

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 1257 (Patterson) – As Introduced February 19, 2021

**SUBJECT:** Small independent telephone corporations: ratemaking

**SUMMARY:** Intends to streamline formal rate cases for small independent telephone corporations (referred to as small incumbent local exchange carriers or ILECs). Specifically, **this bill:**

- 1) Expresses the intent of the Legislature that ILECs be permitted to request adjustments to its revenue requirements or rate design either through an advice letter or an application process;
- 2) Requires, if an ILEC triggers rate review through an application, the parties to the case to participate in at least one day of facilitated mediation; and
- 3) Requires in every ILEC rate case that, before any motion is filed, the moving party shall meet and confer with all other parties to attempt to informally resolve the subject of the motion.

**EXISTING LAW:**

- 1) Requires the California Public Utilities Commission (CPUC) to exercise its regulatory authority to maintain the California High Cost Fund-A Administrative Committee Fund (CHCF-A) program to provide universal service rate support to ILECs in amounts sufficient to meet the revenue requirements established by the CPUC through rate-of-return regulation. (Public Utilities Code § 275.6)
- 2) Prohibits a public utility from changing any rate or alter any classification, contract, practice, or rule which result in any new rate, except upon a showing before the CPUC and a finding by the CPUC that the new rate is justified, as specified. This is also referred to as a finding that the rate is “just and reasonable.” (Public Utilities Code § 454)
- 3) Requires the CPUC to resolve rate-setting or quasi-legislative cases within 18 months of the date the proceeding is initiated, unless the CPUC makes a written determination that the deadline cannot be met and issues an order extending the deadline. (Public Utilities Code § 1701.5)
- 4) Requires the CPUC to annually submit a report to the Legislature on the CPUC’s timeliness in resolving cases, information on the disposition of applications for rehearing, and the days that commissioners presided in hearings, as specified. (Public Utilities Code § Section 910.1)
- 5) Authorizes utilities to make an informal request to the CPUC outside a formal proceeding such as an application, complaint, investigation, or rulemaking for approval, authorization, or other relief, including a request for approval to change rates, charges, terms or conditions contained in the utility's tariffs. The process is commonly referred to as the filing of an “advice letter” which provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions. The

Advice Letter process does not provide for an evidentiary hearing. (CPUC General Order 96-B)

**FISCAL EFFECT:** Unknown. This bill has been keyed fiscal by the Legislative Counsel.

**BACKGROUND:**

*Rate Review & Approval* – The ILECs are monopoly providers under traditional rate of return regulation with rates set by the CPUC. Rates are determined through either a general rate case or a less formal advice letter process administered by CPUC staff.

In either process, the CPUC determines a “revenue requirement” necessary to cover the company’s expenses, a return on capital investment, and a profit. Because the cost of providing service in the rural areas served by ILECs is so high, the revenue from rates can be supplemented with support from the CHCF-A if needed to meet the revenue requirement, with each ILEC’s fund draw determined in its rate proceeding.

Formal cases (aka rate cases) require the submission of an application and are subject to the CPUC’s procedural rules governing rate setting proceedings, including ex parte restrictions, scoping procedures, and the process for preparation and consideration of a proposed decision. Formal cases are evidentiary hearings presided over by an Administrative Law Judge and guided by an Assigned Commissioner. Typically, other parties, such as the Public Advocates Office, intervene in a formal rate case to provide testimony and represent various consumer and interest groups. Issues are sometimes resolved through a settlement between the company and such groups but ultimately formal cases generate a CPUC decision that either adopts the company’s proposed relief, denies relief, or adopts the relief in part.

Rate review through an advice letter is outlined under the CPUC’s General Order 96-B and provides a faster mechanism for addressing non-controversial issues without an evidentiary hearing that requires the assignment of a proceeding and an administrative law judge, and official procedural events. Advice letters are processed by the CPUC’s Communications Division and involve significant data requests and review before a final resolution is ultimately adopted by the CPUC.

Put simply, both types of cases involve the same questions regarding revenue requirements and rate design. The difference is the length of the proceedings and the public procedure that is followed.

For many years all ILECs filed advice letters as needed for rate review. The CPUC later decided to require the 10 ILECs that receive support from CHCF-A to file rate case applications every five years. The other 3 ILECs continue to file advice letters as needed.

**COMMENTS:**

- 1) Author’s Statement. AB 1257 will encourage the CPUC to decrease the regulatory burden and expense of its rate case process for small rural telephone companies. These companies fulfill a critical role in keeping our rural communities connected by ensuring affordable voice service and access to advanced services over broadband-capable

telecommunications networks. The CPUC's current practice of taking a year and a half to two years to complete a formal rate case unnecessarily delays critical investment in telecommunications infrastructure and diverts limited company resources away from providing high quality service to our rural communities.

- 2) A Long Road. In 2015, the CPUC adopted a rate case plan which it has since determined bars ILECs which receive support from the CHFC-A from utilizing the advice letter process for rate review. They are now required to submit formal rate case applications, which trigger a lengthy, adversarial, trial-like process usually reserved for the complex rate cases of the large utilities. The ILECs have limited resources, so they must hire outside counsel, accountants, and expert witnesses to navigate this process, at significant expense.

According to the author the formal rate case process is now taking up to two years to complete, when traditionally it only took one year. Eight out of the ten formal rate cases addressed since 2015 have failed to meet the CPUC's self-imposed 14-month deadline, with each round of cases taking longer than the one before it. Most states process small telephone company rate cases within 12 months, as did the CPUC historically, to ensure the new rate design will go into effect at the beginning of the Test Year used in the rate case.

- 3) There Must Be Another Way. The ILECs are small companies and frustrated by the length and complexity of CPUC rate cases. There have been four unsuccessful legislative attempts, all with different approaches, to modify the rate case procedures for the ILECs, and all have met the same fate. This measure, the fifth attempt, requires that two procedural changes be instituted in an attempt to expedite the proceedings and avoid some of the tension.

*Non-Binding Mediation*: Parties to the rate case would be required to meet for at least one day of mediation before a neutral administrative law judge mediator, using the CPUC's existing alternative dispute resolution (ADR) process. This is intended to result in more rate cases being settled without the need for a lengthy, trial-like process, and a greater narrowing of differences between the parties prior to further litigation.

*Meet and Confer*: Parties to the rate case would be required to "meet and confer" prior to bringing any motion. This is intended to promote efficiency for the parties and advance judicial economy for the assigned administrative law judge by avoiding unnecessary motions. The CPUC's existing rules require "meet and confer" efforts for motions to extend time, but not for other motions.

These are foundational elements of ADR which commonly describes processes, such as facilitation, negotiation, mediation, and early neutral evaluation (or a combination of those techniques), to help disputants resolve a conflict without a formal decision by a court or agency. ADR tries to identify and meet the underlying interests of the parties in the dispute. The CPUC advises that it has a voluntary ADR process available to the parties but the parties or disputants must voluntarily agree and choose to submit to ADR.

4) Prior Legislation. The following bills addressing the efficiency of rate cases for ILECs have been introduced, but not chaptered, since 2014:

- AB 2189 (Arambula) Held in Senate Energy Utilities & Communications, 2020;
- SB 603 (Borgeas) Held in Assembly Appropriations, 2019;
- SB 1122 (Cannella) Held in Assembly Utilities & Energy, 2016; and
- AB 1693 (Perea) Vetoed, 2014.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

CalCom Association  
California Independent Telephone Companies

**Opposition**

None on file.

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