

Decision 17-11-016 November 30, 2017

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

In the Matter of Application of Sierra Telephone Company, Inc. (U1016C) to Review Intrastate Rates and Charges, Establish a New Intrastate Revenue Requirement and Rate Design, and Modify Selected Rates.

Application 16-10-003

(See Appendix 5 for Appearances)

**DECISION ADOPTING ALL-PARTY SETTLEMENT AGREEMENT;  
APPROVING REVENUE REQUIREMENT AND RATE DESIGN; AND  
MODIFYING SELECTED RATES FOR THE SIERRA TELEPHONE CO.  
FOR TEST YEAR 2018**

**Table of Contents**

<b>Title</b>	<b>Page</b>
DECISION ADOPTING ALL-PARTY SETTLEMENT AGREEMENT; APPROVNG REVENUE REQUIREMENT AND RATE DESIGN; AND MODIFYING SELECTED RATES FOR THE SIERRA TELEPHONE CO. FOR TEST YEAR 2018.....	1
Summary.....	2
1. Background.....	2
1.1. The Parties.....	2
1.2. Procedural History.....	3
1.2.1. Information Received After the Filing of Settlement Agreement.....	5
2. Settlement Agreement.....	5
2.1. Legal and Policy Considerations.....	7
2.2. California High Cost Fund-A.....	9
2.2.1. Means Test for CHCF-A.....	10
2.2.2. The Results of Operations Shall Not Be Limited to the Means Test for CHCF-A.....	11
2.3. LifeLine Customer Rates.....	12
2.4. Affiliate Transactions.....	13
2.5. Service Quality, Safety, and Project Reporting.....	14
3. Settlement Standard of Review.....	14
3.1. The Settlement Meets the Standard of Review for Settlement.....	15
3.1.1. ORA Analysis of the Record.....	16
3.1.2. Record Supports the Settlement and is in the Public Interest.....	17
4. Safety Considerations.....	17
5. Request to Admit Testimony.....	18
6. Confidential Testimony and Materials Under Seal.....	18
7. Categorization and Need for Hearing.....	19
8. Comments on Proposed Decision.....	19
9. Assignment of Proceeding.....	19
Findings of Fact.....	20
Conclusions of Law.....	21
ORDER.....	24

Appendix 1 - Joint Settlement Agreement

**Table of Contents (cont.)**

<b>Title</b>	<b>Page</b>
Appendix 2 - National Exchange Carrier Association Correspondence	
Appendix 3 - Sierra Telephone Company, Inc., Test Year 2018 Results of Operations and Relevant Comparisons	
Appendix 4 - Sierra Telephone Company, Inc., Test Year 2018 Results of Operations and Relevant Comparisons	
Appendix 5 - List of Appearances	

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FOR TEST YEAR 2018**

**Summary**

This decision adopts and approves the Joint Motion for Adoption of the All-Party Settlement Agreement (JMSA), as modified by October 11, 2017 Joint Response<sup>1</sup> between the California Public Utilities Commission's Office of Ratepayer Advocates and Sierra Telephone Company, Inc.,<sup>2</sup> for Sierra's General Rate Case Test Year 2018 and closes Application 16-10-003. This decision finds that the Settlement Agreement<sup>3</sup> between the parties, with the additional information submitted to the Commission subsequent to the filing of the JMSA, is reasonable in light of the whole record in this proceeding, consistent with the law and in the public interest.

**1. Background**

**1.1. The Parties**

Sierra Telephone Company, Inc. (Sierra) is a California corporation whose principal place of business is 49150 Road 426, Oakhurst, CA 93644. Sierra owns and operates a telephone system that provides local exchange telephone services in western Sierra and eastern Madera and Mariposa Counties to approximately

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<sup>1</sup> See October 11, 2017 Joint Response to September 28, 2017 E-mail Ruling of Administrative Law Judge Miles" (Joint Response). The Joint Response updates the Interstate Universal Service Fund (USF) support figure to the actual amount that Sierra will receive for 2018 with the corresponding adjustment to the CHCF-A draw, as illustrated in Appendix 2.

<sup>2</sup> Sierra Telephone Company and Office of Ratepayers Advocates (ORA) are jointly referred to as the "parties" throughout this decision.

<sup>3</sup> The parties' Settlement Agreement is attached as APPENDIX 1 to this Proposed Decision.

17,284 access lines. Its telephone system includes facilities for interconnection to a public switched telephone network, and consists of both underground and aerial cable and lines, radio equipment, central office equipment, land and buildings in Oakhurst CA. Sierra serves exchanges in communities of Coarsegold, Mariposa and Raymond.<sup>4</sup>

The ORA serves as representative on behalf of California consumers.<sup>5</sup> ORA's statutory mandate requires it to "advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission," and "obtain the lowest possible rate for service consistent with reliable and safe service levels."

## **1.2. Procedural History**

Sierra filed its General Rate Case (GRC) Application (A.) 16-10-003 on October 3, 2016 (Application), seeking an adjustment to its intrastate revenue requirement and corresponding modifications to its California High Cost Fund A (CHCF-A) draw, as well as adjustments to selected rates. Sierra served direct testimony from six witnesses in support of its Application.<sup>6</sup>

The Application appeared on the Commission's Daily Calendar on October 7, 2016. On October 13, 2016, in Resolution ALJ-3386, the Commission preliminarily designated the proceeding as ratesetting and concluded that hearings would be necessary. On November 1, 2016, Sierra provided its

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<sup>4</sup> Application at 7.

<sup>5</sup> See Pub. Util. Code § 309.5.

<sup>6</sup> Sierra served prepared testimony by Al Baumgarner, Linda Burton, Jeff Busto, Cynthia Huber, David Lashua, Dale Lehman, Carol Matte, Jim Rennard and Joanne Reuter.

customers with notice of the Application as required under Rule 3.2(c)<sup>7</sup> and Rule 3.2(d).<sup>8</sup> ORA filed its protest to the Application on November 2, 2016.<sup>9</sup> Sierra filed a response on November 14, 2016.

A prehearing conference (PHC) was held on December 9, 2016. The assigned Commissioner issued the scoping ruling in the proceeding on January 27, 2017 and a public participation hearing (PPH)<sup>10</sup> was held in Oakhurst, CA on February 17, 2017. ORA served opening testimony on March 20, 2017.<sup>11</sup>

Sierra and ORA exchanged extensive discovery in the form of detailed data requests. Evidentiary hearings (EH) were held at the Commission's offices in San Francisco on May 15, 16 and 17. Thereafter, the parties held substantive settlement discussions, including a June 14, 2017 all-party settlement conference in compliance with Rule 12.1(b). On June 16, 2017, the parties entered the

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<sup>7</sup> All references to Rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at: [http://docs.cpuc.ca.gov/word\\_pdf/RULES\\_PRAC/70731.pdf](http://docs.cpuc.ca.gov/word_pdf/RULES_PRAC/70731.pdf).

<sup>8</sup> Sierra filed the Proof of Compliance required by Rule 3.2, with the Commission on November 21, 2016.

<sup>9</sup> In the Settlement Agreement, the parties identified the following substantive areas identified in ORA's protest: (1) Sierra's rate design; (2) Sierra's proposed CHCF-A draw; (3) Sierra's service quality relating to safety and reliability; (4) Sierra's corporate expense; and (5) Sierra's depreciation study.

<sup>10</sup> A PPH is not a formal hearing at which evidence is taken into the record. However, it provides an opportunity for members of the public to offer comments to the Administrative Law Judge (ALJ) about the quality of service by Sierra as well as any other issues that may be of concern to the communities that Sierra serves. The PPH held in Oakhurst on February 17, 2017 was well attended, and the public was generally supportive of Sierra's Application and proposed rates.

<sup>11</sup> ORA's testimony was sponsored by Adam Clark, Enrique Gallardo, Eileen Odell, Cameron Reed and Tony Tully.

Settlement Agreement that is the subject of this decision (APPENDIX 1 to this decision.)

**1.2.1. Information Received After the Filing of Settlement Agreement**

Following the filing of the Joint Motion for Adoption of the All-Party Settlement Agreement (JMSA), the assigned ALJ issued two separate rulings on August 9, 2017 and September 28, 2017 in order to obtain additional information in support of the proposed settlement from the parties, and/or require explanations from the parties regarding various provisions of the Settlement Agreement. The parties timely responded to the ALJ's rulings. Sierra filed (1) "Response Of Sierra Telephone Company, Inc. (U 1016 C) To The July 25, 2017 ALJ Ruling In A.16-10-003 Seeking Additional Information Regarding Proposed Settlement As To Non-Regulated Revenue"; and the parties filed (2) an "October 11, 2017 Joint Response To September 28, 2017 E-mail Ruling Of Administrative Law Judge Miles" (Joint Response). The Joint Response updates the Interstate Universal Service Fund (USF) support figure to the actual amount that Sierra will receive for 2018 with the corresponding adjustment to the CHCF-A draw, as illustrated in APPENDIX 2.<sup>12</sup>

**2. Settlement Agreement**

The parties' Settlement Agreement proposes an overall intrastate revenue requirement of \$23,575,419 for the test year 2018 (TY 2018). The intrastate revenue requirement agreed to by the parties is based on the 9.22% rate of

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<sup>12</sup> The updated 2018 USF support amount of \$1,382,909 as reported by the National Exchange Carrier Association on October 2, 2017 is APPENDIX 2 (line 6 of chart) to this Decision.

return/cost of capital that the Commission adopted in Decision (D.) 16-12-035.<sup>13</sup> Based on that rate, the parties also include a subsidy draw of \$12,974,098 from CHCF-A.<sup>14</sup> Under the Settlement Agreement, the parties modify Sierra's tariffed basic residential rates from \$20.25 to \$25.00 (exclusive of surcharges, fees or taxes), one-party business rates from \$31.85 to \$39.32 (exclusive of surcharges, fees or taxes), and adopt new rates for other Sierra services, effective January 1, 2018.<sup>15</sup> Itemized rate changes appear in Attachment 3 (Proposed Rate Design) to APPENDIX 1, the Settlement Agreement. Sierra agrees to use its current income tax rate for the purposes of calculating its intrastate revenue requirement herein adopted. Thus, if Sierra's income tax rate changes before or after a decision is issued approving the Settlement Agreement, Sierra shall recalculate its revenue requirement to reflect the new tax rates, and file a Tier 2 advice letter informing the Commission of the revised revenue requirement within 30 days of the tax change taking effect. Sierra sets forth the depreciation agreed between the parties in Attachment 4 (Proposed Depreciation Rates) to APPENDIX 1 Settlement Agreement.

This decision accepts the parties' proposals in APPENDIX 1 Settlement Agreement and its Attachments and sets Sierra's forecasted revenue (updated to

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<sup>13</sup> JMSA at 5 - 6. However, D.16-12-035 is subject to an Application for Rehearing, and the parties acknowledge that if D.16-12-035 is annulled or revised by the Commission or a court of law, any resulting adjustments to the cost of capital and revenue requirement shall be applied to Sierra based on the instructions from the Commission or the reviewing court.

<sup>14</sup> *Id.* at 7. This figure is updated from the \$12,479,462 figure shown in parties' Exhibit 2 to their JMSA, as a result of a \$494,636 difference between the parties' forecast 2018 USF and the actual figure.

<sup>15</sup> See Attachment 3 (Proposed Rate Design) to APPENDIX 1 - Settlement Agreement, which sets forth increased rates for basic business services, inside wire maintenance, calling features, late payment charges and returned check fees.

reflect the parties’ Joint Response) as:<sup>16</sup>

<b>Source</b>	<b>Amount</b>
Local Network Services Revenues	\$7,251,907
Interstate Universal Service Fund (USF) Support for Intrastate Revenue Requirement	\$1,382,909
Intrastate Access Revenues	\$791,871
Miscellaneous and Uncollectible Revenues	\$1,174,634
CA High Cost Fund-A draw	\$12,974,098 <sup>17</sup>
<b>Total Revenue Requirement for 2018 Test Year</b>	<b>\$23,575,419</b>

## **2.1. Legal and Policy Considerations**

Pub. Util. Code § 451 provides that public utilities may demand and receive only just and reasonable charges, and must provide “adequate, efficient, just and reasonable service” in a way that promotes the “safety, health, comfort, and convenience of [their] patrons, employees, and the public.” Pub. Util. Code § 454 requires the Commission to review proposed rates changes, make a finding that they are justified, and authorize the proposed rates changes before they can take effect.

Under Pub. Util. Code § 728, the Commission has the authority to “determine what is just and reasonable, disallow costs that are found to be unjust or unreasonable, and to prevent a utility from passing on to the ratepayers

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<sup>16</sup> See APPENDIX 1 - Settlement Agreement dated June 16, 2017, which was filed by the parties as Exhibit 1 to their JMSA. The Settlement Agreement includes five attachments: Attachment 1 – Tax Liabilities for 2018 Test Year; Attachment 2 – Results of Operations and Relevant Comparisons for Test Year 2018; Attachment 3 – Proposed Rate Design; Attachment 4 – Proposed Depreciation Rates under Settlement Agreement, and Attachment 5 – Sample Annual Progress Report.

<sup>17</sup> The 2018 CHCF-A support and total revenue requirement amounts are based on the 9.22% rate of return that the Commission adopted in A.15-09-005 (D.16-12-035), and is subject to change if the rate of return is revised pursuant to the pending Application for Rehearing of D.16-12-035 in proceeding A.15-09-005.

unreasonable costs for materials and services by disallowing expenditures that the Commission finds unreasonable.”<sup>18</sup> Under the Public Utilities Act, the Commission’s primary purpose is to “insure the public adequate service at [just and] reasonable rates without discrimination...”<sup>19</sup>

Pub. Util. Code § 275.6 requires the Commission to minimize telephone rate disparities between rural and metropolitan areas to keep rates affordable in areas with lower population densities. Under Pub. Util. Code § 275.6(c)(2), the Commission must “employ rate of return regulation to determine a small independent telephone corporation’s revenue requirement in a manner that provides revenues and earnings sufficient to allow the telephone corporation to deliver safe, reliable, high-quality voice communication service and fulfill its obligations as a carrier of last resort in its service territory, and to afford the telephone corporation a fair opportunity to earn a reasonable return on its investments, attract capital for investment on reasonable terms, and ensure the financial integrity of the telephone corporation.” Thus, the scope of this proceeding must include all relevant information necessary to determine whether the applicant’s proposed revenue requirement and other requests are just and reasonable, and permit the utility to fulfill its duties under § 451.

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<sup>18</sup> *Id.*

<sup>19</sup> *Pacific Telephone and Telegraph Company v. Public Utilities Commission* (1950) 34 Cal.2d 822,836 [215P.2d 441].

## **2.2. California High Cost Fund-A**

The purpose of the CHCF-A is to provide a source of supplemental revenues to small Incumbent Local Exchange Carriers<sup>20</sup> such as Sierra, whose basic exchange access line service rates would otherwise be increased to levels that would threaten universal service. As stated in D.14-12-084, “[u]niversal, reliable, affordable, service is critical to public safety and benefits the state as a whole.”<sup>21</sup> The CHCF-A currently supports eligible small ILECS in helping rural residents stay connected to essential services to maintain public health and safety.

The CHCF-A program is funded by a surcharge assessed on revenues collected from end users of intrastate telecommunications services subject to surcharge. The Commission periodically reviews the program fund levels and adjusts the surcharge rate to ensure the program is sufficiently funded. All telecommunications carriers<sup>22</sup> and interconnected Voice-over Internet Protocol service providers<sup>23</sup> are required to assess the CHCF-A surcharge rate of 0.35%.<sup>24</sup>

In administering the CHCF-A program, the Commission must “ensure that rates charged to customers of small independent telephone corporations are reasonably comparable to rates charged to customers of urban telephone

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<sup>20</sup> Small Incumbent Local Exchange Carriers are small independent telephone companies, also known as “small ILECS.”

<sup>21</sup> D.14-12-084 at 53.

<sup>22</sup> See Pub. Util. Code § 275.

<sup>23</sup> See Pub. Util. Code § 285(c).

<sup>24</sup> Resolution T-17453, issued on November 21, 2014, set a surcharge rate of 0.35% effective January 1, 2015.

corporations.”<sup>25</sup> Historically, “comparable” has meant that target rates for residential customers are no more than 150% of basic service rates for California’s urban telephone customers. The “150% formula” was originally established in D.91-09-042, and the formula has been used in part to evaluate the reasonableness of rates charged to customers. In D.10-02-016, the Commission modified the 150% formula so that small ILECs were no longer required to charge up to 150% of the urban basic rate to qualify for CHCF-A support, instead fixing the basic service rate at \$20.25 per month.<sup>26</sup> This requirement remained in effect until the Commission adopted D.14-12-084 in its CHCF-A rulemaking proceeding Rulemaking (R.) 11-11-007, which set the all-inclusive reasonable rate range of \$30.00 to \$37.00, inclusive of federal and state fees and surcharges.<sup>27</sup>

The Settlement Agreement provides for a residential basic rate of \$25.00 effective January 1, 2018, exclusive of fees and surcharges. The parties agree that, after adding Sierra’s calculations of the fees and surcharges, that this will equate to an “inclusive” rate of \$34.83, which is within the range of reasonableness.<sup>28</sup>

### **2.2.1. Means Test for CHCF-A**

The Commission limits the CHCF-A support to amounts which would provide no more than either: 1) a utility’s authorized intrastate rate of return, or 2) the utility’s current funding level for the year for which CHCF-A is being requested, whichever is lower. The foregoing is determined by using a “means

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<sup>25</sup> Pub. Util. Code § 275.6(c)(3).

<sup>26</sup> See D.10-02-016, Ordering Paragraph (OP) 3.

<sup>27</sup> See D.14-12-084, OP 9.

<sup>28</sup> JMSA at 16.

test.”<sup>29</sup> The means test is based, in part, upon at least seven months of recorded data annualized which can then be compared to the utility’s forecasted intrastate rate of return based upon its adopted results of operations for a particular year.

The CHCF-A support for a utility’s test year<sup>30</sup> is determined in its GRC decision, and any renewal of the CHCF-A support for subsequent calendar years shall be in accordance with D.91-09-042. The adopted 2018 CHCF-A support is reflected in the updated TY 2018 Results of Operations and Relevant Comparison submitted by the parties in their October 11, 2017 Joint Response to the September 28, 2017 Ruling of ALJ Miles. (*See* APPENDIX 4 to this decision).

In order for the Commission to perform the means test to determine Sierra’s annual CHCF-A support for years following TY 2018, the Commission will rely upon the figures provided in APPENDIX 4 to this decision.<sup>31</sup>

### **2.2.2. The Results of Operations Shall Not Be Limited to the Means Test for CHCF-A**

The parties contend that the illustrative TY 2018 Results of Operations and Relevant Comparison (Exhibit 2 to the JMSA, attached herein as APPENDIX 3) and updated in their October 11, 2017 Joint Response to reflect the 2018 USF<sup>32</sup> (attached herein as APPENDIX 4), should be used only for the limited purpose of determining and/or performing the “means test” component of Sierra’s future

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<sup>29</sup> *See* D.91-05-016 as modified and clarified by D.91-09-042.

<sup>30</sup> In small LEC GRC proceedings, the test year is the year immediately following issuance of the Commission’s decision (e.g., 2018 would be the test year for this decision, which is anticipated to be issued in December 2017.)

<sup>31</sup> The parties’ filed an “illustrative” Test Year 2018 Results of Operations and Relevant Comparison with their October 11, 2017 Joint Response to September 28, 2017 E-mail Ruling of Administrative Law Judge Miles (Joint Response).

<sup>32</sup> *See* JMSA, at 14, Section B and October 11, 2017 Joint Response, at 4, Section III.

annual CHCF-A filings. The Commission disagrees with the parties' proposed limited use of APPENDIX 4, and accordingly, the Commission finds it reasonable and appropriate to adopt the figures shown in APPENDIX 4, column F as the Sierra 2018 Results of Operations for all purposes consistent with established and historical GRC processes practiced by all Commission Industry Divisions, including Communications Division.

In her September 28, 2017 e-mail ruling seeking clarification on the settlement agreement, the ALJ gave the parties the opportunity to submit an agreed 2018 Results of Operations (replacing figures shown in APPENDIX 4, column F), however, the parties declined to do so. Accordingly, APPENDIX 4 shall be adopted as the 2018 Results of Operations for Sierra.

### **2.3. LifeLine Customer Rates**

The parties' Settlement Agreement reflects an increase in the one-party LifeLine rate from \$20.25 to \$25.00.<sup>33</sup> However, the parties indicate that the LifeLine rate listed in APPENDIX 1, Attachment 3 represents only the starting point of the calculation for determining the LifeLine rate. The actual rate will be calculated by adding the \$25.00 basic rate to the subscriber line charge and then subtracting the applicable 2018 California Specific Support Amount (SSA) and the 2018 federal LifeLine support from the combined figure. In the alternative, Sierra will use any LifeLine rate calculation that the Commission may adopt in R.11-03-013. The parties explain that the figure cannot be shown at this time because the SSA is not released until sometime during the fall of each year. The parties agree that the 2018 LifeLine rate will be determined in accordance with

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<sup>33</sup> See Attachment 3 (Proposed Rate Design) to APPENDIX 1 Settlement Agreement.

the Commission's LifeLine rules once the 2018 SSA is known, and Sierra agrees to submit a Tier 2 advice letter confirming the 2018 LifeLine rate within 10 business days of the Commission's release of the 2018 SSA.<sup>34</sup>

#### **2.4. Affiliate Transactions**

In the Settlement Agreement, Sierra agrees to abide by the following requirements relative to its affiliates:

- a. Sierra and each of its affiliates shall be held in separate legal entities.
- b. Sierra shall maintain separate books for its affiliates as to all transactions.
- c. Sierra shall maintain separate bank accounts for its affiliates as to all transactions.
- d. The cost of any advertising or marketing conducted jointly on behalf of Sierra and any of its affiliates shall be apportioned according to the extent that the advertising or marketing benefits each company. Sierra's share of the cost of such advertising or marketing shall not exceed an even division of the cost amongst all companies involved in the joint advertising or marketing.
- e. Sierra shall not include in its regulated expenses the costs of any joint sponsorships, fundraisers, or charitable donations with its affiliates.
- f. Sierra shall not transfer any physical assets that are used and useful without first obtaining necessary approvals from the Commission.
- g. Sierra shall conduct financial transactions with its affiliates at "arms-length."

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<sup>34</sup> See JMSA, at 17 and Settlement Agreement, paragraph 1h "End User Rates and Rate Design," subsection v.

- h. Sierra shall ensure that affiliate transactions are conducted at rates and upon terms no less advantageous than those otherwise available to Sierra from unaffiliated third parties for similar transactions.

### **2.5. Service Quality, Safety, and Project Reporting**

Sierra agrees to abide by the following requirements relating to service quality, safety and project reporting:

- a. Sierra shall serve ORA with its annual eligible telecommunications carrier filing, which contains project and plant information that would allow ORA to track Sierra's progress toward its plant goals. In addition, Sierra will serve ORA and the Commission on an ongoing basis with an Annual Progress Report (Report) on the status of its plant additions. The Report will be submitted on or before September 15 of each year with information covering an annual period. The Report, which shall be submitted in excel format, will be submitted using the format attached herein as Attachment 5 to APPENDIX 1 Settlement Agreement.
- b. If Communications Division facilitates a workshop on the topic of service quality and investments in broadband infrastructure projects, Sierra will actively participate with ORA in such workshop.
- c. Sierra will make a good-faith best effort to establish formal Mutual Aid Agreements with other utilities, emergency responders, and local organizations. Sierra will also add and maintain the radio station KRYZ as a priority customer for voice and broadband service restoral.

### **3. Settlement Standard of Review**

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record,

consistent with the law, and in the public interest.<sup>35</sup> In order for the Commission to consider a proposed settlement in a proceeding as being in the public interest, the Commission must be convinced that the parties had a sound and thorough understanding and engaged in thoughtful analysis of the Application and of the underlying assumptions and data included in the evidentiary record.

Rule 12.1 sets forth the requirements for proposed settlements. As discussed below, the parties' Settlement Agreement satisfies the Commission's standard of review.

Rule 12.5 limits the future applicability of a settlement.<sup>36</sup>

### **3.1. The Settlement Meets the Standard of Review for Settlement**

As previously noted, the parties held substantive settlement discussions, and their Settlement Agreement was the result of those discussions, including a June 14, 2017 all-party settlement conference, in compliance with Rule 12.1(b).

The proceeding record consists of the filed Application, served testimony and related documents admitted into evidence, testimony elicited during cross examination of witnesses at the EH, the JMSA and Exhibits thereto, such as the Settlement Agreement and its exhibits. The parties represent that their Settlement Agreement resolves the concerns that ORA raised in its protest and addresses the issues within the scoping memorandum. Although the parties indicate that they are submitting a "black box" Settlement Agreement, there is

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<sup>35</sup> Rule 12.1(d).

<sup>36</sup> Rule 12.5 states: "Commission adoption of a settlement is binding on all parties to the proceeding in which the settlement is proposed. Unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding."

sufficient information within the Settlement Agreement (and, as discussed in Section 1.2.1 above), information received after the filing of the Settlement Agreement by the parties to permit the Commission to discharge its regulatory obligations.

### **3.1.1. ORA Analysis of the Record**

ORA represents the interests of ratepayers. ORA representatives must demonstrate that they have a thorough understanding of the GRC issues, which permitted them to make informed decisions respecting the best interests of ratepayers, during the settlement process.

The record of this proceeding shows that ORA met its statutory responsibility to analyze the Application and record and to actively engage with Sierra, as required by D.15-06-048. ORA timely filed its protest to Sierra's Application (a summary of the substantive areas of ORA's protest are summarized in footnote 7 of Section 1.2 "Procedural History"), participated in the PHC and attended the PPH held on February 17, 2017, to obtain comments and feedback from Sierra's customers. ORA carefully scrutinized Sierra's served testimony, served discovery/data requests upon Sierra to examine the issues raised by the Application and testimony, and vigorously cross examined Sierra's experts during the EH to test the validity of Sierra's propositions. ORA served testimony of its own witnesses, and its witnesses also provided thoughtful analysis and testimony during cross examination at the EH. ORA's work in this proceeding was helpful and persuasive, and ORA's effective advocacy in this proceeding is a significant factor in the ALJ's recommendation that the Settlement Agreement be adopted by the Commission.

### **3.1.2. Record Supports the Settlement and is in the Public Interest**

The proposed settlement, as modified herein, is supported by the record in this proceeding, and the settlement benefits the public by ensuring that:

(1) Sierra's CHCF-A subsidy draw for the 2018 TY is reasonable; (2) Sierra's residential and business customers will pay rates that are reasonably comparable to the rates that urban customers pay, pursuant to Pub. Util. Code § 275.6(c)(3); (3) Sierra will adopt new affiliate transaction rules that will lead to greater transparency, accountability and reporting of affiliates dealings and transactions; and (4) Sierra will adopt new requirements relating to service quality, safety and project reporting that will benefits consumers and ratepayers.

The settlement overall, as modified herein, is reasonable and serves the public interest by resolving competing concerns in a collaborative and cooperative manner. By reaching agreement, the parties have also avoided the costs of extended litigation.

## **4. Safety Considerations**

We have considered the potential safety implications of the Settlement Agreement and are satisfied that the intrastate revenue requirement approved in this decision will help Sierra meet the Commission's minimum safety goals and expectations for small local exchange telecommunications companies and/or carriers, and as a public utility that is required to "... furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public," pursuant to Pub. Util. Code § 451.

**5. Request to Admit Testimony**

On October 5, 2017, Sierra and ORA filed a “Motion of the Office of Ratepayers Advocates and Sierra Telephone Company, Inc. to Move Testimony into the Record under Rule 13.8(c)” (October Motion Regarding Testimony). The October Motion Regarding Testimony pertains to testimony of witnesses who were not cross-examined when the parties shortened the evidentiary hearing to discuss settlement, and thus seeks to have previously served testimony admitted into the record of this proceeding, without waiving the right to object to such testimony or to cross-examine witnesses sponsoring the testimony in the event the Commission rejects or modifies the terms of the parties’ Settlement Agreement. Based on the agreement of the parties and finding good cause, we admit - in addition to testimony and materials moved into the record of this proceeding during evidentiary hearing - the witness and expert testimony and exhibits delineated on pages 3-13 of the October Motion Regarding Testimony with the attached Declarations of Adam Clark, Cameron Reid, Enrique Gallardo, Tony Tully and Al Baumgarner.

**6. Confidential Testimony and Materials Under Seal**

The parties submitted certain reports, exhibits and testimony designated as “confidential.” The marking of these reports, exhibits and testimony as “confidential” is deemed to be a request by each party for leave to file those reports and testimony under seal pursuant to Rule 11.4. The disclosure of confidential reports, materials and recommendations, sensitive financial data, operational and other privileged information could place the moving party in serious disadvantage or at unfair business disadvantage. Accordingly, the requests to place these materials under seal pursuant to Rule 11.4 are granted as set forth in the Ordering Paragraphs below.

## **7. Categorization and Need for Hearing**

In Resolution ALJ 176-3386, dated October 13, 2016, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. This decision confirms the categorization.

## **8. Comments on Proposed Decision**

The proposed decision of the ALJ 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. Sierra and ORA filed joint comments on November 20, 2017. They oppose the ALJ's decision to adopt the "illustrative" results of operations in Appendix 4, arguing that doing so will implement an outcome that differs from their mutual intent.<sup>37</sup> However, as discussed in Sections 2.2.1 and 2.2.2 of this decision, adopting a results of operations as part of the GRC is consistent with established and historical GRC processes practiced by all Commission industry divisions. Furthermore, in her September 28, 2017 e-mail ruling, the ALJ gave the parties an opportunity to submit an agreed 2018 Results of Operations (replacing figures shown in APPENDIX 4, column F), but they declined to do so. We agree that adoption of the results of operations in Appendix 4 is appropriate. No reply comments were filed.

## **9. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

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<sup>37</sup> See "Joint Opening Comments of Sierra and ORA on Proposed Decision of Administrative Law Judge Miles Adopting All-Party Settlement Agreement Approving Revenue Requirement and Rate Design and Modifying Selected Rates for Sierra Telephone Co. for Test Year 2018" dated November 20, 2017.

### **Findings of Fact**

1. On October 3, 2016, Sierra filed this GRC Application seeking to update its intrastate rates and charges, intrastate revenue requirement, establish a rate design and increase its draw from the CHCF-A.
2. ORA filed its protest to the Application on November 2, 2016.
3. Sierra and ORA served direct and rebuttal testimony of witnesses prepared to testify in support of their respective positions.
4. Sierra and ORA engaged in significant discovery and data exchange, analysis of each other's positions and arguments, and several days of evidentiary hearing, after which substantive settlement negotiation occurred between the parties.
5. On June 14, 2017, the Sierra and ORA held a duly-noticed all-party formal settlement conference in compliance with Rule 12.1(b), after which they arrived at an All-Party Settlement Agreement (Settlement Agreement) resolving all issues in this proceeding.
6. On June 16, 2017, Sierra and ORA filed a Joint Motion for adoption of their Settlement Agreement.
7. On August 15, 2017, Sierra filed a "Response to July 25, 2017 ALJ Ruling in A.16-10-004 Seeking Additional Information Regarding Proposed Settlement as to Non-regulated Revenue."
8. In response to a September 28, 2017 ALJ ruling received after the Settlement Agreement was submitted, Sierra and ORA updated rate design figures to reflect the 2018 USF, a revenue-neutral change in federal funding, which adjusted the CHCF-A draw.

9. According to the October 2, 2017 National Exchange Carrier Association update in Appendix 2, the 2018 universal services support amount for Sierra will be \$1,382,909.

10. The Settlement Agreement, as modified herein, conveys sufficient information to permit the Commission to discharge its future regulatory obligations with respect to the parties and their interests.

11. The Settlement Agreement, as modified herein and if approved, resolves all issues in Sierra's GRC Application.

12. Pursuant to Rule 11.4, the parties have requested to file under seal confidential materials, including reports, work papers and testimony.

### **Conclusions of Law**

1. Sierra and ORA's Joint Motion for Adoption of their Settlement Agreement (APPENDIX 1 to this decision) should be granted because the Settlement Agreement meets the Commission's standards of review for settlement.

2. The Settlement Agreement between the parties complies with Rule 12.1(d) and is reasonable in light of the record, consistent with law and in the public interest, because it affords Sierra the opportunity to provide "adequate, efficient, just and reasonable service" in a way that promotes the "safety, health, comfort, and convenience of [their] patrons, employees, and the public."

3. Sierra's proposed rate design, set forth in Attachment 3 to APPENDIX 1 - Settlement Agreement, is reasonable and should be granted subject to the terms set forth in the Settlement Agreement.

4. The Settlement Agreement's requirements relating to dealings with its affiliates and Sierra's service quality, safety and project reporting are reasonably designed to lead to greater accountability and benefits to ratepayers and should be adopted.

5. The Settlement Agreement provides for a residential basic rate that, after adding Sierra's calculations of the fees and surcharges, is within the range of reasonableness required to qualify for CHCF-A support and should be adopted.

6. The intrastate revenue requirement of \$23,575,419 agreed to by the parties, which includes a CHCF-A subsidy draw of \$12,974,098 and is based on the 9.22 percent rate of return/cost of capital that the Commission adopted in D.16-12-035 for the 2018 test year, is reasonable and supported by the record in this proceeding, and should therefore be approved.

7. Sierra should be required to submit a Tier 2 advice letter recalculating its revenue requirement in accordance with any instructions provided by the Commission within 30 days of any revision or annulment to D.16-12-035 resulting in adjustments to the 9.22 percent cost of capital agreed to and utilized in the Settlement Agreement to calculate Sierra's intrastate revenue requirement and CHCF-A subsidy draw.

8. If Sierra's income tax rate changes after the adoption of this decision, Sierra should submit a Tier 2 advice letter to the Communications Division recalculating its revenue requirement with new tax rates, within 30 days of the tax change taking effect.

9. The Commission should appropriately rely upon the figures provided in APPENDIX 4 to the Proposed Decision – "Sierra Telephone Company, Inc. Test Year 2018 Results of Operations and Relevant Comparisons (Illustrative Detail)" to: (1) perform the means test to determine Sierra's annual CHCF-A support beyond test year 2018, and (2) for all purposes consistent with established and historical General Rate Case processes practiced by all Commission Industry Divisions, including Communications Division.

10. It is reasonable to adopt APPENDIX 4, column F, as the Results of Operations for test year 2018, consistent with established and historical General Rate Case processes practiced by all Commission industry divisions, including the Communications Division.

11. Pursuant to D.91-09-042, a means test shall not be applied to the determination of a LEC's CHCF-A funding levels following 12 months after a decision or resolution is rendered by the Commission in a LEC's general rate review proceeding.

12. The CHCF-A support for Test Year 2018 should be the CHCF-A amount adopted and reflected in APPENDIX 4, column F of this decision.

13. Within thirty days of the issuance of this decision, Sierra should file a Tier 2 advice letter with revised tariff schedules that implement the Settlement Agreement in APPENDIX 1. The advice letter should be effective for tariffs and services rendered as of January 1, 2018. Within seven days of the date that the advice letter is effective, Sierra should notify its customers of the revised tariffs and rates.

14. The parties' requests to file under seal, confidential materials, including confidential work papers, exhibits and testimony discussed in Section 6 above, should be granted for three years.

15. All pending motions in this proceeding not specifically addressed in this decision, or previously addressed, should be denied as moot.

**O R D E R**

**IT IS ORDERED** that:

1. The June 16, 2017 Joint Motion by the Office of Ratepayer Advocates and Sierra Telephone Company, Inc. (U1016C) requesting the Commission's Adoption of the All-Party Settlement Agreement in Application 16-10-003 is granted pursuant to Article 12.1 of the Commission's Rules of Practice and Procedure.

2. The Settlement Agreement between the parties (APPENDIX 1), as modified by the October 11, 2017 Joint Response of Sierra Telephone Company, Inc. and Office of Ratepayer Advocates to the E-mail Ruling Seeking Clarification on the Settlement Agreement, is approved. Pursuant to the terms of the Settlement Agreement, as modified by the October 11, 2017 Joint Response of Sierra Telephone Company, Inc. and Office of Ratepayer Advocates to the E-mail Ruling Seeking Clarification on the Settlement Agreement, Sierra Telephone Company, Inc.'s Application for new intrastate rates and charges for telephone services in California, and draw from the California High Cost Fund-A, is granted.

3. The terms of the Settlement Agreement, as modified by the October 11, 2017 joint response of Sierra Telephone Company, Inc. and Office of Ratepayer Advocates to the E-mail Ruling Seeking Clarification on the Settlement Agreement, are adopted for the purpose of determining Sierra Telephone Company, Inc.'s intrastate revenue requirement for the 2018 test year, end user rates, other service rates included in APPENDIX 1 and as updated by APPENDIX 4, such as rate of return, income tax liabilities, depreciation, affiliates

rules, and requirements relating to service quality, safety and project reporting for the 2018 Test Year.

4. The Commission adopts the figures shown in APPENDIX 4, column F as the Sierra Telephone Company, Inc. 2018 Results of Operations for all purposes consistent with established and historical General Rate Case processes practiced by all Commission Industry Divisions, including Communications Division.

5. The specific terms of the Settlement Agreement as modified by the October 11, 2017 Joint Response of Sierra Telephone Company, Inc. and Office of Ratepayer Advocates to the E-mail Ruling Seeking Clarification on the Settlement Agreement, are approved and adopted herein and shall be binding upon both Sierra Telephone Company, Inc. and Office of Ratepayer Advocates. Settlement Agreement terms shall also be enforceable by the Commission against Sierra Telephone Company, Inc. and any violation of its terms may subject Sierra Telephone Company, Inc. to Commission actions, including penalties or sanctions.

6. All testimony served in this proceeding is admitted into the record of this proceeding.

7. The provisions of this Settlement Agreement shall not be construed as precedent and in no way bind the Commission.

8. The Commission shall have exclusive jurisdiction over all issues related to this Settlement Agreement.

9. Confidential materials shall be placed under seal for three years from the date of this decision and shall not be publicly disclosed except on further Commission order or by an Administrative Law Judge ruling. If the parties believe that it is necessary for this information to remain under seal for longer

than three years, the parties may file new motions showing good cause for extending this order by no later than 30 days before the expiration of this order.

10. All pending motions in this proceeding that are not specifically addressed in this decision, or previously addressed in this proceeding, are denied.

11. Within thirty days of the issuance of this decision, Sierra Telephone Company, Inc. shall file a Tier 2 advice letter with the Communications Division with revised tariff schedules that implement the Settlement Agreement in APPENDIX 1. The advice letter should be effective for tariffs and services rendered as of January 1, 2018. Within seven days of the date that the advice letter is effective, Sierra Telephone Company, Inc. shall notify its customers of the revised tariffs and rates.

12. Within thirty days of any changes to its income tax rates, Sierra Telephone Company, Inc. shall file a Tier 2 advice letter with the Communications Division with a revised revenue requirement that reflects the new tax rates.

13. Application 16-10-003 is closed.

This order is effective today.

Dated November 30, 2017, at San Francisco, California.

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners