stay in the case would violate Kerman's constitutional rights by denying Kerman an opportunity to earn a reasonable rate of return and depriving it of a property right without due process of law.¹⁰ Specifically, Kerman argues that a stay of the rate case would result in an unlawful taking, by violating the 5th Amendment of the U.S. Constitution, because a stay would not ensure that Kerman will have an opportunity to earn its authorized rate of return.¹¹ Kerman opposes an indefinite stay in the rate case.

In support of its request, Kerman submitted a copy of its Advice Letter 93A, submitted on November 20, 2012, which contains a "means test" analysis setting forth Kerman's claim that it is projected to earn a 5.97% rate of return for 2012. Kerman also included a declaration by Mr. David D. Clark, in support of its motion, along with the Direct Testimony of Mr. Clark served with A.11-12-011. Kerman also submitted a calculation of the amount that Kerman claims it would need to have an opportunity to earn 10% for the year 2013 based on the assumptions and projections in A.11-12-011, with certain exceptions.

Kerman argues that it is well established that the Commission can grant interim relief where "fairness to both the utility and the public require immediate action,"¹² noting that the Commission need not make a finding of financial emergency in order to grant interim relief. Kerman asserts that it is sufficient for Kerman to show that unreasonable delays have occurred and that interim relief

¹⁰ Kerman Opening Comments lines 9-11.

¹¹ Kerman Opening Comments at 3.

¹² Kerman Motion at 8, citing *TURN v. CPUC* 44 Cal.3d 870, 879 (1988).

is warranted.¹³ Kerman contends that this case presents many of the same factors that the Commission has relied upon to justify interim relief in prior decisions, such as Kerman's 2002-2003 rate case, in which the Commission found that "interim rates need not be premised on an emergency alone, but can be adopted for other reasons, including procedural delays."¹⁴

Kerman argues that "unless and until the rules change, the CHCF-A remains available as a source of funding to keep rates low for Kerman's end users, and the Commission has an obligation to use that funding for its intended purposes if necessary to fulfill a company's revenue requirement."¹⁵ Kerman also argues that "failure to process this rate case will discriminate against Kerman" and that "interim rate relief simply seeks to put Kerman on par with the customary one-year timeframe for adjudicating Small LEC rate cases."

Kerman notes that if the Commission does impose a stay, the "waterfall effect" should remain frozen for the duration of the stay and Kerman must be permitted to seek annual adjustments through the CHCF-A Advice Letter process.¹⁶

Kerman argues that Public Utilities Code Section 275.6(c)(2)(2) requires the Commission to continue adjudicating small company rate cases under a rate of return regulatory model and that the Commission cannot choose to ignore a request for rate adjustment that has been properly brought before it.

¹³ Kerman Motion at 8.

¹⁴ D.03-03-009 at 6.

¹⁵ February 4, 2013, Kerman Reply at 8.

¹⁶ March 7, 2013, Opening Comments at 1.

4.1. DRA's Response

DRA opposes Kerman's request. First, DRA states that Kerman motion is improper under Rule 7.3(a) because interim relief was not addressed in the June 15 Scoping Memo. Next, DRA states that the motion is premature, since the next steps in the proceeding should be a proposed decision on the threshold question of whether to freeze Kerman's A-Fund subsidy and the GRC. DRA also objects to interim rate relief on the basis that Kerman has not demonstrated that it faces an imminent financial emergency or that its investment costs are indisputably reasonable and that the request raises a host of issues that require more time for review.¹⁷ DRA notes that in the past two years Kerman's cash flow has been sufficient to allow it to issue dividends of \$1 million in 2012 and \$1.1 million in 2011. DRA urges the Commission to reject Kerman's motion and recommends that the Commission coordinate the issue of granting Kerman's A-Fund subsidy increase with the concurrent A-Fund Rulemaking to ensure consistent and non-discriminatory treatment between the Small LECs.

DRA maintains that Kerman's request is inconsistent with D.12-12-003, in which the Commission denied a settlement which would have increased CHCF-A subsidy by \$1.9 million or 24%. DRA notes that Pub. Util. Code §§ 451 and 454 require that the Commission grant an increase for investment related costs only after a final determination that the costs are reasonable and prudent. DRA notes that the Commission has the discretion to grant an exception for interim rate relief under certain conditions, noting that the Commission has held, for example, that interim rate relief is "justified only if the utility faces a financial

¹⁷ DRA Response at 1.

emergency.” (Citing Coast Communities Gas & Electric Co. (1951) 50 Cal. P.U.C. 580, 586 [D.45653]; Citizens Utilities Co. (1957) 55 Cal. P.U.C. 628, 630[D.55137]; San Diego Gas and Electric Co. (1961) 58 Cal. P.U.C. 684,685[D.61984]; So. Cal. Edison Co. (1971) Cal. P.U.C. 77, 78[D.78441].)

DRA recommends that the Commission stay the GRC and adopt a date upon which Kerman’s new revenue requirement would be effective when a final decision is issued. DRA also suggests that we freeze the waterfall draw until December 31, 2013, with any party having an option to request a six-month extension via an ALJ Ruling, consistent with the approach adopted in D.12-02-005 for Small LECs. According to DRA, as many as five other companies were expected to file GRCs in 2012.¹⁸

DRA does not dispute Kerman’s assertion that it may seek interim rate relief,¹⁹ but notes that there is no requirement that the Commission grant such relief. DRA suggests that the Commission provide Kerman with interim relief only when Kerman can demonstrate that it is experiencing an imminent financial emergency.

DRA notes that under Pub. Util. Code § 454, the Commission is not permitted to grant any increase for investment-related costs, such as interim rates, prior to a final determination that the costs are reasonable and prudent.

DRA notes that the Commission has granted exceptions in certain cases. In this case the Commission has already determined, through D.12-12-003, that an increase in CHCF-A support is not reasonable.

¹⁸ DRA January 18, 2012 Motion at 2.

¹⁹ DRA Response at 5.

DRA notes that in both the instant proceeding and in R.11-11-007, the Commission has expressly stated an intent to temporarily freeze the A-Fund and GRCs for each of the small LECs because of the concurrent A-Fund Rulemaking and to prevent discrimination against the Small LECs.

DRA states that without a freeze, the parties will be forced to simultaneously provide information and recommendations to the Commission in the Rulemaking while litigating the Small LECs GRC applications. DRA argues that it makes little sense to process the GRCs necessary to reset a company's A-Fund subsidy at the same time the A-Fund rules are under review and subject to revision.²⁰

Finally, DRA notes that the authorized rate of return is a goal and not a guarantee, and that California ratepayers are not obligated to provide Kerman with a \$1.9 million increase in its CHCF-A subsidy simply because Kerman claims it is not earning a 10% return.²¹

5. Discussion and Analysis

The primary questions before us in this interim decision are whether to grant Kerman's request for interim relief and whether to stay A.11-12-011 during the pendency of the Rulemaking. In our deliberations, we are guided by our recent decisions in the instant proceeding and in R.11-11-007.

In D.12-12-003, we described our concerns regarding an increase in the CHCF-A subsidy, finding that in light of the clear concerns articulated in the CHCF-A Rulemaking about the scope and direction of the CHCF-A, we were not

²⁰ DRA January 18, 2012, Motion at 1.

²¹ DRA Response at 6.

prepared to treat Kerman's GRC application as though R.11-11-007 did not exist. We found that given the totality of the circumstances, in particular our determination that a detailed review of the CHCF-A is necessary, the settlement was not in the public interest.

In D.13-02-005, issued on February 13, 2013, we adopted a one-year freeze in general rate case schedules and waterfall provisions for CHCF-A recipients (with the exception of Kerman). In that proceeding, both DRA and the Small LECs agreed that there should be some type of freeze of the Small LECs CHCF-A rate case schedule and waterfall mechanism while the Rulemaking was pending.

Notwithstanding these recent findings, in its January 9 Motion, Kerman claims that because its rate case has been delayed, it must be granted an immediate increase in its CHCF-A draw to ensure that it has an opportunity to earn its authorized rate of return until a final decision is reached in A.11-12-011. To do otherwise, Kerman argues, would result in a violation of Kerman's constitutional rights by denying Kerman an opportunity to earn a reasonable rate of return and depriving it of a property right without due process of law.

We find that Kerman's motion is procedurally acceptable despite the fact that interim relief was not addressed in the initial scoping memo. The fact that interim rate relief was not raised in the initial scoping memo does not bar parties from raising the issue at a later point in the proceeding if circumstances change. We also need not wait until the Rulemaking concludes to act on a request for interim relief.

Our responsibility when reviewing requests for rate changes are set forth, in part, in Pub. Util. Code § 454(a). This code section provides that "no public utility shall change any rate or so alter any classification, contract, practice or rule as to result in any new rate, except upon a showing before the commission and a

finding by the commission that the new rate is justified.” Notwithstanding this requirement, this Commission, and the California Supreme Court, have both previously determined that the Commission has the authority to grant interim rate relief when warranted.

As the California Supreme Court found in *Toward Utility Rate Normalization v. Public Utilities Commission*, 44 Cal.3d 870, 750 P.2d 787, 256 Cal. Rptr. 8 (1988),²² upholding the Commission’s order, an interim increase need not be premised on the presence of a financial emergency or the absence of any dispute regarding the investment costs, but could be based on other circumstances as well. We have, at times, granted interim rate relief in advance of the required findings in situations where utility’s request for rate relief was accompanied by a showing of a financial emergency or where the utility’s investments costs are indisputably reasonable. In this case, Kerman’s request is not based on financial emergency or the reasonableness of its investment costs, but is based on the delay in the GRC and its claim that it has a right to an increase in the CHCF-A draw in order to have an opportunity to earn its authorized rate of return.

We agree with Kerman that the Commission has the authority to grant interim relief if necessary and reasonable, but we do not find that it is reasonable to do so here.

Although this Commission has granted interim relief for various reasons, it is not obligated to grant relief in every case. The Commission attempts, as best it can, to resolve all proceedings as promptly as possible consistent with the applicable statutes. This situation, like many the Commission faces, is unique.

²² *TURN v. CPUC*, 44 Cal.3d 870 (1988).

The instant application was filed shortly after the opening of a Rulemaking intended to review the CHCF-A program that Kerman and other Small LECs rely upon to provide high quality service at reasonable rates to their customers.

Although any changes to the program will affect Kerman and the other Small LECs and their customers on a prospective basis only, for reasons of efficiency, the Commission has already determined that it is not reasonable to attempt to adjudicate a potential increase in the CHCF-A draw for one recipient while the Rulemaking is pending. The Commission has also determined that it was necessary to freeze the Small LECs GRCs and the associated “waterfall provisions” while the Rulemaking was pending.²³

Kerman’s requested interim relief would result in an even greater increase in its CHCF-A draw than the request denied in D.12-12-003, albeit subject to refund. At the time Kerman’s Motion for Interim Relief was filed, a scoping memo had not yet been issued in R.11-11-007. A Scoping Memo has since been issued, and the schedule in that proceeding now calls for comments and reply comments to be filed on June 28, 2013, and August 16, 2013, respectively, with a Proposed Decision to be issued in the fourth quarter of 2013.

We disagree with Kerman that a stay of this proceeding would constitute a taking. Nor would a stay of the rate case violate Kerman’s due process rights. The Commission has not issued a final decision in this matter. The Commission will continue to process the case, and intends to set rates to be charged by the small independent telephone corporations in accordance with Sections 451, 454, 455, and 726. However, we must do so in an administratively efficient manner.

²³ D.13-02-005 stated that Kerman’s GRC request and any associated freeze would be addressed in the instant proceeding.

This Commission has already found that to increase Kerman's CHCF-A draw now, without further review, is unreasonable in light of the current Rulemaking. We have also frozen the other Small LECs rate cases pending a final determination in the Rulemaking.

Our decision in this case is consistent with D.12-12-003, Conclusion of Law 4, in which we stated that it is not reasonable to increase Kerman's CHCF-A draw by close to a million dollars absent closer scrutiny when the Commission was considering CHCF-A changes. That decision did not stay the GRC, but it did acknowledge that adopting such an increase, absent closer scrutiny, would be unreasonable. The instant proceeding is the appropriate place for that closer scrutiny and this proceeding will be adjudicated as soon as possible following the conclusion of the Rulemaking, anticipated late this calendar year.

We recognize that D.13-02-005 specifically excluded Kerman from the GRC freeze. However, our exclusion of Kerman in that proceeding was not intended to position Kerman differently than the other Small LECs during the Rulemaking, but instead was due to the procedural fact that Kerman had already filed its GRC and therefore, any stay or freeze should be decided in this case. Freezing the Kerman GRC generally places Kerman on the same footing as the other Small LECs.

The waterfall provisions will also remain unchanged during the freeze and stay, such that Kerman, like the other Small LECs can continue to seek annual adjustments through that process.²⁴ Through Commission Resolution T-17385,

²⁴ Pursuant to Appendix A of D.91-09-042, "Annual ALs are to include 'net settlements effects' of regulatory changes ordered by this Commission and the Federal Communications Commission. These ALs will include, among other things, changes in

Footnote continued on next page

CHCF-A support for Kerman and the other Small LECs was updated for Calendar Year 2013. That Resolution directs the Communications Division to issue support payments to each of the Small LECs on a monthly basis. Kerman's monthly support for 2013 is \$291,591 and yearly support is \$3,499,094.

As we also found in D.13-02-005, Kerman and the Small LECs retain the ability to file an application for emergency rate relief through the existing process.

We find that adopting a stay in the GRC is neither unjust nor unreasonable. The means for rate relief continue to exist in the GRC, which will be adjudicated in due course once the Rulemaking has concluded or at an earlier date as discussed herein. Contrary to Kerman's arguments, it will not be "locked in" to any particular return; it retains discretion to adjust operations and expenditures as it sees fit pending the conclusion of its GRC.

By issuing this interim decision, we are not prejudging the results of the GRC. A Scoping Memo has now been issued in the Rulemaking. When the GRC recommences, it will be necessary for the parties to conduct discovery, investigation and analysis of the issues to determine whether the proposed levels of revenues, expenses and rate base are just and reasonable and in the public interest.

levels of interstate high cost funding, interstate NTS assignment, other FCC ordered changes in separations and accounting methodology and Commission-ordered changes such as rate changes affecting access charges, intraLATA toll or EAS settlements revenues, etc."

6. Categorization and Need for Hearing

In Resolution ALJ-176-3287 dated January 12, 2012, the Commission preliminarily categorized this proceeding as ratesetting and found that hearings would be necessary.

7. Kerman Motion for Leave to File Confidential Version of Motion for Interim Rate Relief

On January 9, 2013, Kerman filed a motion requesting authority to file and treat as confidential and seal a confidential version of its motion for interim rate relief pursuant to Rule 11.4. Kerman states that the confidential material provided with the Motion for Interim Rate Relief are contained in pages DC 0034 through DC 0040, DC 0049 through DC 0050, and DC 0059 through DC 0060 of the Direct Testimony of David D. Clark (Clark Testimony). The Clark Testimony was submitted as Attachment A to the Motion for Interim Rate Relief. Kerman states that the subject material in the Clark Testimony contains actual demand data, forecasted demand data, and proposed plant construction figures. Kerman explains that the information and calculations identified in the worksheets, if publicly disclosed, could subject Kerman to an unfair business disadvantage.

It is reasonable to grant Kerman's request for confidentiality while the rate case proceeding is pending. Pursuant to Rule 11.4, we will seal the material contained in pages DC 0034 through DC 0040, DC 0049 through DC 0050, and DC 0059 through DC 0060 of the Clark Testimony filed with Kerman's Motion for Interim Rate Relief.

8. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on September 23, 2013 by Kerman and DRA and reply comments were filed on September 30, 2013 by Kerman and DRA.

In their opening comments, Kerman objects to a stay of A.11-12-011 and reiterates its argument that an extension in the rate case is an unlawful and unconstitutional taking of their property. DRA supports the stay in the rate case, but suggests that the proposed decision should be revised in order to provide the same six-month extensions afforded to the other Small LECs. DRA states that this modification is necessary to place Kerman on the same footing as the other Small LECs.

We have reviewed the opening and reply comments submitted in response to the proposed decision. New Conclusions of Law and Ordering Paragraphs have been added to allow parties to request a six-month extension of the stay.

9. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Julie Halligan is the assigned ALJ in this proceeding.

Findings of Fact

1. Small LECs wishing to receive CHCF-A support must periodically file GRCs with the Commission.
2. On December 28, 2011, Kerman Telephone Company d/b/a Sebastian filed a general rate case A.11-12-011 with a 2013 test year.
3. A stay of the pending Kerman GRC proceeding, along with a freeze in the CHCF-A waterfall provisions at their current level, is warranted.
4. Pursuant to the “waterfall provision” in D.91-09-042, Kerman Telephone Company is eligible for 100% funding for calendar year 2013 and extend to and including December 31, 2013 continuing until a final decision is issued in this proceeding.

5. The Commission should continue to provide CHCF-A support contingent upon a future Kerman GRC decision in A.11-12-011.

6. In Resolution T-17385, the Commission adopted \$32.628 million in California High Cost Fund-A Support for Calendar Year 2013.

7. Pursuant to Resolution T-17385, Kerman's approved California High Cost Fund-A support for Calendar Year 2013 was adjusted to \$3,499,094, effective January 1, 2013.

8. As proposed, approving interim rate relief for Kerman would not result in a rate increase to Kerman's customers, but would result in an 56% increase in Kerman's CHCF-A subsidy, or \$1,969,907 in additional funds.

9. In Resolution ALJ-176-3287, dated January 12, 2012, and reiterated in the June 15, Scoping Memo, this application was preliminarily categorized as ratesetting and hearings were found to be necessary.

10. Kerman requested authority to file certain material attached to its Motion for Interim Rate Relief which include pages DC 0034 through DC 0040, DC 0049 through DC 0050, and DC 0059 through DC 0060 in the Direct Testimony of David D. Clark under seal, pursuant to Rule 11.4.

Conclusions of Law

1. Kerman's request for interim rate relief should be denied.

2. A freeze of Kerman's CHCF-A draw would maintain the status quo until the Commission concludes its review of the CHCF-A.

3. A one-year freeze of A.11-12-011, Kerman's GRC Application, should be retroactive to January 1, 2013 and extend to and including December 31, 2013, unless a further stay is adopted.

4. If it appears that R.11-11-007 will not be concluded by December 31, 2013, any party may request an extension of the stay for an additional six months.

5. The assigned ALJ may approve or reject the extension request.

6. If it appears that R.11-11-007 will not be concluded by June 30, 2014, any party may request a second-six month extension, until December 31, 2014, which must be considered by the full Commission.

7. The "Waterfall Provisions" of the California High Cost Fund-A should be frozen for Kerman Telephone Company (dba Sebastian) until the Commission has issued a final decision in Application 11-12-011.

8. All other features of the current California High Cost Fund-A program should remain in effect during the stay and freeze.

9. Kerman's request that pages DC 0034 through DC 0040, DC 0049 through DC 0050, and DC 0059 through DC 0060 in the Direct Testimony of David D. Clark, included as part of Attachment A to its Motion for Interim Rate Relief should be granted.

O R D E R

IT IS ORDERED that:

1. Kerman Telephone Company d/b/a Sebastian's request for interim rate relief is denied.

2. Application 11-12-011, the General Rate Case Application of Kerman Telephone Company d/b/a Sebastian will be stayed until December 31, 2013.

3. If it appears that Rulemaking 11-11-007 will not be concluded by December 31, 2013, any party may request an extension of the stay for an additional six months. The extension request will be approved or rejected by a ruling of the assigned Administrative Law Judge.

4. If an extension is granted by the assigned Administrative Law Judge, and it appears that the Rulemaking will not be concluded by June 30, 2014, any party may request a six-month extension, until December 31, 2014.

5. A second request for an extension of the stay and freeze must be considered by the full Commission.

6. The "Waterfall Provisions" of the California High Cost Fund-A will be frozen for Kerman Telephone Company d/b/a Sebastian until the Commission has issued a final decision in Application 11-12-011.

7. All other features of the current California High Cost Fund-A program will remain in effect during the stay and freeze.

8. Kerman Telephone Company d/b/a Sebastian's request that the confidential material contained in pages DC 0034 through DC 0040, DC 0049 through DC 0050, and DC 0059 through DC 0060 of the Direct Testimony of David D. Clark included in Attachment A to the Motion for Interim Rate Relief is granted pending a final decision in Application 11-12-011.

9. Application 11-12-011 remains open.

This order is effective today.

Dated October 31, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners