Application of Calaveras Telephone Company (U1004C), Cal-Ore Telephone Co. (U1006C), Ducor Telephone Company (U1007C), Happy Valley Telephone Company (U1010C), Hornitos Telephone Company (U1011C), Kerman Telephone Co. (U1012C), The Ponderosa Telephone Co. (U1014C), Sierra Telephone Company, Inc. (U1016C), The Siskiyou Telephone Company (U1017C), Volcano Telephone Company (U1019C), and Winterhaven Telephone Company (U1021C) for Ratemaking Determination regarding Dissolution of Rural Telephone Bank.

Application 07-12-026
(Filed December 20, 2007)

REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
IN RESPONSE TO THE OPENING COMMENTS OF CALAVERAS TELEPHONE COMPANY (U 1004 C), CAL-ORE TELEPHONE CO. (U 1006 C), DUCOR TELEPHONE COMPANY (U 1007 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), AND VOLCANO TELEPHONE COMPANY (U 1019 C) ON THE ASSIGNED COMMISSIONER AND ASSIGNED ADMINISTRATIVE LAW JUDGE’S RULING AND ORDER TO SHOW CAUSE

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July 28, 2017
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Calaveras Telephone
Company (U1004C), Cal-Ore Telephone
Co. (U1006C), Ducor Telephone Company
(U1007C), Happy Valley Telephone
Company (U1010C), Horntos Telephone
Company (U1011C), Kerman Telephone
Co. (U1012C), The Ponderosa Telephone
Co. (U1014C), Sierra Telephone Company,
Inc. (U1016C), The Siskiyou Telephone
Company (U1017C), Volcano Telephone
Company (U1019C), and Winterhaven
Telephone Company (U1021C) for
Ratemaking Determination regarding
Dissolution of Rural Telephone Bank.

Application 07-12-026
(Filed December 20, 2007)

REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES
IN RESPONSE TO THE OPENING COMMENTS OF CALAVERAS
TELEPHONE COMPANY (U 1004 C), CAL-ORE TELEPHONE CO. (U 1006 C),
DUCOR TELEPHONE COMPANY (U 1007 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), AND VOLCANO TELEPHONE
COMPANY (U 1019 C) ON THE ASSIGNED COMMISSIONER AND ASSIGNED
ADMINISTRATIVE LAW JUDGE’S RULING AND ORDER TO SHOW CAUSE

I. INTRODUCTION

Pursuant to the Assigned Commissioner and Assigned Administrative Law
Judge’s Ruling And Order To Show Cause, the Office of Ratepayer Advocates (“ORA”)
files its reply to the Opening Comments of the Calaveras Telephone Company (U 1004
C) (“Calaveras”), Cal-Ore Telephone Co. (U 1006 C) (“Cal-Ore”), Ducor Telephone
Company (U 1007 C) (“Ducor”), Kerman Telephone Co.(U 1012 C) (“Kerman”), The
Ponderosa Telephone Co. (U 1014 C) (“Ponderosa”), Sierra Telephone Company, Inc.
(U 1016 C) (“Sierra”), The Siskiyou Telephone Company (U 1017 C) (“Siskiyou”), and Volcano Telephone Company (U 1019 C) (“Volcano”) (collectively, the "Independent Small LECs" or “Respondents”).

The Commission granted rehearing as a result of the California Court of Appeal, Fifth Appellate District’s annulment of Decision (“D.”)10-06-029, which required the Applicants to refund almost all of the Rural Telephone Bank (“RTB”) proceeds to ratepayers.¹ The Court of Appeal annulled this decision because it found that a refund to ratepayers would run afoul of the rule against retroactive ratemaking.² The instant proceeding considers the remand of D.10-06-029 and Applicants’ request for rehearing on D.11-03-030. The OSC directed parties to address all factual and legal issues related to the rehearing granted in D.11-12-057 and the instant Order to Show Cause (“OSC”). Regardless of the Respondents’ extensive comments, no new facts have been introduced which would support Respondents’ contention that they did not violate Rule 1.1.

II. SUMMARY OF RECOMMENDATIONS

ORA revised its recommended penalty in its Opening Comments which were reserved on July 27, 2017 to remove the fines and penalties associated with the TDS Companies (also known as the Hornitos Telephone Company, Happy Valley Telephone Company, and Winterhaven Telephone Company) which were inadvertently included in ORA’s original Opening Comments, which were served on July 14, 2017. Additionally, ORA reduced the penalty amount for Kerman Telephone Company to reflect the modification made in D. 10-10-036 from $1,511,629 to $1,506,596.³ The Commission should impose a total penalty of $28,063,983 with a fine of $295,000 payable towards the State of California General Fund and the remaining $27,778,983 allocated among the Respondents to be invested in each company’s own capital infrastructure projects, which

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the company would not add to its rate base and thus would not earn a return on the investment.

Table 1 illustrates the penalties applicable to each Respondent with these corrections:

<table>
<thead>
<tr>
<th>COMPANY</th>
<th>FINES PAYABLE TO THE GENERAL FUND</th>
<th>REMEDY: INVESTMENT IN FUTURE CAPITAL PROJECTS BY EACH COMPANY</th>
<th>TOTAL PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calaveras</td>
<td>$35,000</td>
<td>$655,087.57</td>
<td>$690,087.57</td>
</tr>
<tr>
<td>Cal-Ore</td>
<td>$35,000</td>
<td>$1,470,151.00</td>
<td>$1,505,151.00</td>
</tr>
<tr>
<td>Ducor</td>
<td>$35,000</td>
<td>$534,076.99</td>
<td>$569,076.99</td>
</tr>
<tr>
<td>Kerman</td>
<td>$40,000</td>
<td>$1,506,596</td>
<td>$1,546,596</td>
</tr>
<tr>
<td>Ponderosa</td>
<td>$35,000</td>
<td>$7,101,551.31</td>
<td>$7,136,551.31</td>
</tr>
<tr>
<td>Sierra</td>
<td>$40,000</td>
<td>$3,471,574.00</td>
<td>$3,511,574.00</td>
</tr>
<tr>
<td>Siskiyou</td>
<td>$35,000</td>
<td>$6,121,109.07</td>
<td>$6,156,109.07</td>
</tr>
<tr>
<td>Volcano</td>
<td>$40,000</td>
<td>$6,918,837.19</td>
<td>$6,958,837.19</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$295,000</strong></td>
<td><strong>$27,778,983</strong></td>
<td><strong>$28,073,983</strong></td>
</tr>
</tbody>
</table>

III. DISCUSSION

ORA reaffirms its support for the Commission’s finding that the Independent Small LECs violated Rule 1.1. The record shows that the Independent Small LECs were not forthright in providing information regarding distributions from the RTB when they filed their Application A.07-12-026 and in any other filing. The Independent Small LECs’ assertion that the OSC has no basis in fact and is legally unsupportable is false.

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4 D.11-03-030 Finding of Fact 11, p. 29.
This OSC does not revisit the retroactive ratemaking issues related to D.10-06-029 and D.10-10-036, rather, it addresses the Respondents’ violation of the Rule 1.1, as well as other Commission decisions and requirements, and the appropriate application of Public Utilities (“PU”) Code §2108 in light of factual changes since D.11-03-030 was issued, specifically, the Court of Appeals decision requiring the Commission to return all the RTB proceeds to the Applicants. When previously determining penalties, the Commission considered the fact that Applicants were already being directed to return $31 million to ratepayers. The Respondents have not submitted any other new facts in this case.

The Independent Small LECs did not provide material financial information regarding RTB proceeds totaling $27 million dollars at the time they filed A.07-12-026. It was only in subsequent filings and responses to data requests that the Applicants disclosed the entirety of the RTB proceeds that they had received. The Independent Small LECs’ own Opening Comments stated that it was not until December of 2009 that a complete record of the redemption proceeds was provided. The Independent Small LECs argue that because the Commission had previously specified that “gains on sale” must be addressed through the application process, it was proper to omit the $27 million in RTB stock redemptions that they had received from all other Commission filings. However, the Independent Small LECs were obligated to furnish the Commission with all the relevant information so that it could make an informed decision about the appropriate ratemaking treatment for the RTB proceeds.

A. The RTB Proceeds Were Public Utility Assets and Respondents Were Obligated to Disclose them to the Commission.

The Court of Appeal properly found that the RTB assets were an “asset required for public utility service.” Furthermore, contrary to Respondents’ arguments, the Court

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5 Three Applicants are not Respondents to this OSC.
6 Opening Comments of the Independent Small LECs, pp. 11-12.
of Appeal did not opine on whether the proceeds from the RTB stock were relevant to the Commission’s prospective ratemaking determination. The Respondents were obligated to furnish the Commission with all relevant information necessary for the Commission to make an informed decision about the appropriate ratemaking treatment for the RTB disbursements.

B. **Respondents Withheld Information Necessary for the Commission to Set Reasonable Rates.**

As the OSC stated “the issue here is whether the RTB funds should have been reported in a timely manner, regardless of whether or not the funds should have be distributed to ratepayers or retained by applicants.” The Commission has an obligation to set reasonable rates under PU Code §728. Therefore, Respondents are mistaken that the Commission should only consider “gains on sale” material. The patronage shares, which made up the bulk of the proceeds, are annual refunds, which effectively lowered the interest expense on the loans and reduced Respondents cost of providing service. Additionally, by failing to report all of their income sources including the stock redemption proceeds, the Respondents prevented the Commission from considering all information pertinent in setting rates. Respondents also attempt to argue that it was sufficient to report the RTB proceeds as non-operating revenue. However, the RTB loans were meant to support expansion of broadband infrastructure within the territories of the Independent Small LECs, not to support non-regulated activities or businesses. Recording the proceeds in non-operating accounts increases the income of their non-regulated businesses. Respondents should have known that this information would be material in determining rates, particularly when the redemption amounts were greater than their recently reported income amounts, and it was their burden to bring this to the Commission’s attention.

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8 Testimony of Daniel K. Douglas on Behalf of Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 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), and Volcano Telephone Company (U 1019 C) in Response to Assigned Commissioner and Assigned Administrative Law Judge’s Ruling and Order to Show Cause, July 14, 2017, p. 4.

9 Respondent’s Opening Comments, p. 48.
Furthermore, Respondents’ argument that they properly disclosed the RTB proceeds is misleading.\textsuperscript{10} In its Application, the Respondents disclosed the amount of the gains on sale, about $3,000; however, they only disclosed the existence of the other RTB proceeds in its Application, not the amount.\textsuperscript{11} Additionally, it required roughly 22 months to determine that the original $3,000 reported in the Application was only a small portion of the $27 million\textsuperscript{12} that the Respondents received from the RTB.

C. **ORA’s Recommended Penalty is Justified under PU Code §2107.**

As stated in ORA’s Opening Comments, ORA’s recommended fines are a reasonable deterrent and are commensurate with the ill-gotten benefits derived from Respondents’ activities. The Commission should adopt the penalties shown in Table 1.

Although PU Code § 2108 permits the Commission to consider the continuing nature of violations in imposing fines, ORA reiterates that the application of this statute in its entirety will result in fine amounts much greater than the stock redemption proceeds that are the subject of this proceeding. Applying PU Code § 2108 would result in the following fines:

**Table 2 – Estimated fine for violation of Rule 1.1**

<table>
<thead>
<tr>
<th>Telephone Company</th>
<th>Daily Fine</th>
<th>Violation Days</th>
<th>Total Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calaveras</td>
<td>$15,000</td>
<td>1,145</td>
<td>$17,175,000</td>
</tr>
<tr>
<td>Cal-Ore</td>
<td>$15,000</td>
<td>1,145</td>
<td>$17,175,000</td>
</tr>
<tr>
<td>Ducor</td>
<td>$15,000</td>
<td>1,145</td>
<td>$17,175,000</td>
</tr>
<tr>
<td>Kerman</td>
<td>$20,000</td>
<td>1,145</td>
<td>$22,900,000</td>
</tr>
<tr>
<td>Ponderosa</td>
<td>$15,000</td>
<td>1,145</td>
<td>$17,175,000</td>
</tr>
<tr>
<td>Sierra</td>
<td>$20,000</td>
<td>1,145</td>
<td>$22,900,000</td>
</tr>
<tr>
<td>Siskiyou</td>
<td>$15,000</td>
<td>1,145</td>
<td>$17,175,000</td>
</tr>
</tbody>
</table>

\textsuperscript{10} D.11-03-030, pp. 19-20.
\textsuperscript{11} A.07-12-026, fn. 21, p. 9.
\textsuperscript{12} D.10-06-029, pp. 10-11.
<table>
<thead>
<tr>
<th>Volcano</th>
<th>$20,000</th>
<th>1,145</th>
<th>$22,900,000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>$154,575,000</strong></td>
</tr>
</tbody>
</table>

The application of PU code §2108 would result in a fine that would be more than five times greater than the redemption proceeds. It would be inconsistent with D.98-12-075 for the Commission to impose a fine of $154,575,000 and therefore, excessive and unreasonable.

**IV. CONCLUSION**

ORA reiterates that the facts underlying this proceeding have not changed. The Independent Small LECs were obligated to furnish the Commission with all the relevant information so that it could make an informed decision about the appropriate ratemaking treatment for the RTB proceeds. However, the Independent Small LECs failed to provide material financial information regarding proceeds totaling $27 million dollars. Therefore, the Commission should impose a penalty of $28,073,983 with fine of $295,000 payable towards the State of California General Fund and the remaining $27,778,983 to be invested in future building or upgrading of broadband infrastructure in areas within their service territories, which the company would not add to its rate base and thus would not earn any profit on the investment.

Respectfully submitted,

/s/ CANDACE CHOE

CANDACE CHOE

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July 28, 2017