

Decision 14-02-047

February 27, 2014

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

Order Instituting Rulemaking into the review of the California High Cost Fund-A Program.

R.11-11-007  
(Filed November 10, 2011)

**ORDER DENYING REHEARING OF DECISION 13-02-005****I. INTRODUCTION**

Decision (D.) 13-02-005<sup>1</sup> granted the motion filed by 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 (these ten utilities are hereinafter referred to as Independent Small LECs) entitled “For Proposed Decision Adopting A One-Year Freeze In The CHCF-A Rate Schedule And Waterfall Mechanism” (hereinafter, October 15, 2012 motion), for nine of the ten Independent Small LECs.<sup>2</sup> The California High Cost Fund-A (CHCF-A or Fund-A) is a subsidy program based on the principle of universal service. Universal service as it applies to telecommunications services is the concept that consumers should have access to basic telephone service in their homes that is both affordable and ubiquitously available. “The CHCF-A is funded by a surcharge assessed on an end-user’s billed intrastate telecommunications services

<sup>1</sup> All citations to Commission decisions refer to the Commission’s decision number as found in the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/cyberdocs/Libraries/WEBPUB/Common?decSearchDsp.asp>.

<sup>2</sup> Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company (collectively TDC Telecom), and Frontier Communications did not join in the motion. Kerman Telephone Company (Kerman) joined the motion but requested that it be excluded from the requested stay and freeze.

...” (R.11-11-007 at p. 3.) The waterfall provision “refers to the 6-year phase down of CHCF-A funding level beginning in the year after the completion of a general rate case (GRC). The funding levels are 100% of the CHCF-A amount for the first three years, 80% the fourth year, 50% the fifth year, and 0% thereafter.” (R.11-11-007 at p. 11 fn 28.)

D.13-02-005 is an interim decision in Rulemaking (R.) 11-11-007, a proceeding to review the CHCF-A. In R.11-11-007 the Commission stated:

On October 27, 2011, the FCC approved the creation of Connect America Fund (CAF) to help extend high speed internet to unserved Americans. This major policy decision also intends to comprehensively reform its Universal Service Fund and intercarrier compensation systems because the FCC believes “these systems have been widely viewed as broken, and long overdue for reform . . . .” One of the goals of this reform among other things is the commitment to fiscal responsibility of the newly created CAF. A firm annual budget set at current levels—\$4.5 billion—will prevent growth in the Fund and help protect consumers from increased contribution fees.

We believe Federal proceedings have the potential to affect state programs. The largest and most immediate potential effect will be an increase of draws from the CHCF-A by small ILECs. This will cause an added financial burden to the California ratepayers, if CHCF-A rules stay unchanged. The Commission has noticed that the CHCF-A carriers have more heavily invested in plant modernization, including switching to broadband capable fiber optic networks, than their counterpart carriers that did not receive the support funds. The FCC reforms are of particular interest to California because under the current rules, any reduction in federal high cost support translates into an increase in support from the CHCF-A. The state’s subsidy mechanisms should be addressed now, as the potential effects of federal funding mechanism changes could result in a substantial impact to the CHCF-A program.

(R.11-11-007 at pp. 11-13.)

Previously, on January 18, 2012, the Commission’s Division of Ratepayer Advocates (DRA, which since September 2013 is the Office of Ratepayer Advocates or ORA) filed a motion to freeze the waterfall provisions of the CHCF-A, and suspend processing of all Fund-A company GRC applications. The Independent Small LECs

opposed DRA's motion, and the motion was subsequently denied by D.13-02-005. Nevertheless, the Independent Small LECs filed their October 15 motion requesting a one-year freeze of their GRC schedules and the waterfall provisions (excepting Kerman). Specifically, they requested a stay in their GRC schedules from January 1, 2013 until December 1, 2013; they also argued that the waterfall provisions should be suspended during that year at their current levels (except for Kerman whose waterfall provision had been frozen at 100% upon its filing a rate application in December 2011), and that the other features of the CHCF-A program, e.g., annual CHCF-A funding adjustments via the Advice Letter process, as well as the ability to file an emergency application for rate relief, remain in effect during the freeze. The challenged decision authorizes a stay in the GRC schedule, as well as a stay in the waterfall mechanism for those Independent Small LECs until December 31, 2013; it also authorizes the administrative law judge (ALJ), for good cause, to grant a further extension if warranted. The Independent Small LECs filed a timely application for rehearing of D.13-02-005.<sup>3</sup>

Thereafter, on May 22, 2013, the Assigned Commissioner issued a scoping memo and ruling in the underlying proceeding (hereinafter, May 22, 2013 AC ruling). The May 22, 2013 AC ruling adopted a schedule that, among other things, anticipated the adoption of a decision in the underlying proceeding in the fourth quarter of 2013. On August 30, 2013, the Independent Small LECs filed a motion seeking an evidentiary hearing. On October 24, 2013, ORA and the Independent Small LECs filed a joint motion for a limited extension of the stay ordered by D.13-02-005 that also requests authority that any party may request an additional extension of the stay until December 31, 2014. On December 20, 2013 ALJ Colbert granted the joint motion.

In their application for rehearing, the Independent Small LECs allege error in D.13-02-005 because it set the date for lifting the stay on their rate case filings for December 31, 2013, rather than December 1, 2013, arguing that the stay should extend no

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<sup>3</sup> D.13-02-005 issued on February 20, 2013. The Independent Small LECs' application for rehearing was filed on March 22, 2013, within the statutory 30-day period authorized by Public Utilities Code section 1731, subdivision (b)(1).

further than December 1, 2013, in order to permit them time to file rate cases during December to avoid the waterfall mechanism from taking effect on January 1, 2014. Because D.13-02-005 determined that the rate case stay and the freeze of the waterfall mechanism would both expire on December 31, 2013, the Independent Small LECs contend that they cannot timely file rate cases in order to avoid any reductions in CHCF-A funding, which they argue is a violation of Public Utilities Code sections 275.6 and 1751.1(a)(1) and (2). The Independent Small LECs allege that by imposing a stay until December 31, the challenged decision prevents them from pursuing timely rate relief, and departs from Commission precedent in a manner that is contrary to law, and arbitrary and capricious. Further, they contend that the December 31, 2013 date for lifting the stay will necessarily prevent them from filing rate applications in 2013, arguing D.13-02-005 violates their constitutional rights, and that the determination to lift the stay on December 31 is not supported by the record. They also assert D.13-02-005 unlawfully empowers the ALJ to extend the stay and freeze the waterfall provisions for an additional six months if necessary, contending that would exceed the scope of the ALJ's duties under the Commission's Rules of Practice and Procedure. The Independent Small LECs argue that the possibility of a unilateral extension of the stay would result in the Commission unlawfully ignoring statutory requirements that it continue rate-of-return regulation for Independent Small LECs because it would not be processing rate cases. Additionally, they allege that an extension of the GRC schedules would be the equivalent of an unlawful taking of property in violation of the United States Constitution and Public Utilities Code, contending the extension would unlawfully foreclose them from exercising their only form of rate relief. Finally, the Independent Small LECs argue that the possibility that a six-month extension might be ordered without hearings would constitute an improper modification of the CHCF-A rules, and that any extension would be a due process violation because it would violate their opportunity to earn a reasonable rate of return.

## II. DISCUSSION

We have thoroughly considered the allegations and other arguments in the application for rehearing and are of the opinion that good cause does not exist for granting rehearing in this matter. The allegation that the ALJ does not have authority to extend a stay is erroneous. Pursuant to Commission Rules of Practice and Procedure rule 9.1, the ALJ may rule on any motion that does not involve a final determination of the proceedings. A motion for an extension of the stay would not involve a final determination of the proceeding. The ALJ may properly rule on any such motion. (Cal. Code of Regs., tit. 20, §9.1.) In light of the May 2013 scoping memo and ruling, and December 20 ALJ ruling granting the October 24 joint motion, the application for rehearing is moot. There is no good cause for entertaining further the application for rehearing of D.13-02-005. Therefore, we deny the application for rehearing of D.13-02-005.

**THEREFORE, IT IS ORDERED** that

1. The application for rehearing of Decision 13-02-005, filed by 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, is denied.

2. Rulemaking 11-11-007 remains open.

This order is effective today.

Dated: February 27, 2014, at San Francisco, California.

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