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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)

THIRD AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

1. Background

Pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure,[1] this Third Amended Scoping Memo and Ruling sets forth the, issues, need for hearing, schedule, and other matters necessary to adjudicate Phase 2 of this proceeding. With the Order Instituting Rulemaking (OIR) Rulemaking (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 determined that a detailed review of the program was warranted in response to market, regulatory, and technological changes since the CHFC-A program was first established in 1987. In this OIR, the Commission has sought comment on how the program can more efficiently and effectively meet its stated goals. During the pendency of this proceeding the Commission has and will solicit proposals on how the program should be modified consistent with its statutory

[1] California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

purpose. Phase 1 of this proceeding was completed on December 18, 2014, with the issuance of D.14-12-084.

This ruling amends the scope and schedule of this proceeding in order to consider, review and resolve the issues reserved for Phase 2 of the OIR. The overall scope of this proceeding remains unchanged.

2. Relevant Procedural History

The OIR was approved on November 10, 2011, and issued on November 18, 2011. The preliminary scoping memo 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 October 15, 2012, the small incumbent local exchange carriers (Small ILECs) filed a motion for a proposed decision adopting a one-year stay in the CHCF-A general rate case (GRC) schedule and "waterfall mechanism."[2] On February 20, 2013, the Commission issued D.13-02-005 approving a one-year freeze in GRC schedules and waterfall provisions for CHCF-A recipients.[3] On May 22, 2013, the assigned Commissioner issued the initial Scoping Memo and Ruling which adopted, confirmed, and incorporated the scope set forth in the preliminary scoping memo, as well as identified additional issues in light of the opening comments, the initial prehearing conference (PHC) as well as the passage of Senate Bill 379.

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[2] A "Waterfall Mechanism" is a six-year cycle that 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.

[3] On August 8, 2014 the Commission issued D.14-08-010 extends the current stay of the GRC schedules and freeze of the waterfall provisions for CHCF-A recipients adopted in D.13-02-005.

On March 18, 2014, the assigned Commissioner issued an Amended Scoping Memo and Ruling. The Amended Scoping Memo and Ruling revised the scope set forth in the initial scoping memo, identified new issues, set forth the issues to be addressed in workshops, evidentiary hearing and/or briefs, and sought additional comments from the parties. In addition, due to its complexity, the proceeding was divided into two phases (Phase 1 and Phase 2), with the following issues reserved for Phase 2: (1) The applicability of rate of return as a regulatory framework for California's rural ILECs and the operation of the A-Fund; (2) Alternative forms of regulation, including whether to introduce incentive based regulation; (3) Whether or not to continue the GRC process for the Small ILECs; (4) Whether an evaluation of the presence of competition should include all technologies; and (5) Proposals to disqualify non-CHCF-A recipients from CHCF-A eligibility. As set forth in the Amended Scoping Ruling, the initial deadline for resolving the issues in this proceeding was June 9, 2016.

On December 9, 2014, the assigned Commissioner issued a Second Amended Scoping Ruling that (consistent with Governor Brown's message in his veto of Assembly Bill 1693 revised the scope of this proceeding to address the implementation of a GRC Plan for Small ILECs that draw from the CHCF-A program, as well as possible adjustments to the waterfall mechanism. On December 18, 2014, the Commission issued D.14-12-084 which completed Phase 1 of the proceeding. D.14-12-084 also reiterated that there would be a Phase 2 in the proceeding[4] and added two additional issues for consideration in that phase: (1) a review of the Commissions' preliminary conclusion not to open the areas

[4] D.14-12-084, Ordering Paragraph (OP) 1.

the Small ILECs serve to competition, to be informed by studies the Commission would conduct in Phase 2 on deployment of Broadband Networks and Universal Service; and (2) a review of whether imputation of broadband revenues[5] is appropriate for GRC cycles following the first cycle approved after the Phase 2 decision.

On June 25, 2015, the Commission issued D.15-06-048 adopting a Rate Case Plan for the Small ILECs. On June 3, 2016, D.16-06-031 extended the statutory deadline for this proceeding until August 8, 2016. On July 14, 2016, D.16-07-017 extended the statutory deadline to October 7, 2016. On September 29, 2016, D.16-09-058 extended the statutory deadline to December 6, 2016. D.16-12-027, dated December 1, 2016, extended the statutory deadline until February 4, 2017, and D.17-01-033, issued on January 23, 2017, extends the statutory deadline in this proceeding to April 5, 2017.

3. Amended Scope for Phase 2 of Proceeding

As noted, supra, the Amended Scoping Memo, issued on March 18, 2014, divided the proceeding into two phases and set forth five issues to be considered in the second phase. D.14-12-084 completed Phase 1 of the proceeding and added two additional issues for consideration in Phase 2. The current issues to be considered in Phase 2 of this proceeding are: (1) the applicability of rate of return as a regulatory framework for California's Small ILECs and the operation

[5] Many of the Small ILECs have wholly-owned unregulated affiliates, Internet Service Providers which provide a variety of broadband services. Other Small ILECs have internal divisions provisioning broadband to their rate-base. At issue is whether revenues from these broadband affiliates or operations should be "imputed" to carriers that are subsidized by the CHCF-A when a carrier's revenue requirement is established in GRC proceedings and the amount of A-Fund subsidy is determined.

of the CHCF-A Fund; (2) alternative forms of regulation, including whether to introduce incentive-based regulation; (3) whether or not to continue the GRC process for the Small ILECs; (4) whether an evaluation of the presence of competition should include all technologies; (5) proposals to disqualify non-CHCF-A recipients from CHCF-A eligibility; (6) a review of our preliminary conclusion not to open the Small ILECs service areas to competition, informed by studies the Commission will conduct in Phase 2 on deployment of Broadband Networks and Universal Service; and (7) a review of whether imputation of broadband revenues is appropriate for GRC cycles following the first cycle approved after the issuance of the Phase 2 decision.

OP 6 of D.14-12-084 requires the Commission's Communications Division to initiate the California state contracting process in order to commence the Broadband Network and Competition study in the first quarter of 2015, with the study to be conducted within 18 months of commencement.[6] OP 7 of D.14-12-084 requires requests to amend certificates of public convenience and necessity to: (1) include Small ILEC areas or for access to Section 251(b) elements or interconnection under Section 251 (c); or (2) for a petition under Section 251(f)(2) to suspend or modify the application of the requirements of Section 251(b) or (c); or (3) a petition under Section 253 (f) be deferred until the Broadband Networks and Universal Service studies are completed and evaluated in Phase 2 to determine whether some or all of the Small ILEC areas should be opened to competition.[7]

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[6] D.14-12-084, OP 6.

[7] *Id.*, OP 7.

As explained in D.14-12-084 the Commission will conduct the Broadband Networks and Universal Service studies in order to evaluate a variety of factors that affect deployment and availability of broadband capable and high-quality voice networks. The studies will evaluate the extent of broadband capable network build-out in the Small ILEC areas, including information on speed capability and offerings, latency, data caps, and other relevant factors for broadband and high-quality voice. The studies will account for the new Federal Communications Commission standard that broadband networks eligible for federal support have speeds of 10 megabit per second (mbps) downstream and 1 mbps upstream, evaluate what investments are needed to comply with that standard, and document the extent to which Small ILEC broadband meets California's underserved standard of 6 mbps downstream and 1.5 mbps upstream.

The Broadband Networks and Universal Service studies will identify barriers to broadband capable network and high quality voice build-out including: population density; demographic factors including income levels, business, government, and local institutions; terrain; access to electricity or reliance on diesel; environmental permits, and; other factors that affect investment in broadband capable networks. The studies will account for the cost of burying lines underground in light of weather and fire danger issues, and document the overlap between areas of high fire danger and Small ILEC territory. The studies should take account of the unique facts of each of the Small ILEC areas and be fact-specific. The studies will build on the Commission's broadband mapping efforts, will establish a baseline of conditions and inform

the Commission about factors relevant to investment in broadband capable networks, and consider future requests for competition in the Small ILEC areas.[8]

The contracting process for the Broadband Network and Competition study was to be initiated in the first quarter 2015, with the study to be conducted/completed within approximately 18 months. The Communications Division (CD) has indicated that responses to the request for offers from candidate vendors were due on March 27. and that CD should award the contract to successful vendor by April 14, 2017 with an anticipated consultant start date of May 5. The study will be conducted in two parts: (1) A Broadband Network study with maps that show the broadband buildout for all 13 Small ILECs and related income levels, population densities, fire threats, and service speeds for each service territory and; (2) a written study report. CD has been working on the mapping portion of the study indicated that that it is near completion. However, the written broadband portion of the study and the written competition study are not expected to be ready until the late third or early fourth quarter of 2017. Once all portions of the study are complete, CD will conduct a comprehensive review and should have a conclusive Broadband and Competition Study complete by end of the year.

Until the comprehensive Broadband Network and Competition study is complete the issues identified for Phase 2 of this proceeding cannot be resolved. Pending completion of the Broadband and Competition study, parties may comment on the current scope of Phase 2 of the proceeding as set forth, *supra*, and whether the seven issues currently identified in the scope should remain, be

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[8] D.14-12-084, at 57-58.

reduced, or be expanded. In addition parties should indicate which issues can be resolved through comments and briefs and which issues, if any, require evidentiary hearings. Any party who requests a hearing must (A) identify the disputed material facts, (B) summarize the evidence that the party intends to offer at a hearing, and (C) provide a schedule for all hearing-related events.

As indicated, supra, the written broadband portion of the Broadband Network and Competition study are not expected to be ready until the late third or early fourth quarter of 2017 after which CD will need to conduct a comprehensive review. Thus the conclusive Broadband and Competition Study will not be complete until the end of 2017. Until the comprehensive Broadband Network and Competition study is complete the issues identified for Phase 2 of this proceeding cannot be resolved. Therefore, it is the Commission's intent to complete this proceeding within 24 months of the date this Scoping Memo is issued. This deadline may be extended by order of the Commission. (Public Utilities Code Section 1701.5(b).)

4. Schedule

As set forth in this third amended scoping memo, seven issues are currently in the scope of this proceeding and until the comprehensive Broadband Network and Competition study is complete the issues mandated for Phase 2 of this proceeding cannot be resolved. I seek comment on the current scope of this proceeding and whether it should be modified. The revised schedule for the Commission to consider the Phase 2 issues is set forth below. The Commission intends to complete this proceeding within twenty-four (24) months of the date of this amended scoping ruling:

Event	Date
Comments Filed and Served	April 24, 2017
Reply Comments Filed and Served	May 8, 2017
Prehearing Conference	June 7, 2017
Broadband Network and Competition Study, Completed	December 2017
Evidentiary Hearings (if needed)	TBD 2018
Briefs	TBD 2018
Proposed Decision	TBD 2018

5. Parties and Service List

The current service list for this proceeding remains in effect and valid. Any person who wishes to become a party to this proceeding shall, within fifteen (15) days after the issuance of this Ruling, send a request to the Commission's Process Office via electronic mail (process_office@cpuc.ca.gov) or by postal mail (Process Office, CPUC, 505 Van Ness Avenue, San Francisco, California 94102) to be placed on the official service list in this proceeding. Parties who only wish to monitor the proceedings, but not participate as an active party, shall indicate that they be added to the "Information Only" section of the service list. The service list will be posted on the Commission's website: www.cpuc.ca.gov shortly thereafter.

Any person or party interested in participating in this rulemaking but who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY-toll free) or (415) 703-5282 (TTY) or send an e-mail to public.advisor@cpuc.ca.gov.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Commission Rule 2.3.1, available on our website at http://www.cpuc.ca.gov/PUC/efiling. All parties shall comply with the requirements of this rule.

6. Compliance with Section 1711(a)

Cal. Pub. Util. Code § 1711(a) states:[9]

> Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

R.11-11-007 was served on the current service lists as well as the service lists for R.01-08-002 and Application 99-09-044. Based on past participation in this proceeding this satisfies the criteria contemplated by Pub. Util. Code § 1711(a).

7. Presiding Officer

Pursuant to Rule 13.2(c) Commissioner Martha Guzman-Aceves is the Presiding Officer in this proceeding; W. Anthony Colbert is the assigned Administrative Law Judge.

8. Proceeding Category and Need for Hearings

The Commission preliminarily categorized this rulemaking to be "quasi-legislative" and preliminarily determined that hearings are unnecessary. The designation of quasi-legislative remains. However, as set forth in the

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[9] Pub. Util. Code § 1711(a) became effective on January 1, 2017.

Amended Scoping Memo, hearings will be necessary for this proceeding and their date, location, and time will be discussed at an upcoming PHC and determined in a subsequent ruling.

9. *Ex parte* Communications

Per Rule 8.3(a) of the Commission's Rules of Practice and Procedure, *ex parte* communications are allowed without restriction or reporting requirement.

10. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a)(1) and Rule 17.1, a party who intends to seek an award of compensation in this phase of the proceeding must file and serve a notice of intent to claim compensation no later than 30 days after the date of the PHC.

11. Settlement and Alternative Dispute Resolution

While the schedule does not include specific dates for settlement conferences it does not preclude parties from meeting at other times provided notice is given consistent with our Rules.

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained ALJs serve as neutrals. The parties are encouraged to visit the Commission's ADR webpage at http://www.cpuc.ca.gov/adr/, for more information.

If requested, the assigned ALJ will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may contact the ADR Coordinator directly at adr_program@cpuc.ca.gov. The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will

contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

12. Final Oral Argument

A party in a quasi-legislative proceeding in which a hearing is held has the right to make a Final Oral Argument before the Commission, if the argument is requested within the Closing Brief. (Rule 13.13.)

IT IS RULED that:

1. The amended scope is set forth in the body of this ruling until amended by a subsequent ruling of the assigned Commissioner.
2. The amended schedule is set forth in the body of this ruling until amended by a subsequent ruling of the assigned Commissioner or Administrative Law Judge.
3. Commissioner Martha Guzman Aceves is the Presiding Officer in this proceeding.
4. This is a quasi-legislative proceeding, and hearings will be needed. The date, location, and time of evidentiary hearings will be discussed at the June 7, 2017 prehearing conference and determined in a subsequent ruling.
5. Briefs and replies will be required in this proceeding, with dates for submission to be discussed at the June 7, 2017 prehearing conference and determined in a subsequent ruling.
6. *Ex Parte* communications are allowed per Rule 8.3(a).
7. Any person who wishes to become a party to this proceeding shall, within fifteen (15) days after the issuance of this ruling, send a request to the Commission's Process Office via electronic mail (process_office@cpuc.ca.gov) or

by postal mail (Process Office, CPUC, 505 Van Ness Avenue,San Francisco, California 94102) to be placed on the official service list in this proceeding. Parties who only wish to monitor the proceedings, but not participate as an active party shall indicate that they be added to the "Information Only" section of the service list.

8. All parties shall abide by the Commission's electronic service rules contained in Rule 1.10 of the Commission's Rules of Practice and Procedure.

Dated April 4, 2017, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES
Martha Guzman Aceves
Assigned Commissioner