

Decision 24-08-023

August 1, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Foresthill Telephone Co. (U 1009 C) to Modify Intrastate Revenue Requirement and Rate Design and Adjust Selected Rates.

Application 22-11-001

ORDER MODIFYING DECISION 24-01-031 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. INTRODUCTION

In Decision (D.) 24-01-031 (Decision)¹ we resolved Foresthill Telephone Co.’s (Foresthill) general rate case (GRC) for Test Year 2024. The Decision adopts an overall intrastate revenue requirement of \$3,329,163, including \$1,189,006 from the California High-Cost Fund-A program (A-Fund). Foresthill and its Internet Service Provider (ISP) affiliate, Audeamus, filed a timely application for rehearing of the Decision.²

The Decision makes the following determinations that are relevant to Foresthill’s allegations of legal error raised in the application for rehearing. First, the Decision includes both Caller ID and Call Waiting in basic service rates at no additional charge, making certain adjustments to Foresthill’s local revenues and A-Fund draw to these ends. (Decision at 11.) The Decision adjusts Foresthill’s local revenues and A-Fund draw by relying on two line items listing Caller ID and Call Waiting individually, but not a third line item that jointly lists Caller ID and Call Waiting as a

¹ Unless otherwise noted, citations to Commission decisions are to the official pdf versions, which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

² For simplicity, references to rehearing applicants are to Foresthill only.

combined service. (See Decision, Appendix A, line 1.a; Exh. KTC-FTC-11-C (Clark Opening Testimony), exhibit DC-1 at 40.)

Second, the Decision calculates Foresthill's A-Fund draw according to D.21-04-005 (Imputation Decision), which adopted an intrastate ratemaking mechanism called "broadband imputation" pursuant to Public Utilities Code³ section 275.6. (Decision at 9, 13-14.) As part of this calculation, the Decision includes revenues derived from Consumer Broadband Only Loop (CBOL) lines and uses the actual A-Fund amount that Foresthill will receive to determine income tax liability. (*Id.* at 13-14, 25.)

Broadband imputation requires that in any GRC filed by Foresthill or other Small Independent Local Exchange Carriers (Small ILEC) participating in the A-Fund, positive net revenue associated with retail broadband service provided by the Small ILEC or its ISP affiliate is imputed to determine A-Fund support. (Imputation Decision at 23-24 (Ordering Paragraph (OP) 1).) The imputed revenues are limited to those derived within the Small ILEC's service territory and based upon the Small ILEC's local exchange facilities. (*Ibid.*) The imputed amount is subject to an audit and/or reasonableness review to ascertain the completeness, accuracy, and reasonableness of the broadband-related revenues and expenses. (*Id.* at 19, 25 (OP 4).)

The purpose of broadband imputation is to ensure that California ratepayers funding the A-Fund are not over-subsidizing the Small ILECs as required by the statutory directives set forth in section 275.6. (*Id.* at 2, 7-8, 16-17.) To achieve this purpose, broadband imputation offsets excessive A-Fund draws by considering the net positive broadband-related revenues that are derived from broadband-capable facilities subsidized by the A-Fund. (See, e.g., *id.* at 23 (Finding of Fact (FOF) 2), 23-24 (OP 1); D.21-08-042 at 9 (Imputation Rehearing).) Broadband imputation balances the interests of Foresthill and A-Fund contributors by eliminating excessive subsidy levels while providing Foresthill an opportunity to meet its revenue requirement. (Imputation

³ Unless otherwise indicated, all subsequent section references are to the California Public Utilities Code.

Rehearing at 8-10.) Striking this balance is within our authority and part of section 275.6's statutory imperative. (See generally § 275.6, subd. (c); § 275.6, subd. (c)(7); Imputation Rehearing at 4-7.) We affirmed broadband imputation in D.21-08-042 (Imputation Rehearing) after a group of Small ILECs and their ISP affiliates, including Foresthill and Audeamus, filed an application for rehearing of the Imputation Decision.

Following the issuance of the Imputation Rehearing, the Small ILECs and their ISPs affiliates (Petitioners) filed a petition for writ of review in the Court of Appeal, Fifth Appellate District. (Case No. F083339.) Their writ petition presented a facial challenge to broadband imputation that sought to nullify the Imputation Decision and Imputation Rehearing (collectively Imputation Decisions), challenging the Commission's statutory, constitutional, and jurisdictional bases for imposing the rule.

The Court of Appeal granted the writ petition and, following certification of the record and oral argument, ultimately upheld the decisions. In a partially published opinion, *Calaveras Telephone Co. et al. v. Public Utilities Com.* (2022) 87 Cal.App.5th 793 (*Calaveras*), the court determined that broadband imputation was authorized by section 275.6 and was not preempted by federal law. The court also determined that Petitioners' constitutional takings claim was unripe because the Commission had not yet implemented broadband imputation in a GRC proceeding. Petitioners filed a timely petition for review of *Calaveras* in the California Supreme Court. (Case No. S278799.) On April 26, 2023, the California Supreme Court summarily denied the petition for review.

Since then, we have completed several GRCs for the Small ILECs, applying broadband imputation when the rule was applicable. Of the contested proceedings, Sierra Telephone Company (Sierra) and Volcano Telephone Company (Volcano) filed applications for rehearing challenging, among other things, broadband

imputation as applied. We denied these rehearing applications in D.23-06-058 (Sierra Rehearing) and D.23-08-051 (Volcano Rehearing).⁴

After their rehearing applications were denied, both Sierra and Volcano and their ISP affiliates proceeded to court. Sierra and its ISP affiliate, Sierra Tel Internet, filed a federal complaint in the United States District Court, Eastern District of California (Case No. 1:23-cv-01143-BAM). Volcano and its ISP affiliate, Volcano Vision, filed a petition for writ of review in the California Court of Appeal, Third Appellate District (Case No. C099562). We received a favorable decision in Sierra's federal case, *Sierra Telephone Co., Inc. v. Reynolds* (E.D. Cal. 2023), 2023 WL 8190262 (*Reynolds*), and the Volcano matter is pending. Foresthill's rehearing application represents the third as-applied challenge to broadband imputation.

In its rehearing application, Foresthill argues that the Decision is unlawful because it fails to accurately account for the revenue impacts of providing both Call Waiting and Caller ID as free custom calling features. Foresthill also argues that the Decision is in error because broadband imputation is preempted by federal law, violates the Takings Clause of the United States Constitution, and is inconsistent with the Imputation Decision's directives related to CBOL lines and the calculation of income tax liability. No party filed a response to the rehearing application.

We have carefully considered the arguments raised in the application for rehearing and are of the opinion that modifications to the Decision are appropriate, as explained below. After making these modifications, rehearing of D.24-01-031 is denied.

II. DISCUSSION

A. **The Decision is modified to fully account for the revenue impacts of including both Caller ID and Call Waiting as free custom calling features.**

In its rehearing application, Foresthill argues that the Decision's local revenue calculation is inaccurate because it fails to account for Caller ID as a standalone

⁴ Although broadband imputation was applied to Kerman Telephone Co., the company did not to file an application for hearing of its GRC decision. (App. Reh. at 2, fn. 6.)

service and a combined service with Call Waiting. (App. Rehg. at 17-19.) Foresthill asserts that the record supports a reduction in local revenues of \$29,583 and a corresponding increase in A-Fund support pursuant to section 275.6(c)(4). (*Ibid.*) Foresthill therefore claims the Decision is not supported by substantial evidence and violates section 275.6. (*Id.* at 17, 19.)

Foresthill correctly identifies an inadvertent error. Accordingly, we modify the Decision to reduce Foresthill's local revenue amount by \$29,583 and increase its A-Fund draw by the same, as reflected in the Ordering Paragraphs below and the updated Results of Operations Table included as Appendix A to this Order.

B. As modified, the Decision's implementation of broadband imputation is affirmed.

Foresthill makes several claims that the Decision's implementation of broadband imputation is unlawful. Each claim is discussed and addressed below.

1. The Decision is modified to exclude imputed revenues from CBOL lines.

Foresthill provides three types of lines to its customers: (1) a voice line that provides voice service only; (2) a voice-data line that provides voice service and broadband service; and (3) a CBOL line that provides only broadband service. (Decision at 13.) A customer's election of the service(s) subscribed to dictates the type of line. (*Ibid.*)

The Decision determines that Audeamus' revenues from CBOL lines should be included in the broadband imputation calculation. (Decision at 13-14.) The Decision concludes that this approach is consistent with the plain language in the Imputation Decisions. (*Id.* at 14.) The Decision also reasons:

Foresthill's expert, Mr. Clark, confirmed that the same broadband-capable infrastructure was used to provide voice and broadband service. Since the broadband-capable infrastructure for CBOLs, voice, and voice/data lines are the same, the designation of a line can change at any time. Accordingly, CBOL lines benefit from CHCF-A support to the same extent that voice and voice/data lines do. Mr. Clark also confirmed that revenues derived from Audeamus' broadband offerings would be reflected in the

income statement of Audeamus. It logically follows then, that reasonable net positive retail broadband-related revenues derived from utilizing Foresthill's network are subject to broadband revenue imputation.

(*Id.* at 13.)

In its rehearing application, Foresthill alleges that the Decision violates the Imputation Decisions because it ignores Foresthill's testimony asserting that CBOL cost are entirely interstate and therefore have no impact on intrastate revenue requirement and, relatedly, the A-Fund. (App. Rehg. at 13-14.) For these reasons, Foresthill further claims that the Decision is unsupported by substantial evidence and fails to include adequate findings. (*Id.* at 14-15.) Foresthill also argues that the alleged lack of intrastate impacts is inconsistent with the intent and purpose underlying broadband imputation and the plain language in Ordering Paragraph 1 of the Imputation Decision, which excludes broadband-related revenues from "alternative service platforms." (*Id.* at 13-14.)

Based on the record in this proceeding, we find that the Decision does not completely align with the Imputation Decisions. Accordingly, we will modify the Decision to exclude revenues derived from CBOL lines from the imputed amount, as reflected in the Ordering Paragraphs below and the updated Results of Operations Table included as Appendix A to this Order.

2. Broadband imputation does not constitute an unconstitutional taking of Foresthill's property.

Foresthill argues that the Decision's application of broadband imputation violates the Takings Clause of the United States Constitution. (App. Rehg. at 10-11.) Foresthill claims that its property has been unconstitutionally taken because the Decision's approved rate design is not equal to the approved revenue requirement, thereby impermissibly depriving Foresthill of adequate revenues to recover its operating and capital costs. (*Id.* at 10-11.) Foresthill further claims that the Decision unlawfully conflates its regulated revenues with Audeamus' unregulated revenues. (*Id.* at 10-11.)

Foresthill reiterates claims that we have already addressed and rejected in prior challenges to broadband imputation. (Sierra Rehearing at 5-8, Volcano Rehearing

at 22-25; see *Reynolds, supra*, 2023 WL 8190262 at **7-8, 11-12.) Accordingly, we deny Foresthill’s application for rehearing on this point.

3. The Decision’s income tax treatment under broadband imputation is lawful.

A Small ILEC’s revenue requirement must include a reasonable forecast of the tax liabilities that it expects to experience during the test year. (Decision at 24, citing § 275.6, subd. (b)(5).) The Decision calculates the income taxes using the final A-Fund support amount after broadband revenues are imputed. (*Id.* at 25.) As support, the Decision states that this approach is consistent with prior decisions implementing broadband imputation in Sierra’s and Volcano’s general rate cases (D.23-01-004 and D.23-08-051) and the Imputation Decision. (*Ibid.*)

Foresthill argues that the Decision’s calculation of taxes violates section 275.6(b)(5), the Imputation Decision, including its plain language and rejection of The Utility Reform Network’s pro forma proposal, and past Commission decisions applying the “net to gross multiplier” to calculate taxes. (App. Rehg. at 15-16.) We have already addressed and rejected these same allegations in prior challenges to broadband imputation, and Foresthill fails to demonstrate that our prior conclusions were in error. (Sierra Rehearing at 10-13; Volcano Rehearing at 27-30.)

Foresthill also claims that the Decision violates section 1757(a)(3) because “the only ‘finding’ offered to justify the Decision’s treatment of income taxes is the conclusory statement that it is ‘consistent with the decisions in D.23-01-004, D.23-08-051, and D.21-04-005.’” (App. Rehg. at 16-17, quoting Decision at 25.) We do not agree that cross-referencing our prior decisions that include thorough analysis on the matter at issue is conclusory. We have determined, however, that additional findings would be useful to provide further clarity as to the principles and facts relied upon by the Decision. We therefore modify the Decision as stated in the Ordering Paragraphs below.

4. Broadband imputation is within the Commission’s jurisdiction and not preempted by federal law.

Foresthill alleges that the Decision’s application of broadband imputation exceeds the Commission’s jurisdiction and is preempted by federal law under a conflict preemption theory, arguing that the rule is a form of indirect public utility style regulation of Audeamus. (App. Rehg. at 1, 6-7, 8, 11-13.) Foresthill claims that broadband imputation conflicts with the Federal Communications Commission’s (FCC) *In the Matter of Restoring Internet Freedom* (2018) 33 F.C.C. Rcd 331 (2018 Order), which classifies broadband Internet access service (BIAS) as an “information service” under Title I of the Communications Act of 1934, as amended (the Act). (*Id.* at 8, 11-12.)

Foresthill also notes the FCC’s then pending notice of proposed rulemaking, wherein the FCC proposed to reclassify broadband under Title II of the Act with broad forbearance. (*Id.* at 12-13.) Foresthill alleges that broadband imputation “is just as likely, if not more likely, to be subject to conflict preemption, under the FCC’s anticipated Title II regime.” (*Id.* at 13.) On April 25, 2024, the FCC adopted its order reclassifying BIAS back to Title II, *In the Matter of Safeguarding and Securing the Open Internet Restoring Internet Freedom*, WC Docket 23-320, Report and Order, et al., FCC 24-52 (rel. May 7, 2024) (2024 Order).

We have already rejected allegations that broadband imputation exceeds our jurisdiction and is preempted by the FCC’s 2018 Order. (Imputation Decision at 13-15; Imputation Rehearing at 14-16, 20-22; see *Reynolds, supra*, 2023 WL 8190262 at **14-15.) In addition, we have carefully reviewed the 2024 Order and find no basis for Foresthill’s conflict preemption claim. Thus, we deny Foresthill’s rehearing application as to these jurisdictional and preemption claims.

III. CONCLUSION

For the reasons discussed above, the Decision is modified as specified below and rehearing of the Decision, as modified, is denied.

THEREFORE, IT IS ORDERED that:

1. Add new Finding of Fact 16:
“Calculating Foresthill’s income taxes using the final CHCF-A support amount, after broadband revenues are imputed, is consistent with section 275.6, the broadband imputation rule as set forth in D.21-04-005, and decisions applying the rule, for example, D.23-01-004 and D.23-08-051.”
2. Add new Conclusion of Law 8:
“Calculating Foresthill’s income taxes using the final CHCF-A support amount, after broadband revenues are imputed, is consistent with section 275.6, the broadband imputation rule as set forth in D.21-04-005, and decisions applying the rule, for example, D.23-01-004 and D.23-08-051.”
3. Modify D.24-01-031 to replace the operating revenues amount of “\$3,329,163” with “\$3,395,162” in the table on page 2 and Ordering Paragraph 2.a.
4. Modify D.24-01-031 to replace the operating expenses amount of “\$2,741,377” with “\$2,807,377” in the table on page 2, Conclusion of Law 3, and Ordering Paragraph 2.c.
5. Modify D.24-01-031 to replace the revenue requirement amount of “\$3,329,163” with “\$3,395,163” on page 2 in the text and table, Finding of Fact 7, Conclusion of Law 4, and Ordering Paragraph 3.
6. Modify D.24-01-031 to replace the California High-Cost Fund-A amount of “\$1,189,006” with “\$1,454,443” on page 2, page 36, Finding of Fact 8, Conclusion of Law 2, and Ordering Paragraph 2.b.
7. Modify D.24-01-031 at page 15 in the last sentence of the second full paragraph to read: “With inclusion of the Land and Building adjustment, the Commission finds that Foresthill’s broadband imputation amount should be \$390,497.”
8. Modify D.24-01-031 to replace the second full paragraph starting at page 13 and ending on page 14 with the following text:
“Cal Advocates contends that because Foresthill’s ISP (Audeamus) utilizes the same network infrastructure to provide all three types of

services, revenues from CBOLs should not be excluded. Based on the record in this proceeding, we find that imputing Audeamus' CBOL revenues to calculate Foresthill's broadband imputation amount does not completely align with D.21-04-005 and D.21-08-042."

9. Replace the Results of Operations Table included as Appendix A to D.24-01-031 with the modified Results of Operations Table included as Appendix A to this Order.

10. Rehearing of D.24-01-031 is denied.

11. This proceeding, Application 22-11-001, is closed.

This order is effective today.

Dated August 1, 2024, at San Francisco, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.

APPENDIX A

A.22-11-001 FORESTHILL General Rate Case

Intrastate Results of Operations

Adopted Rates

Line #	Description	Cal Advocates Proposed (A)	Foresthill Proposed * (Latest Filed) (B)	Commission Adjustments to Foresthill Proposed in D.24-01-031 (C)	Adopted in D.24-01-031 (D)	Commission Adjustments to D.24-01-031 per D.24-08-023 (E)	Adopted per D.24-08-023's modifications to D.24-01-031 (F)
OPERATING REVENUES:							
1	Total Revenue	\$ 3,235,541	\$ 3,755,219	\$ (426,056)	\$ 3,329,163	\$ 65,999	\$ 3,395,162
1.a	Total Regulated Revenue	\$ 2,512,527	\$ 3,364,722	\$ (595,911)	\$ 2,768,811	\$ 235,854	\$ 3,004,665
1.a (1)	Local Revenue	\$ 521,553	\$ 533,696	\$ (1,319)	\$ 532,377	\$ (29,583)	\$ 502,794
1.a (2)	High Cost Loop Support	\$ 779,559	\$ 779,559	\$ 83,668	\$ 863,227	\$ -	\$ 863,227
1.a (3)	Intrastate Special and Switch Access Revenue	\$ 141,640	\$ 135,421	\$ -	\$ 135,421	\$ -	\$ 135,421
1.a (4)	Miscellaneous	\$ 49,683	\$ 48,594	\$ -	\$ 48,594	\$ -	\$ 48,594
1.a (5)	Less: Uncollectible Revenue	\$ (1,028)	\$ 186	\$ -	\$ 186	\$ -	\$ 186
1.a (6)	CHCF-A	\$ 1,021,120	\$ 1,867,266	\$ (678,260)	\$ 1,189,006	\$ 265,437	\$ 1,454,443
1.b	Net Positive Broadband Revenue Imputation	\$ 723,014	\$ 390,497	\$ 169,855	\$ 560,352	\$ (169,855)	\$ 390,497
OPERATING EXPENSES:							
2	Total Operating Expense	\$ 2,661,841	\$ 3,154,452	\$ (413,075)	\$ 2,741,377	\$ 66,001	\$ 2,807,377
2.a	Operating Expense Subtotal	\$ 2,115,951	\$ 2,283,855	\$ (167,904)	\$ 2,115,951	\$ -	\$ 2,115,951
2.a (1)	Plant Specific	\$ 886,612	\$ 818,421	\$ 68,191	\$ 886,612	\$ -	\$ 886,612
2.a (2)	Plant Non-Specific	\$ 65,454	\$ 87,876	\$ (22,422)	\$ 65,454	\$ -	\$ 65,454
2.a (3)	Customer Operations	\$ 480,340	\$ 584,871	\$ (104,531)	\$ 480,340	\$ -	\$ 480,340
2.a (4)	Corporate Operations	\$ 683,545	\$ 792,686	\$ (109,141)	\$ 683,545	\$ -	\$ 683,545.00
2.b	Depreciation & Amortization Expense	\$ 549,548	\$ 561,292	\$ (360)	\$ 560,932	\$ -	\$ 560,932
2.c	Tax (excluding income tax)	\$ 96,669	\$ 112,015	\$ (15,874)	\$ 96,141	\$ -	\$ 96,141
2.c (1)	Taxes Other Than Income	\$ 150,862	\$ 150,365	\$ (31)	\$ 150,334	\$ -	\$ 150,334
2.c (2)	Amortized Excess Deferred Income Tax	\$ (54,193)	\$ (38,350)	\$ (15,843)	\$ (54,193)	\$ -	\$ (54,193)
2.d	Income Tax	\$ (100,327)	\$ 197,289	\$ (228,937)	\$ (31,648)	\$ 66,001	\$ 34,353
2.d (1)	State Income Tax	\$ (31,693)	\$ 62,323	\$ (72,320)	\$ (9,997)	\$ 20,850	\$ 10,852
2.d (2)	Federal Income Tax	\$ (68,634)	\$ 134,966	\$ (156,617)	\$ (21,650)	\$ 45,151	\$ 23,501
RATE BASE:							
3	Total Rate Base	\$ 6,381,538	\$ 6,682,603	\$ (144,379)	\$ 6,538,224	\$ -	\$ 6,538,224
3.1	Telephone Plant-in-Service	\$ 20,179,217	\$ 20,163,052	\$ (4,551)	\$ 20,158,501	\$ -	\$ 20,158,501
3.2	Telephone Plant Under Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3.3	Material & Supplies	\$ 58,145	\$ 63,773	\$ -	\$ 63,773	\$ -	\$ 63,773
3.4	Working Cash	\$ 235,708	\$ 241,449	\$ (11,390)	\$ 230,059	\$ -	\$ 230,059
3.5	Less: Depreciation Reserve	\$ (12,704,721)	\$ (12,527,484)	\$ 186	\$ (12,527,298)	\$ -	\$ (12,527,298)
3.6	Less: Deferred Taxes	\$ (946,764)	\$ (946,786)	\$ 22	\$ (946,764)	\$ -	\$ (946,764)
3.7	Less: Post Retirement Benefits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3.8	Less: Customer Deposits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3.9	Less: UEDTB	\$ (440,047)	\$ (311,400)	\$ (128,647)	\$ (440,047)	\$ -	\$ (440,047)
4	Net Revenues	\$ 573,700	\$ 600,767	\$ (12,981)	\$ 587,786	\$ (1)	\$ 587,785
5	Authorized Rate of Return	8.990%	8.990%		8.990%		8.990%
6	Return on Rate Base	\$ 573,700	\$ 600,766	\$ (12,980)	\$ 587,786	\$ -	\$ 587,786
7	Revenue Requirement	\$ 3,235,541	\$ 3,755,218	\$ (426,055)	\$ 3,329,163	\$ 66,001	\$ 3,395,163
8	CHCF - A Subsidy	\$ 1,021,120	\$ 1,867,266	\$ (678,260)	\$ 1,189,006	\$ 265,437	\$ 1,454,443
9	Rate of Return	8.990%	8.990%		8.990%		8.990%
For Income Tax Calculations							
10.1	State Tax Rate	8.84%	8.84%		8.84%		8.84%
10.2	Federal Tax Rate	21.00%	21.00%		21.00%		21.00%
10.3	Interest Expense	\$ 54,687	\$ 54,687	\$ -	\$ 54,687	\$ -	\$ 54,687
10.4	State Taxable Income	\$ (358,521)	\$ 705,020	\$ (818,113)	\$ (113,094)	\$ 235,854	\$ 122,761
10.5	Federal Taxable Income	\$ (326,828)	\$ 642,697	\$ (745,793)	\$ (103,096)	\$ 215,005	\$ 111,909