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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Update Surcharge Mechanisms to ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California.

R.21-03-002

OPENING 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) AND
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
("SMALL LECS")**

**ON PROPOSED DECISION UPDATING THE MECHANISM FOR SURCHARGES TO
SUPPORT PUBLIC PURPOSE PROGRAMS**

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I. INTRODUCTION.

Pursuant to Rule 14.3(a) of the of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), 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) (collectively, the “Small LECs”) submit these opening comments on the Proposed Decision of Administrative Law Judge (“ALJ”) Fortune Updating the Mechanism for Surcharges to Support Public Purpose Programs (the “Proposed Decision”). The Proposed Decision would adopt a single “per access line” fee to fund each of the Commission’s public purpose programs, in place of the program-specific surcharge system that exists today. The Small LECs support the overall approach reflected in the Proposed Decision, which is an appropriate response to the “continuous, year-over-year declines in the intrastate billing base for surcharges” that the Proposed Decision describes. *Proposed Decision* at 3. The Proposed Decision also appropriately concludes that “[t]he Commission is limited in its ability to expand the billing base to include broadband,” and the Proposed Decision avoids potentially confusing “hybrid” approaches and arbitrary caps on surcharges.¹ In addition, the Proposed Decision correctly retains the intrastate revenue approach to the Commission’s “user fee,” which must utilize a revenue-based approach as a matter of law.²

While the Small LECs generally support the Proposed Decision, certain clarifications are still needed to the definitions of key terms to conform to the record, to avoid ambiguities in implementation, and mitigate potential inconsistencies in enforcement. Specifically, the following definitions should be adjusted:

- The definition of “access line” should include specific language clarifying that it is focused on “intrastate” services to avoid the implication that the definition expands beyond the Commission’s jurisdiction.³

¹ *Proposed Decision* at 27, 34.

² *Id.* at 56-57; Pub. Util. Code § 432(c)(3).

³ *See id.* at 52.

- The ambiguous term “unique identifier” should either be removed or clarified to ensure that it does not sweep in purely interstate or non-regulated services.⁴
- The Commission should expressly adopt the Form 477 standards for counting the number of “access line” equivalents presented by high-capacity circuits, rather than relying on the more ambiguous language regarding the “number” of “two-way communications” that the “end-user can maintain at the same time.”⁵
- References to “VoIP” should include the modifier “interconnected” and rely on the established definition in Public Utilities Code Section 285, which is the appropriate statutory provision attaching public policy fund obligations to interconnected VoIP.⁶

These adjustments are narrowly-focused, but they are important to ensure that “per access line” fees are calculated with precision and in a manner consistent with the record.

In addition to addressing these definitional issues, the Proposed Decision should be modified to provide additional implementation time of at least six months, consistent with the widespread feedback from carriers. As written, and assuming the Proposed Decision is adopted at the October 6, 2022 meeting, there will be less than three months of implementation time, coinciding with the holiday season and end of year responsibilities for many carriers. Instead of rushing the implementation of the Proposed Decision, the Commission should establish an implementation date of the first day of the first month that is at least six months following the adoption of the Proposed Decision.

II. IMPORTANT ADJUSTMENTS TO THE DEFINITIONS USED IN THE PROPOSED DECISION SHOULD BE MADE TO AVOID AMBIGUITIES IN IMPLEMENTATION, SUBJECTIVITY IN ENFORCEMENT, AND UNDUE EXPANSIONS TO INTERSTATE SERVICES.

The Small LECs appreciate the adjustments that the Proposed Decision incorporates to the definition of “access line” based on the comments on the October 29, 2021 Staff Report, Part 2 (“Staff Report 2”).⁷ Four additional areas should be clarified to

⁴ *Id.*

⁵ *Id.* at 52, n. 176.

⁶ *Id.* at 52.

⁷ *Id.*

ensure that the new “per access” line approach is precisely defined and consistently applied, consistent with the Commission’s jurisdiction.

First, the definition of “access line” should expressly state that the “real-time two-way voice telecommunications services” referenced in the definition are limited to “intrastate” services. To the extent that a service is designated as 100% interstate, it cannot properly be subjected to California intrastate surcharges or fees. For example, purely interstate special access circuit is not subject to intrastate surcharges today (because it generates no intrastate revenue), and it should not be swept into the surcharge mechanism proposed in the Proposed Decision (because it does not constitute an intrastate “access line”). Based on the jurisdictional statements already reflected in the Proposed Decision, it does not appear that the Commission intends to sweep in non-jurisdictional services,⁸ but the definition of “access line” does not clearly reflect this limitation. A simple insertion of the word “intrastate” in the definition of “access line” would address this area of potential ambiguity.

Second, the definition of “access line” should remove the ambiguous and undefined term “unique identifier.”⁹ As the record reflects, this language is ripe for misinterpretation or subjective enforcement because it lacks a clear definition.¹⁰ Without this term, the definition “access line” is still sufficient to achieve the Commission’s purpose of applying a surcharge to each “line,” but if the definition is retained, it should include a specific definition to avoid uncertainty in its application.¹¹ As written, “unique identifier” could refer to an account number or another piece of customer information that is not the functional equivalent of a “line.”

Third, consistent with its use of the “Form 477” definitions for “lines or connections (including voice grade equivalents),”¹² the Proposed Decision should

⁸ See *Proposed Decision* at 10, n. 17 (explaining that “interstate services . . . are not” subject to California surcharges.”).

⁹ *Id.* at 52.

¹⁰ See *CCTA Opening Comments on March 30, 2022 Ruling* at 4-5; *CTIA Opening Comments on March 30, 2022 Ruling* at 5; *Frontier Opening Comments on March 30, 2022 Ruling* at 4.

¹¹ See, e.g., *Small LECs’ Reply Comments on March 30, 2022 Ruling* at 3-4 (noting the importance of clarifying that the term “unique identifier” is “not intended to encompass interstate or information services,” and observing that this clarification “will avoid implementation disputes and unintended expansions of the surcharge base.”)

¹² *Proposed Decision* at 66 (FOF 9).

expressly confirm that it is adopting the FCC’s Form 477 standards for high-capacity circuits or other multi-line business services, such as point-to-point or special access circuits. Finding of Fact 9 in the Proposed Decision supports this outcome, but it does not expressly state that the Form 477 standards will apply to high-capacity and multi-line services that do not have a predetermined number of “lines” or “connections.” The FCC has already resolved how to “count” these services in determining access line equivalencies, and the Commission should confirm that it will adopt a consistent approach.¹³

Fourth, the definition of “Voice over Internet Protocol,” or “VoIP” continues to include an improper statutory cross-reference as the basis for defining VoIP. The current definition refers to Public Utilities Code Section 239, which is a remnant of SB 1161 (2012), the statute that adopted Public Utilities Code Section 710 (Padilla), which is no longer in effect.¹⁴ While Section 239 remains in statute, the appropriate cross-reference is to Public Utilities Code Section 285, which is independent of the SB 1161 regime and which was specifically adopted to incorporate “interconnected VoIP” within the billing base for the public purpose programs.¹⁵ The Commission should insert the proper cross-reference and ensure that its definition of VoIP uses the term “interconnected” in modifying “VoIP,” to avoid implications that the definition encompasses pure computer-to-computer IP transmissions and other services that are beyond the scope of the statutory framework.

To implement each of the clarifying edits identified herein, the Commission should make the following changes to the definitions of “access line” and “VoIP service” in the Proposed Decision, which appear on pages 52 and 53:

¹³ See *Proposed Decision* at 44 (noting Frontier’s request that “high-capacity circuits” be “counted under industry standards, such as the FCC’s Form 477 definitions.”) (citing *Frontier Opening Comments on March 30, 2022 Ruling* at 2.

¹⁴ See SB 1161 (2012 Padilla) § 2 (adding Pub. Util. Code § 239), § 3 (confirming repeal of Public Utilities Code Section 710 on January 1, 2020).

¹⁵ Pub. Util. Code § 285(b) (expressing Legislative intent to “ensure that end-use customers of interconnected VoIP service providers contribute to the funds enumerated in this section,” which include the Commission-administered public purpose funds).

“Access Line” means a wire or wireless connection that provides a real-time two-way intrastate voice telecommunications service or interconnected VoIP service to or from any device utilized by an end-user, regardless of technology, which is associated with a 10-digit NPA-NXX number ~~or other unique identifier~~ and has a service address or Place of Primary Use in California. Access Line equivalents for high-capacity circuits shall be determined according to the standards governing FCC Form 477 submissions.

“Interconnected VoIP service” means service as defined in Pub. Util. Code Section 285.

With these adjustments, the Small LECs support the definitions in the Proposed Decision.

III. THE IMPLEMENTATION TIME PROVIDED UNDER THE PROPOSED DECISION IS INSUFFICIENT.

The Proposed Decision would adopt an implementation date for the new “access line surcharge collection and remittance mechanism” of January 1, 2023. Feedback from carriers on the record shows that this timeframe will be insufficient. As Staff Report 2 observes, “the majority of carriers indicated that six months is adequate for carrier billing system modifications.”¹⁶ Even if it is adopted at the earliest opportunity without being held even once, the Proposed Decision would not be released until the end of the first week of October, at the earliest. Carriers would have less than three months from this date to work with billing vendors, revamp systems, provide appropriate notice to customers, and address any implementation issues that may arise. These important tasks would overlap with the holiday season and interfere with “end of year” business and regulatory responsibilities that necessarily require carriers’ attention.

These concerns are particularly acute for the Small LECs, who are small, rural providers with limited resources. In addition, most of the Small LECs rely on third-party billing vendors who will be heavily impacted by this statewide change and may be unable to complete the adjustments in the timeframes provided. These obstacles could make it impracticable or even impossible for carriers to complete the implementation of the new surcharge paradigm in a thoughtful and streamlined manner. Given how significant the changes will be, and the importance of implementing the changes for the entire industry on the same date, the Commission should follow the consensus from the parties and

¹⁶ *Staff Report 2* at 31.

provide at least six months of implementation time.¹⁷ Specifically, the Commission should modify Ordering Paragraph 6 of the Proposed Decision, as follows:

6. All wireline, wireless and interconnected Voice over Internet Protocol carriers or providers shall implement the new access line surcharge collection and remittance mechanism adopted in this decision, ~~beginning January 1, 2023~~ on the first day of the first full month following the issuance date of this decision.

Using this timeline, if the final decision is issued on October 7, 2022, the implementation date would be May 1, 2023. Providing a reasonable implementation deadline would ensure that all carriers can implement this change on the same date, regardless of their resources and circumstances. This will ensure consistent messaging to consumers and consistent surcharge responsibilities for all carriers, as they transition to the new system.

IV. CONCLUSION.

The Small LECs support the Commission's efforts to address the profound reductions in intrastate billing base that have required significant increases in the surcharges necessary to fund the Commission's public purpose programs. The Small LECs believe strongly in universal service and support the Commission's efforts to properly fund and consistently support those programs. The Commission should adopt this Proposed Decision, but it should include the important adjustments to the definitions and implementation timelines herein. The Small LECs' proposed improvements will allow for a streamlined implementation and consistent application of the new framework, which will benefit all parties and the Commission.

Respectfully submitted this 22nd day of September 2022.

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¹⁷ See *Cox OIR Opening Comments* at 7-8; *Charter OIR Opening Comments* at 4; *Comcast Phone OIR Opening Comments* at 4; *Small LECs OIR Opening Comments* at 2; *CTIA OIR Opening Comments* at 7.

Appendix A

Proposed Revisions to Findings and Conclusions
(Additions are underlined and deletions are in strikethrough)

Findings of Fact

1. The Commission implemented the Moore Universal Telephone Service Act, which established universal service in California, in D.84-04-052.
2. Pub. Util. Code Sections 270-285 and Section 431 authorize the Commission to administer and fund the PPPs and collect user fees.
3. All telecommunications carriers operating in California must comply with the federal Communications Act, 47 U.S.C. Section 254, which requires carriers to contribute to universal service on an equitable and non-discriminatory basis.
4. The Commission adopted an intrastate revenue-based end-user surcharge mechanism in D.94-09-0658 and D.96-10-066
5. The intrastate revenue billing base declined by 58 percent between 2012 and 2020.
6. Each telecommunications company providing full Facilities-Based/ Limited-Facilities Based, Resold Competitive Local Exchange Services, and Facilities-based Interconnected VoIP services in California must receive operating authority through a Certificate of Public Convenience and Necessity from the Commission, subject to Pub. Util. Code Section 1001.
7. Each telecommunications company providing non-dominant interexchange carrier service in California must receive operating authority from the Commission through a simplified registration application, subject to Pub. Util. Code Section 1013 and D.97-06-107.
8. Each telecommunications company providing wireless service in California must register through a wireless identification registration with the Commission subject to D.13-05-035.
9. Telecommunications service providers must report the number of subscriber lines or connections (including voice grade equivalents) served in California biannually through the FCC 477 report.
10. Pursuant to Section 8.1.9 of the CPUC GO 153, California LifeLine subscribers are exempt from paying PPP surcharges and the user fee.

11. Access line is defined by Section 41007.1 of the State Taxation Code to include wireline, wireless, and VoIP service lines.

XX. It is reasonable to provide carriers with at least six months to implement the new surcharge system.

Conclusions of Law

1. The Commission must support universal service for all Californians pursuant to the Moore Act.

2. The Commission must maintain the user fee assessment and collection based on intrastate telecommunications revenue at this time.

3. It is reasonable for the Commission to shift from an intrastate revenue base to a per access line flat-rate for assessing and collecting PPP surcharges.

XX. It is reasonable to require carriers to use the Form 477 established standards for counting the number of intrastate high-capacity circuits or multi-line business services subject to the PPP surcharges.

4. The Commission should exempt incarcerated individuals from paying PPP surcharges and the user fee.

5. The Commission should continue to exempt LifeLine subscribers from paying PPP surcharges and the user fee.