BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service.

R. 18-07-006
(July 12, 2018)

COMMENTS OF
CALAVERAS TELEPHONE COMPANY (U 1004 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNITOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017 C)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
(the “Small LECs”)

ON STAFF PROPOSAL ON IMPLEMENTATION OF AFFORDABILITY METRICS

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I. INTRODUCTION

Pursuant to the schedule set forth in the Assigned Commissioner’s and Assigned Administrative Law Judge’s (“ALJ”) Ruling Inviting Comments on Staff Proposal on Implementation of Affordability Metrics (“Staff Proposal”) and the ALJ’s November 24, 2021 Email Ruling Granting Motion of California Water Association for Extension of Time for Comments on Staff Proposal, Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the “Small LECs”) submit these comments on the Staff Proposal and respond to the general questions and communications-specific questions listed in the Ruling.

The Staff Proposal focuses on broadband services in its communications implementation section but fails to address or even acknowledge the Commission’s lack of jurisdiction to regulate broadband rates. Unlike the more detailed analysis provided for energy and water company general rate case proceedings, the Staff Proposal does not provide a concrete and specific proposal on how the metrics would be implemented to regulate telephone rates—or how they could be implemented to regulate broadband rates. Rather, it recommends the metrics be incorporated into the California Advanced Services Fund (“CASF”) program and broadly notes that implementation could also include the Commission’s other Public Purpose Programs (“PPPs”).\(^1\) While the Small LECs’ Internet Service Provider (“ISP”) affiliates\(^2\) support the goals

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1. *Staff Proposal* at 41-42.
2. The Small LECs offer broadband services through an unregulated ISP affiliate, except for Pinnacles Telephone Co. and Happy Valley Telephone Company, Hornitos Telephone Company and Winterhaven Telephone Company. (“the TDS Companies”). For the purposes of these comments, the term ISPs or ISP affiliates is used as shorthand.
of affordable broadband, they recommend that the implementation of the metrics be limited to informing consumers in the Commission’s annual affordability report, and that the metrics be used in the Commission’s LifeLine proceeding where appropriate cost recovery can be provided for reduced “low income” rates. As the Small LECs have emphasized, the underlying data sources for the metrics have significant margins of error and do not reliably measure affordability in granular geographic areas, such as in rural service areas. These margins of errors should be incorporated into the metrics. In addition, the Affordability Ratio Calculator (“ARC”) contains multiple errors in the Small LECs’ data that should be corrected in the updated ARC.

II. RESPONSES TO QUESTIONS IN RULING REGARDING STAFF PROPOSAL.

A. General Questions:

1. What outputs from the Affordability Ratio Calculator tool would be useful?

As described further in Section III below, the Affordability Ratio (“AR”) tool should incorporate the quantifiable sampling errors in the Public Use Microdata Sample (“PUMS”) data sources. Rather than relying on point estimates to measure affordability of each Public Use Microdata Area (“PUMA”), the metrics should be used to identify three groups of PUMAs—those materially above or below a given affordability threshold, those clearly below the benchmark, and those for which the metrics are not sufficiently precise to estimate. Using confidence intervals to produce these affordability groupings will be more consistent with the underlying data uncertainties.

2. Are there additional ways the metrics can be used to identify/designate vulnerable communities?

Based on the unreliability of the PUMS data for the affordability metrics, the Small LECs believe their use should be limited to high level assessments, such as in the Commission’s annual affordability report; however, the metrics should not be broadly applied to identify vulnerable communities, particularly given the very large margins of error and unreliable results for the small, rural areas that the Small LECs serve.
B. Communications: Staff identifies the California Advanced Services Fund as a key CPUC public purpose program that can benefit from incorporating the affordability framework. Should other CPUC efforts or public purpose programs incorporate the affordability framework into their decision-making process? If so, how?

The affordability framework cannot and should not be applied to the Commission’s PPPs to regulate broadband rates. As the Small LECs have demonstrated, the Commission lacks jurisdiction to impose “common carrier” regulations on unregulated, interstate broadband Internet access services.\(^3\) Therefore, the Commission may not lawfully apply the affordability framework to regulate broadband rates. In addition to being unlawful and subject to federal preemption, regulating broadband rates would also stifle innovation and investment in broadband services to the detriment of California consumers. In support of the Federal Communications Commission’s (“FCC’s”) reclassification of broadband services as “information services” the FCC reached numerous findings, including the conclusion that “burdensome regulation . . . stifles innovation and deters investment.”\(^4\) These FCC findings, which the Mozilla court did not overturn, included the “effects [of public utility style regulation] on small ISPs and rural communities where firms are more likely to take the risks of offering much-needed services in a more predictable and less onerous regulatory climate.”\(^5\)

The fact that many of the Small LECs participate in the California High Cost Fund-A (“CHCF-A”) program does not diminish the force of federal law or avoid the jurisdictional

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\(^3\) Small LECs Comments on PD at 2-5; Small LECs Comments on Affordability Metrics Revised Staff Proposal at 2, n. 2; Opening Comments to OIR, at pp. 5-6; see also In the Matter of Restoring Internet Freedom (“RIFO”), WC Docket No. 17-108, Declaratory Ruling, Report and Order, FCC 17-166 (rel. Jan. 4, 2018) (“RIFO”) at ¶ 20 (“[w]e reinstate the information service classification of broadband Internet access service.”), petition for review granted in part on other grounds and denied in part by Mozilla Corp. v. Fed. Commc'n's Comm'n, 940 F.3d 1, 35 (D.C. Cir. 2019) (upholding the FCC's classification of broadband Internet access as an “information service”); CCTA Opening Cmts on PD; N.Y. State Telecomms. Ass'n v. James, 2021 U.S. Dist. LEXIS 110127, *22-23 (explaining that “rate regulation is a long-accepted method of regulating common carriers” and finding that New York’s low-income broadband law is conflict preempted). The Ninth Circuit “ha[s] long recognized that the Internet and the nation’s vast network of telephone lines are instrumentalities of and intimately related to interstate commerce.” United States v. Costanzo, 956 F.3d 1088, 1092 (9th Cir. 2020) (internal quotation marks and citation omitted).

\(^4\) RIFO at ¶ 1 (finding that “burdensome regulation . . . stifles innovation and deters investment.”).

\(^5\) Mozilla, supra, 940 F.3d at 50 (citing RIFO at ¶¶ 103-106).
restrictions on the Commission’s authority. The Commission lacks authority to regulate broadband rates pursuant to its administration of the CHCF-A program. Public Utilities Code Section 275.6(c)(5) directs the Commission to administer the CHCF-A program to “[p]romote customer access to advanced services and deployment of broadband-capable facilities in rural areas that is reasonably comparable to that in urban areas, consistent with national communications policy.” However, this provision does not authorize the Commission to regulate the rates, terms or conditions of unregulated, broadband services. Section 275.6 applies to “telephone corporations,” not ISPs.7

The regulation of broadband rates in the Small LECs’ rate case proceedings is further precluded by the recently issued decision in Phase 2 of the CHCF-A rulemaking where the Commission declined to mandate an affordable broadband program based on the extensive record developed in Phase 2.8 Instead, the Phase 2 CHCF-A Decision encouraged the Small LECs to participate in the federal Emergency Broadband Benefit (“EBB”) program and noted the Small LECs’ obligations as Eligible Telecommunications Carriers (“ETCs”) to offer federal Lifeline discounts on broadband programs.9 The Small LECs have participated in the EBB program, and they anticipate that they will participate in the recently-enacted Affordable Connectivity Program (“ACP”) as it evolves during 2022.10

The Small LECs support the goal of affordable broadband and in response to the COVID-19 pandemic, many of the Small LECs’ ISP affiliates offered, on a temporary basis, various types of discounts on retail broadband service during 2020. However, these small, rural ISPs cannot afford to offer discounted broadband services on a long-term basis without cost recovery given the profound costs of delivering broadband in the Small LECs’ rural service territories,

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7 Section 275.6 has more than twenty references to “telephone corporations” and only one informational reference to affiliate ISPs.
8 D.21-06-004 at 36.
9 Id. at 36-38.
including the high fixed expenses that are largely beyond the companies’ control, lack of economies of scale and scope, and high percentages of LifeLine-eligible customers for many companies. The Small LECs continue to recommend that the Commission provide additional support for longer-term “affordable” plans through the LifeLine proceeding, in which the Small LECs are active parties.

Even as to regulated residential voice services, the implementation of the metrics in rate cases for utilities serving small, rural areas, such as the Small LECs, is problematic because these metrics do not reliably measure affordability in small, rural areas where the rates will be implemented. As a result, other data and measures of affordability should be considered to better measure affordability for small, rural areas, such as the Area Deprivation Index ("ADI").11 Because the ADI is broader in scope than the Socioeconomic Vulnerability Index ("SEVI") and includes additional measures of affordability, its use is more appropriate for rural areas where housing costs and other components of the SEVI metrics do not necessarily provide an accurate picture of affordability in rural areas.

As noted above, the Small LECs support incorporating the affordability framework into the Commission’s LifeLine proceeding where proper cost recovery can be provided to broadband providers for lower-cost broadband offerings. They also support incorporating the metrics into voluntary Commission broadband grant proceedings, such as CASF or industrywide proceedings relating to Senate Bill 156, provided the sampling errors are incorporated for granular geographic areas.12 Rather than seeking to regulate broadband rates through the CASF program, the affordability metrics and their outputs could be used as one of many factors in evaluating whether to award a particular grant. If artificially low rates are required as a rigid condition of CASF grant eligibility, participation in the program would be reduced, compromising the

11 Small LECs Comments on Revised Staff Proposal at 3 (explaining ADI measure of affordability).
12 For the reasons noted above, these affordability tools should not apply to assess or regulate broadband rates in mandatory rate case proceedings that the Small LECs must file to maintain access to critical CHCF-A support to meet their revenue requirement.
purpose of the program to promote more affordable deployment of infrastructure that can bring significant benefits to consumers. In other words, the Commission should not mandate that rates fall below an affordability demarcation value as a pre-condition to receiving a grant but should merely consider any broadband rate commitments that provider may make along with other relevant factors in evaluating grant applications.

III. THE STAFF PROPOSAL DOES NOT RECOGNIZE OR INCORPORATE THE SIGNIFICANT SAMPLING ERRORS ASSOCIATED WITH THE AFFORDABILITY METRICS AND FORECASTING.

In prior comments, the Small LECs described the significant sampling errors associated with the data sources for the SEVI and the AR metrics, particularly for the Small LECs’ rural service territories. The Staff Proposal, however, fails to mention or attempt to address these sampling errors in its proposed implementation framework. At the Commission’s November 15th Public Workshop on Affordability Metrics Implementation, Commission staff acknowledged that there are considerable margins of error in the housing costs and income estimates. However, staff explained that they did not try to incorporate the margins of error into the AR tool because staff believed doing so would create confusion and make the metrics more complicated. Staff noted that the AR is intended to provide estimates for a representative household and that it will not accurately characterize affordability for every household in an area given the wide range of experiences for individual households. Staff noted that the purpose of the tool is to compare affordability for one part of the state to another and to track changes over time. Staff’s statements indicate that the AR tool may be more appropriate to use to provide high level assessments in an annual affordability report, but it would not be useful to apply to the Small LECs’ general rate cases given the very large margins of error and unreliable results for

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13 See, e.g., Small LECs Comments on Scoping Memo at 4-6; Small LECs Comments on Revised Staff Proposal at 2-5.
small, rural areas.

The Small LECs have suggested different ways in which these sampling variations could be accounted for, including quantifying and incorporating the uncertainty or confidence intervals associated with the metrics, using established methodologies.\textsuperscript{15} The Small LECs also made recommendations to mitigate skewed results for owner-occupied housing estimates, which were not addressed in the Staff Proposal.\textsuperscript{16} The Small LECs urge the Commission to consider incorporating these suggestions to help mitigate reliability concerns. The failure to do so will result in inaccurate and potentially misleading depictions of affordability, with corresponding harm to consumers, particularly in small, rural areas. The sampling variation is larger the more granular the geographic area considered (due to the attendant smaller sample size).

The Staff Proposal should also recognize and address the additional uncertainty created by forecasting. Because of this uncertainty, the Small LECs continue to recommend a composite of independent measures be used to forecast the variables used for the metrics, rather than relying on a single source.\textsuperscript{17} These measures could be weighted, with more credibility given to official government sources.

\textbf{IV. THE DATA FOR THE AR CALCULATOR SHOULD BE CORRECTED.}

The AR Calculator ("ARC") purports to provide affordability results for the "[a]rea defined by combination of ILEC Voice and Lowest Broadband broken down by PUMA (Comm PUMA-Provider Results).” However, the input tab for the broadband services is missing broadband service offerings of some of the Small LECs’ ISP affiliates. As one example, the Staff Proposal presents an illustration from the ARC for PUMA 10703 – Tulare County (Outside Visalia, Tulare & Porterville Cities) that it claims represents the AR20 score for “the lowest rate for essential communications services for the 13 housing units serviced by this specific

\textsuperscript{15} Small LECs Comments on Scoping Memo at 5-6. 
\textsuperscript{16} Id. 
\textsuperscript{17} Small LECs Comments on Scoping Memo at 3-4.
broadband provider – voice provider combination” according to the data collected for 2019. This AR20 score is based on the combination of Ducor Telephone Company and an unaffiliated fixed wireless broadband provider, unwired Broadband, Inc. Ducor’s ISP affiliate, Varnet, Inc., offers broadband services at 25/3 Mbps at rates that are significantly lower than the pricing reflected in the ARC and Staff Proposal, yet the Staff Proposal omits this much lower cost broadband offering. The ARC likewise omits or provides incorrect information regarding broadband service offerings of some of the Small LECs’ ISP affiliates even though the Small LECs provided accurate information in response to Communications Division data requests and previously notified Commission staff of these same errors in their November 20th joint response to staff’s November 5, 2020 email relating to the 2019 Annual Report workpapers. In addition, the identified pricing for some of the Small LECs’ basic, residential voice services is also inaccurate and the Small LECs noted these issues in their prior November 20th joint response.

As they also previously noted, the Commission’s shapefiles do not appear to match the shape of the Small LECs’ service territories. Telephone service areas and census areas do not follow the same boundaries and census boundaries are subject to change with each new census. The Commission staff should update its shapefiles. Subject to limited exceptions, the Small LECs’ affiliated ISPs offer broadband services throughout the Small LECs’ telephone service territories. The ARC incorrectly shows areas where broadband services are not available from the affiliated ISPs. Also subject to limited exceptions, the Small LECs offer voice services in areas where their affiliated ISPs provide broadband services. The ARC incorrectly depicts areas as having no voice service, when in fact the areas are served.

In November 2021, the Small LECs have again followed up with Commission staff regarding multiple errors in the ARC data. They understand that the Commission staff will be issuing an updated ARC with 2020 data. The ARC and Staff Proposal should be updated to

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18 *Staff Proposal* at 42, Figures 14-15.
19 *Id.*
correctly reflect the “lowest cost broadband” offerings of the Small LECs’ ISP affiliates and accurate pricing for the Small LECs’ basic, residential voice services. Based on the number of errors the Small LECs identified, the Commission staff should carefully reassess its work papers and shapefiles to ensure that the information in the updated ARC is accurate. Failure to correct these errors would result in unreliable and inaccurate reporting of the affordability metrics. In addition, Commission staff should provide the parties with information regarding any assumptions made. Based on follow-up communications with CD staff, the Small LECs learned that the 2019 voice pricing data for some of the Small LECs was an average of the pricing data as of 1/1/19 and 1/1/20. It also appears that Commission staff made certain assumptions in compiling the data, such as incorrectly assuming that broadband is not available in an area where there are no subscribers. This type of information should be made available to all parties in advance so they can meaningfully assess the data. Prior to releasing annual updates to the ARC and other metrics, the Small LECs recommend that Staff work with each carrier to confirm the data are accurate.

V. COMMISSION STAFF SHOULD FURTHER EVALUATE ITS FORECASTING METHOD FOR AR VALUES.

The Staff Proposal uses inflation forecasts from the California Department of Finance (“DOF”) to forecast AR values, which are only available for urban regions of the state. For rural areas not covered by these forecasts, Commission staff propose to use the national CPI-U forecasts as a proxy. Staff Proposal at 10-11. Commission staff should measure past performance of these forecasts and monitor future forecasts. The past decade has been a time of unusually low and stable inflation, which appears to be changing. The ability of DOF macroeconomic models to accurately forecast inflation under these circumstances is unknown.

20 Belz and Wessel, Explaining the Inflation Puzzle (Jan. 2020) (noting that “inflation has been low and relatively stable in the last three decades”), available at https://www.brookings.edu/product/explaining-the-inflation-puzzle/.
The use of the national average for rural areas should also be further considered. Inflation varies geographically, and whether inflation rates in rural parts of California are similar to the national rates should be investigated.

VI. CONCLUSION

The Small LECs urge the Commission to carefully consider the issues described above to ensure that the AR metrics are lawfully and properly implemented to measure the affordability of communications services and that the metrics do not produce inaccurate and unreliable results.

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