

Date of Hearing: May 5, 2020

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 2189 (Arambula) – As Introduced February 11, 2020

**SUBJECT:** Small independent telephone corporations: rates

**SUMMARY:** Authorizes small independent telephone corporations to request rate cases before the California Public Utilities Commission (CPUC) either through an advice letter or application. Specifically, **this bill:**

- 1) Authorizes a small independent telephone corporation to request adjustments to its revenue requirement or rate design by initiating a rate case before the CPUC.
- 2) Authorizes a rate case to be initiated by a small independent telephone corporation through either an advice letter or application.
- 3) Requires a rate case submitted by an advice letter to be processed according to the CPUC's rules governing advice letters.
- 4) Requires a rate case submitted by application to be processed according to the CPUC's rules governing formal proceedings.
- 5) Authorizes the CPUC, following review of an advice letter submitted, to require that the advice letter be resubmitted as an application if, based on the contents of the advice letter, the small independent telephone corporation's proposal does both of the following:
  - a) Seeks an increase to its revenue requirement that exceeds the inflation-adjusted value of its current CPUC-approved revenue requirement; and,
  - b) Raises new or unusual issues of fact that necessitate a formal process.
- 6) Prohibits the CPUC from requiring a rate case advice letter be resubmitted as an application unless, within 120 days of the submission date of the advice letter, the CPUC issues a resolution that includes factual findings sufficient to satisfy specified requirements. If the 120th day following submittal of a rate case advice letter falls on a weekend or holiday, issuance of the resolution on the following regular business day shall be deemed to be within 120 days.
- 7) Specifies if the CPUC requires that a rate case advice letter be resubmitted as an application, the small independent telephone corporation shall have at least 90 days from the date of the resolution to file its application. If the 90th day following issuance of the resolution falls on a weekend or holiday, the small independent telephone corporation shall have until at least the following regular business day to resubmit the advice letter as an application. All deadlines associated with the submission of rate cases shall be tolled and all procedural and substantive

rights conferred by submitting the advice letter shall be preserved until at least 90 days following the date of the resolution ordering the resubmittal.

- 8) Specifies for purposes of this bill, inflation shall be measured according to the United States Department of Commerce's Gross Domestic Product-Chained Price Index.
- 9) Defines "small independent telephone corporations" for purposes of this bill as rural incumbent local exchange carriers (RLECs) subject to CPUC regulation.

**EXISTING LAW:**

- 1) Requires the CPUC to exercise its regulatory authority to maintain the California High Cost Fund-A (CHCF-A) Administrative Committee Fund 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. (Public Utilities Code (PUC) Section 275.6)
- 2) Authorizes the CPUC on its own order, whenever it determines it to be necessary, conduct financial audits of the revenues required to be collected and submitted to the CPUC for each of the specified universal service funds, as specified. (PUC Section 274)
- 3) Requires the CPUC to resolve ratesetting 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, including findings as to the reason, and issues an order extending the deadline. Specifies that the CPUC may specify in a scoping memo a resolution date later than 18 months from the date the proceeding is initiated, if that scoping memo includes specific reasons for the necessity of a later date and the commissioner assigned to the case approves the date, as specified. (PUC Section 1701.5)
- 4) Requires all charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered to be just and reasonable. (PUC Section 451)
- 5) 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 rehearings, and the days that commissioners presided in hearings, as specified. (PUC Section 910.1)
- 6) Prohibits a public utility from changing any rate or so alter any classification, contract, practice, or rule as to 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. (PUC Section 454)

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

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "AB 2189 will encourage the CPUC to complete these rate cases in a more efficient, cost-effective, and timely manner that is commensurate with the small size of these rural telephone companies. Communications needs are just as important in rural areas as they are elsewhere in California. These rural telephone companies serve remote and hard to reach areas while maintaining affordability. 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) **Background:** The CPUC is tasked with developing and implementing a number of public programs to promote universal service, including the CHCF-A, the California High Cost Fund-B, the California Lifeline Program, the California Teleconnect Fund, the California Advanced Services Fund, and the California Deaf and Disabled Telecommunications Program. Such 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, 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.

- 3) **California High Cost Fund-A:** CHCF-A is a universal service program that supports providers serving rural, high-cost areas. Combined with federal funding, CHCF-A ensure rates for Californians in such areas remain reasonable and comparable to rates throughout the rest of the state. CHCF-A provides support for rural small independent telephone companies, also known as RLECs, who are under rate-of-return regulations. These RLECs are carriers of last resort who are obligated to serve all customers in their service area. There are 13 RLECs and 10 are currently drawing CHCF-A funds.

The 10 RLECs that draw CHCF-A funds are also known as the small independent local exchange carriers:

- Calaveras Telephone Company
- California-Oregon Telephone Company
- Ducor Telephone Company
- Foresthill Telephone Company
- Kerman Telephone Company
- Pinnacles Telephone Company
- The Ponderosa Telephone Company
- Sierra Telephone Company
- Siskiyou Telephone Company
- Volcano Telephone Company

The three RLECs that do not currently draw CHCF-A funds are:

- Happy Valley Telephone Company
- Hornitos Telephone Company
- Winterhaven Telephone Company

The level of support received by CHCF-A carriers is determined as part of a CPUC general rate case proceeding. The CPUC calculates a revenue requirement need by the carrier to cover expenses, a return on capital investment, and a profit. This includes all reasonable investments necessary to provide for the delivery of high-quality voice communication services and the deployment of broadband-capable facilities. As of September 2018, the surcharge for CHCF-A is 0.35 percent of each customer's phone bill for intrastate telecommunications service.

- 4) **Formal vs. Informal Proceedings:** There are two CPUC processes that exist for RLEC rate cases to be determined; a formal process and an informal process. Formal 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 propose relief, denies relief, or adopts the relief in part.

Informal cases are initiated by an advice letter which are outlined under the CPUC's General Order 96-B to provide 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 request and review before a final resolution is ultimately adopted. Put simply, both types of cases involve the same questions regarding revenue requirements and rate design. The difference is the procedure that is followed.

- 5) **Timelines and Delays:** The CPUC generally has the authority to conduct rate cases through a formal or informal process and has historically processed rate case within a year of filing. However no clear criteria exist for the CPUC to determine when a rate case should be conducted as a formal or informal proceeding. Currently law requires the CPUC to resolve ratesetting or quasi-legislative cases within 18 months of the date the proceeding is initiated. Between 2001 and 2009, 19 RLEC rate cases were conducted through an advice letter process and one was conducted through a formal proceeding. Beginning in 2009 the CPUC switched from conducting almost all of its RLEC rate cases through an informal process to a formal processes.

In 2014, the Legislature passed AB 1693 (Perea) which would have established deadlines for the CPUC to complete RLEC rate cases and implement interim rates in the event the CPUC

failed to meet the deadlines. Governor Brown vetoed AB 1693 and in his veto message directed the CPUC to create a rate case plan to encourage timely completion of these rate cases. In June 2015, the CPUC adopted Decision 15-06-048 which established a 420 day deadline for implementing rates resulting from RLEC rate cases. However, as part of D.15-06-048 the CPUC removed the option to commence rate cases by advice letter and, as such, the timeliness of these rate cases have not improved.

Since it began conducting all RLEC rate cases through the formal process the approximate time it has taken to complete these rate cases has increased substantially; at times exceeding 420 days in duration and pass the 18 month statutory deadline. The delays in completing RLEC rate cases may stem from a number of issues, including disputes between parties, extensive information gathering and fact-finding associated with proceedings, and administrative law judge assignments. At times formal rate cases may include significant changes to underlying CPUC rules and policies about established programs which can require greater discussion and debate about issues outside a RLEC's revenue requirement needs. In addition, CPUC rules provides a process for the CPUC to convert informal proceedings to formal proceedings if parties object and significant policies issues arise.

The bill specifies that RLECs may submit rate cases through advice letters or applications, and establishes a process for the CPUC to covert informal proceeding to formal proceeds if certain criteria are met. The author argues that codifying the RLECs ability to conduct rate cases through advice letter would provide clear guidance to the CPUC and restore an option that can result in a fair and timely process for RLECs rate cases to be completed by the CPUC.

- 6) **Arguments in Support:** According to the California Communications Association, the sponsor of the bill, "For over 20 years, the CPUC used the advice letter process for these rate cases, but it has become clear that the CPUC now requires exclusively formal applications and no longer permits the informal advice letter process. Both processes provide full transparency and disclosure of the information needed for the CPUC and other parties to provide input on ratemaking proposals. However, formal rate cases are more costly and cumbersome because of the nature of the process. Informal rate cases do not involve an ALJ, testimony, expert witnesses, motion practice, response to formal discovery, and other costly formalities. At a time when the CPUC is confronting critical issues in many utility sectors, AB 2189 would provide a procedural change which would assist in achieving more timely resolutions for the small rural telephone company rate cases."
- 7) **Related Legislation:** SB 603 (Borgeas) of 2019 authorizes RLECs to request rate cases before the CPUC either through an advice letter or application. *Status: Held under submission in the Assembly Committee on Appropriations.*
- 8) **Previous Legislation:** AB 1959 (Wood) of 2018 extended the sunset date for the CHCF-A and California High Cost Fund-B from January 1, 2019, to January 1, 2023. *Status: Chaptered by the Secretary of State, Chapter 256, Statutes of 2018.*

SB 1122 (Cannella) of 2016 required the CPUC to make a final decision in a general rate case of a small independent telephone company no later than 390 days following the

company's filing and if the deadline is missed, provides that the utility may file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation. *Status: Died in the Assembly Committee on Utilities and Commerce.*

AB 1693 (Perea) of 2014 required the CPUC to issue a final decision on a general rate case of a small independent telephone corporation within a specified timeframe. *Status: Vetoed by the Governor.*

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Communications Association (sponsor)  
California's Independent Telecommunications Companies

**Opposition**

None on file.

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