Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE
Miguel Santiago, Chair
AB 162 (Kiley) – As Introduced January 7, 2019

SUBJECT: Communications: universal service programs: Public Utilities Commission reimbursement fees

SUMMARY: Prohibits the California Public Utilities Commission (CPUC) from collecting revenues to support universal service programs from services the Federal Communications Commission (FCC) classifies as an information service. Specifically, **this bill**:

1) Prohibits any revenues that are collected for deposit in specified universal service funds to be collected from a communications service that the FCC has determined is an information service, as specified. Specifies that this bill does not affect the collection of revenues from Voice over Internet Protocol services, as specified.

2) Prohibits any fee imposed by the CPUC to apply to a communications service that the FCC has determined is an information service, as specified.

EXISTING LAW:

1) Establishes the following funds in the State Treasury:

   a) The California High-Cost Fund-A Administrative Committee Fund;

   b) The California High-Cost Fund-B Administrative Committee Fund;

   c) The Universal Lifeline Telephone Service Trust Administrative Committee Fund;

   d) The Deaf and Disabled Telecommunications Program Administrative Committee Fund;

   e) The California Teleconnect Fund Administrative Committee Fund; and,

   f) The California Advanced Services Fund. (PUC Section 270)

2) Establishes the California High Cost Fund-A (CHCF-A) Program to provide universal service rate support to small independent telephone corporations in amounts sufficient to meet the revenue requirements established by the CPUC through rate-of-return regulation in furtherance of the state's universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state, as specified. (PUC Section 275.6)

3) Establishes the California High Cost Fund-B (CHCF-B) Program to provide a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the CPUC. The purpose of the program shall be to promote the

goals of universal telephone service and to reduce any disparity in the rates charged by those companies, as specified. (PUC Section 276.5)

4) Establishes the California LifeLine Program to provide discounts on home phone and cell phone services to qualified low-income households, as specified. Requires the CPUC and telephone corporations to employ every means to ensure that every qualified household is informed and afforded the opportunity to subscribe to the service. (PUC Section 871 *et seq.*)

5) Establishes the California Deaf and Disabled Telecommunications Program (DDTP) to provide specialized telecommunications devices and services capable of serving the needs of individuals with hearing, vision, speech, cognitive and mobility disabilities, as specified. (PUC Section 2881 *et seq.*)

6) Establishes the California Teleconnect Fund Program (CTF) to advance universal service by providing discounted rates to qualifying schools maintaining kindergarten or any of grades 1 to 12, inclusive, community colleges, libraries, hospitals, health clinics, and community organizations, as specified. (PUC Section 280)

7) Establishes the California Advanced Services Fund (CASF) to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as specified. (PUC Section 281)

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

COMMENTS:

1) **Authors Statement:** According to the author, "Text messaging is integral to modern communication, especially for young people, and should remain tax free. Government policies have already made California unaffordable for far too many, and becoming the first state in the nation to tax texting would only make our affordability problem worse. AB 162 makes it clear that the [CPUC] is prohibited from unilaterally extending taxes, fees, and surcharges to any communications service that the [FCC] has classified as an "Information Service," which now includes text messages."

2) **Background**: Ensuring that everyone has access to safe, reliable, and high-quality telecommunications service is a bedrock principle of telecommunications policy. The CPUC is tasked with developing and implementing programs to advance universal service. Universal service means that a minimum level of telecommunications service is available to everyone in the State at a reasonable rate. To do so, the CPUC implements a number of public programs to promote universal service, including CHCF-A, CHCF-B, the California LifeLine Program, CTF, CASF, and DDTP.

3) **Universal Service Programs:** The State's universal service programs are generally developed to provide support either for providers in areas of the state where it might not make economic sense to provide telecommunications services to certain areas, such as rural, remote, and sparsely populated areas; or support for individuals who otherwise might struggle to access affordable telecommunications services, such as low income, deaf and disabled, or individuals living in or serving disadvantage communities and institutions.

The universal service programs are funded through a surcharge on each customer's phone bill for intrastate telecommunications services. The surcharge for each program is typically adjusted on an annual basis to ensure adequate funding to cover carrier claims and administrative costs. As of February 2019, the total surcharge for all universal service programs is 6.94 percent of each customer's phone bill for intrastate telecommunications service. The states universal service programs include the following:

California High Cost Fund-A: The CHCF-A program provides support for rural small independent telephone companies who are under rate-of-return regulations to ensure rates for customers, mostly in rural areas, remain reasonable and comparable to rates throughout the rest of the state. These rural small independent telephone companies are carriers of last resort (COLR) meaning they are obligated to serve all the customers in their service area. As of February 2019, the CHCF-A surcharge is set at 0.35 percent.

California High Cost Fund-B: The CHCF-B provides support to large telephone companies who are COLRs for providing basic telephone service to all residential customers within designated high-cost service areas to ensure rates for customers remain reasonable and comparable to rates throughout the rest of the state. High cost areas are high-cost Census Block Groups in service areas where the cost of service exceeds $36 per month. As of February 2019, the CHCF-B surcharge is set at zero percent.

California LifeLine Program: The California LifeLine Program was created to provide access for low-income households to affordable basic residential telephone service. The California LifeLine Program helps consumers lower the cost of their phone bills by providing discounts for home phone and cell phone service to qualified residents. Qualifying residents include those who are enrolled in certain public assistance programs such as Medicaid/Medi-Cal, CalFresh, Food Stamps, Supplemental Nutrition Assistance Programs (SNAP), the Women, Infants and Children Program (WIC), the National School Lunch Program, among others. As of February 2019, the surcharge for the California LifeLine Program is set at 4.75 percent.

California Deaf and Disabled Telecommunications Program: DDTP is a universal service program that provide specialized telephone equipment and relay services to individuals who have difficulty using the telephone due to difficulties seeing, hearing, speaking, moving, learning, or remembering. As of February 2019, the surcharge is set at 0.5 percent.

California Teleconnect Fund: The CTF program is a universal service program created to provide discounts to telecommunications services to qualifying institutions. CTF provides a 25 percent discount for voice services and a 50 percent discount for broadband services on select communications services to schools, libraries, hospitals and other non-profit organizations. As of February 2019, the surcharge for the CTF program is set at 0.78 percent.

California Advanced Services Fund: CASF is a universal service program created to encourage the deployment of broadband services in unserved areas of the state. The CASF program provides grants to fund broadband infrastructure projects that will provide broadband access to 98 percent of California households in each region. In addition, the Program provides grants to eligible non-profit organizations to promote broadband deployment and adoption throughout the state. As of February 2019, the CASF surcharge is set at 0.56 percent.

4) **Telecommunications vs. Information Service:** The Telecommunications Act of 1996 (the Act) updated the nations telecommunication law to allow greater entry into the communication market to promote competition. The Act, among other things, established two categories in which communications services would be categorized under. Those categorized under Title I of the Act are considered "telecommunications service" which include traditional common carriers such as telephone companies. These telecommunications services are subject to public utility style regulations in order to ensure universal service. Those categorized under Title II of the Act are considered "information services" such as internet service providers and are subject to less regulation and enforcement from the FCC. In short, the type of service and what it is classified under the Act determines who has the legal authority to regulate the service and the level of regulation.

5) **Texting Tax:** In November 2018, the CPUC issued a proposed decision examining whether or not text messaging service revenue should be subject to the universal service program surcharge. Everyone contributes and benefits from universal service programs regardless of the type of service they use, their income, whether or not they have a disability, or where they live in the state. Over the years, there has been a steady decline in revenues for the states universal service programs, from approximately $16 billion in 2011 to approximately $11 Billion in 2017. At the same time the budget for the states universal service programs has steady increase from $670 million in 2011 to $998 million in 2017. Revenues for these programs depend not just on the number of customers but also on the number of services subject to the surcharge.

   Texting is one of the most common forms of communications today with trillions of wireless text messages being sent out each year. Before the proposed decision text messaging services were neither classified a "telecommunications service" nor an "information service." In the proposed decision the CPUC argued it wasn't necessary to classify text messaging services but it had the responsibility and the authority to preserve and advance universal service under the Act. The CPUC determined that assessing a surcharge on text messaging revenues is likely to increase total revenues to fund the states universal service programs. Following the proposed decision, in December 2018, the FCC issued a declaratory ruling classifying text messaging services as an "information service." Following the FCC's action, the CPUC pulled the proposed decision from its agenda and it is unclear whether or not it will be coming back.

   This bill prohibits the CPUC from collecting revenues to support universal service programs from services the FCC classifies as an "information service." It is unclear why this bill is necessary given the CPUC's actions following the FCC's declaratory ruling. Furthermore, it is unknown what technology might exist in the future that the FCC may classify as an "information service," which may also be exempted from the universal service programs surcharge. As more people move from traditional telephones to IP-enabled services, the pot in which the CPUC draws revenues from to fund the states universal service programs will slowly diminish. Absent the CPUC abilty to draw new sources of revenue; the alternative is for it to increase its surcharge on existing services therefore putting a higher burden on those who still use traditional telephone services; or slowly diminish the level or quality of service provided to the millions of Californians who depend on these programs to communicate with the outside world.

6) **Arguments in Support:** According to the Southwest California Legislative Council, "As introduced AB 162 would prohibit the [CPUC] from collecting, for deposit into any universal service fund, any revenues derived from charges upon the provision of a communications service that the [FCC] has determined is an information service. This bill would also prohibit the [CPUC] from imposing a utility reimbursement fee that is applicable to the provision of a communications service that the [FCC] has determined is an information service […] As one of the highest taxed states in the country already, we do not need to be applying yet another tax on text messages that have become a convenient and preferred means of communication between family members, with employees, and with clients and customers. Just because it exists is no reason to tax it."

REGISTERED SUPPORT / OPPOSITION:

Support

Southwest California Legislative Council
United Chamber Advocacy Network

Opposition

None on file.

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