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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of Calaveras Telephone Company
(U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor
Telephone Company (U 1007 C), Happy Valley Telephone
Company (U 1010 C), Hornitos Telephone Company
(U 1011 C), Kerman Telephone Co. (U 1012 C), The Ponderosa
Telephone Co. (U 1014 C), Sierra Telephone Company, Inc.
(U 1016 C), The Siskiyou Telephone Company (U 1017 C),
Volcano Telephone Company (U 1019 C), Winterhaven
Telephone Company (U 1021 C) for Ratemaking Determination
Regarding Dissolution of Rural Telephone Bank

A. 07-12-026
(Filed December 20, 2007)

REPLY COMMENTS OF

CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE COMPANY (U 1012 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)

**ON REVISED PROPOSED DECISION DETERMINING RATEMAKING TREATMENT
FOR RURAL TELEPHONE BANK STOCK DISSOLUTION PROCEEDS
AND ORDER TO SHOW CAUSE**

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 14.3(d) of the California Public Utilities Commission's ("Commission")
3 Rules of Practice and Procedure ("Rules"), Calaveras Telephone Company (U 1004 C) ("Calaveras"),
4 Cal-Ore Telephone Co. (U 1006 C) ("Cal-Ore"), Ducor Telephone Company (U 1007 C) ("Ducor"),
5 Happy Valley Telephone Company (U 1010 C) ("Happy Valley"), Hornitos Telephone Company
6 (U 1011 C) ("Hornitos"), Kerman Telephone Co. (U 1012 C) ("Kerman"), The Ponderosa Telephone
7 Co. (U 1014 C) ("Ponderosa"), Sierra Telephone Company, Inc. (U 1016 C) ("Sierra"), The Siskiyou
8 Telephone Company (U 1017 C) ("Siskiyou"), Volcano Telephone Company (U 1019 C)
9 ("Volcano"), and Winterhaven Telephone Company (U 1021 C) ("Winterhaven") (collectively,
10 "Applicants") hereby provide these reply comments addressing the opening comments of the
11 Division of Ratepayer Advocates ("DRA") on the Revised Proposed Decision of Administrative Law
12 Judge ("ALJ") Bushey Determining Ratemaking Treatment for Rural Telephone Bank Stock
13 Dissolution Proceeds (the "Revised PD") and Order to Show Cause ("OSC"). These reply comments
14 were originally due on January 15, 2010, but the deadline was extended until January 28, 2010 based
15 on an email ruling from ALJ Bushey at 12:31 p.m. on December 28, 2009.

16 As described in Applicants' comprehensive opening comments, the Revised PD is fatally
17 flawed. In its factually-unsupported regurgitation of the Revised PD's baseless theories and
18 unsubstantiated conclusions, DRA's opening comments are also fundamentally flawed. Rather than
19 attempting to independently analyze the record evidence in this proceeding or provide evidence in
20 support of its positions, DRA's opening comments blindly recite and endorse the conclusions in the
21 Revised PD. Like the Revised PD, DRA does not address the voluminous expert testimony and other
22 evidence submitted in Applicants' Supplemental Filing. DRA appears to believe that the sheer
23 magnitude of the proceeds received from the redemption of stock accumulated annually over more
24 than 30 years from the Rural Telephone Bank ("RTB") warrants a distribution of the proceeds to
25 ratepayers beyond what is called for by the "gain on sale" rules, and which is not permitted by the
26 rule against retroactive ratemaking. The fact that a large amount of money is at issue does not give
27 the Commission license to ignore the law and the extensive evidence in the record. Nor does the
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1 amount in dispute give DRA any justification for its claims. Similarly, neither DRA nor the Revised
2 PD can justify a misallocation of RTB proceeds simply by generating contrived uncertainty about
3 Applicants' disclosure and reporting obligations or by disseminating unfounded accusations.

4 Nothing in DRA's opening comments can distract from the fact that there is a mountain of
5 undisputed record evidence supporting Applicants' proposed allocation of the RTB proceeds, and
6 literally no evidence that would justify the taking of Applicants' property without due process of law.
7 Contrary to DRA's assertions, Applicants have more than met their burden of proof in this
8 proceeding. The distribution of RTB proceeds requested by Applicants is compelled by the
9 Commission's "gain on sale" rules and the doctrine forbidding retroactive ratemaking. DRA's four-
10 page, rote endorsement of the Revised PD does not in any way repair the deep legal and logical
11 infirmities in the Revised PD. For all of the reasons set forth in Applicants' opening comments, and
12 for the reasons set forth herein, the Revised PD should be rejected and replaced with a proposed
13 decision that correctly weighs the record evidence and applies the law to that evidence.

14 **II. THE MAGNITUDE OF THE PROCEEDS REDEEMED BY THE RURAL**
15 **TELEPHONE BANK DOES NOT ABSOLVE THE COMMISSION OF ITS DUTY TO**
16 **CORRECTLY APPLY THE LAW.**

17 Like the Revised PD, DRA's opening comments place heavy emphasis on the amounts
18 redeemed from the RTB dissolution in the hope that the "sticker shock" of the number will cause the
19 Commission to ignore the applicable rules governing distribution of those redeemed funds. It is true
20 that the total amount redeemed from the RTB was over \$31 million,¹ but that sum is only shareable
21 with ratepayers to the extent provided by the Commission's "gain on sale" rules, and to the extent
22 permitted by the doctrine forbidding retroactive ratemaking. The approximately \$31 million
23 redeemed from the RTB is no more nor no less subject to sharing with ratepayers than it would be if
24 it were only \$30,000. If the Commission fails to follow its own rules and/or California law in
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27 ¹ It should be noted that the redeemed amount listed for Happy Valley was incorrect in the Revised PD. *See Applicants'*
28 *Opening Comments*, at pp. 20-21.

1 connection with this proceeding, Applicants' due process rights will be violated, regardless of the
2 dollar figures involved.

3 The Revised PD exaggerates the significance of funds received from the RTB by including
4 amounts in the \$31.3 million figure that are clearly not subject to sharing. The redeemed patronage
5 shares represent approximately \$24.8 million of the \$31.3 million, but since those shares are refunds
6 on annual interest previously paid over many years, they are not "gains on sale." As such, there is no
7 basis for sharing them with ratepayers under the "gain on sale" decision (D.06-05-041). Moreover,
8 denying Applicants the full redeemed amounts of these shares would constitute retroactive
9 ratemaking, in clear violation of the Commission's authority. *See Applicants' Opening Comments*, at
10 p. 11.

11
12 The principal investments reflected in the redeemed \$31.3 million are also categorically
13 exempt from sharing with ratepayers. These funds represent approximately \$3.6 million of the total
14 redeemed funds. The "gain on sale" rules only apply to "gains," and these principal investments in
15 RTB stock cannot be subject to sharing. *See id.* A similar analysis applies to the residual payment
16 gains associated with stock not placed in rate base, an amount that comprises approximately
17 \$600,000 of the \$31.3 million in redeemed funds. The "gain on sale" rules are clear that gains are
18 only subject to sharing where the underlying asset has been placed in rate base. *Id.* (citing D.06-05-
19 041, *mimeo*, at p. 99 (O.P. 9)). Since the vast majority of the dividends on Class C shares are the
20 fruits of either converted Class B patronage shares or assets held outside of rate base, they are also
21 exempt from sharing. Those dividends represent approximately \$2.3 million of the \$31.3 million in
22 RTB proceeds that Applicants received.

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25 When the non-shareable proceeds are subtracted from the total redeemed amount, required
26 adjustments for time in rate base and separations are made, and the 67% / 33% allocation percentages
27 are applied, the pre-tax amount that remains, and which is subject to sharing, is approximately
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1 \$3,000.² This is the amount identified in the Application (as corrected in Exhibit B to Applicants'
2 Response to RTB-1). The references to the other components of the \$31.3 million are misplaced, as
3 there is no valid basis for taking these amounts and assigning them to ratepayers.

4 Applicants cannot be blamed for proposing an outcome that is consistent with the "gain on
5 sale" rules, and which is in keeping with the federal treatment of the interstate portion of the proceeds
6 (and the associated accounting guidance received from the Rural Utilities Service ("RUS")). The
7 Commission must follow the clear precedent of the "gain on sale" decision and the applicable
8 doctrines forbidding retroactive ratemaking, regardless of the amounts involved. The magnitude of
9 the redeemed proceeds does not change their character – the mere size of the sum at stake does not
10 transform proceeds that are not sharable into sharable amounts.

11
12 Even though the amount at issue has no bearing on the proper distribution of RTB proceeds
13 under law, Applicants have submitted compelling evidence that the redemption proceeds received
14 from the RTB would represent a reasonable return given all of the risks attendant to ownership of
15 RTB stock. In Attachment B to Applicants' Supplemental Filing, Dr. Danner and Dr. Hamm
16 demonstrated that even if the RTB patronage shares were considered dividends on RTB stock –
17 which they are not – the returns that Applicants received for their investments are quite reasonable.
18 *See Supplemental Filing, Attachment B (LECG Report), at pp. 29-35.* Applicants' shareholders faced
19 considerable equity risks, liquidity risks, and political risks in connection with their purchases of
20 RTB stock. *Id.* Applicants tied up capital in the RTB for more than three decades without the
21 opportunity to earn a return. During that time, Applicants had no ability to sell or otherwise dispose
22 of the RTB shares. *Id.* at pp. 34-35. Applicants were not guaranteed any returns on their
23 investments, and if the RTB had imploded like similar quasi-governmental entities Fannie Mae and
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27 ² Prior to these adjustments, the amount that is subject to the "gain on sale" sharing and allocation formula, is
28 approximately \$55,000.

1 Freddie Mac, Applicants would have received virtually nothing upon the RTB's dissolution. *Id.* at
2 pp. 33-34. As summarized in the LECG Report, Applicants did not receive excessive returns relative
3 to the risks associated with the RTB. *LECG Report*, at p. 32.

4 **III. LIKE THE PROPOSED DECISION, DRA'S COMMENTS FAIL TO IDENTIFY ANY**
5 **WRONGDOING ASSOCIATED WITH APPLICANTS' REPORTING OR**
6 **DISCLOSURES OF THE RURAL TELEPHONE BANK PROCEEDS.**

7 DRA amplifies the unfounded accusations of malfeasance rendered against Applicants in the
8 Revised PD, but fails to supply any analysis or evidence supporting those accusations. *See DRA*
9 *Opening Comments*, at pp. 2-3. Applicants' opening comments contain a complete, factually-
10 supported analysis of each of the allegations in the Revised PD and the associated OSC, and
11 Applicants' opening comments demonstrate in detail that Applicants complied with all applicable
12 reporting and disclosure obligations relative to the redeemed proceeds of the RTB stock. *See*
13 *Applicants' Opening Comments*, at pp. 25-32. Nothing in DRA's opening comments discredits this
14 analysis.
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16 DRA's suggestion that Applicants "actively misled" the Commission is belied by the clear
17 references to the patronage shares in Applicants' original Application. *DRA Opening Comments*, at p.
18 2. The Application reflects the outcome that Applicants justifiably believed was compelled by the
19 Commission's "gain on sale" rules, and which is consistent with the federal treatment of the proceeds.
20 The figures in Attachment 1 to the Application were not presented as containing the universe of
21 redeemed RTB proceeds, only the portion subject to sharing for those five Applicants who had RTB
22 stock in the intrastate rate base. The Application plainly discloses that the RTB provided funds other
23 than those listed in Attachment 1, but also states Applicants' good faith belief that those other
24 amounts are not properly subject to sharing under the rules. As discussed in Applicants' opening
25 comments, there was no directive in the rate case statements giving rise to the Application requiring
26 that a full accounting of even irrelevant RTB proceeds be provided. Again, since Applicants had a
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1 reasonable belief that the patronage shares and non-rate base proceeds were irrelevant to a proper
2 distribution of RTB funds to ratepayers, there would have been no reason to account for them in the
3 Application. The proposed allocation of proceeds in the Application is consistent with the "gain on
4 sale" rules and is also consistent with the guidance from the National Exchange Carrier Association
5 ("NECA") outlining the federal treatment of RTB redemption proceeds. *See Supplemental Filing,*
6 Attachment C (letter containing NECA guidance on RTB redemption treatment). Nevertheless,
7 Applicants did disclose the existence of patronage shares in footnote 21 to the Application. *See*
8 *Applicants' Opening Comments*, at p. 29 (citing A.07-12-026, at p. 9, fn. 21); *see also* A.07-12-026,
9 at p. 2, fn. 1.
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11 It is disingenuous for DRA to suggest that it "took extraordinary efforts" for the Commission
12 to discover the full amounts that Applicants' received from the RTB. The record is clear that
13 Applicants responded completely and directly to all questions posed by the ALJ, and to all questions
14 posed by the Commission Staff. *Applicants' Opening Comments*, at pp. 30-31. Had the ALJ or Staff
15 requested information about the patronage shares, Applicants would have provided such information.
16 Had the Commission stated that Applicants had to include a full accounting of all RTB proceeds in
17 their Application, including irrelevant proceeds, Applicants would have done so. The ALJ's and the
18 Staff's failure to ask questions about the patronage shares cannot be transmuted into some form of
19 deception by Applicants. Imputing any bad faith to Applicants in this context is particularly
20 egregious where, as here, the information that the Revised PD alleges should have been provided
21 would only have been relevant to a novel theory of asset redistribution that was first revealed in the
22 Original PD, long after the disclosures in question.
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25 Contrary to DRA's hyperbolic allegations, the Small LECs did not "usurp the Commission's
26 authority" in filing this Application and pursuing the outcome that is clearly compelled by the "gain
27 on sale" rules. *DRA Opening Comments*, at p. 3. As any Applicant would, Applicants described their
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1 proposed outcome in their Application, and supported that Application with ample authority.
2 Applicants had no way to predict that these proceeds would be subject to a theory that ignores the
3 "gain on sale" decision, and which attempts to retroactively adjust Applicants' rates by taking the
4 annual patronage refunds.

5
6 DRA's suggestion that Applicants "received higher subsidies in 2007 from the 'A fund' than
7 those to which they were entitled" is also meritless. *DRA Opening Comments*, at p. 2. Applicants'
8 opening comments negate any finding that there was a requirement in the CHCF-A rules that would
9 have compelled Applicants to disclose the value of the redeemed patronage shares in 2006.³
10 *Applicants' Opening Comments*, at pp. 25-28. It is not even the case, as DRA suggests, that
11 Applicants had the "opportunity" to disclose the proceeds in their 2006 CHCF-A filings. Information
12 of this sort simply is not called for in that filing, as explained fully in Applicants' opening comments.
13 *Id.* Contrary to DRA's representations, the Commission had already made clear that this application
14 proceeding was the appropriate forum in which to address ratemaking issues associated with the RTB
15 stock redemption. *See Applicants Opening Comments*, at p. 27 (citing *Siskiyou GRC Resolution, Res.*
16 *T-16006*, O.P. 8).

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18 Like the Revised PD, DRA fails to demonstrate, based on any record evidence or authority,
19 that Applicants engaged in any wrongdoing in this proceeding or in their CHCF-A disclosures prior
20 to this proceeding. DRA's flawed opening comments further demonstrate the infirmities of the
21 Revised PD.
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27 ³ It should also be noted that Applicants reported the redeemed value of the RTB stock on their annual Form M (or
28 equivalent) filings in 2006 and/or 2007. This further negates any claim of deception in connection with Applicants' 2006
reporting, and Applicants' 2007 CHCF-A receipts.

1 **IV. APPLICANTS HAVE MET THEIR BURDEN OF PROOF TO JUSTIFY THE**
2 **DISTRIBUTION OF RURAL TELEPHONE BANK FUNDS OUTLINED IN THEIR**
3 **APPLICATION.**

4 Like the Revised PD, DRA invokes the burden of proof in an attempt to discredit Applicants'
5 considerable record evidence without actually addressing or refuting that evidence. *DRA Opening*
6 *Comments*, at p. 3. In a proceeding where Applicants have submitted hundreds of pages of
7 uncontradicted evidence, and where DRA has submitted nothing, this reliance on the burden of proof
8 is particularly misplaced.

9 As summarized in Applicants' opening comments, Applicants have indeed met the burden of
10 proof. Applicants have shown that the patronage shares are refunds of interest paid, and thus are not
11 subject to sharing under the "gain on sale" rules. *Opening Comments*, at pp. 7-10. Applicants have
12 shown that their shareholders provided the funds for the purchased Class B shares, and that to the
13 extent that those shares were not placed in rate base, ratepayers bore no risks in connection therewith.
14 Applicants have further demonstrated that their access to RTB funding actually benefited the
15 ratepayers. Applicants have proved that the only "gains" on any asset placed in rate base were the
16 "residual" amounts identified in the Application. Applicants' position is supported by expert
17 testimony, substantial legal citations, the RTB bylaws, federal separations authority, the
18 Commission's "gain on sale" rules, and many other materials in numerous filings throughout this
19 proceeding. None of this has been disputed or refuted by DRA's scant opening comments, nor,
20 indeed, by the Revised PD itself.

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23 Applicants have not only met the burden of proof, their submissions in this proceedings have
24 shifted the burden to DRA to justify its alternative distribution of RTB proceeds based on the novel
25 theories in the Revised PD. Although DRA correctly states that Applicants had the initial burden of
26 proof in this proceeding, that burden was clearly shifted to any party advocating another outcome.

27 Although the burden of producing evidence as to a particular fact is initially on the party with the
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1 burden of proof as to that fact, once that party produces evidence sufficient to make its *prima facie*
2 case, the burden shifts to the other party to refute the *prima facie* case. *Sargent Fletcher, Inc. v. Able*
3 *Corp.*, 110 Cal.App.4th 1658, 1667 (2003). Based on the November 19, 2009 Supplemental Filing
4 and other materials in the evidentiary record, Applicants have produced evidence that is more than
5 sufficient to make their case, let alone a support a *prima facie* case. Accordingly, the burden of
6 production has shifted to DRA to refute the compelling evidence that Applicants have produced.
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8 DRA has not done so, and cannot do so.

9 Indeed, even if DRA could introduce evidence to rebut evidence submitted by Applicants, it
10 chose not to do so. The record in this proceeding is closed, and the matter has been submitted for a
11 decision. DRA cannot reasonably allege that Applicants have not met their burden of proof where
12 the record consists entirely of Applicants' undisputed evidence, and where DRA has not even
13 attempted to submit evidence of its own that might provide a basis for the Commission to reach a
14 conclusion different from that proposed by Applicants.
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16 As Applicants noted in connection with the Original Proposed Decision ("Original PD") in
17 this proceeding, the burden of proof cannot absolve the Commission from its legal obligation to
18 support its decisions with substantial evidence. Regardless of whether Applicants have been deemed
19 to have met their burden based on the evidence submitted, a proposed decision must include findings
20 that "are supported by substantial evidence in light of the whole record." *See* Pub. Util. Code §
21 1757(a)(4). Like the Original PD, the Revised PD ignores Applicants' substantial evidence, and
22 replaces Applicants' requested outcome with a result that is entirely unsupported by substantial
23 evidence in the record. Adoption of the Revised PD would constitute clear legal error in violation of
24 the Commission's charge to "regularly pursue its authority." *See* Pub. Util. Code § 1757; *Camp*
25 *Meeker Water System, Inc. v. Public Util. Commission*, 51 Cal.3d 845 (1990). Even if the
26 Commission were to erroneously conclude that Applicants had not met the burden of proof in
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1 connection with this Application, it could not support the outcome proffered in the Revised PD, as it
2 entirely lacks support in the record.

3 **V. ALLEGATIONS OF MISCONDUCT IN REPORTING CANNOT VOID THE RULE**
4 **AGAINST RETROACTIVE RATEMAKING.**

5 DRA claims at pages three and four of its opening comments that the prohibition in California
6 law on retroactive ratemaking by the Commission is not applicable because Applicants allegedly
7 concealed revenues from the Commission by "fraud, misrepresentation or omission." *DRA Opening*
8 *Comments*, at pp. 3-4. DRA cites three Commission decisions and one opinion of the California
9 Court of Appeal in an attempt to support its argument. However, DRA's arguments are incorrect and
10 inapplicable to this proceeding. The authorities it cites are likewise inapplicable.
11

12 First, as Applicants demonstrated in their November 19, 2009 Supplemental Filing, the rates
13 that the PD is now attempting to adjust retroactively via a refund mechanism were established in a
14 series of general rate case decisions beginning in 1996 and continuing through 2007 during which a
15 uniform overall rate of return of 10% was adopted for each of the Applicants. During most of that
16 period, until February, 2005, there was no indication that RTB would be liquidated, and the final
17 distribution of liquidation proceeds was not completed until October, 2007. Accordingly, all known
18 and measurable financial information regarding the RTB loans and investments during the period in
19 which all of those general rate cases were decided was disclosed in the general rate cases, and there
20 could not possibly have been any "fraud, misrepresentation or omission" concerning the proceeds
21 from the liquidation of RTB. In its opening comments, DRA does not cite any facts in support of its
22 claim that some "fraud, misrepresentation or omission" was made by Applicants in the course of any
23 of those general rate cases. By contrast, Applicants' opening comments trace in detail the sequence
24 of events associated with the dissolution of the RTB and demonstrate that there has never been any
25 fraud, misrepresentation, or omission that would even hint that DRA has any basis for such a claim.
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1 With respect to the authorities cited by DRA, in each case, there are major differences
2 between the circumstances involved and this proceeding. The first decision cited, Commission
3 Decision 04-04-071, addressed an application for rehearing concerning a performance-based
4 incentive mechanism that would adjust rates for two energy utilities based upon such indicators as
5 customer satisfaction, service quality, and employee safety. *Id., mimeo*, at p. 2. In response to an
6 argument that this mechanism, which could have resulted in financial penalties or rewards based
7 upon the performance indicators, constituted retroactive ratemaking, the Commission disagreed for
8 two reasons. First, while the Commission reaffirmed the applicability of the prohibition on
9 retroactive ratemaking as provided for in Public Utilities Code Section 728 to general ratemaking, it
10 stated that incentive mechanisms that provided for financial incentive that rewarded good
11 performance and punished poor performance were not prohibited by this rule. *Id., mimeo*, at pp. 7-8.
12 Second, the decision reaffirmed the inherent power of the Commission to penalize a utility under its
13 jurisdiction, a principle that Applicants do not dispute. On this basis, D.04-04-071 does not support
14 DRA's argument with respect to retroactive ratemaking. The refund mechanism proposed in the
15 Revised PD would apply to revenues already collected pursuant to a final order of the Commission
16 issued in connection with general ratemaking. The proposal in the Revised PD is not a penalty to be
17 applied prospectively.

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21 Next, DRA cites D.04-09-061, which involved allegations that Pacific Bell Telephone
22 ("Pacific Bell") had underreported earnings that deprived ratepayers of sharing proceeds under the
23 former NRF regulatory regime under which Pacific Bell had operated for years. The Commission
24 only found in that case that it did not have enough information before it to conclude that a penalty
25 was warranted. The Commission then ordered Pacific Bell to correct its records concerning certain
26 transactions and report to the Commission concerning whether these corrections had any impact on
27 previous results of operations. *Id., mimeo*, at pp. 129-134. D.04-09-061 provides no support for
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1 DRA's proposition that the Commission may engage in retroactive ratemaking based upon the
2 sketchiest allegations of "fraud, misstatements or omissions" such as those that DRA has recited.

3 Finally, DRA cites D. 08-09-038, which involved a fine imposed upon an energy utility that
4 falsified records concerning reporting of employee injuries in order to qualify for a bonus based upon
5 improvement in that metric. The Commission ordered a fine based, in part, upon the amount of the
6 bonus that the utility had ostensibly qualified for, plus interest. The utility admitted to recordkeeping
7 inaccuracies and errors, but disputed the amount of the fine. D.08-09-038, *mimeo*, at pp. 58-62.

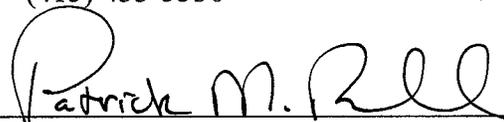
8 There is no discussion of the prohibition against retroactive ratemaking. The Commission's decision
9 cites *Wise v. PG&E* for the proposition that the Commission can impose a penalty upon a utility for
10 fraud. *Wise v. PG&E*, 77 Cal.App.4th 287, 300 (1999). DRA refers to this decision in its Opening
11 Comments. As noted above, Applicants do not dispute this general proposition, but it is not
12 applicable to this proceeding because the Revised PD does not seek to impose a fine, but rather seeks
13 to adjust rates retroactively to account for the receipt of the RTB stock proceeds.
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1 **VI. CONCLUSION.**

2 DRA's brief opening comments do nothing to resuscitate the unfounded conclusions in the
3 Revised PD. Without an independent examination of the record, and without refuting any of
4 Applicants' record evidence, DRA baldly endorses the Revised PD. Neither DRA's misplaced
5 emphasis on the amount in controversy in this case, nor its unsupported allegations of fraud by
6 Applicants can alter the straightforward application of the "gain on sale" rules to this case. For all of
7 the reasons set forth above, DRA's arguments should be rejected, and the Revised PD should be
8 replaced with a proposed decision that is both consistent with the law, and reflective of the record in
9 this proceeding.
10

11 Dated this 28th day of January, 2010, at San Francisco, California.

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1 CERTIFICATE OF SERVICE

2 I, Noel Gielegthem, declare:

3 I am a resident of the State of California, over the age of eighteen years, and not a party to the
4 within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street,
5 17th Floor, San Francisco, CA 94111.

6 On January 28, 2010, I served a true copy of the

7 **REPLY COMMENTS OF**

8
9 **CALAVERAS TELEPHONE COMPANY (U 1004 C)**
10 **CAL-ORE TELEPHONE CO. (U 1006 C)**
11 **DUCOR TELEPHONE COMPANY (U 1007 C)**
12 **HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)**
13 **HORNITOS TELEPHONE COMPANY (U 1011 C)**
14 **KERMAN TELEPHONE COMPANY (U 1012 C)**
15 **THE PONDEROSA TELEPHONE CO. (U 1014 C)**
16 **SIERRA TELEPHONE COMPANY, INC. (U 1016 C)**
17 **THE SISKIYOU TELEPHONE COMPANY (U 1017 C)**
18 **VOLCANO TELEPHONE COMPANY (U 1019 C)**
19 **WINTERHAVEN TELEPHONE COMPANY (U 1021 C)**

20 **ON REVISED PROPOSED DECISION DETERMINING RATEMAKING**
21 **TREATMENT FOR RURAL TELEPHONE BANK STOCK DISSOLUTION PROCEEDS**
22 **AND ORDER TO SHOW CAUSE**

23 by emailing a true and correct copy in searchable Adobe Acrobat PDF format to the parties on the
24 attached service list for this proceeding. Pursuant to ALJ Clopton's letter of December 17, 2009, this
25 PDF version was also sent to Assigned Commissioner Peevey, and a hard copy of this document was
26 also sent to Assigned Commissioner Peevey and Assigned ALJ Bushey.

27 I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on January 28, 2010, at San Francisco, California.

Noel Gielegthem

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