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

In the Matter of Application of Sierra
Telephone Company, Inc. (U 1016 C) to
Modify Intrastate Revenue Requirement and
Rate Design and Adjust Selected Rates.

A.21-11-005

COMMENTS OF

SIERRA TELEPHONE COMPANY, INC. (U 1016 C)

**ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PATRICIA B. MILES
APPROVING REVENUE REQUIREMENT, RATE DESIGN AND SELECTED RATES
FOR THE SIERRA TELEPHONE CO. FOR TEST YEAR 2023**

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1 **I. INTRODUCTION.**

2 Pursuant to Rule 14.3 of the Rules of Practice and Procedure (“Rules”) of the California
3 Public Utilities Commission (“Commission”) and consistent with the clarifications to the comment
4 deadline provided in the December 20, 2022 Ruling from Administrative Law Judge (“ALJ”) Miles,¹ Sierra Telephone Company, Inc. (“Sierra”) provides these opening comments on the
5 Proposed Decision of ALJ Miles (“Proposed Decision”) dated December 2, 2022.² Based on
6 grave legal errors and factual determination that deviate from the record, the Proposed Decision
7 would radically reduce Sierra’s revenue requirement and CHCF-A support to levels that would
8 compromise its ability to meaningfully invest in its network, materially impair Sierra’s ability to
9 recover its costs of operation, and deny Sierra sufficient support to ensure its financial stability
10 and continuous provision of safe, reliable, high-quality service to the rural communities it serves.

11 The Proposed Decision contains several significant legal, technical, and factual errors.
12 Sierra urges the Commission to take the time necessary to correct these infirmities in the Proposed
13 Decision so that Sierra will have a reasonable ratemaking platform through which to continue its
14 long history of community-focused customer service and investment in modern infrastructure.
15 There are five principal errors in the Proposed Decision. *First*, the Proposed Decision would
16 wrongfully disallow critical fiber projects that Sierra has planned for the test year, relying on an
17 unlawful “rate base” standard and ignoring unrebutted evidence in the record that the projects are
18 thoughtfully conceived, achievable at reasonable cost, and on pace for completion prior to the end
19 of the test year. *Second*, the Proposed Decision uses an insufficient inflation factor in computing
20 the expense caps that Sierra must apply to its test year expense calculations for 2023, contrary to
21 record evidence, federal regulations, and express guidance from the National Exchange Carrier
22 Association (“NECA”), which is charged with interpreting those regulations. *Third*, the Proposed
23 Decision endorses a manipulation of Sierra’s taxable income calculation in response to
24 “broadband imputation,” contrary to explicit directives in Commission decisions clarifying that

26 ¹ The December 20, 2022, Ruling clarifies that the deadline for these comments is December 27, 2022.

27 ² The Proposed Decision is identified as having been filed on December 2, 2022, but it was filed and served
28 after 5:00 p.m. on that date, so should be deemed as having been issued on the next business day, which
was December 5, 2022. *See* Rule 1.15.

1 imputation of Internet Service Provider (“ISP”) revenues cannot impact revenue requirement.
2 *Fourth*, the Commission adopts an unreasonably high rate for basic business service, far higher
3 than any other Small LEC business rate, in excess of rates charged in urban areas, and contrary to
4 the Proposed Decision’s treatment of residential rates. *Fifth*, the Proposed Decision rejects the
5 consensus proposal to include all custom calling features within basic rates, opting instead for a
6 partial inclusion of vertical service features that will confuse consumers and undercut important
7 public safety benefits to be derived from the proposal. In addition to these major concerns, the
8 Proposed Decision would adopt new reporting requirements not authorized by any rulemaking,
9 prejudge the results of the ongoing service quality proceeding, and reject confidential treatment for
10 ISP affiliate revenues, contrary to an express statutory directive.

11 The Commission should not proceed with a hasty resolution of this proceeding or a rush to
12 judgment on these important matters. It should carefully evaluate these comments and make the
13 changes necessary to align the Proposed Decision with the record and the law.³

14 **II. LEGAL STANDARDS AND POLICY IMPERATIVES GOVERNING** 15 **SIERRA’S REVENUE REQUIREMENT AND RATE DESIGN.**

16 Public utility ratemaking is governed by specific constitutional and statutory requirements,
17 which must be followed in establishing Sierra’s revenue requirement and rate design. To avoid an
18 unconstitutional taking of utility property, the Commission must set a rate structure that “afford[s]
19 sufficient compensation” to recover the utility’s reasonable operational costs and afford the utility
20 a fair opportunity to earn a reasonable return on its investments in regulated infrastructure that will
21 be in service during the test period.⁴ If the revenues conferred by the rate structure provide
22 “insufficient operating capital or . . . impeded [the] ability to raise future capital,” or if a rate
23 would be “inadequate to compensate current equity holders for the risks associated with their
24 investments,” it will be deemed an unlawful taking, in violation of the Fifth and Fourteenth
25 amendments to the United States Constitution.⁵ In fashioning a rate design, the Commission

26 ³ These comments are within the 25-page limit on opening comments in general rate cases. Rule 14.3(b).

27 ⁴ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989); *Bluefield Water Works & Improvement Co. v.*
Pub. Service Comm’n of West Virginia, 262 U.S. 679, 692 (1923).

28 ⁵ *Duquesne, supra*, 488 U.S. at 312.

1 cannot force Sierra to look to its unregulated operations or interstate revenue sources to recover its
2 regulated, intrastate costs.⁶ According to Commission precedent acknowledged by the Court of
3 Appeal, the reasonableness of costs are not measured by backward-looking calculations, but by
4 forecasts of what is expected to be required in a future test year.⁷

5 Because Sierra qualifies for participation in the CHCF-A program, the Commission must
6 observe specific statutory ratemaking practices that build upon the constitutional standards. In
7 calculating Sierra's "revenue requirement," the Commission must include all of a company's
8 reasonable costs, including "reasonable expenses and tax liabilities" and a "reasonable rate of
9 return on its rate base."⁸ The "rate base" must reflect the "value of a telephone corporation's plant
10 and equipment that is reasonably necessary to provide regulated voice service and access to
11 advanced services," and the Legislature expressly clarified that "the [C]ommission shall . . .
12 [i]nclude all reasonable investments necessary for . . . the deployment of broadband-capable
13 facilities in the rate base."⁹ Likewise, the "rate design" must be "targeted to provide a fair
14 opportunity to meet the revenue requirement."¹⁰ End user rates must be both "just and
15 reasonable" and "reasonably comparable to rates charged to customers of urban telephone
16 corporations."¹¹ The CHCF-A component of rate design must be set "in an amount sufficient to
17 supply the portion of the revenue requirement that cannot reasonably be provided by the customers
18 . . . after receipt of federal universal service rate support."¹²

19 The Commission's determinations for Sierra must also be guided by federal and state

20 ⁶ *Brooks-Scanlon Co. v. Railroad Commission*, 251 U.S. 396, 399 (1920) (state commission ratemaking
21 calculation deemed unlawful because it forced utility to look to unregulated affiliate operations to fulfill its
22 revenue requirement). In *Brooks-Scanlon*, the United States Supreme Court explained that the railroad in
23 question "may be making money from its sawmill and lumber business, but it no more can be compelled to
24 spend that than it can be compelled to spend any other money to maintain a railroad for the benefit of
25 others who do not care to pay for it." *Id.*

24 ⁷ See *City of Los Angeles v. Pub. Util. Comm'n*, 7 Cal.3d 331, 346 ("The basic approach of the commission
25 in rate making . . . is to take a test year and determine the revenues, expense, and investment for the test
26 year."); D.04-06-018 at 6 (a "test year" is "the period over which the cost of service and the proposed rates
27 will be evaluated."); D.20-08-011, Appendix C (requiring a 2023 test year for Sierra's rate case).

26 ⁸ Pub. Util. Code § 275.6(b)(5).

27 ⁹ Pub. Util. Code §§ 275.6(b)(2), 275.6(c)(6).

28 ¹⁰ Pub. Util. Code § 275.6(b)(3).

¹¹ Pub. Util. Code § 275.6(c)(3).

¹² Pub. Util. Code § 275.6(c)(4).

1 policy promoting infrastructure deployment and “affordability” for rural consumers. The Federal
2 Communications Commission (“FCC”) has set aggressive and advancing policies to promote
3 investment in broadband-capable infrastructure, noting that it “must continue to take concrete
4 steps toward closing the digital divide for all Americans” and “we believe that continued forward
5 progress toward universal deployment is imperative if all Americans are to enjoy the full promise
6 of our economy.”¹³ To foster these investments, the FCC has made continued receipt of federal
7 high-cost support contingent upon meeting specified broadband build-out objectives, currently set
8 at 25 Megabits per second (“Mbps”) download and 3 Mbps upload.¹⁴ The record in this
9 proceeding shows that this standard will soon increase to 100/20 Mbps.¹⁵ Governor Newsom has
10 staked out similar objectives, ordering that “agencies subject to my authority are directed to pursue
11 a minimum broadband speed goal of 100 megabits per second download speed to guide
12 infrastructure investments and program implementation to benefit all Californians.”¹⁶ At the same
13 time, rate affordability concerns remain paramount in Commission policy, and presents social
14 justice concerns, especially in lower-income rural areas.¹⁷

15 The Proposed Decision contains only a limited discussion of the “legal policy authority for
16 this General Rate Case,” which ignores most of the critical ratemaking requirements and
17 fundamental social policy objectives implicated by Sierra’s application.¹⁸ The Proposed Decision
18 does not acknowledge the crushing effect that its conclusions will have on Sierra’s cost recovery

19 ¹³ *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All*
20 *Americans in a Reasonable and Timely Fashion*, GN Docket No. 18-238, 2019 Broadband Report, FCC
19-44 (rel. May 8, 2019) at ¶ 9.

21 ¹⁴ *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order*, FCC 18-176 (rel.
22 Dec. 13, 2018) at ¶ 3.

23 ¹⁵ See FCC DOC-385322A1, *July 15, 2022 News Release* (noting that FCC Chairwoman Rosenworcel has
24 circulated a “Notice of Inquiry” that “proposes to increase the national broadband standard to 100 megabits
per second for download and 20 megabits per second for upload” and “proposes to set a separate national
goal of 1 Gbps/500 Mbps for the future.”), available at: <https://www.fcc.gov/document/chairwoman-rosenworcel-proposes-increase-minimum-broadband-speeds>.

25 ¹⁶ *Newsom Executive Order N-73-20*, OP 1.

26 ¹⁷ See R.18-07-006 at 9 (“rate affordability remains a concern, especially during poor economic conditions
or relatively high unemployment.”); *Environmental & Social Justice Action Plan*, Version 2.0 at 9 (noting
27 that “some populations in California face higher barriers to access to clean, safe, and affordable utility
services” and acknowledging that the Commission’s “decisions have the potential to perpetuate and
exacerbate existing disparities in ESJ communities.”).

28 ¹⁸ *Proposed Decision* at 7.

1 mechanisms, nor does it recognize harmful effects of its determinations on rural consumers, who
2 will face significantly higher rates and be left on the wrong side of the “digital divide.” The
3 Commission should not overlook these considerations as it examines the Proposed Decision.

4 **III. THE PROPOSED DECISION SETS AN UNLAWFUL REVENUE**
5 **REQUIREMENT THAT EXCLUDES CRITICAL EXPENSES,**
6 **SYSTEMATICALLY UNDERESTIMATES EXPENSES, AND IMPROPERLY**
7 **DECREASES TAXABLE INCOME.**

8 **A. The Proposed Decision Applies an Incorrect Standard for Measuring Sierra’s**
9 **Rate Base and Wrongfully Excludes Critical Fiber Projects That Are**
10 **Thoughtfully Conceived and On Track to Be Completed in The Test Year.**

11 The Proposed Decision recommends a massive \$40 million plant disallowance that would
12 strip Sierra of more than \$3 million per year in necessary revenues, thereby undermining Sierra’s
13 ability to pursue critical fiber upgrades in its service territory.¹⁹ The basis for this unprecedented
14 rejection of a rural telephone company’s planned investment is an argument that Cal Advocates
15 failed to reveal until its opening brief,²⁰ and which lacks any supporting testimony or evidentiary
16 foundation. The Proposed Decision relies on an unlawful standard for measuring rate base,
17 incorrectly suggesting that plant must already be in service in order to be included in forward-
18 looking test year ratemaking calculations. Likewise, it overlooks extensive record evidence
19 demonstrating that the projects are proceeding toward a timely completion during the test year,
20 instead endorsing innuendo from Cal Advocates that it is “unlikely” that all of the anticipated
21 projects will be in service by the test year.²¹ It is essential to a reasonable outcome in this
22 proceeding that the Commission remedy the Proposed Decision’s approach to these projects; if the
23 Proposed Decision is not corrected, Sierra will not have the resources to pursue the investments
24 that are necessary to keep up with customer demand for broadband-capable facilities, and
25 compliance with federal and state regulatory requirements will be impossible, with profound

26 ¹⁹ *Id.* at 24-26.

27 ²⁰ Cal Advocates provided no witness addressing plant issues, and it did not propose any adjustments to
28 Sierra’s rate base until September 6, 2022, when it supplied its opening brief. The Public Participation
Hearing (“PPH”), the testimony deadline, and the evidentiary hearings all occurred prior to this revelation,
and this untimely attempt to undermine Sierra’s projects should not be credited at this late date.

²¹ *Proposed Decision* at 25-26.

1 consequences for continued access to federal high-cost support.²²

2 The Proposed Decision’s proffered legal standard for evaluating Sierra’s proposed plant
3 additions is plainly unlawful. The Proposed Decision suggests that “plant-in-service should only
4 be included within rate base calculations *when used*.”²³ It doubles down on this incorrect
5 formulation by stating that “plant in service should not include the entire RUS loan total . . . when
6 only a portion of the proceeds have been utilized.”²⁴ As both the Commission and the California
7 appellate courts have confirmed, the proper measurement of rate base is the “value of existing
8 undepreciated plant *and plant additions for the test year*.”²⁵ Utilities do not have to show that they
9 have *already installed* plant in advance of the test year, and the Commission has often emphasized
10 that “[f]or test year ratemaking, if historical data is not representative of future operations, then
11 appropriate adjustments should be made to reflect expected operations.”²⁶ In many instances,
12 including in small rural telephone company rate cases, the Commission has authorized
13 investments in the future test year that are not already in service.²⁷ There is no reason for this
14 situation to be different, and the Commission should remove the erroneous legal standards in the
15 Proposed Decision that confuse the timing and nature of the inquiry presented by the application.

16 In addition to the foundational legal errors that animate the Proposed Decision’s plant
17

18 ²² See RT at 112:15-21 (Montgomery) (confirming that the current FCC minimum speed capability
19 standard is 25/3 Mbps, but noting that “the FCC chairwoman has just sent a notice of inquiry that that is
20 going to 100/20 and she’s like to see it at one gig, so that is going to change very quickly”); *see also* 47
C.F.R. § 54.308(a)(2) (making federal high-cost support contingent upon meeting specific, evolving,
federal broadband capability standards).

21 ²³ *Proposed Decision* at 25 (emphasis added).

22 ²⁴ *Id.* at 26.

23 ²⁵ D.85-012-071 (FOF 5), 1985 Cal.PUC LEXIS 1069, *23 (emphasis added); *see also City of Los Angeles*
24 *v. Pub. Util. Comm’n*, 7 Cal.3d 331, 346 (1972).

25 ²⁶ D.90-01-016, 1990 Cal.PUC LEXIS 15, *16.

26 ²⁷ *See, e.g.,* D.19-06-025 at 9-10 (approving Ducor’s investments in “Fiber to Home” technology that it was
27 “planning to deploy” in its 2019 test year, and rejecting arguments from Cal Advocates that the “proposals
28 are premature.”); D.19-04-017 at 51-52 (approving Foresthill’s “fiber projects” as part of “plant additions
for telephone network maintenance and upgrades” for test year 2019, rejecting Cal Advocates
characterizations of the investments as “premature projects”); D.16-06-053 at 1, 19 (substantially adopting
Kerman’s “average rate base” for test year 2016, including the effects of “plant upgrades during the years
2015 and 2016 collectively”); D.86-01-013, 1986 Cal. PUC LEXIS 11, *3 (rejecting proposal from
consumer organization to remove the costs of Evans Telephone Company’s new office building from the
test year on the grounds that the office “would be occupied in late December 1985,” which put it within the
test year and appropriate for inclusion in rate base).

1 disallowance, its rejection of Sierra’s projects rests upon a judgment that Sierra is not in a position
2 to complete the installations by the end of 2023.²⁸ The record squarely contradicts this inference,
3 and the trajectory and feasibility of the projects has been corroborated through additional
4 information from Sierra’s engineering consultant that the ALJ accepted into the record on
5 December 15, 2022.²⁹ Sierra provided unrebutted testimony from its Operations Manager and
6 President that the 2023 fiber projects are “on track” and that Sierra is actively working toward
7 their timely completion.³⁰ The record reflects tangible steps from Sierra to ensure that the projects
8 will be completed, including the hiring of an outside engineering contractor and the payment of
9 the engineering aspects of this project with Sierra’s general funds to expedite the planning and
10 development of the specific installation plans.³¹ While the projects are extensive, the record
11 provides strong support for the conclusion they will be completed and deliver the intended
12 benefits to customers by the end of the test year.

13 To allow for reasonable tracking of Sierra’s progress toward completion of these projects,
14 Sierra’s engineering consultant has continued to update a “progress report” reflecting the status of
15 specific steps involved in project design and execution. This progress report was produced in
16 discovery, a portion of it was entered into the record during the hearings,³² and Sierra has
17 continued to regularly update Communications Division regarding the status of this document
18 since the evidentiary hearings concluded in August 2022.³³ The most recent version of this
19

20 ²⁸ *Proposed Decision* at 25.

21 ²⁹ *See Sierra Motion to Reopen the Record* (Dec. 9, 2022), Attachment A; *ALJ Ruling Granting Motion to Reopen* (Dec. 15, 2022) at 1.

22 ³⁰ *See* RT at 184:16-19 (Montgomery) (“So if you look at the Vantage Point timeline, you’ll see that we are
23 still on-track. So construction has not began, but the plan was not to begin construction yet.”); RT at 82:20-
24 (Huber) (confirming that project completion by the end of 2023 is “still realistic” and that Sierra has
24 “been meeting the timeline that was set with [its] consultant.”). None of Cal Advocates’ cross-examination
25 undermined these statements. *See* RT at 39:9-55:11, 64:28-72:8, 80:21-83:26, 84:4-87:13 (Huber); 134:1-
18, 138:14-142:14, 168:24- 175:16 (Montgomery).

26 ³¹ RT at 85:14-86:12 (Huber) (confirming use of general funds for project design); RT at 187:20-25
26 (Montgomery) (“Vantage Point” is “the project management team on this project”); 184:23-27
27 (Montgomery) (noting that Vantage Point prepared the “engineering, the mapping, the layouts; so all of the
27 design portion of the project”).

28 ³² Exh. PAO-13.

³³ *Oral Argument Transcript* at 769:5-7.

1 progress report depicts the status of the projects as of December 9, 2022.³⁴ As shown in this
2 document, there are two phases to the test year fiber project; Phase 1 concerns outside plant
3 construction in the Mariposa and Raymond areas, and it remains set for completion in July 2023 at
4 a total cost of approximately \$11 million.³⁵ Phase 2 addresses installations in Yosemite Lakes
5 Park Park subdivision, with a completion date of December 22, 2023 and associated cost of \$29
6 million.³⁶ When it is compared to the earlier version of same document submitted during the
7 evidentiary hearing, the updated progress report reflects major advancements in the Phase 1
8 project development.³⁷ “RUS contract approval” has been received, and the Phase 1 bids are in
9 the process of being developed in advance of a January 20, 2022 RUS approval of the winning
10 bid. The “electronics” installation aspects of the projects are very mature—Sierra already has the
11 vast majority of those materials in its possession.³⁸ The Phase 2 installations also remain on the
12 intended track, with bids set for February 28, 2022. Based on this updated progress report, there is
13 no basis for the Proposed Decision’s premature conclusion that Sierra’s projects are infeasible or
14 unreasonably delayed. Again, Cal Advocates has submitted no contrary evidence and only
15 revealed its objection to the projects in briefing, which does not have the weight of evidence.

16 During oral argument, Cal Advocates attempted to create confusion regarding the status of
17 the projects in light of their relationship to Rural Utilities Service (“RUS”) debt financing,³⁹ which
18 Sierra has obtained—and which the Commission authorized⁴⁰—to provide capital for the projects.
19 Despite these rhetorical efforts, there is nothing unusual about Sierra’s planned deployment, and
20 the Commission should not be distracted by suggestions that the investments are “unreasonable”
21 or “unrealistic.” Sierra originally identified the projects for completion over a five-year period in
22 the applicable RUS documentation, but there is no RUS requirement or construction reality that
23

24 ³⁴ See *Sierra Motion to Reopen the Record* (Dec. 9, 2022), Attachment A.

25 ³⁵ *Id.* The target areas of Mariposa and Raymond are abbreviated in the progress report as “MMPA,”
“RAA” and “RYMN.”

26 ³⁶ Yosemite Lakes Park is abbreviated as “YMLP” in the progress report.

27 ³⁷ Compare Exh. PAO-13 to *Sierra Motion to Reopen the Record* (Dec. 9, 2022), Attachment A.

28 ³⁸ *Id.*; *Oral Argument Transcript* at 798:15-19.

³⁹ *Oral Argument Transcript* at 784:10-785:7.

⁴⁰ See D.21-07-009.

1 mandates such an incremental approach. Bureaucratic delays in RUS’s process led to delays in
2 approval of the loans,⁴¹ but the overall construction plan remains sound and consistent with
3 standard construction practices.⁴² It is not relevant whether the fiber projects *could have been*
4 installed over a five-year period as long it is feasible and cost effective to install them in the test
5 year, as Sierra has proposed. The record demonstrates conclusively that the projects are
6 reasonable and “on track.” For the same reasons, Sierra will be drawing down on the loans from
7 RUS to fund the projects, and it will therefore be incurring interest expense during the test year.

8 As the Commission considers the Proposed Decision’s plant disallowance, it should be
9 mindful of the costs and benefits inherent in the choice presented here. The benefits of these
10 projects are tremendous. They will bring full fiber-to-the-premises (“FTTP”) connections to more
11 than 4000 households that are currently served with outdated infrastructure, and it would achieve
12 this \$40 million investment for only \$3 million in revenue. This is far different from what would
13 occur if the same projects were pursued through the California Advanced Services Fund program
14 or another similar grant alternative. In that context, the vast majority—or perhaps all—of the
15 capital would be supplied by ratepayers; here, *Sierra* is supplying the capital in the form of loan
16 commitments that it will have to pay back to RUS, in exchange for only a return on those
17 investments and recovery of depreciation over the life of the assets through the regulated
18 ratemaking process. The inclusion of these amounts in rate base will also pave the way for Sierra
19 to continue investing at similar levels in the years after the test year toward achievement of
20 Sierra’s goal of FTTP at substantially all customer locations.⁴³ None of this will be possible if
21 these amounts are not included in rate base in *this* rate case; no rational company could wait until

22
23 ⁴¹ RT at 53:19-23 (Huber) (“Through the process of applying for the loan and the delays, due to the capitol
riots, COVID, and staff leaving RUS, that there were delays, and we just received the release of funds in
January of 2022.”).

24 ⁴² See Exh. STC-12 (*Thompson Opening Testimony*) at 35 (Sierra’s intended project “design is the most
25 reasonable choice based on today’s available network engineering options and will meet customer and
regulatory needs for years to come, without having to make significant reinvestment every few years.”).

26 ⁴³ RT at 172:19-22 (Montgomery) (with reference to the test year investments, confirming that “I do expect
27 the same level of investment both in capital and in construction needs.”), RT at 173:10-15 (explaining that
the investment to bring FTTP to every home in the service territory would “north of 200 million, and so it
28 doesn’t take a lot of math to figure out that we’re going to have to continue to invest 40 million or more per
year to try to reach complete fiber to the home type network in any reasonable time.”).

1 Sierra's next test year of 2028 to recover on investments that need to be put in the ground in 2023.
2 Measured against the benefits of the projects, the costs are profound. Customers are actively
3 awaiting these projects, and because the PPH took place long before Cal Advocates' delayed
4 opposition, customers in the area are under the impression that the projects are proceeding. The
5 consequences of not approving these investments could also compromise federal funding, which
6 will soon depend on achieving 100/20 Mbps capabilities. The harms from restricting broadband
7 access in this area, which includes important governmental and regional business centers in
8 Mariposa and Madera Counties, will be immeasurable. If the Commission denies these reasonable
9 investments, it is likely to have a cascading effect on the economic conditions in the area.

10 The cost-benefit analysis applicable to these projects undeniably favors including them in
11 rate base. Sierra understands the Commission's interest in ensuring that investment plans are
12 prudent and timely executed. Sierra has already developed extensive materials that confirm the
13 importance, feasibility, and timeliness of these projects, but Sierra stands ready and willing to
14 provide all necessary ongoing information to give the Commission the comfort to ensure that the
15 benefits of these projects can be realized. It is crucial that the Proposed Decision's recommended
16 disallowance be reversed; Sierra's full rate base should be restored to the test year calculations,
17 and the corresponding interest expense should be included for recovery during 2023.

18 **B. The Proposed Decision Endorses a Methodological Error in Computing the**
19 **Applicable Expense Caps for the Test Year.**

20 The Proposed Decision also adopts an inadequate expense figure that fails to account for
21 the full impacts of inflation through the end of the 2023 test year.⁴⁴ This calculation error results
22 in an improper expense disallowance of approximately \$116,000 that is contrary to the record,⁴⁵ at
23
24

25 ⁴⁴ See *Proposed Decision* at 19.

26 ⁴⁵ See *Sierra Reply Brief*, Appendix A, Line 2 (comparing Sierra's and Cal Advocates' expense proposals);
27 Exh. PAO-3 (*Ye Testimony*), Exhibit C-1, Attachment 1, Line 8 (depicting the 1.3% GDP-CPI increase as a
28 measurement of the "Change in GDP-CPI 2020"); Exh. STC-07 (*Duval Rebuttal Testimony*) at 8:19-21 ("...
the inflation factor released in October 2021 is designed to allow for an 'apples to apples' comparison
between the 2020 results of the cap and each company's 2020 actual expenses. It does not account for
inflation during 2021, 2022, or 2023.").

odds with federal regulations,⁴⁶ and inconsistent with express guidance from the National Exchange Carrier Association (“NECA”) regarding the vintage of its inflation factors.⁴⁷

In D.21-06-004, the Commission concluded that CHCF-A recipients must apply the FCC’s “corporate expense cap” and “operating expense limitation” in computing their test year expenses.⁴⁸ These two “caps” do not measure companies’ actual expenses;⁴⁹ instead, they rely on formulaic calculations to establish a ceiling on the amount of expenses that a company can recover through its rate structure.⁵⁰ A key component of both formulas is inflation, calculated using the Gross Domestic Product-Chained Price Index (“GDP-CPI”).⁵¹ Because these computations are derived from the federal high-cost support paradigm, which relies on historical expense data,⁵² the most current inflation factors available at any given time only measure the effects of inflation through the end of the prior calendar year, which is two years prior to the year in which federal

⁴⁶ See 47 C.F.R. § 54.1308(a)(4)(i)-(ii) (comparing “actual monthly per-loop Corporate Operations expense” to the “monthly per-loop amount computed” by the corporate expense formula in Section 54.1308(a)(4)(ii)(A)); 47 C.F.R. § 54.1305 (designating the vintage of the company data for comparison as derived from “the calendar year preceding each July 31 filing”); 47 C.F.R. § 54.303(a)(6) (confirming operation of inflation in operating expense limitation formula).

⁴⁷ See *Sierra Motion to Reopen the Record* (Dec. 9, 2022), Attachment B (confirming that 1.3% GDP-CPI increase in NECA’s 2021 USF Data Submission reflects “the price increase for costs incurred in 2019 vs. costs incurred in 2020, and is not a projection of inflation for 2022”).

⁴⁸ See D.21.06-004 at 42-43 (OPs 6-7).

⁴⁹ RT at 632:7-8 (Ye) (agreeing that Cal Advocates’ proposed expense figure is “the product of this formula, not Sierra’s actual expenses”); Exh. STC-06 (*Duval Opening Testimony*) at 32:4-6 (“I do not believe that the application of the FCC’s Corporate Cap without adjustment for California-specific costs is appropriate for companies in California”); D.21-06-004 at 21 (noting that the expense caps do not include a “regional adjustment that accounts for unique California conditions.”)

⁵⁰ See *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order* FCC 11-161 (rel. 18, 2011) (“*USF/ICC Transformation Order*”), Appendix C, ¶ 2, n. 1 (corporate expense cap was developed by comparing the “expense per loop” for carriers with specified numbers of working loops, using data from NECA participating companies from 2010); 47 C.F.R. § 54.1308(a)(4)(ii) (the number of “working loops” and “inflation” are the only variables used in applying the cap formula); 47 C.F.R. §§ 54.303(a)(1), (a)(6) (operating expense limitation relies on the “number of housing units” in a service territory, the density of those housing units, and inflation).

⁵¹ 47 C.F.R. § 54.1308(a)(4)(2)(D) (confirming use of GDP-CPI in computing corporate expense cap); 47 C.F.R. § 54.303(a)(6) (confirming use of GDP-CPI in computing operating expense limitation).

⁵² 47 C.F.R. § 54.1305(f) (confirming that corporate expense data submitted to NECA in “each July 31st filing” is derived from “the calendar year preceding” that submission); 47 C.F.R. § 54.303(a)(4) (total eligible annual operating expenses for 2016 will be limited to the total eligible annual operating expenses as defined in this section”).

1 high-cost support is being established.⁵³ For example, the inflation factor released by NECA in
2 October 2021 only encompassed inflationary effects through the end of 2020, and this inflation
3 factor was used to calculate 2022 high-cost support.⁵⁴ To ensure that the full impact of the GDP-
4 CPI is included in future test year calculations, the Commission must apply projections of inflation
5 for each of the years from the base year used by NECA to the future test year used in a rate case.⁵⁵

6 The Proposed Decision endorses Cal Advocates' inflation factor of 1.23056868, but the
7 record shows definitively that this figure only accounts for inflation through 2021.⁵⁶ Cal
8 Advocates' methodology began with the inflation factor issued by NECA in 2021, and it grew that
9 figure by one additional year of inflation using the 4.2% figure that was released by the United
10 States Department of Commerce's Bureau of Economic Analysis ("BEA").⁵⁷ In a letter from
11 NECA accepted into the record on December 15, 2022, NECA confirmed directly that the
12 inflation factor identified in its September 30, 2021 submission measures "the price increase for
13 costs incurred in 2019 vs. costs incurred in 2020, and is not a projection of inflation for 2022."⁵⁸
14 This letter repudiates Cal Advocates' representations that the 1.180967 inflation factor in the 2021
15

16
17 ⁵³ Exh. STC-07 (*Duval Rebuttal Testimony*) at 8:15-17 ("... the 2020 GDP-CPI factor that was published
18 by NECA in 2021 is used to update the corporate cap to reflect inflation between 2019 and 2020 so that it
19 can be applied in calculating support paid two years later, in 2022"); RT at 648:9-11 (Ye) ("NECA didn't
20 provide a projection").

21 ⁵⁴ See Exh. PAO-03 (*Ye Testimony*), Exhibit C-1, Attachment 1, Line 8 (inflation factor issued in 2021
22 reflects "Change in GDP-CPI 2020"); *Sierra Motion to Reopen the Record* (Dec. 9, 2022), Attachment B
23 (confirming that 2021 NECA letter does not contain a "projection of inflation for 2022.").

24 ⁵⁵ D.21-06-004 at 27 ("To adjust the operating expense cap with a future test year, NECA's inflation factor
25 should be added to the FCC's operating expense cap to true-up the historical data."); Exh. STC-07 (*Duval
26 Rebuttal Testimony*) at 10:19-21, 13:10-12 ("it is vital that the inflationary factors used represent the
27 impacts that inflation will have ... through 2023" in applying both expense limitations), 9:11-13 (Sierra
28 uses "more accurate GDP-CPI factors for 2021 through 2023, ... which reflect the actual inflation hat
occurred in 2021 and the inflation that is projected by the Congressional Budget Office to take place in
2022 and 2023").

⁵⁶ *Proposed Decision* at 19; see also Exh. STC-07 (*Duval Rebuttal Testimony*) at 9:6-7 ("Cal Advocates'
approach systematically excludes two years of inflation in computing corporate expense cap"), 11:22-24
("Cal Advocates uses GDP-CPI factors that are three years in arrears" in the operating expense limitation).

⁵⁷ See Exh. PAO-03 (*Ye Testimony*) at 1-4, Exhibit C-13. This BEA figure for 2021 was not available when
Sierra filed its application because 2021 was not yet over, but Sierra does not dispute the use of this figure
as long as it is not misinterpreted to be an inflationary measurement for 2023.

⁵⁸ See *Sierra Motion to Reopen the Record* (Dec. 9, 2022), Attachment B; *ALJ Ruling Granting Motion to
Reopen* (Dec. 15, 2022) at 1.

1 NECA submission accounts for inflation through 2022,⁵⁹ and the NECA letter shows that the
2 Proposed Decision’s inflation factor is two years short of what is needed to apply the expense caps
3 in the test year. Sierra’s inflation factor remedies this shortfall by incorporating two additional
4 years of inflation into the applicable factor using GDP-CPI projections from the Congressional
5 Budget Office, figures that the record shows are reliable and parallel to the Department of
6 Commerce figures that NECA uses.⁶⁰

7 The NECA letter provided by Sierra leaves no doubt that Sierra’s expense figures are
8 correct, but NECA’s statements are also evident from the applicable federal regulations, the source
9 data in the record, and the weight of the testimony provided during the hearings. The FCC order
10 that initiated the current corporate expense cap confirms that the “base year” for the corporate cap
11 formula relies on 2010 expense data, which informed 2012 high-cost support.⁶¹ Therefore, the
12 first inflationary adjustment was designed to update the 2010 results for inflation between 2010
13 and 2011, so that it could be applied to the 2013 high-cost support amounts.⁶² To reach accurate
14 figures for a 2023 test year, 13 total years of inflation would have to be added to the 2010
15 “startup” figures, but Cal Advocates only adds 11 years of inflation.⁶³ Cal Advocates’ own
16 witness admitted that NECA does not offer “projections” and that the source data “comparing
17 2010 and 2011 GDP-CPI” is what she “state[d] is for 2013.”⁶⁴ Likewise, the 2021 BEA data

19 ⁵⁹ Exh. PAO-03 (*Ye Testimony*) at 1-6 (Table 1-2) (misrepresenting 1.180967 inflation factor as accounting
20 for inflation through 2022); *see also Cal Advocates Opening Brief* at 14 (incorrectly stating that the
“inflation adjustment that was published in the prior year’s NECA annual filing is used for ‘Expense
Incurred In’ the current year.”).

21 ⁶⁰ Exh. STC-07 (*Duval Rebuttal Testimony*) at 22:3-5 (“Table 6 below shows the historical GDP-CPI
22 factors reported by the Congressional Budget Office and the U.S. Department of Commerce for 2016
through 2021, and they are the same.”); RT at 376:19-24 (Duval) (“The only point I’m making is that the
23 GDP-CPI factor that the U.S Department of Commerce is using and NECA utilizes in their annual filing is
the same factor, the same calculation, if you will, of what the Congressional Budget Office uses.”).

24 ⁶¹ *USF/ICC Transformation Order*, FCC 11-16, Appendix C (“NECA 2010 USF Data Filing” is the source
25 for the “statistical analysis” that informs the current corporate cap); Exh. PAO-03 (*Ye Testimony*), Exhibit
C-3 at 3 (“[i]f the limitation on Corporate Operations Expense had not been instituted,” high-cost recipients
26 would have experienced an “increase . . . from the current view of 2010 data used for 2012 support
payments.”) (emphasis added).

27 ⁶² *Id.*, Exhibit C-3, Attachment 1 (Lines 8-10).

28 ⁶³ *Id.* at 1-6 (Table 1-2) (reflecting only 10 rows of inflationary increases), 1-7 (adding only one year of
additional inflation to figures in table).

⁶⁴ RT at 652:7-653:2 (*Ye*).

1 attached to Cal Advocates' testimony confirms that it is not a measurement of 2022 inflation.⁶⁵

2 The record is entirely consistent with the summary provided in the NECA letter that the
3 Commission has now received into the record.

4 When the correct inflation factors are utilized, the record shows that Sierra's actual test
5 year expenses exceed both the corporate expense cap and the operating expense limitation.⁶⁶

6 Therefore, the results of the caps control the expense calculation for the test year, and with the
7 necessary corrections to the inflation factor, Sierra's intrastate corporate expenses should be
8 \$1,558,426, and its operating expenses should be \$10,055,279.⁶⁷

9 **C. The Proposed Decision Violates Express Commission Precedent By Reducing**
10 **Taxable Income In Response To Broadband Imputation.**

11 The Proposed Decision also improperly reduces Sierra's revenue requirement by reducing
12 test year taxable income in response to "broadband imputation."⁶⁸ The effect is to reduce Sierra's
13 test year tax expense, even though the broadband imputation decision states unequivocally that
14 imputation impacts only rate design, and not revenue requirement. The Proposed Decision ignores
15 the imputation framework explicitly designed by the Commission and instead adopts the
16 opportunistic and self-contradictory positions presented by Cal Advocates. The Commission
17 should correct this legal error and restore approximately \$430,000 to the revenue requirement.⁶⁹

18 As matter of law based on Public Utilities Code Section 275.6, revenue requirement must
19 be computed by adding the utility's expenses, plus its return on rate base, plus its income tax
20 liabilities.⁷⁰ In fact, the Proposed Decision endorses this exact equation.⁷¹ For decades, the

21 ⁶⁵ Exh. PAO-03 (*Ye Testimony*), Exhibit C-13 at 12, Line 37 (4.2% GDP inflation is for 2021, not 2022).

22 ⁶⁶ The Proposed Decision incorrectly states that "[b]oth Sierra and Cal Advocates calculated a corporate
23 expense cap that exceeds the estimated corporate expenses for TY 2023." *Proposed Decision* at 19. The
24 record shows that when the correct growth factors are applied to Sierra's actual expenses, its actual 2023
expenses exceed the corporate expense cap. *See* Exh. STC-07 (*Duval Rebuttal Testimony*), Exhibit CD-R1

25 at 126, Lines 20-22 (showing amounts excluded from recovery for 2023 based on corporate expense cap).
⁶⁷ Exh. STC-07-C (*Duval Rebuttal Testimony*), Exhibit CD-R1 at 3 (Line 14) 88 (Line 14), 127 (Intrastate
Expense).

26 ⁶⁸ *Proposed Decision* at 22-23.

27 ⁶⁹ *See* Exh. STC-07 (*Duval Rebuttal Testimony*), Exhibit CD-R1 at 2 (Line 10) (reflecting correct taxable
income figure).

28 ⁷⁰ Pub. Util. Code § 275.6(b)(5).

⁷¹ *Proposed Decision* at 15.

1 income tax liability component of revenue requirement has been determined by multiplying the
2 rate of return by the rate base (gross income), accounting for tax deductions (taxable income), and
3 multiplying the resulting taxable income by the applicable tax rates (federal and state) using a
4 “net-to-gross multiplier.”⁷² However, the Proposed Decision does not follow this well-established
5 practice for determining the income tax liability component of revenue requirement. Instead, the
6 Proposed Decision identifies Sierra’s return on rate base (gross income), accounts for Sierra’s tax
7 deductions (taxable income), and then it *deducts* the ISP affiliate’s net revenues from taxable
8 income before applying tax rates to calculate the tax liability component of Sierra’s revenue
9 requirement. This is a deviation from the tax calculation performed in every small telephone
10 company rate case that has been identified in the parties’ briefs.

11 The pretense for this unprecedented tax treatment is the Commission’s new “broadband
12 imputation” policy, but the Proposed Decision contradicts express Commission directives in
13 adopting broadband imputation.⁷³ In D.21-04-005, the Commission explained that broadband
14 imputation would be adopted as a pure function of rate design, with no impact on revenue
15 requirement. The Commission stated that “the rate design portion of the GRC is the proper time
16 for consideration of broadband imputation” and that “each dollar increase in broadband imputation
17 will result in a corresponding dollar decrease in CHCF-A support.”⁷⁴ The only plausible
18 interpretation of this language is that broadband imputation cannot change a utility’s costs, as
19 reflected in its revenue requirement. Because income tax liability is a cost impacting revenue
20 requirement, the Proposed Decision’s determination to reduce Sierra’s test year costs to reflect
21 broadband imputation is improper and should be corrected to avoid legal error.

22 In the proceeding leading to the Commission’s imputation decision, the Commission was
23 presented with the option of proceeding in the manner adopted by the Proposed Decision, and the
24 Commission declined to adopt that approach. The Utility Reform Network (“TURN”) argued in
25

26 ⁷² See, e.g., D.19-06-025 (Ducor), Appendix B (computing “net-to-gross multiplier” to increase gross
27 revenue by the tax impacts of earning the rate of return on rate base specified in the rate case), D.19-04-017
(Foresthill), Appendix B (applying “net-to-gross multiplier methodology”).

28 ⁷³ *Proposed Decision* at 22-23.

⁷⁴ See D.21-04-005 at 18-19.

1 favor of combining the telephone company's and the ISP's costs as the initial step in the
2 imputation determination, relying on "pro forma" approach to broadband imputation.⁷⁵ However,
3 the Commission rejected TURN's proposal, clarifying that "we decline to consider ISP affiliate
4 operations in the determination of Small ILECs' revenue requirements."⁷⁶

5 The Proposed Decision asserts that Cal Advocates "uses a series of algebraic equations to
6 calculate Sierra's income taxes after imputing broadband revenues,"⁷⁷ but these "equations" are
7 just a way of obfuscating a manipulation of revenue requirement based on a policy that is
8 supposed to have no effect on "costs." As detailed in Sierra's briefs, the calculations Cal
9 Advocates' exhibits show that it computed one revenue requirement when displaying costs, and
10 another for tabulating the CHCF-A draw.⁷⁸ No authority permits this disconnect. The
11 Commission must adhere to the broadband imputation framework that it adopted in 2021 and
12 apply broadband imputation to Sierra's rate design only. In its appellate defense of broadband
13 imputation, the Commission has represented to the Court of Appeal that imputation will not create
14 revenue shortfalls for the Independent Small LECs because "the revenues from the Small ILECs
15 and their ISP affiliates flow to the 'same pocket' of the common owners."⁷⁹ The Commission
16 would contradict these characterizations if it adopted Cal Advocates' proposal, which is premised
17 on broadband imputation creating a shortfall in revenue that reduces tax liability.

18 **IV. THE PROPOSED DECISION WOULD ADOPT A FLAWED RATE DESIGN** 19 **THAT IMPOSES UNREASONABLE RATES ON BUSINESS CUSTOMERS.**

20 The Proposed Decision adopts significant increases in basic rates for both residential and
21 business service.⁸⁰ While Sierra does not believe that the record supports any rate increases in

22 ⁷⁵ See, e.g., D.21-04-005 at 18 ("TURN argues that it is just and reasonable for the Commission to take the
23 ISP affiliates' operations into consideration when determining intrastate revenue requirement...").

24 ⁷⁶ See D.21-04-005 at 18.

25 ⁷⁷ *Proposed Decision* at 23.

26 ⁷⁸ *Sierra Opening Brief* at 21-22; *Sierra Reply Brief* at 47-50.

27 ⁷⁹ See D.21-08-042 at 12 (on rehearing, rejecting the Independent Small LECs' evidence that broadband
28 imputation creates revenue shortfalls); see also *id.* at 11 (claiming that the broadband imputation policy
"neither requires the ISP affiliate to transfer funds to the Small ILEC nor takes any of the ISP affiliates'
profits that the common owners otherwise would have absent the subsidized benefits the ISP affiliates
derive from CHCF-A funding").

⁸⁰ *Proposed Decision* at 11-12.

1 middle-income and low-income areas like Sierra’s territory, the proposed \$3.93 increase in
2 business rates is particularly unjustified. The Proposed Decision also inexplicably restricts the
3 proposal that both parties support to include custom calling features and voice mail in basic rates.
4 The Commission should correct the Proposed Decision to address both of these issues.

5 **A. The Proposed Decision Would Adopt Exorbitant Business Rates That Cannot**
6 **Be Justified on the Record.**

7 The Proposed Decision would adopt a business rate that is neither “just and reasonable”
8 nor “reasonably comparable” to rates charged in urban areas, inconsistent with legal standards
9 governing end user rates.⁸¹ The Proposed Decision does not ground its proposal in the record
10 evidence or address Sierra’s extensive showing that the proposal would be unreasonable. Instead,
11 it offers only a generic endorsement of Cal Advocates’ viewpoints and the conclusory statement
12 that “[w]e accept Cal Advocates proposal to increase the basic business rate to \$43.25” without
13 analysis, explanation or support.⁸²

14 There are several compelling reasons not to adopt the Proposed Decision’s approach and to
15 instead keep rates at their current levels, which already reflect the 23.5% rate increase the
16 Commission adopted in Sierra's test year 2018 rate case.⁸³ First, the proposed business rate would
17 be the highest rate ever adopted for a small, rural telephone company, far higher than any other
18 similarly-situated company.⁸⁴ These disparities cannot be justified, especially given the record
19 that Sierra has developed showing that its business community is struggling.⁸⁵ Second, \$43.25 is
20 also nearly 60% more expensive than the full voice services available to business customers of
21 AT&T, Frontier, and Consolidated over VoIP platforms, which are priced at \$24-\$25 per month.⁸⁶

22 ⁸¹ See Pub. Util. Code § 275.6(c)(3).

23 ⁸² *Proposed Decision* at 11.

24 ⁸³ D.17-11-016 at 6, *modified by* D.18-12-030.

25 ⁸⁴ Exh. STC-05 (*Rule Rebuttal Testimony*) at 3:12-22, Exhibit DR-1.

26 ⁸⁵ Exh. STC-04 (*Rule Opening Testimony*) at 16 (“Especially now, given the COVID-19 pandemic and
27 growing economic uncertainties in the region, rate increases would be harmful to consumers in Sierra’s
28 area and not in the public interest”); Exh. STC-11 (*Lehman Rebuttal Testimony*) at 1 (“Sierra’s current rates
are already higher than reasonably comparable urban rates—and no further increases are warranted”); Exh.
STC-05 (*Rule Rebuttal Testimony*) at 2 (“[m]aking this high rate even higher is contrary to the public
interest and will harm struggling small business customers in Sierra’s service territory”).

⁸⁶ Exh. STC-11 (*Lehman Rebuttal Testimony*) (reflecting business voice service prices over VoIP platforms
of \$24 for AT&T, \$25 for Consolidated, and \$24.99 for Frontier).

1 Third, the Proposed Decision is internally inconsistent in its approach to residential and business
2 rates. It states that the Commission is “persuaded that Sierra’s concerns about the income
3 demographics of its customers, the ongoing financial challenges within the community due to
4 recent fires, as well as effects of the pandemic warrant mitigation,” and is therefore “willing to
5 adopt a compromise increase of \$1.50 (a six percent increase), which will increase basic
6 residential rates.”⁸⁷ Businesses are part of the same community as the residential customers, and
7 they are subject to the same—or greater—cost pressures in the wake of COVID-19 and the recent
8 wildfires. The Proposed Decision cannot justify its disparate treatment of business customers.

9 While Cal Advocates has consistently advocated for higher rates on rural consumers in
10 cases under the rate case plan, it is inappropriate for the Commission to impose these unjustified
11 costs on Sierra's business customers.⁸⁸ Adoption of the Proposed Decision would frustrate
12 important affordability and social justice objectives. Based on the 2020 Annual Affordability
13 Report prepared by Commission staff in connection with the “affordability” rulemaking (R.18-07-
14 006), Sierra’s service territory is among the “Areas of Affordability Concern.”⁸⁹ The proposed
15 rates reflect a lack of concern for the impacts on business customers in an area that the Proposed
16 Decision itself acknowledges is experiencing “ongoing financial challenges . . . due to recent fires,
17 as well as the effects of the pandemic.”⁹⁰ The Proposed Decision’s rates also contradict the
18 Commission’s social justice stances, including ESJ Goals 1 (integrating equity and access
19 considerations throughout CPUC proceedings) and 3 (improving access to high-quality
20 communications services) and 7 (promoting economic opportunity).⁹¹ The proposed business
21 rates are not in the best interests of Sierra’s customers or the state.

22 **B. The Proposed Decision Inappropriately Rejects the Parties’ Consensus**
23 **Proposal Regarding the Inclusion of Custom Calling Features in Basic Rates.**

24 In addition to the problems presented by the magnitude of its proposed business rates, the

25 ⁸⁷ *Proposed Decision* at 11.

26 ⁸⁸ See *Proposed Decision* at 10 (citing Exh. PAO-1 (*Cal Advocates Opening Testimony*) at 2).

27 ⁸⁹ The report is accessible at this link: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/affordability/2020-annual-affordability-report>

28 ⁹⁰ *Proposed Decision* at 11.

⁹¹ *Environmental & Social Justice Action Plan*, Version 2.0 at 96.

1 Proposed Decision fails to follow the unanimous recommendation of the parties to include all
2 custom calling features and voice mail in basic residential and business rates for Sierra's
3 customers.⁹² Without explanation, the Proposed Decision limits the expansion of functionalities in
4 basic service to "Call Waiting, Call Forwarding and Economy Voice Mailbox services."⁹³ This
5 formulation of basic service will confuse customers, limit the competitive value of the proposal,
6 and deny customers' the ability to flexibly use important customer calling features such a "caller
7 ID." As Sierra explained, wireless and VoIP providers commonly include the full range of
8 features in their basic service packages, and it will materially limit consumer benefits and deny
9 Sierra the competitive parity that it intends to achieve from this rate reconfiguration.⁹⁴

10 The exclusion of Caller-ID from the Proposed Decision's listed features is particularly
11 concerning given the tangible public safety benefits of that service. As Sierra's Customer Care
12 Manager noted, Caller ID can be "essential" in situations of domestic violence, harassment,
13 unsupervised children, and elder abuse.⁹⁵ Anti-robocall features also provide important public
14 benefits. In rapidly-developing wildfire or regional disaster situations, similar benefits are likely
15 to be conferred on customers, and they should not have to navigate an "a la carte" custom calling
16 feature platform in order to obtain these services; they should already have them so they can be
17 used when they are needed most. Again, these concerns implicate social justice issues in a rural
18 area like Sierra's service territory, and those imperatives should not be overlooked.⁹⁶

19 No explanation is given for the limitations in the Proposed Decision, and no discussion of the
20 parties' important evidence in support of Sierra's proposal is provided. The Commission should
21 not restrict the advancement in basic rates that Sierra is proposing; it should follow the parties'

22
23
24 ⁹² *Proposed Decision* at 12; see *Sierra Opening Brief* at 66-67; *Cal Advocates Opening Brief* at 21.

25 ⁹³ *Proposed Decision* at 12.

26 ⁹⁴ Exh. STC-10 (*Lehman Opening Testimony*) at 17; Exh. STC-04 (*Rule Opening Testimony*) at 19:3-7
(naming VoIP provider Vonage as an example), 18:23-27 ("[I]n my experience as Customer Care Manager,
customers will ask if there are any features included with the basic rate.").

27 ⁹⁵ Exh. STC-04 (*Rule Opening Testimony*) at 18:12-13.

28 ⁹⁶ *Environmental & Social Justice Action Plan*, Version 2.0 at 96 (reflecting goals of "improv[ing] access"
to high-quality communications services, ensuring consumer protection, and assessing impacts of
Commission decisions in order to promote economic opportunity).

1 recommendations and adopt them as presented.

2 **V. THE PROPOSED DECISION IMPOSES IMPROPER ANNUAL BROADBAND**
3 **IMPUTATION REPORTS IN CONFLICT WITH COMMISSION**
4 **PRECEDENT.**

5 Neither the Proposed Decision’s findings nor the scope of this proceeding permit the
6 adoption of an *annual* broadband imputation reporting requirement. The Proposed Decision
7 concludes that “D.21-04-005 and D.14-12-084, represent clear Commission precedent that Sierra
8 should update the Commission on the status of its imputable net positive retail broadband
9 revenues in preparation for Sierra’s GRC.”⁹⁷ The Proposed Decision does not cite to any finding
10 from D.14-12-084 that relates in any way to an *annual* broadband imputation reporting
11 requirement, and none exists. The Proposed Decision cites to the Commission’s conclusion in
12 D.21-04-005 that:

13 [a]ll reasonable net positive retail broadband-related revenues of the Small ILECs
14 and their ISP affiliates (but excluding revenues derived from areas outside of the
15 Small ILECs’ telephone service territories and revenues resulting from alternative
16 service platforms that are not based upon the Small ILECs’ local exchange
17 facilities) should be imputed ⁹⁸

18 However, the scope of this provision is expressly limited to “the calendar year immediately
19 preceding the filing of the GRC application.”⁹⁹ D.21-04-005 also requires Sierra to “submit with
20 its GRC application a financial statement in a format to be provided by the California Public
21 Utilities Commission Communications Division [“CD”] staff detailing each category of revenue
22 and expense covered by Ordering Paragraph 1 for the calendar year immediately preceding the
23 filing of the GRC application.”¹⁰⁰ Imposing a new mandate for Sierra to submit a financial
24 statement showing revenue and expense for years other than “the calendar year immediately
25 preceding the filing of the GRC application” would be inconsistent with this precedent. The only
26 relevant “imputable net positive retail broadband revenues in preparation for Sierra’s GRC” are
27 the revenues for the “calendar year immediately preceding the filing of the GRC application.”¹⁰¹

28 ⁹⁷ *Proposed Decision* at 33.

⁹⁸ D.21-04-005 at 24 (OP 1).

⁹⁹ *Id.*

¹⁰⁰ *Id.* (OP 2) (emphasis added).

¹⁰¹ D.21-04-005 at 24 (OP 1).

1 Providing annual imputation information for timeframes other than those designated for
2 computing broadband imputation would not assist the Commission; it would only create
3 unnecessary costs and deepen the intrusion from broadband imputation. Likewise, annual reports
4 cannot be “useful in an oversight capacity . . . to ensure that Sierra’s use of CHCF-A subsidies is
5 prudent and consistent with providing safe, reliable service to customers at just and reasonable
6 rates” because the Commission’s broadband imputation rules do not contemplate “oversight” of
7 broadband imputation between rate cases.¹⁰² Additionally, financial documentation relating to
8 STI’s broadband imputation amount is not rationally related to “Sierra’s use of CHCF-A” support,
9 Sierra’s service quality, or its basic residential telephone rates.¹⁰³ Similarly, financial
10 documentation relating to STI’s broadband imputation amount would not “assist the
11 Commission’s Communications Division in its evaluation of the reliability and reasonableness of
12 the broadband service that Sierra’s affiliate provides.”¹⁰⁴ To the extent the Proposed Decision
13 finds that Commission precedent supports Cal Advocates’ proposed annual broadband imputation
14 reporting requirement, these findings would be arbitrary and capricious and an abuse of discretion.

15 Moreover, the Proposed Decision fails to address the showing in Sierra’s briefs that the
16 adoption of Cal Advocates’ proposed annual broadband imputation reporting requirement would
17 exceed the scope defined in the Scoping Memo. Endorsing this unjustified annual requirement
18 would further exceed the Commission’s jurisdiction and be subject to conflict preemption.¹⁰⁵

19 **VI. THE PROPOSED DECISION SHOULD BE CLARIFIED TO CONFIRM THAT**
20 **IT IS NOT ADOPTING CAL ADVOCATES’ PROPOSED SERVICE QUALITY**
21 **REPORTING REQUIREMENTS, CONSISTENT WITH THE COMMISSION’S**
22 **CONCLUSIONS IN PRIOR RATE CASES.**

23 The Commission should clarify the Proposed Decision to ensure that it is not interpreted to
24 impose broadband service quality reporting requirements on Sierra, which would prejudge the

25 ¹⁰² *Proposed Decision* at 33.

26 ¹⁰³ *Id.*

26 ¹⁰⁴ *Id.*

27 ¹⁰⁵ *Sierra Opening Brief* at 90-92; *Scoping Memo* at 5-6 (the scope of this proceeding limited to what
28 “amount of the retail revenues of the ISP are subject to imputation as part of the determination of rate
design and CHCF-A support as required by D.21-04-005.”); *Sierra Reply Brief* at 43-44.

1 outcome of the pending rulemaking in which that very issue is being addressed.¹⁰⁶ Section 7.2.1
2 of the Proposed Decision is entitled “Relevance of Retail Broadband Revenues and Quality and
3 Reliability of Broadband Service to CHCF-A,” but the findings in this section are limited to Cal
4 Advocates’ proposed annual broadband imputation reporting requirement.¹⁰⁷ This Proposed
5 Decision summarizes the parties’ arguments and the ALJ’s May 31, 2022 Ruling finding that
6 “Sierra’s arguments are not convincing.”¹⁰⁸ However, after noting this procedural event, the
7 Proposed Decision addresses the separate point that “D.21-04-005 and D.14-12-084, represent
8 clear Commission precedent that Sierra should update the Commission on the status of its
9 imputable net positive retail broadband revenues in preparation for Sierra’s GRC” and that Cal
10 Advocates’ proposed financial documentation relating to STI’s broadband operations “is
11 important because they assist the Commission’s Communications Division in its evaluation of the
12 reliability and reasonableness of the broadband service that Sierra’s affiliate provides.”¹⁰⁹

13 Because the Proposed Decision does not reach any conclusions relating to Cal Advocates’
14 broadband service quality proposal, Section 7.2.1 of the Proposed Decision should be revised to
15 focus only on Cal Advocates’ proposed annual broadband imputation reporting requirement and
16 remove the unnecessary and confusing discussion of Cal Advocates’ motion to compel broadband
17 service quality data. Alternatively, this section should be revised to clarify that the discussion of
18 the motion to compel is only an endorsement of the alleged duty to provide broadband service
19 quality data *in a rate case*. To avoid conflicts with R.22-03-016, the Commission should confirm
20 that the Proposed Decision is not intended to adopt Cal Advocates’ proposed broadband service
21 quality reporting requirements—which reflect the exact same proposals Cal Advocates is asking
22 the Commission to adopt for all carriers in that separate proceeding.¹¹⁰

23

24 ¹⁰⁶ See R.22-03-016, *Assigned Commissioner’s Scoping Memo and Ruling* at 3 (July 22, 2022) (designating
25 the question of whether to apply “specific service quality metrics and standards” to broadband Internet
service” for consideration in Phase 2 of the rulemaking).

26 ¹⁰⁷ *Proposed Decision* at 31-34.

27 ¹⁰⁸ *Id.* at 31-33.

28 ¹⁰⁹ *Id.* at 33.

¹¹⁰ See R.22-03-016, *Cal Advocates Opening Comments on OIR to Consider Amendments to General Order*
133, Attachment A at A-1 to A-2.

1 **VII. THE PROPOSED DECISION WOULD IMPROPERLY EXPOSE FINANCIAL**
2 **DATA OF SIERRA’S ISP AFFILIATE IN VIOLATION OF STATUTE.**

3 The Proposed Decision would eviscerate the plain language of an unambiguous statutory
4 provision and expose STI’s revenue data to public disclosure.¹¹¹ This discussion appears to be
5 intended to ensure that the Commission can disclose the recommended CHCF-A amount in the
6 “results of operations” table accompanying the Proposed Decision. To that extent, Sierra and STI
7 do not object to the Commission disclosing the CHCF-A draw in the Proposed Decision and the
8 final decision adopted in this proceeding, and they agree to waive the protections of Public
9 Utilities Code Section 275.6(e) to that limited extent. However, the Proposed Decision goes far
10 beyond this limited context and would unlawfully reject all protections for STI’s “net revenues.”
11 Absent Sierra’s or STI’s agreement, the Commission cannot undermine Section 275.6(e), which
12 provides that the “commission shall treat as confidential any information pursuant to this
13 subdivision,” including “information regarding revenues derived from the provision of
unregulated internet access service by that corporation or its affiliate”¹¹²

14 Despite this plain language, the Proposed Decision offers arbitrary and capricious
15 reasoning that “net positive broadband revenue imputation is different from the kind of
16 information contemplated by the statutes” because it “reveals nothing about gross revenues, the
17 number of accounts, the cost of providing service, the rates paid by customers, etc.”¹¹³ Section
18 275.6(e) does not distinguish between “gross” and “net revenues,” but mandates that the
19 Commission treat as confidential all “information regarding revenues derived from the provision
20 of unregulated internet access service.”¹¹⁴ The Proposed Decision also errs in applying the
21 balancing test of the California Public Records Act (“CPRA”) to conclude that “[t]ransparency
22 requires that the figures contained in the Results of Operations, particularly the adopted CHCF-A
23 support amounts, be disclosed to the public.”¹¹⁵ The CPRA balancing test does not apply to
24

25
26 ¹¹¹ *Proposed Decision* at 35-37.

27 ¹¹² Pub. Util. Code § 275.6(e).

28 ¹¹³ *Proposed Decision* at 35, n. 83.

¹¹⁴ Pub. Util. Code § 275.6(e).

¹¹⁵ *Proposed Decision* at 36-37.

1 records that are categorically exempt from disclosure under the express provisions of law.¹¹⁶
2 Section 275.6(e) articulates precisely this type of restriction. Similarly, the Proposed Decision
3 includes an irrelevant reference to the fact that “neither D.21-04-005 nor D.21-08-042 addressed
4 the question of confidentiality.”¹¹⁷ These CHCF-A Phase 2 decisions did not need to implement
5 or otherwise discuss Section 275.6(e) for it to take effect; it is applicable by its own terms.

6 Compliance with Section 275.6(e) is not optional, and it is not subject to a balancing test.
7 The Commission will commit legal error if it does not correct the Proposed Decision’s
8 unsupported statutory analysis, and reaching these issues is unnecessary because Sierra and STI
9 will agree to this waiver to the extent necessary for the Commission to reveal the CHCF-A draw in
10 the proposed decision and final decision resolving this proceeding. This waiver is limited to the
11 CHCF-A figure, and Sierra does not agree to remove these protections in any other context.

12 **VIII. THE PROPOSED DECISION SHOULD BE MODIFIED TO INCLUDE AN**
13 **EXPLICIT MECHANISM FOR REVERSING BROADBAND IMPUTATION IF**
14 **BROADBAND IMPUTATION IS DEEMED UNLAWFUL.**

15 Based on the “broadband imputation” policy adopted in Phase 2 of the CHCF-A
16 rulemaking, the Proposed Decision reduces Sierra’s CHCF-A draw on a dollar-for-dollar basis
17 based on the net positive retail broadband-related revenues from Sierra’s ISP-affiliate, Sierra Tel
18 Internet (“STI”).¹¹⁸ Sierra maintains that this policy is unlawful because it produces an overall
19 rate design that is insufficient to recover Sierra’s revenue requirement.¹¹⁹ This outcome is an
20 unlawful taking, a violation of statutory mandates, and an improper imposition of public utility-
21 type regulation on broadband service, which the FCC has deemed an “information service.”¹²⁰

22 ¹¹⁶ See Gov’t Code § 6254(k) (CPRA incorporates restrictions on disclosure for information that is
“exempted or prohibited pursuant to federal or state law.”).

23 ¹¹⁷ *Proposed Decision* at 35, n. 83.

24 ¹¹⁸ D.21-04-005 at 19, 23-24 (“... each dollar increase in the broadband imputation amount will result in a
corresponding dollar decrease in CHCF-A support.”).

25 ¹¹⁹ Pub. Util. Code § 275.6(b)(4) (“rate-of-return regulation” requires a rate design that will “provide the
company a fair opportunity to meet the revenue requirement.”); Pub. Util. Code § 275.6(c)(4) (CHCF-A
must be provided “in an amount sufficient to supply the portion of the revenue requirement that cannot
reasonably be provided by the customers of each small independent telephone corporation after receipt of
federal universal service rate support.”); *see also Brooks-Scanlon, supra*, 251 U.S. at 399 (state
commissions cannot force utilities to recover their regulated costs from unregulated operations).

27 ¹²⁰ *Id. In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Declaratory Ruling, Report*

1 While the Fifth District Court of Appeal has recently rendered an unpublished opinion
2 rejecting some of the Independent Small LECs’ arguments and finding that others are “unripe,”¹²¹
3 Sierra and the other Independent Small LECs have not exhausted their appellate rights, and the
4 Commission should take proactive steps to incorporate a mechanism in the Proposed Decision to
5 reverse broadband imputation if it is ultimately deemed unlawful. The following language should
6 be added as an ordering paragraph to address this contingency:¹²²

7 XX. Sierra’s draw from the CHCF-A in this case has been reduced by net positive retail
8 broadband-related revenues of Sierra’s ISP affiliate, STI, based on the “broadband imputation”
9 policy in adopted in D.21-04-005 and D.21-08-042. These decisions were upheld in response to a
10 legal challenge from Sierra, STI, and the other Independent Small LECs and their affiliates.
11 However, the timeframes applicable to further appeals have not elapsed. If the decisions are
annulled and the broadband imputation policy is deemed unlawful, Sierra shall submit a Tier 2
advice letter recomputing its CHCF-A draw for test year 2023 to remove the effects of broadband
imputation, but leave Sierra’s revenue requirement and rate design otherwise unchanged.

12 IX. CONCLUSION.

13 The Commission should not resolve this proceeding by replicating Cal Advocates’
14 unfounded positions and applying them to Sierra. It should fashion a balanced, record-driven
15 resolution that approves Sierra’s critical fiber investments, calculates expenses in keeping with
16 NECA guidance, and follows the parameters that the Commission itself established for broadband
17 imputation. While timely action on a rate case application is important, the Commission should
18 not rush to act on this proposal; it should take the time to reach the right outcome. The Proposed
19 Decision requires significant changes to avoid legal error and harm to rural consumers, and the
20 Commission should pursue those revisions, even if it means collecting more information or
21 reexamining the record based on recent facts. Sierra will do its part to work with the Commission
22 and provide any additional information that the Commission may deem necessary.

24 *and Order, and Order*, FCC 17-166 (rel. Jan. 4, 2018) at ¶ 20 (“We reinstate the information service
25 classification of broadband Internet access service.”), *reversed in part on other grounds by Mozilla Corp. v.*
26 *Fed. Commc’ns Comm’n*, 940 F.3d 1, 35 (D.C. Cir. 2019) (upholding the FCC’s classification of broadband
Internet access as an “information service”); *see also* Pub. Util. Code § 202 (prohibiting Commission
jurisdiction over “interstate commerce”).

27 ¹²¹ *Calaveras Telephone Co. v. Pub. Util. Comm’n*, Fifth District Court of Appeal, Case No. F083339,
Unpublished Opinion (filed Dec. 20, 2022).

28 ¹²² *See Sierra Opening Brief* at 95.

Executed on this 27th of December 2022, at Oakland, California.

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Appendix A

APPENDIX A: RECOMMENDED CHANGES TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Findings of Fact

1. On November 1, 2021, Sierra filed this GRC Application seeking to update its intrastate rates and charges, intrastate revenue requirement, establish a rate design and increase its draw from the CHCF-A.
2. The Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary.
3. Cal Advocates filed its protest to the Application on December 1, 2021.
4. On January 18, 2022, a PHC was held to discuss issues of law and fact and there was agreement that there would be need for evidentiary hearings.
5. A Scoping Memo was issued on March 1, 2022, setting forth the issues to be determined.
6. The parties stipulated that, pursuant to D.16-12-035, Sierra would utilize a cost of capital figure of 9.22 percent in this GRC, subject to adjustment going forward following the conclusion of the pending cost of capital proceeding in R.22-09-003.
7. Sierra and Cal Advocates served direct and rebuttal testimony of witnesses prepared to testify in support of their respective positions.
8. Sierra and Cal Advocates engaged in significant discovery and data exchange, analysis of each other's positions and arguments, and several days of evidentiary hearing.
9. The Commission approved Sierra's request to incur indebtedness in connection with the RUS loan funds ~~were approved for Sierra~~ in D.21-07-009, issued in July 2021.
10. Sierra used RUS-its own general funds for consultant and engineering expenses in connection with the RUS fiber projects ~~but had not commenced infrastructure projects at the time of hearing, in August 2022~~ and Sierra has made significant progress on the RUS fiber projects based on a progress report accepted into the record on December 15, 2022.

11. In D.21-06-004, the Commission affirmed the use of the FCC's corporate expenses cap mechanism for calculating and determining a reasonable level of corporate expenses for telecommunications carriers drawing from CHCF-A, provided that the expense caps are updated annually for inflation through the test year, using the GDP-CPI.

12. In D.21-06-004, the Commission determined that the NECA cost study is a reasonable method for forecasting GRC Test Year rate base.

13. In D.21-04-005, the Commission mandated that in any rate case filed by small LECs drawing support from the CHCF-A, positive net revenue associated with retail broadband service of the ISP affiliate of the small LEC shall be imputed in the determination of CHCF-A support.

14. Based on our review of all the information in the record, we can independently determine and adopt the figures contained in the Results of Operations for Sierra for the TY 2023 (Appendix A).

15. Appendix A reflects an overall revenue requirement of ~~\$20,162,135~~ \$23,639,114 for Sierra for TY 2023.

16. Sierra's TY 2023 CHCF-A support of ~~\$7,225,106~~ \$12,053,636, reflected in Appendix A has been calculated in accordance with the means test and D.91-05-016 as modified by D.91-09-042.

17. It is appropriate to apply NECA's most recent inflation factors and forecasted GDP-CPI from the Congressional Budget Office, which results in an overall operating expense budget of to adjust Sierra's proposed corporate operations expense budget of \$-10,055,279 to \$9,939,332 and a corporate expense budget of \$1,558,426 for the test year.-

~~18. —Sierra's proposed intrastate depreciation expenses of \$7,286,033 have been reduced to \$6,173,711, because Sierra's capital projects have not yet commenced and are not completed.~~

19. A six percent increase in Sierra's basic residential rates (from \$25.00 to \$26.50, exclusive of surcharges, fees and taxes), if approved, is within the \$30 to \$40 range that the Commission deemed just and reasonable for small telephone corporations in D.21-06-004.

20. ~~A-Cal Advocates' proposed~~ ten percent increase in Sierra's basic business rate (from \$39.32 to \$43.25, exclusive of surcharges, fees and taxes), is not reasonably comparable to rates charged to customers of urban telephone corporations, as required by Pub. Util. Code §275.6.

XX. Based on economic conditions in Sierra's service territory and the impacts of recent wildfires and the COVID-19 pandemic, it is not reasonable to raise basic business rates at this time.

21. Pursuant to Rule 11.4, the parties have requested to file under seal confidential materials, including reports, work papers and testimony.

22. Appendix A "Intrastate Results of Operations" are not confidential data.

YY. It is reasonable to adopt a mechanism to reverse the effects of broadband imputation in the event that the policy is determined to be unlawful by a reviewing court.

Conclusions of Law

1. Sierra's application should be granted as modified by this decision.

2. Sierra's CHCF-A subsidy should be ~~\$7,225,106~~12,053,636.

3. Sierra's proposed operating expense (excluding depreciation) of \$10,055,279 should be ~~reduced to \$9,939,332~~adopted.

~~4. It is reasonable to reduce Sierra's proposed intrastate depreciation expense of \$7,286,033 to \$6,173,711 because Sierra's capital projects have not yet been completed.~~

5. Sierra's overall intrastate revenue requirement for test year 2023 should be ~~\$20,162,135~~23,639,114.

6. End user rates for residential customers should be set at \$26.50 (exclusive of surcharges, fees and taxes) and for business customers at ~~\$43.25~~39.32 (exclusive of surcharges, fees and taxes).

7. It is appropriate to authorize Sierra to submit a Tier 2 AL to the Commission's Communications Division within 30 days of the effective date of this decision to request any revenue differential between January 1, 2023 and the first day of the next month (resulting from the decision not being approved as of January 1, 2023), following the adoption of this decision

(effective date), through the CHCF-A Fund. The AL should provide a calculation to “true-up” the revenue differential.