

Decision **PROPOSED DECISION OF COMMISSIONER SANDOVAL**
(Mailed 7/15/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**INTERIM DECISION EXTENDING THE FREEZE IN GENERAL RATE CASE
SCHEDULES AND WATERFALL PROVISIONS FOR CALIFORNIA HIGH
COST FUND-A RECIPIENTS UNTIL DECEMBER 31, 2014**

1. Summary

This Proposed Decision extends the current stay of the general rate case (GRC) schedules and freeze of the waterfall provisions for California High Cost Fund-A (CHCF-A) recipients adopted in Decision 13-02-005 on February 13, 2013. The current stay of the GRC schedules and freeze of the waterfall provisions for CHCF-A recipients, set to expire on August 29, 2014,¹ are hereby extended. The stay of the GRC schedules is extended until December 31, 2014. The freeze of the waterfall provisions for CHCF-A recipients is extended to April 2015. The stay can be extended for three months by a ruling

¹ On April 29, 2014, the Commission's Executive Director granted a request for a 60 day extension of the general rate case deadline.

of the assigned Administrative Law Judge if this proceeding is not completed by December 31, 2014.

2. 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 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, 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 proposals on how the program should be modified consistent with its statutory purposes.

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 (DRA) 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 LECs. 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 Prehearing Conference (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 Telephone Company and a one-year freeze in the 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. Parties were instructed to file and serve additional comments by June 28, 2013, with additional reply comments filed and served by July 11, 2013.

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

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

4 D.13-02-005.

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 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 on the Scoping Memo and Ruling.

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. 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.

On August 30, 2013, the Small ILECs submitted a Motion for Evidentiary Hearings (EH). On September 16, 2013 ORA, TURN, and CCTA filed responses to the Small LEC's motion. The Small LECs submitted a Reply to the Responses on September 25, 2013.

On October 24, 2013, the Small ILECs and ORA submitted a Joint Motion for a limited extension of the GRC schedules and a freeze of the waterfall mechanism for CHCF-A recipients. On December 20, 2013, in an ALJ Ruling issued by the assigned ALJ, the requests in the Joint Motion were approved.

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

On January 27, 2014, the Small ILECs submitted their Motion for Revisions to Scoping Memo, Inclusion of all Material Factual Disputes in EH, 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 LECs issued a reply to the responses on February 20, 2014.

On February 25, 2014, ALJ Colbert issued a Ruling Noticing Public Participation Hearings, which scheduled three public participation hearings (PPHs). On February 27, 2014, the Commission issued an Order Denying Rehearing of Decision 13-02-005.

On March 18, 2014, the assigned Commissioner issued an Amended Scoping Memo and Ruling. The Amended Scoping Ruling revised the scope set forth in that earlier Scoping Memo, identified new issues, set forth the issues to be addressed in workshops, EH and/or briefs, and sought additional comments from the Parties, in light of the initial opening comments, the initial PHC, the second PHC, as well as the passage of Senate Bill 379. In addition, the proceeding was divided into two phases. On March 25, 2014, the assigned ALJ issued an e-mail ruling clarifying the scope of the comments to the Amended Scoping Ruling. On April 8, 2014, parties filed their initial comments.

On April 9, 2014, a third PHC was held in order to discuss the scheduling and details for workshops, EHs and briefs in the proceeding. Commissioner Sandoval and ALJ Colbert co-presided. On April 17, 2014, a PPH was held in North Fork, CA. On April 21 a PPH was held in Jackson, CA. The third and last PPH was held in Yreka, CA on May 8, 2014.

On April 15, 2014, the Small ILECs submitted a letter to the Commission's Executive Director pursuant to Rule 16.6 requesting a 60-day extension to the

current rate case deadline and associated waterfall mechanism. This deadline, as governed by D.91-09-042, D.13-02-005, and the December 20, 2013 ALJ Ruling issued in R.11-11-007, was set to expire on June 30, 2014. The Commission's Executive Director granted the request on April 29, 2014, effectively extending the rate case deadline and associated waterfall mechanism to August 29, 2014. This extension allowed time for the assigned Commissioner and ALJ to evaluate a proposal for a formal extension of the deadline and issue an appropriate Proposed Decision for the Commission's consideration.

On April 22, 2014, Parties, with the exception of the Small ILECs, filed reply comments to the Amended Scoping Ruling. On April 23, the Small ILECs were allowed to late file their comments. On May 14, the assigned Commissioner and ALJ issued a Joint Ruling Setting the Scope, Schedule, Procedures and Issues for Phase 1 of the Rulemaking.

Workshops were held on May 28, 2014, where Parties discussed the issues to be addressed as set forth in the Amended Scoping Memo.⁶ A workshop report was not filed.

We have reviewed the relevant motions and replies thereto; the comments and reply comments to the Amended Scoping Ruling, as well as the transcript from the third PHC. In that light we have made the instant decision to extend the current stay on GRC and the freeze on the waterfall mechanism.

3. Proposed Extension of the current GRC Stay and Waterfall Mechanism Freeze

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

⁶ Amended Scoping Memo and Ruling at 10-12.

CHCF-A support must periodically file 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 1 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.

In the Interim D.13-02-005 Ordering Paragraphs (O.P.) 8 and 9 allow for consecutive six-month extensions – January 1 through June 30, 2014, and July 1 through December 31, 2014, respectively – in the event that R.11-11-007 continues. In accordance with O.P. 10, a second formal extension of the stay and freeze must be made through a decision considered by the full Commission. In comments submitted on April 8, 2014, the small ILECs explained that they would not object to a second extension subject to certain conditions. A further extension will allow the parties and Commission staff to focus their efforts on addressing the questions and issues presented by the OIR. Given the continued complexities involved with this Rulemaking, the current stay and freeze should be extended as follows:

- 1) The freeze on the waterfall mechanism should be extended from August 29, 2014 and should be in effect until April 1, 2015, subject to the same limitations as the original freeze imposed by the Interim D.13-02-005;
- 2) The stay on the rate case filings should be extended from August 29, 2014 and should be in effect until

- December 31, 2014, subject to the same limitations as the original stay imposed by the Interim Decision;
- 3) The assigned ALJ should be allowed to extend the stay for three months, by a ruling, if this proceeding is not completed by December 31, 2014;
 - 4) The status of Kerman's ongoing rate case should be unaffected by the instant Decision; and
 - 5) This decision in no way binds either the Independent Small LECs or ORA to any position regarding a stay or freeze longer than it proposed in this decision.

As set forth in the Amended Scoping Memo, the Commission anticipates issuing a Proposed Decision for R.11-11-007 by December, 2014. The instant Decisions' extension of the stay and freeze will provide sufficient time for the parties and Commission staff to address the issues presented by OIR. Therefore, an extension of the stay of GRC and freeze of the waterfall mechanism, in accordance with the dates and limitations outlined above, is granted.

4. Categorization and Need for Hearings

The Commission preliminarily categorized this rulemaking to be "quasi-legislative" and preliminarily determined that hearings are unnecessary. In the Amended Scoping Memo and Ruling of the Assigned Commissioner, issued on March 18, 2014 it was determined that public hearings are necessary. The designation of quasi-legislative remains.

5. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 4, 2014, by ORA and the Small ILECs. Reply Comments were filed by ORA on August 11, 2014.

In its comments ORA stated that it found no legal or factual error in the PD and that the PD appropriately extends the stay of the GRC schedule and freeze waterfall for CHCF-A recipients from August 29 until December 31, 2014.⁷ ORA agreed that it was appropriate to allow up to two extensions of the freeze and stay, for three months each, if the proceeding was not completed by December 31, 2014.⁸

The Small ILECs state that the PD should be revised in five ways. First, to ensure that there is a window of time in which to file rate cases without incurring the waterfall, the lifting of the waterfall "freeze" should occur on a later date than the lifting of the rate case stay. Second, the Small ILECs claim that the current procedural schedule would not permit the adoption of a decision in Phase I of this proceeding until at least early January 2015 and thus the waterfall freeze should not be lifted until April 1, 2015. Third, the Small ILECs state that the PD should provide that the rate cases that will follow Phase I of this proceeding can utilize a test year of 2016. Fourth, the Small ILECs assert that PD improperly delegates authority to the assigned ALJ to unilaterally extend the rate case stay and waterfall freeze beyond December 31, 2014. The ILECs contend that this delegation is unlawful and inappropriate, and should be removed. Fifth, the Small ILECs contend that the PD misstates their position regarding the proposed extension of the waterfall freeze. The Small ILECs assert that they did not propose that the Commission extend the waterfall freeze to December 31, 2014. Rather, the independent Small LECs state that they would not oppose an

⁷ ORA Comments at 1

⁸ *Id.*

extension of the current rate case stay to December 31, 2014, under certain conditions, which included the waterfall freeze lifting on April 1, 2015.⁹

In its reply comments ORA states that it does not oppose the request by the Small ILECs to extend the waterfall freeze until after the stay of the GRC schedule. However, ORA believes it is premature to set April 1, 2015 as the definitive date for the end of the waterfall freeze given the on-going work on Phase I of this proceeding, and the potential extension of the case if the Commission does not issue a decision in December 2014. ORA argues that this is especially true in light of the fact that the ALJ may extend the schedule after January 2015 in response to a request by any party.¹⁰

ORA asserts that it is premature to establish and adopt a hard date for test years in this PD, while the proceeding is still occurring and the time for filing GRCs is uncertain. Finally, ORA notes that the Small ILECs again raise their objection to the Commission imposing a GRC stay, objecting that the Commission cannot lawfully delegate authority to the ALJ to extend the rate case stay or waterfall freeze. ORA points out that this argument was raised previously by the Small LECs and rejected by the Commission in D.14-02-047.¹¹

In response to the comments of the Small ILECs and reply comments of ORA, Section 1 and Section 3 of the PD have been modified to reflect that the freeze of the waterfall provisions for CHCF-A recipients is extended to April 2015. Findings of Fact #13 and #16, Conclusions of Law #2 and Ordering Paragraph #2 are modified in a similar manner. In addition, Section 1 and

⁹ Opening Comments of the Small ILECs at 1:12-25

¹⁰ Reply Comments of ORA, at 2

¹¹ *Id.*

Section 3 of the PD have been modified to allow that the stay of the GRC schedules (only) can be extended by the assigned ALJ for three months at the request of any Party to the proceeding. Findings of Fact #15 and #16, Conclusions of Law #6 and Ordering Paragraph #5 are modified in a similar manner.

The test year to be utilized for the rate cases that follow conclusion of Phase I of this proceeding will be addressed in the final decision. No other changes or modifications have been made to the PD.

Findings of Fact

1. The OIR was issued pursuant to the Commission's D.10-02-016.
2. The OIR (R.11-11-007) begins a review of the CHCF-A program.
3. The CHCF-A rules are summarized in Appendix, Section D to D.91-09-042.
4. Small LEC wishing to receive CHCF-A support must periodically file GRCs with the Commission.
5. CHCF-A subsidies are subject to a six-year phase down cycle or "waterfall."
6. A company receives full (100%) funding for three years following the GRC decision.
7. In the fourth year the company would receive 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.
8. On February 13, 2013, the Commission issued an Interim Decision in D.13-02-005.
9. D. 13-02-005 provides for one year stay of the GRC schedules and freeze of the waterfall provisions for CHCF-A recipients until December 31, 2013.

10. On December 20, 2013, in an ALJ Ruling, the one year stay of the GRC schedules and freeze of the waterfall provisions was extended to June 30, 2014.

11. On March 18, 2014, the assigned Commissioner issued an Amended Scoping Memo and Ruling, among other things, the proceeding was divided into two phases.

12. On April 15, 2014, the Small ILECs submitted a letter to the Commission's Executive Director pursuant to Rule 16.6 requesting a 60-day extension to the current rate case deadline and associated freeze in the waterfall mechanism.

13. The Small ILECs propose that the current freeze of the waterfall provisions of D.91-09-042 would be extended until April 1, 2015, at the current CHCF-A subsidy level for the Small ILECs (with the exception of Kerman) and that all other features of the current CHCF-A program would remain in effect during the proposed freeze extension. The Small ILECs would retain the ability to file an application for emergency rate relief.

14. In November 2014 the Small ILECs and the other parties to the proceeding would confer in order to determine if a further stay/freeze in the GRC and waterfall were warranted.

15. The assigned ALJ would be allowed to extend the stay for three months, by a ruling, if this proceeding is not completed by December 31, 2014.

16. An extension of the current stay of the Small ILEC's pending GRC proceedings, until December 31, 2014, along with an extension of the current freeze in the CHCF-A waterfall provisions, until April 1, 2015, at their current levels (with the exception of Kerman) are warranted.

Conclusions of Law

1. The current stay in the CHCF-A Rate Case Schedule should be extended to December 31, 2014.

2. The current freeze in the CHCF-A “Waterfall Mechanism” should be extended to April 1, 2015.
3. All other features of the current CHCF-A program should remain in effect during the proposed extension of the stay and freeze.
4. The Small ILECs should retain the ability to file an application for emergency rate relief through the existing Commission process.
5. The parties should confer to review the status of the instant proceeding in November 2014.
6. If it appears that the proceeding will not be concluded by December 31, 2014, any party may request an extension of the stay for an additional three months.
7. The assigned ALJ may approve or reject the extension request.
8. If an extension is granted by the assigned ALJ, the parties should again confer to review the status of the instant proceeding in February 2015.

I N T E R I M O R D E R

IT IS ORDERED that:

1. The current stay of the General Rate Case proceedings of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company and Volcano Telephone Company will be extended to December 31, 2014.
2. The current freeze of the “Waterfall Provisions” of the California High Cost Fund-A (CHCF-A) will be extended until April 1, 2015, at their current levels for Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor

Telephone Company, Foresthill Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company and Volcano Telephone Company subject to any adjustments in funding that result from the CHCF-A annual filings.

3. All other features of the current CHCF-A program will remain in effect during the proposed stay and freeze.

4. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company and Volcano Telephone Company will retain the ability to file an application for emergency rate relief through the existing Commission process.

5. The parties to this proceeding will confer to review that status of the proceeding in November 2014. If it appears that Phase 1 of the proceeding will not be concluded by December 31, 2014, any party may request an extension of the stay for an additional three months. The extension request will be approved or rejected by a ruling of the assigned Administrative Law Judge.

6. If an extension is granted by the assigned Administrative law Judge, the parties will confer to review the status of the proceeding in February 2015. If it appears that the proceeding will not be concluded by March 31, 2015, any party may request a three month extension, until June 30, 2015.

7. The second request for an extension of the stay and or freeze must be considered by the full Commission.

8. Rulemaking 11-11-007 remains open.

This order is effective today.

Dated _____, at San Francisco, California.