

**PUBLIC UTILITIES COMMISSION**

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TO PARTIES OF RECORD IN RULEMAKING 11-11-007:

This is the proposed decision of Commissioner Guzman Aceves. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 3, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:mph

Attachment

Decision PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES  
(Mailed 4/29/2021)

**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

**DECISION ADDRESSING SELECT GENERAL RATE CASE- RELATED  
MATTERS OF THE SMALL INCUMBENT LOCAL EXCHANGE CARRIERS**

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**DECISION ADDRESSING SELECT GENERAL RATE CASE- RELATED MATTERS OF THE SMALL INCUMBENT LOCAL EXCHANGE CARRIERS****Summary**

By this decision, we adopt select rules for the general rate cases (GRCs) of 10 Small Incumbent Local Exchange Carriers (Small ILECs).<sup>1</sup> We specify the additional charges to be included in basic residential service rates and modify the presumptively reasonable range to be \$30 to \$40, adopt standards regarding the reporting and treatment of miscellaneous revenues, and require that the Small ILECs report all regulated and non-regulated miscellaneous revenue from license and leases in their GRC applications.

In addition, this decision reaffirms the Federal Communications Commission's (FCC's) corporate expense cap adopted in Decision (D.)14-12-084 and eliminates the rebuttable presumption. It establishes an operating expense cap, modeled on the FCC Operating Expense cap, without a rebuttable presumption and rejects several parties' proposals for rate case efficiency. The Small ILECs and their Internet Service Provider affiliate companies are directed to participate in the federal Emergency Broadband Benefit program and provide data to the Commission's Communications Division staff for the duration of the program. Finally, as part of the GRC application, the Small ILECs must submit their most recent National Exchange Carrier Association cost study, including all data relating to the intrastate rate base, and use it to forecast Test Year rate base.

This proceeding remains open.

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<sup>1</sup> Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company (TDS Companies) are parties to this proceeding that do not currently draw from the California High Cost Fund-A fund and have not been submitting GRC applications. If any of the TDS Companies submit a GRC application, then it would also be subject to the rules adopted in this decision.

## 1. Background

The California High Cost Fund A (CHCF-A or A-Fund) program was established in 1987 to provide universal service rate support to small independent telephone corporations serving rural areas in California. Ten small incumbent local exchange carriers (Small ILECs<sup>2</sup>) that are parties to this proceeding qualify for and receive support from the A-Fund. The instant proceeding began in 2011 to review the CHCF-A program in response to market, regulatory, and technological changes since the program's introduction. In Decision (D.) 14-12-084 concluding Phase I of this proceeding, the California Public Utilities Commission (Commission) found that a basic residential service rate range of \$30 to \$37, inclusive of surcharges and fees, was presumptively reasonable.<sup>3</sup>

On March 22, 2019, assigned Commissioner Guzman Aceves issued the Fourth Amended Assigned Commissioner's Scoping Memo and Ruling (Fourth Amended Scoping Memo) that invited the parties to comment on, among other issues, the following:

- (2.b) If rate-of-return regulation is required for the CHCF-A eligibility, how can the Commission continue to improve the program in furtherance of the statutory goals?
- i. What measures should the Commission adopt to reduce costs and increase efficiency?

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<sup>2</sup> The Small ILECs that currently receive support from the CHCF-A are Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company. Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company (TDS Companies) are also parties to this proceeding but do not currently receive support from the CHCF-A.

<sup>3</sup> D.14-12-084 at 66-69 and Ordering Paragraph 9.

- ii. What measures should the Commission adopt to ensure that recovery of costs and investments is reasonable?
- iii. Should the Commission adopt an operating expense limitation? If yes, should the Commission adopt the FCC 11-161 limitation or develop new metrics or formulas?
  - iv. Are there other measures or changes that the Commission should consider?

(3.a) Whether the Commission should investigate the penetration of the CHCF-A program in rural low-income and tribal communities?

(4) Basic Service Rates:

a. Should the Commission re-examine basic service rates to ensure the rates are just and reasonable and reasonably comparable to the rates of urban customers? Specifically:

- i. Should the Commission develop new metrics or formula to determine the basic service rates?
- ii. If no, should the Commission keep the rate range of \$30-\$37 adopted in D.14-12-084? Should the rate range be modified to a different rate range?

b. Should the Commission continue to use the federal access recovery charge as a benchmark for basic service rates?

(5) Accounting treatment for miscellaneous revenues:

a. What is the proper ratemaking treatment for revenues derived from the use of regulated utility property for easements, licenses, leases, assignments, permits for use or occupancy, or encumbrances?

- i. Should the revenues be booked as regulated revenues or non-regulated revenues? Please identify applicable federal or state accounting rules.
- (6) Use of federal Universal Service support for investments in Plant and Facilities and operating expenses:
- a. Please identify each federal Universal Service support program and describe how each program operates.
  - b. Describe the federal accounting and ratemaking treatment for each federal Universal Service support program.
  - c. Are federal Universal Service Funds (USF) used for operating expenses and plant investment? If yes, can reasonable estimates be made for the amount of USF support used for operating expenses and the amount of USF support used for plant investment in a given period?
  - d. Should the federal USF amounts estimated to be used for plant investment be included in plant-in-service accounts and earn a rate of return?

The Small ILECs, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), The Utility Reform Network (TURN), the TDS Companies, the California Cable & Telecommunications Association, and the California Association of Competitive Telecommunications Companies filed Opening Comments on the Fourth Amended Scoping Memo (Opening Comments on Fourth Amended Scoping Memo) on May 21, 2019 and Reply Comments on the Fourth Amended Scoping Memo (Reply Comments on Fourth Amended Scoping Memo) on July 5, 2019.

At the Prehearing Conference conducted on July 31, 2019, parties discussed with the assigned Commissioner and assigned Administrative Law Judges (ALJs) whether evidentiary hearings were needed. The assigned ALJs

issued a Ruling on September 12, 2019 setting dates for evidentiary hearings, and evidentiary hearings were held from January 27, 2020 through February 5, 2020.

The Small ILECs, Cal Advocates, TURN, and Stephen Kalish filed Opening Briefs (Opening Briefs) on April 21, 2020 and Reply Briefs (Reply Briefs) on May 19, 2020 regarding the issues addressed in this decision and other issues. On January 28, 2021, an ALJ's Ruling directed the parties to provide comments regarding a Communications Division (CD) Staff Report (January 2021 Staff Report) concerning the issues of basic service rates and miscellaneous revenues. The Small ILECs, Cal Advocates, and TURN filed Opening Comments on the January 2021 Staff Report (Opening Comments on January 2021 Staff Report) on February 22, 2021, and the Small ILECs, Cal Advocates, and Stephen Kalish filed Reply Comments on the January 2021 Staff Report (Reply Comments on January 2021 Staff Report) on March 2, 2021.

## **2. Discussion**

### **2.1. Additional Charges to Basic Residential Service Rates**

In D.14-12-084, the Commission established a presumptively reasonable range for basic residential service rates of \$30 to \$37, inclusive of additional charges.<sup>4</sup> However, the Commission did not specify the additional charges to be included in the all-inclusive basic service rate. In its January 2021 Staff Report, the Commission's Communications Division (CD) Staff proposed to eliminate this uncertainty by establishing the following defined list of additional charges to be included in the all-inclusive basic service rate: (1) all telephone access charges, including the Subscriber Line Charge (SLC); (2) all current and future Commission mandated end user surcharges, including the Universal LifeLine

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<sup>4</sup> D.14-12-084 Ordering Paragraph 9.



Telephone Service, Deaf and Disabled Telecommunications Program, CHCF-A, California High Cost Fund B (CHCF-B), California Teleconnect Fund, and California Advance Services Fund;<sup>5</sup> (3) the 911 Emergency Telephone Users Surcharge; (4) the Federal Universal Service Charge (FUSC); and (5) the California Public Utilities Commission (CPUC) User Fee. CD Staff proposes to exclude from the all-inclusive basic service rate all taxes (including the federal excise tax, California state taxes, and local taxes), all local charges, and any other charges, taxes, and fees not specifically identified in this decision.<sup>6</sup> CD Staff proposes that any change to the amount of an additional charge between general rate cases (GRCs) would not be reflected in the all-inclusive rate until the next GRC proceeding. However, customers would pay the revised charge, which may result in customers temporarily paying basic rates that fall outside the approved range of reasonableness.<sup>7</sup> CD Staff also proposes that a Small ILEC be prohibited from modifying the sum total of charges between GRCs where the Small ILEC has flexibility<sup>8</sup> in determining the amount applied to customer bills if it would result in the basic rate falling outside the range of reasonableness.<sup>9</sup>

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<sup>5</sup> CD Staff also proposed that any new telecommunications end user surcharges should be included in the all-inclusive basic rate.

<sup>6</sup> January 2021 Staff Report at 6-8.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> For example, the FCC requires all telecommunications service providers to contribute to the Universal Service Fund (USF) but does not require this contribution to be passed on to the consumer as a FUSC. Service providers are allowed but are not required to include a FUSC line item on a customer bill. See as of this writing the website located at <https://www.fcc.gov/consumers/guides/understanding-your-telephone-bill#typical-charges>.

<sup>9</sup> For example, assuming a range of reasonableness of \$30-\$40, if the all-inclusive basic rate were \$39.75, under the CD Staff proposal the Small ILEC would not be permitted to increase optional charges on basic service customer bills by more than \$0.25 before the next GRC because it would cause the all-inclusive basic rate to exceed the approved range.

The Small ILECs propose that the all-inclusive rate calculation should include all additional charges that relate to basic residential service, arguing that it is essential to determine whether the overall rate is affordable in each Small ILEC territory.<sup>10</sup> The Small ILECs propose that the Federal Excise Tax be included as part of the all-inclusive rate because it is a liability imposed on customers regarding the purchase of local telephone service. In addition, any charges imposed by a local jurisdiction should be included if those charges are applied to local exchange service.<sup>11</sup> Taxes of general applicability that apply to a Small ILEC's business, such as income and property taxes, should be excluded from the all-inclusive rate.<sup>12</sup> The Small ILECs agree that basic service rates, before adding additional charges, should not be adjusted outside of the GRC proceeding even if the surcharges and fees change between rate cases. However, the Small ILECs contend that the Commission should not restrict their recovery of fluctuations in surcharges and fees that occur between GRCs.<sup>13</sup>

TURN agrees with CD Staff's identification of the categories of additional charges that should be included and excluded from the all-inclusive basic rate.<sup>14</sup> TURN disagrees with CD Staff's proposal that customers pay for an adjustment to an element in the all-inclusive rate that occurs before the next GRC when the total adjusted rate falls outside the range of reasonableness. Instead, TURN suggests that the Commission require the Small ILEC to report the individual

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<sup>10</sup> Small ILECs Opening Comments on January 2021 Staff Report at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> TURN Opening Comments on January 2021 Staff Report at 4.

element change in its advice letter filing, retain a maximum all-inclusive rate of \$37, and make up the loss of revenues from A-Fund subsidies.<sup>15</sup>

Cal Advocates urges the Commission to adopt the methodology used by the National Exchange Carrier Association (NECA) when D.14-12-084 was issued to identify the additional charges. In D.14-12-084, the Commission found that it was appropriate to use the NECA Access Recovery Charge (ARC) benchmark to develop basic rates.<sup>16</sup> At that time, NECA included the Federal SLC, Access Recovery Charge, CHCF-A Surcharge, CHCF-B Surcharge, Deaf and Disabled Telephone Program/Telephone Relay Service Surcharge, Emergency 911 Surcharge, Universal LifeLine Telephone Service Surcharge, California Advance Services Fund Surcharge, and California Teleconnect Fund Surcharge to determine whether a basic residential rate exceeded the \$30 ARC benchmark. Cal Advocates notes that the Commission applied that list of surcharges and fees in D.19-04-017 adopting intrastate rates for Foresthill Telephone Companies in its GRC Application A.17-10-004. Cal Advocates argues that other charges, including the CPUC User Fee, Federal Excise Tax, FUSC, and local surcharges, were not identified in NECA's ARC benchmark and should not be included in the all-inclusive basic service rate.<sup>17</sup> Further, Cal Advocates notes that it had previously recommended that basic residential rates should have an annual inflation adjustment. However, Cal Advocates argues that CD Staff's proposed inclusion of charges that are not part of the NECA benchmark would result in

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<sup>15</sup> *Ibid.*

<sup>16</sup> D.14-12-084 at 67.

<sup>17</sup> Cal Advocates Opening Comments on January 2021 Staff Report at 3-4.

rates exceeding the \$30-\$37 range in fewer than three years if an inflation adjustment was applied.<sup>18</sup>

In determining which surcharges, taxes, and fees should be included as additional charges in the basic service rate, we recognize that there are competing considerations at play. First, the additional charges are components of basic residential service rates that are subject to a specified range of reasonableness. Pursuant to D.14-12-084, we should consider the effect of any change in those additional charges on whether the revised total basic residential service rates continue to fall within the range of reasonableness. Thus, if the proposed additional charges result in new total basic residential service rates that exceed the ceiling of the range of reasonableness, we should consider whether the ceiling should be raised at the same time we consider whether to include the additional charges. Second, there is a clear public benefit to customers in having all-inclusive basic service rates accurately reflect all elements, including surcharges and fees, that make up those rates. We believe that the Federal Excise Tax and local charges based upon service are additional charges that ordinarily should be included within the basic service rate. However, the parties' comments note that the inclusion of those charges would cause the all-inclusive rate to exceed the current range of reasonableness ceiling. Additionally, local charges may vary within a Small ILEC's territory, which may make it difficult to determine the basic rate in a GRC.

We believe that CD Staff's proposal regarding the surcharges and fees to be included and excluded from the list of additional charges comprising basic residential service rates reasonably reflects and balances the factors described

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<sup>18</sup> Cal Advocates Comments on January 2021 Staff Report at 9.

above. As a result, we adopt CD Staff's proposed list of the additional charges to be included in all-inclusive basic residential service rates and exclude other charges, including the Federal Excise Tax and local charges.

The treatment of increases in surcharges and fees between GRCs presents a similar conundrum. As the Small ILECs appropriately point out, they must pay many of these surcharges and fees<sup>19</sup> whether or not the funds are collected from customers. Although the inclusion of the FUSC and CPUC User Fee on customer bills is discretionary, the FCC and CPUC respectively determine the total amount that the Small ILECs must remit. Additionally, for CPUC-mandated end-user surcharges and the 911 Emergency Telephone Users Surcharge, the Small ILECs are required to collect specific amounts from customers and remit them to the relevant state agency. We agree with CD Staff that it is more equitable for the Small ILECs' customers to pay any changes in mandatory charges between GRCs.<sup>20</sup> Further, we determine that it is reasonable for the Small ILECs to modify the discretionary charges<sup>21</sup> on customer bills between GRCs in response to changes in the required contribution to the FCC and CPUC. As a result, we find that the Small ILECs' customers should pay any increases or decreases in the surcharges and fees included in the all-inclusive basic service rate that occur between GRCs. If the all-inclusive basic rate falls outside the range of reasonableness as a result of these changes between GRCs, the basic rate will be adjusted in the next GRC.

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<sup>19</sup> The revenue from access charges is used to recover specific costs of providing telephone service and is retained by the Small ILECs.

<sup>20</sup> January 2021 Staff Report at 8.

<sup>21</sup> These discretionary charges currently are the FUSC, CPUC User Fee, and SLC.

## **2.2. Range of Reasonableness for Basic Residential Service Rates**

In administering the CHCF-A program, the Commission shall ensure that rates charges to the Small ILECs' customers are just and reasonable and are reasonably comparable to rates charged to customers of urban telephone corporations.<sup>22</sup> In D.14-12-084, the Commission established a presumptively reasonable range for basic residential service rates of \$30 to \$37, inclusive of additional charges.<sup>23</sup> The Commission found that the rate floor of \$30 balanced a fair and reasonable burden on state-wide A-fund contributors with a fair and reasonable rate for the Small ILECs' customers. The Commission also found that the \$30-\$37 range was consistent with D.91-09-042, which held that rural rates shall not exceed 150 percent of comparable urban rates. In setting that rate range, the Commission noted the unique role of rural carriers in meeting universal service goals and addressing wildfire danger and the higher cost to provide service to their customers.<sup>24</sup>

In its Opening Brief, Cal Advocates proposes regular inflation-based adjustments to basic service rates, postulating that gradual increases would be more successful at preventing rate shock. Cal Advocates claims that inflation adjustments would allow basic service rates to remain within the range of reasonableness for six to ten years depending on how the all-inclusive rate is calculated. Cal Advocates suggests the use of the NECA Gross Domestic Product-Chained Price Index to make inflation adjustments to rates.<sup>25</sup>

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<sup>22</sup> Pub. Util. Code Section 275.6(c)(3).

<sup>23</sup> D.14-12-084 Ordering Paragraph 9.

<sup>24</sup> D.14-12-084 at 67-69.

<sup>25</sup> Cal Advocates Opening Brief at 37-39.

The Small ILECs assert that their customers are likely to be highly price-sensitive and that increases to basic service rates would be inconsistent with the demographics and affordability indices in rural areas. The Small ILECs argue that any increases should be capped at the inflation-adjusted value of current rates.<sup>26</sup>

TURN argues that the proposals of the Small ILECs and Cal Advocates to tie rate increases to inflation would not result in just and reasonable rates. TURN asserts that the proposal of Cal Advocates does not differentiate between rates set for various services but instead would apply rate increases to all services without regard for costs.<sup>27</sup> TURN does not believe that inflation-based rate caps will improve the efficiency of the rate setting process. TURN agrees with the Commission's already established \$30-\$37 all-inclusive range of reasonableness for basic service rates.<sup>28</sup>

In their briefs and comments addressing the issue of basic service rates, no party advocates for an adjustment to the \$30-\$37 range of reasonableness. Further, no party challenges D.14-12-084's conclusion that the range is just and reasonable, and no party disputes that the \$30-\$37 range is reasonably comparable to rates charged to customers of urban telephone corporations. However, Cal Advocates notes that adding additional charges to the all-inclusive rate methodology effectively results in a change of the range of reasonableness of basic rates.<sup>29</sup> Cal Advocates persuasively demonstrates that CD Staff's proposal

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<sup>26</sup> Small ILECs Opening Brief at 67-68.

<sup>27</sup> TURN Opening Brief at 37-39.

<sup>28</sup> TURN Reply Brief at 32.

<sup>29</sup> Cal Advocates Opening Comments on January 2021 Staff Report at 20.

will increase the all-inclusive basic rate by \$2.20.<sup>30</sup> We agree with Cal Advocates that changing the additional charges to be included in the all-inclusive basic rate should also change which basic rates are presumptively reasonable. Further, an increase to the all-inclusive basic residential service rate without a commensurate increase to the range of reasonableness ceiling would significantly restrict the ability of the Commission to modify basic rates in the next GRC cycle.

We are not persuaded that an automatic inflation adjustment to basic residential rates is merited. We agree with the Small ILECs that affordability and price sensitivity are important factors that the Commission must take into account. We are also not persuaded that any general index of inflation is a better gauge of the reasonableness of the rate to be charged than consideration of the Small ILECs' actual costs as part of the GRC process.

In light of the record, the discussion in Section 2.1, and the considerations set forth above, we find an increase to the upper bound of the range of reasonableness by \$3.00 to \$40.00 to account for the additional charges to the all-inclusive basic residential service rate to be just and reasonable and reasonably comparable to rates charged to customers of urban telephone corporations.<sup>31</sup> As a result, we adopt a presumptively reasonable all-inclusive range of \$30 to \$40 for basic residential service rates. See **Error! Reference source not found.** for a table illustrating how the inclusion of additional charges affects the all-inclusive basic rate on a \$25 bill. The Commission can reconsider the range of reasonableness after the next cycle of GRCs.

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<sup>30</sup> Cal Advocates Opening Comments on January 2021 Staff Report at 6.

<sup>31</sup> We have rounded the exact difference of \$2.20 up to \$3.00 for simplicity.



### **2.3. Miscellaneous Revenues**

In the GRC process, the Commission determines each Small ILEC's revenue requirement, rate base, and rate design. Revenue requirement is the amount necessary for a Small ILEC to recover its reasonable expenses and tax liabilities and earn a reasonable rate of return on its rate base.<sup>32</sup> Rate base means the value of a Small ILEC's plant and equipment that is reasonably necessary to provide regulated voice services and access to advanced services, with the Small ILEC entitled to a fair opportunity to earn a reasonable rate of return on that value.<sup>33</sup> Rate design is the mix of end user rates, high-cost support, and other revenue sources that are targeted to provide a fair opportunity to meet a Small ILEC's revenue requirement.<sup>34</sup>

The Small ILECs generate revenues from the licensing and leasing of their facilities. CD Staff has raised the concern that the Small ILECs could assert that the assets used to generate those revenues are non-regulated property that are not part of their rate base, and the Small ILECs could claim that they do not have any obligation to report licensing and leasing revenues. However, if the non-regulated property goes unreported, some of those revenues may be incorrectly categorized and unaccounted for, which would lead to an improper increase in the Small ILECs' revenue requirement and CHCF-A support.<sup>35</sup>

CD Staff has stated that the Commission needs to examine the extent to which licensing and leasing revenues should be included in the ratemaking process and whether those revenues should be booked as regulated or non-

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<sup>32</sup> Pub. Util. Code Section 275.6(b)(5).

<sup>33</sup> Pub. Util. Code Section 275.6(b)(2).

<sup>34</sup> Pub. Util. Code Section 275.6(b)(3).

<sup>35</sup> January 2021 Staff Report at 3.

regulated revenues. CD Staff has proposed that all uses of the Small ILECs' assets by a third party or non-regulated entity, including all licenses and leases, be reported as regulated or non-regulated revenues in their GRC applications so that the Commission can make a determination of the proper characterization of those assets.<sup>36</sup> CD Staff proposes the option that regulated licensing and leasing revenues be accounted for either as miscellaneous revenue or as a reduction in expense.<sup>37</sup> CD Staff also proposes that the Small ILECs disclose all non-regulated revenues from licenses, leases, and other uses in an Excel spreadsheet in their GRC applications using a CD staff-developed reporting template.<sup>38</sup>

The Small ILECs recommend that the Commission continue to follow federal regulations and NECA Reporting Guideline 8.3 regarding the inclusion of miscellaneous revenues as part of regulated rate design. The Small ILECs assert that NECA provides two options so that regulated cost recovery does not include a component of a plant used by others: (1) a company may perform a detailed analysis identifying all rental plant to be removed; and (2) a company can reduce its intrastate revenue requirement by the intrastate portion of its related rent revenues, effectively counting license or lease payments as reductions to regulated expense.<sup>39</sup> The Small ILECs do not oppose the disclosure of all licensing and lease revenues in GRCs.<sup>40</sup>

The Small ILECs also dispute the idea that ratepayers pay for facilities, asserting that ratepayers pay rates and the Small ILECs purchase facilities with

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<sup>36</sup> *Id.* at 3, 9.

<sup>37</sup> *Id.* at 10.

<sup>38</sup> *Id.* at 11 and Appendix A, 13.

<sup>39</sup> Small ILECs Opening Comments on January 2021 Staff Report at 1, 10-11.

<sup>40</sup> Small ILECs Opening Comments on January 2021 Staff Report at 9.

their own capital. The Small ILECs also argue that Column D of the Appendix A reporting template for non-regulated revenues is confusing in that seeking information whether a facility is paid by federal, or state subsidies is not useful because subsidies do not pay for utility property. As a result, the Small ILECs propose that Column D be amended to direct the Small ILECs to provide the “percentage of the asset included in rate base.”<sup>41</sup>

Cal Advocates proposes that the Commission require the Small ILECs to report all revenues referenced in the Federal Uniform System of Accounts, 47 C.F.R. Section 32.5200 Miscellaneous Revenue. Cal Advocates also proposes the following changes to the Appendix A reporting template for non-regulated revenue: (1) delete as unnecessary the Column B note regarding company name identification; (2) the Column D heading should specify an amount as well as a percentage; and (3) a new Column J should be added titled “Recording Policy” to identify the Small ILEC recording methodology, including the account number under which the revenue is recorded.<sup>42</sup>

The Small ILECs do not oppose Cal Advocates’ proposed changes to Appendix A Columns B and J. The Small ILECs believe that Cal Advocates’ proposed change to Column D is useless because the sources of funds are not traceable to uses of funds, and the vast majority of figures would be zero.<sup>43</sup>

In its Reply Comments regarding the January 2021 Staff Report, Cal Advocates rejects the Small ILECs’ proposal to amend the language of Column D and reasserts that Column D should require reporting of percentage and

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<sup>41</sup> Small ILECs Opening Comments on January 2021 Staff Report at 13-14.

<sup>42</sup> Cal Advocates Opening Comments on January 2021 Staff Report at 11-12.

<sup>43</sup> Small ILECs Reply Comments on January 2021 Staff Report at 5.

amounts.<sup>44</sup> However, Cal Advocates does not explain the reason that specific amounts should be reported in addition to percentage.

After review of all party comments, we conclude that: (1) the standards set forth in the Federal Uniform System of Accounts, 47 C.F.R. Section 32.5200 Miscellaneous Revenue and NECA Reporting Guideline 8.3 should be applied in the GRCs of the Small ILECs regarding the reporting and treatment of miscellaneous revenues, including revenues from licenses, leases, and other uses, and (2) the Small ILECs shall report all regulated and non-regulated miscellaneous revenues in their GRC applications, with regulated licensing and leasing revenues accounted for using one of the two options in NECA Reporting Guideline 8.3 and non-regulated licensing, leasing, and other use revenues disclosed in an Excel spreadsheet using the reporting template set forth in **Error! Reference source not found.** of this decision, which incorporates the modifications regarding Column B and a new Column J as proposed by Cal Advocates.

#### **2.4. Corporate Expense Cap**

The Commission in D.14-12-084 addressed the accounting treatment for corporate expenses by adopting the FCC's mechanism(s) for limiting corporate expenses under its operating expense account.<sup>45</sup> Corporate expenses are a component of operating expenses. In D. 14-12-084, the Commission adopted the FCC's corporate expense cap for Small ILEC GRCs. The FCC created operating and corporate expense caps to limit the amount of operating expenses that

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<sup>44</sup> Cal Advocates Reply Comments on January 2021 Staff Report at 2, 6.

<sup>45</sup> 47 C.F.R. Part 32 – Uniform System of Accounts for Telecommunications Companies – Subpart C – Instructions for Balance Sheet Accounts 32.1500 – Other jurisdictional assets net; Subpart E – Instructions for Expense Accounts 32.6720 – General and administrative.

telecommunications companies like the Small ILECs can use as eligible expenses for federal subsidies.<sup>46</sup> The FCC explained that “[b]ecause expenditures for corporate operations expenses are discretionary in many instances, and carriers with 200,000 or fewer loops<sup>47</sup> have little incentive – absent the limitation – to minimize these expenses, we continue to believe that some limitation on the universal service support available for these expenses is reasonable and appropriate. The limitation is intended to encourage carriers to assign corporate operations expenses to the proper accounts and to discourage carriers from incurring excessive expenditures.”<sup>48</sup>

As mentioned above, the Commission in D.14-12-084 adopted the FCC methodology for determining a reasonable level of corporate expenses for those telecommunications carriers drawing from the CHCF-A fund. All corporate expenses under the FCC corporate expense cap are considered reasonable, however, expenses over the cap are considered unreasonable and not eligible for recovery. In D.14-12-084, the Commission allowed the Small ILECs and other intervenors to rebut the presumption that expenses above the cap are unreasonable (this is referred to as the rebuttable presumption).

The Small ILECs argue for a removal of the corporate expense cap, or at a minimum, allowance of a regional adjustment that accounts for unique California conditions. According to the Small ILECs, the absence of a regional

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<sup>46</sup> 47 C.F.R. Sections 54.1301-54.1309 (2014).

<sup>47</sup>Loops are so-called *last-mile* facilities: the wires or cables a wireline provider uses to connect its customers to the nearest switch and from there to the rest of the world” (Digital Crossroads at 25).

<sup>48</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking (2001), FCC 01-157 at Paras. 70-71.

adjustment has resulted in arbitrary and inflexible calculations of corporate expense that do not account for California-specific costs.<sup>49</sup> The Small ILECs also argue for retaining the rebuttable presumption from the corporate expense cap because it would allow the Commission to respond to company-specific circumstances that may require expense to be above the cap.<sup>50</sup>

Cal Advocates recommends affirming that rate case litigation expenses are subject to the corporate expense cap and eliminating parties' ability to rebut the presumption of reasonableness of the corporate expense cap.<sup>51</sup> Cal Advocates argues that the Small ILECs have made the same argument about California's unique costs compared to other states<sup>52</sup> and have abused the opportunity to continue to rebut the corporate expense cap. The Small ILECs have argued against the imposition of the FCC Corporate Expense cap in every GRC since D.14-12-084 was adopted.<sup>53</sup> Cal Advocates' Opening Brief mentions that this represents a wasteful increase in litigation cost.<sup>54</sup> In addition, Cal Advocates argues that a regional adjustment proposed by the Small ILECs is unnecessary because the FCC's corporate expense cap formula already accounts for different costs among the study area and sets an upper limit on expenses that can be 115% greater than projected.<sup>55</sup>

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<sup>49</sup> Small ILECs Opening Brief at 50-52.

<sup>50</sup> Small ILECs Opening Brief at 52.

<sup>51</sup> Cal Advocates Opening Brief at 26-31.

<sup>52</sup> Cal Advocates Reply Brief at 12.

<sup>53</sup> Cal Advocates Reply Brief at 12-13.

<sup>54</sup> Cal Advocates Opening Brief at 28.

<sup>55</sup> Cal Advocates Reply Brief at 13.

Cal Advocates' opening brief also alleges that in past GRCs some of the Small ILECs have repeatedly attempted to include rate case legal expenses in the operating expense account (Account 6720), but also record rate case litigation expenses in the rate base (Account 1500).<sup>56</sup> Account 1500 covers physical plant assets and any expenses recorded are eligible to earn a rate of return.<sup>57</sup>

After reviewing all parties' comments, we reaffirm the use of the FCC's corporate expense cap mechanism for calculating and determining a reasonable level of corporate expenses for telecommunications carriers drawing from CHCF-A.

The Commission's intent in adopting the FCC's corporate expense cap which is a component of the operating expense cap was clear and can be understood in this excerpt:

A primary goal of the instant OIR is for the Commission to determine how the CHCF-A program can more efficiently and effectively meet its stated goals of providing affordable, widely available, safe, reliable and high quality communications services for rural areas of the state. Adopting a uniform standard for determining a reasonable level of corporate operations expenses for carriers receiving subsidies from the CHCF-A program allows the program to achieve its goals while ensuring that the level of support is not excessive or wildly disparate across companies, and avoids imposing an undue burden on California ratepayers who contribute to the fund.<sup>58</sup>

The Commission adopted the rebuttable presumption to, "... [offer] the Commission and parties the flexibility necessary to account for unique situations.

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<sup>56</sup> Cal Advocates Opening Brief at 29-30.

<sup>57</sup> Account 1500 is part of 47 CFR Part 32 Subpart C - "Instructions for Balance Sheet Accounts - Other jurisdictional assets net."

<sup>58</sup> D.14-12-084 at 28.

The corporate cap will be applied as a rebuttable presumption in the context of establishing revenue requirement in the GRCs.”<sup>59</sup> In D.14-12-084, the Commission further explained that, “... the rebuttable presumption will be available in either direction whether expenditures fall above or below the cap. If expenditures exceed the cap, there would be a presumption of unreasonableness and carriers would have the opportunity to rebut the presumed level of expenses imposed under the cap by demonstrating that a different level of corporate expenses is reasonable. Expenses that fall below the cap would be presumed reasonable subject to an opportunity by other parties to rebut that conclusion in the GRC.”<sup>60</sup>

The Commission, in allowing a rebuttable presumption, intended to provide flexibility for the Small ILECs, parties and Commission staff. However, since D.14-12-084 was adopted, what seems to be taking place during the Small ILECs’ GRCs is contrary to what the Commission intended. As Cal Advocates noted in their opening brief, “... allowing parties to rebut the operating expense account cap in GRC(s) has resulted in an increase in corporate (legal) expenses for litigating rate cases.”<sup>61</sup> We are concerned about the inconsistency, among the Small ILECs, regarding the accounting treatment for corporate legal expenses. We agree with Cal Advocates that, “... allowing the Small ILECs to remove rate case litigation costs from the Corporate Operations Expense Account (6720), place them in rate base (1500), and earn a rate of return on those expenses, is contrary to the Commission’s intent.”<sup>62</sup> We therefore remove the rebuttable

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<sup>59</sup> D. 14-12-084 at 29.

<sup>60</sup> *Id.* at 29.

<sup>61</sup> Cal Advocates Opening Brief at 26.

<sup>62</sup> *Id.* at 31.



presumption of the reasonableness of the corporate expense cap and we clarify that rate case litigation expense is subject to the corporate expense cap and must be recorded in FCC Account 6720.

## **2.5. Operating Expense Cap**

One of the Commission's CHCF-A goals is to determine how the program can more efficiently and effectively provide affordable, widely available, safe, reliable and high-quality communications services for rural areas of the state. In this decision, the Commission is working to strike a balance to determine a reasonable level of operating expense for carriers receiving CHCF-A support while ensuring that California ratepayers are not unduly burdened by supporting carrier operations that are excessive and inefficient.

When the Commission adopted the FCC's corporate expense cap in D.14-12-084, it did not adopt an operating expense cap. Operating expenses include four major expense groups: plant specific operations, plant non-specific operations, customer operations, and corporate operations (referred to in this decision as corporate expenses). As mentioned above in section 2.4, corporate expenses are a component of the FCC's operating expense account. During the Commission's GRC review process staff examines all aspects of operating expenses. In their opening brief, Cal Advocates suggests that the Commission should increase the efficiency of the Small ILECs' GRC process by adopting an operating expense cap,<sup>63</sup> and we agree.

The Commission's intent in imposing a cap on operating expense is to streamline the GRC process as well as ensure a prudent level of operating cost and incentives for Small ILECs to operate more efficiently. We believe that the

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<sup>63</sup> Cal Advocates Opening Brief at 32.

FCC's operating expense caps are a rational mechanism for calculating and determining a reasonable amount of operating expenses for those carriers drawing from the CHCF-A program. Following the logic and rationale we applied for the corporate expense cap in section 2.4, we do not allow a rebuttable presumption for GRC operating expenses.

The FCC uses its operating expense cap analysis to determine the level of High Cost Loop Support (HCLS). The financial data used to determine federal loop support is similar to the type of information the Commission uses for its GRC review and analysis and can be used to derive intrastate operating expenses.

NECA calculates the FCC's operating expense cap for each carrier by using a regression model. (*See **Error! Reference source not found.*** for this formula.) The model generates an annual operating expense per location plus 1.5 standard deviations (defined as the mean standard error of the regression) multiplied by the number of locations. The regression model is based on housing units (locations) and density and is described in detail in 47 CFR Section 54.303(a)(1) of the FCC's rules.

The Commission can and should mirror the FCC's process to implement an operating expense cap for California. A Small ILEC's annual operating expense for a 12-month period would be compared to the maximum (cap) allowable set by the FCC. If a Small ILEC's operating expense exceeds the cap, then it should reduce operating expense proportionately to meet the cap. If a Small ILEC's annual operating expense for a 12-month period is lower than the cap, then the Small ILEC is not impacted. (*See **Error! Reference source not found.*** for details.) To derive the Small ILECs' intrastate operating expense cap, Small ILECs should use the same financial data submitted to the FCC for HCLS

because it would reduce questions in data requests about the validity of those numbers. To adjust the operating expense cap with a future test year, NECA's inflation factor should be added to the FCC's operating expense cap to true-up the historical data. Implementing an operating expense cap process can also eliminate or reduce the number of data requests that are generally provided during a typical GRC.

## **2.6. Rate Case Process and Procedures**

Parties were asked to propose modifications to the rate case process that would increase efficiency and reduce costs. Due to a variety of factors, the GRC process for the Small ILECs can be described as lengthy, expensive, and burdensome. Parties in testimony, briefs, and comments have presented alternative mechanisms for the timing of public participation hearings, discovery, and mediation, among other proposals. No changes will be made to the existing GRC processes or to additional proposals not specifically addressed in this section. The following GRC rate case streamlining proposals, introduced by the Small ILECs, require discussion: timing of public participation hearings, requiring mediation prior to evidentiary hearings, limiting data requests to 300 for each rate case, requiring parties to meet and confer prior to motions, and reallocating some of the time allotted to Cal Advocates for rebuttal testimony to the applicants.<sup>64</sup>

GRC applicants have the burden of proof to present the reasons for the requests in their application. Waiting until parties have served testimony to schedule and hold public participation hearings will not add efficiency to the current rate case process and is rejected. Limiting discovery for Cal Advocates

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<sup>64</sup> Small ILECs Opening Brief at 62-66.

and other parties is not statutorily permissible and is rejected. Reallocating the time for rebuttal testimony from Cal Advocates to the applicants does not reduce the time required to complete the GRC or increase efficiency and is therefore rejected. Additionally, it is reasonable for Cal Advocates to have more time than the applicants because they must use discovery to acquire information about the contents of the application. Requiring parties to participate in mandatory mediation prior to evidentiary hearings and meet and confer requirements prior to filing motions is rejected. The Commission's Rules already identify the scenarios where meet and confer is required. The Commission's Alternative Dispute Resolution (ADR) Program rule is that parties "voluntarily agree" and choose to submit to ADR. Parties who have willingly submitted to the ADR process enter the program in good faith to engage in the process constructively. This approach yields timely and successful ADR results in most cases. Conversely, involuntary ADR (mandatory ADR) usually is far less successful, far more time consuming, and often leads to proceeding delays. Thus, we reject mandating ADR because it may further delay a proceeding instead of speeding up its resolution.

## **2.7. Plant Investment and Federal Support**

The Small ILECs earn a rate of return on plant investment that is recorded in rate base.<sup>65</sup> When the Small ILECs receive subsidies from the federal USF, it is unclear how those federal subsidies are accounted for when the Small ILECs provide rate base/plant-in-service and accumulated depreciation data in their respective GRC testimonies and workpapers.

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<sup>65</sup> Pub. Util. Code Section 275.6(b)(2).

Cal Advocates has proposed that the Commission should exclude federal USF subsidies for investment in Plant and Facilities from the calculation of the Small ILECs' rate base because it violates 47 C.F.R. Section 32.2000 rate-of-return regulation, which states that the regulated plant-in-service accounts may not include contributions such as those from the federal high-cost subsidies.<sup>66</sup> It can be argued that federal high-cost support subsidies should not be included in rate base on which the rate of return is earned because it is not investor funded capital.<sup>67</sup> Therefore, utility plant purchased with federal high-cost subsidies should be removed from the calculation of the Small ILECs' rate base because it represents non-investor supplied capital. The FCC has adopted several mechanisms to properly account for plant purchased with federal high-cost subsidies: Capitalization, Rate Base Method, and the Revenue Requirement Offset Method.<sup>68</sup> To identify where their funds for plant investment come from, the Small ILECs can use any of these methods.

Commission Resolution T-17002 and federal rules under 47 C.F.R. Section 54.314 state that the Small ILECs should identify in their annual Eligible Telecommunications Carrier (ETC) reports how they are using the high-cost support. It is reasonable that the Commission require the Small ILECs to report on how federal and investor funds are used to calculate their rate base. This process will reduce the possibility of the Small ILECs earning a return on an inflated rate base.<sup>69</sup> Additionally, it is also reasonable for the Commission to require the Small ILECs to track plant investments and submit an annual report

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<sup>66</sup> Cal Advocates Opening Comments on Fourth Amended Scoping Memo at 21.

<sup>67</sup> Cal Advocates Reply Comments on Fourth Amended Scoping Memo at 13.

<sup>68</sup> Cal Advocates Opening Comments on Fourth Amended Scoping Memo at 21-22.

<sup>69</sup> Cal Advocates Reply Comments on Fourth Amended Scoping Memo at 12-13.

along with their ETC report to Cal Advocates to ensure ratepayer funds are being used properly.<sup>70</sup>

If the Small ILECs comingle federal USF subsidies with other revenue sources, it becomes difficult to determine how much federal USF subsidies are used for plant investment. Cal Advocates recommends using the recent annual NECA cost study that has recorded rate base amounts to forecast each Small ILEC's GRC Test Year rate base. This approach would assist in ensuring that there is no double recovery of plant investment.<sup>71</sup>

The Small ILECs oppose Cal Advocates' proposal and claim that the proposal is based on the false premise that the Small ILECs' plant was "purchased with" federal high-cost support. The Small ILECs contend that Cal Advocates is attempting to reduce the Small ILECs' CHCF-A support by excluding federal USF subsidies for investment in Plant and Facilities from the calculation of the Small ILECs' rate base.<sup>72</sup> The Small ILECs characterize Cal Advocates' statements of facts and laws as incorrect and suggest that they confuse revenue accounts with plant accounts. The Small ILECs further claim that Cal Advocates, without citation, alleges that plant purchased with federal high-cost subsidies are non-investor supplied capital.<sup>73</sup> The Small ILECs state that the Commission should not approve any proposal to treat federal universal service funding as a contribution to capital in the ratemaking process.<sup>74</sup> Additionally, the Small ILECs state that once revenue, including federal high

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<sup>70</sup> Cal Advocates Opening Comments on Fourth Amended Scoping Memo at 26.

<sup>71</sup> Cal Advocates Opening Brief at 34.

<sup>72</sup> Small ILECs Reply Comments on Fourth Amended Scoping Memo at 9-10.

<sup>73</sup> Small ILECs Reply Comments on Fourth Amended Scoping Memo at 10.

<sup>74</sup> Small ILECs Opening Testimony of Duval at 69.

cost support, is received that it becomes the property of the company and can be comingled with all other dollars earned by the company.<sup>75</sup> The Small ILECs also argue that HCLS does not fund any specific investments and that federal funding amounts have no impact on rate base calculations.<sup>76</sup>

The Small ILECs oppose Cal Advocates' proposal to determine the rate base amount from the NECA cost study. They state that this is not permitted by statute and would be inappropriate because the NECA rate base figures would cover a year or two years before the Test Year and historical data is not a reliable predictor of future rate base.<sup>77</sup> Additionally, the Small ILECs state that using the NECA rate base would create a temporal disconnect between rate design and rate base where current customers are paying for returns on historical rate base. They also argue that using the rate base from the NECA cost study is not necessary to prevent double recovery because there is no double recovery occurring.<sup>78</sup>

According to Pub. Util. Code Section 275.6 (c)(2), rate-of-return regulation must be used 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

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<sup>75</sup> Small ILECs Opening Brief at 58.

<sup>76</sup> Small ILECs Opening Brief at 58-59.

<sup>77</sup> Small ILECs Opening Brief at 57-59.

<sup>78</sup> Small ILECs Opening Brief at 57-59.

terms, and ensure the financial integrity of the telephone corporation.

The Small ILECs receive significant amounts of federal and state support. Cal Advocates has noted that in 2018, 46% of total Small ILEC revenues were from the CHCF-A and 25% were from federal High Cost support.<sup>79</sup> The types of federal support that the Small ILECs include, but are not necessarily limited to, the following:

- Alternative Connect America Cost Model (A-CAM)
- Connect America Fund Broadband Loop Support (CAF-BLS)
- High Cost Loop Support (HCLS)
- Intercarrier Compensation Recovery (ICC)

CAF-BLS support is interstate, HCLS support is intrastate, and ICC and A-CAM provide both inter- and intrastate support.

The Small ILECs earn a rate of return on plant investment. We agree with the Small ILECs that HCLS and the *intrastate* portions of A-CAM subsidies are already incorporated into intrastate rate design and are part of the “Result of Operations” table. The issue here is whether the federal subsidies that support *interstate* ratemaking are properly accounted for in both the state and the federal ratemaking process for the Small ILECs. The Small ILECs did not describe whether federal subsidies that support interstate ratemaking such as A-CAM, CAF-BLS, and ICC are earmarked for specific capital investments. Because the Small ILECs comingle federal USF subsidies they receive with other sources of revenue, determining how much federal USF subsidies are used for plant investment is complicated. Even though the Small ILECs are required to file annual ETC certifications with the Commission, the Small ILECs state that they

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<sup>79</sup> Cal Advocates Testimony of James Ahlstedt at 4-6.



are unable to identify the specific amounts of federal USF utilized for capital investment and operating expense.<sup>80</sup>

According to the Small ILECs, HCLS, CAF-BLS, and A-CAM are federal high-cost funds, and each has established jurisdictional treatment that governs its use in ratemaking.<sup>81</sup> However, the proper allocation of these federal high cost funds and the proper assignment of cost recovery and ultimately revenue are not transparent.

To support transparency and to ensure that cost recovery is appropriate, the Small ILECs should use the rate base amount from NECA's latest cost study as a proposed rate base for each GRC Test Year. Because NECA's rate base figures are at least two years behind a test year, adjustment could be made for new additions, closure of plants, or other changes that have occurred since the year of the NECA cost study. We believe the NECA's cost study is a reasonable method for forecasting GRC Test Year rate base because the recorded NECA cost study rate base amounts are comparable to the GRC forecasted amounts, with an average difference of 1.77%.<sup>82</sup> The NECA cost study includes total company rate base, which is then allocated between the intra- and the interstate jurisdictions. The Small ILECs should allocate the same amount of rate base to the intrastate jurisdiction as shown in the NECA cost study. This approach would ensure proper jurisdictional allocation. The NECA cost study also incorporates the most recent recorded level of plant additions and depreciation, which will help streamline the GRC process. Therefore, the Small ILECs must submit their most

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<sup>80</sup> Cal Advocates Reply Testimony of Hoglund at 1-2.

<sup>81</sup> Small ILECs Opening Brief at 47.

<sup>82</sup> Cal Advocates Reply Testimony of Hoglund at 1-8.

recent NECA cost study, including all data relating to the intrastate rate base, with their GRC application.

## **2.8. Affordable Broadband and State and Federal Broadband Programs**

Many parties in briefs and testimony have affirmed that the broadband adoption percentage is low in the Small ILECs' service territories because the broadband rates are not affordable for many rural consumers.

Cal Advocates' data show that broadband subscription rates vary from 30% to 72%.<sup>83</sup> Cal Advocates provided data that indicates that broadband service is unaffordable for many low-income customers in the Small ILECs' service territories; 84% of non-LifeLine residential voice customers subscribe to broadband service from the Small ILECs or their ISP affiliates compared to only 66% of LifeLine residential voice customers.<sup>84</sup>

TURN's data shows that high broadband prices in the Small ILECs' territories result in lower demand for higher broadband speeds.<sup>85</sup> The lack of affordable broadband is a problem for many households in Small ILEC service areas.

Both TURN and Cal Advocates propose that the Small ILECs or their ISP affiliates should offer an affordable broadband plan and that the amount of imputed broadband revenue could be reduced to offset a lower broadband rate for low-income customers.

In the January 2021 Staff Report, CD Staff propose that each Small ILEC be required to offer an affordable broadband plan, either directly or through their

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<sup>83</sup> Cal Advocates' Opening Brief at 18.

<sup>84</sup> Cal Advocates Opening Brief at 19.

<sup>85</sup> TURN Opening Brief at 8.

ISP affiliate, as a condition of receiving CHCF-A support, and meet price, speed, and eligibility requirements. CD Staff also proposed possible methodologies for reducing the amount of imputed broadband revenue as an incentive to enroll low-income customers.

After the issuance of the Staff Report, the FCC in February 2021 launched a new federal broadband initiative to help low-income families obtain affordable broadband services. The FCC established the Emergency Broadband Benefit (EBB) program in Report and Order 21-29 pursuant to the Consolidated Appropriations Act of 2021.<sup>86</sup> The EBB provides eligible low-income households with a monthly discount up to \$50 off the standard retail rate for broadband service and a monthly discount up to \$75 for Tribal lands.<sup>87</sup> Eligible households may also receive a one-time discount of up to \$100 to purchase certain connected devices such as a laptop, a desktop computer, or a tablet.<sup>88</sup> The EBB is a temporary program with a budget of \$3.2 billion. The program will end when the fund is expended or six months after the end of the COVID-19 public health emergency.<sup>89</sup>

The Commission has also initiated R.20-09-001 to address broadband infrastructure needs. Given the broadband efforts underway both at the state and federal levels, it is reasonable to gather information from these initiatives before creating any additional programs. Accordingly, we will not adopt an affordable broadband program through the CHCF-A at this time and instead direct the

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<sup>86</sup> *In re Emergency Broadband Benefit Program* (EBB Order) WC Dkt. 20-445; FCC 21-29 (rel. February 26, 2021).

<sup>87</sup> 47 CFR Section 54.1603.

<sup>88</sup> *Ibid.*

<sup>89</sup> EBB Order at Para. 86.

Small ILECs to participate in the EBB program either independently or through their ISP affiliates as a condition of receiving CHCF-A support.<sup>90</sup> The California Legislature has directed the Commission to promote access to broadband services in rural areas that is reasonably comparable to that in urban areas, consistent with federal communications policy.<sup>91</sup> Directing the Small ILECs' to participate in the EBB program is consistent with the Legislature's directive, will allow us to maximize federal funding for universal service, and will make broadband services more accessible and affordable for low-income families residing in rural areas. The COVID-19 pandemic has underscored the need for access to reliable and affordable broadband services, and the Small ILECs' participation in the EBB program will greatly aid in making that a reality for many more low-income families.

As we continue to explore ways to increase access to affordable broadband services and to determine the level of assistance needed, it is important for the Commission to gather accurate and up-to-date information about broadband services in rural areas. Therefore, we direct the Small ILECs to submit data to the Commission about their participation in the EBB at the end of the program, and annually on April 1 if the program extends more than 12 months. Data must include at a minimum the following: number of participants, plans and rates participants are subscribing to, if the participants were existing Small ILEC customers, if the participants are California and/or federal Lifeline participants. The data should be submitted in an Excel spreadsheet as depicted in **Error!**

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<sup>90</sup> The requirement to participate in the EBB program would only apply to Small ILECs that receive funds from the CHCF-A. The TDS companies would not be subject to this requirement unless they request CHCF-A support.

<sup>91</sup> Pub. Util. Code section 276.5(c)(5).

**Reference source not found.** to this decision. CD Staff will work with parties in this proceeding to improve the reporting template and may modify the template as needed. This data will provide the Commission with information about customer needs and preferences that will aid in determining how best to provide affordable broadband to low-income households.

In addition, the Small ILECs have an existing obligation as ETCs receiving federal High Cost support to offer federal Lifeline program discounts on broadband service that will also assist low-income households. The Commission will monitor the development of state and federal efforts to improve access to broadband services and may further consider whether to address any missing gaps in affordability, quality, or infrastructure needs.

### **3. Comments on Proposed Decision**

The proposed decision of Commissioner Guzman Aceves in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3. Comments were filed on \_\_\_\_\_ by \_\_\_\_\_. Reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

### **4. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Hazlyn Fortune and Peter Wercinski are the assigned Administrative Law Judges in this proceeding.

### **Findings of Fact**

1. The FCC's Corporate Expense Cap is a rational mechanism for calculating and determining a reasonable level of corporate expenses for those carriers drawing from the CHCF-A.

2. In February 2021, the FCC issued Report and Order 21-29 which established the federal EBB program.

3. The federal EBB program provides eligible low-income households with a monthly discount up to \$50 off the standard retail rate for broadband services and a monthly discount up to \$75 for Tribal lands, and a one-time discount up to \$100 to purchase certain connected devices such as a laptop, a desktop computer, or a tablet from participating providers.

4. The federal EBB program is a temporary program with a budget of \$3.2 billion which will end when the fund is expended or six months after the end of the COVID-19 public health emergency.

### **Conclusions of Law**

1. CD Staff's proposal to include (a) all telephone access charges, including the Subscriber Line Charge; (b) all current and future Commission mandated end user surcharges, including the Universal LifeLine Telephone Service, Deaf and Disabled Telecommunications Program, CHCF-A, CHCF-B, California Teleconnect Fund, and California Advanced Services Fund; (c) the 911 Emergency Telephone Users Surcharge; (d) the Federal Universal Service Charge; and (e) the CPUC User Fee as the complete and exclusive list of additional charges in all-inclusive basic residential service rates is reasonable and should be adopted.

2. The Small ILECs' customers should pay any increases in the surcharges and fees included in the all-inclusive basic service rates that occur between GRCs.

3. A \$30 to \$40 range for the Small ILECs' basic residential service rates is just and reasonable and reasonably comparable to rates charged to customers of urban telephone corporations and should be adopted.

4. The standards set forth in the Federal Uniform System of Accounts, 47 C.F.R. Section 325200 Miscellaneous Revenue and NECA Reporting Guideline 8.3 should be applied in the GRCs of the Small ILECs regarding the reporting and treatment of miscellaneous revenues, including revenues from licenses, leases, and other uses.

5. The Small ILECs should report all regulated and non-regulated miscellaneous revenues in their GRC applications, with regulated licensing and leasing revenues accounted for using one of the two options in NECA Reporting Guideline 8.3 and non-regulated licensing, leasing, and other use revenues disclosed in an Excel spreadsheet using the reporting template set forth in Appendix A to this decision.

6. The Small ILECs should comply with the FCC corporate expense cap established in D.14-12-084 without a rebuttable presumption.

7. It is reasonable to establish an operating expense cap for the Small ILECs without a rebuttable presumption.

8. The Commission should adopt all activities to support accurate accounting allocations for FCC Accounts 1500 and 6720.

9. NECA's cost study is a reasonable method for forecasting GRC Test Year rate base.

10. The Small ILECs should use (with adjustments made for new additions, plant closures and similar expenses) the rate base amount from NECA's most recent cost study as a proposed rate base for each GRC Test Year.

11. It is reasonable to require the Small ILECs to participate in the FCC's EBB program as a condition of receiving CHCF-A support.

12. It is reasonable that the Commission gather accurate data about broadband prices to determine the level of assistance needed for broadband services in rural areas.

## O R D E R

**IT IS ORDERED** that:

1. (a) All telephone access charges, including the Subscriber Line Charge; (b) all current and future Commission mandated end user surcharges, including the Universal LifeLine Telephone Service, Deaf and Disabled Telecommunications Program, California High Cost Fund A , California High Cost Fund B , California Teleconnect Fund, and California Advance Services Fund; (c) the 911 Emergency Telephone Users Surcharge; (d) the Federal Universal Service Charge; and (e) the California Public Utilities Commission User Fee shall be the complete and exclusive list of additional charges in all-inclusive basic residential service rates in a general rate case of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, or Volcano Telephone Company.

2. The customers of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company (each company individually Small ILEC) shall pay any increases in the surcharges and fees included in the all-inclusive basic service rates that occur between the general rate cases of the Small ILEC.



3. The presumptively reasonable range for basic residential service rates for Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall be \$30 to \$40.

4. The standards set forth in the Federal Uniform System of Accounts, 47 C.F.R. Section 32500 Miscellaneous Revenue and National Exchange Carrier Association Reporting Guideline 8.3 shall be applied in the general rate cases of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company regarding the reporting and treatment of miscellaneous revenues, including revenues from licenses, leases, and other uses.

5. In a general rate case (GRC) of Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, or Volcano Telephone Company (each company individually Small ILEC), a Small ILEC shall report all regulated and non-regulated miscellaneous revenues in their GRC application, including revenue from both licenses and leases, with regulated licensing and leasing revenues accounted for using one of the two options in National Exchange Carrier Association Reporting Guideline 8.3 and non-regulated licensing, leasing, and

other use revenues disclosed in an Excel spreadsheet using the reporting template set forth in Appendix A to this decision.

6. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall adhere to the Federal Communications Commission's standards for corporate expense limits in their General Rate Cases, those limits shall be non-rebuttable, and expenses above those limits will be considered unreasonable.

7. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall adhere to the Federal Communications Commission's standards for operating expense limits in their General Rate Cases, those limits shall be non-rebuttable, and expenses above those limits will be considered unreasonable.

8. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall record rate case litigation expenses in Federal Communications Commission Account 6720.

9. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone

Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall use the rate base amount from the National Exchange Carrier Association's most recent cost study as a proposed rate base for each General Rate Case Test Year.

10. Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company will be subject to Ordering Paragraphs 1 through 9 of this Decision if they submit a General Rate Case application.

11. Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company, either individually or through their respective Internet Service Provider affiliates, shall participate in the Federal Communications Commission's Emergency Broadband Benefit Program as a condition to receive funds from the California High Cost Fund-A.

12. Using a reporting template provided by California Public Utilities Commission (Commission) staff, Calaveras Telephone Company, Cal-Ore Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company shall submit data to the Commission about their participation in the Federal Communications Commission's Emergency Broadband Benefit Program at its conclusion and annually on April 1 if the program extends for more than 12 months. Data must include but is not limited to the number of participants, a listing of the plans and

rates participants are subscribing to, whether the participants were existing Small ILEC customers, and whether the participants are California LifeLine or federal Lifeline participants.

13. Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company will be subject to Ordering Paragraphs 11 and 12 of this Decision if they elect to receive funds from the California High Cost Fund-A.

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California.