STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 3, 2011

To: The Commission
(Meeting of May 5, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 841 (Buchanan) – Telecommunications: universal service: Voice over Internet Protocol (VoIP).**
As amended: March 31, 2011.

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

SB 841 would authorize the CPUC to require interconnected VoIP service providers to collect and remit CPUC Public Purpose Program (PPP) surcharges on California intrastate revenues.

The bill explicitly states that it does not confer jurisdiction to the CPUC or any other entity to regulate interconnected Voice-Over-Internet Protocol (VoIP) service or providers thereof, except for the sole purpose of imposing the PPP surcharges.
AB 841 states that the sole purpose of the bill is to ensure that end-use customers of interconnected VoIP contribute to the PPP surcharges.

The requirement would apply only to interconnected VoIP service provided to an end-use customer's place of primary use that is located within California. The term "place of primary use" is defined as the street address where the use primarily occurs or a reasonable proxy such as the customer's registered location for 9-1-1 purposes.

This bill would permit a VoIP provider to use one of three methodologies to determine intrastate revenues, but the choice must be consistent with the methodology the provider uses at the federal level:

1. (e)(1)(A) The inverse of the Federal Communication Commission's (FCC) safe harbor as it may be revised from time to time
2. (e)(1)(B) A traffic study

3. (e)(1)(C) Any other means of accurately apportioning revenues between federal and state jurisdictions.

SB 841 states legislative intent that any traffic study used would be excluded from public inspection under GO 66-C.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC already has authority to regulate interconnected VoIP as it is a “telephone corporation” as defined in PU Code Sec. 234. The language of this bill implies or suggests that the CPUC does not now have this authority.

The CPUC should oppose the “place of primary use” language in proposed subsection 285 (d) if it is an attempt to limit collection to intrastate revenues of <u>fixed</u> VoIP service only. If this subsection is intended to avoid collection of surcharges on intrastate revenues earned in another state, we would support the intent of the provision as this is a federal requirement.

The CPUC should have the discretion to determine the type of methodology a provider may use to identify intrastate revenues, consistent with federal law. In any event, the methodologies permitted by AB 841 should be consistent with FCC methodologies. Therefore any traffic study used by a VoIP provider for identifying intrastate revenues should be the same traffic study the provider uses to determine interstate/international revenues for purposes of contributing to the federal Universal Service Fund (USF). The FCC regulations require that before an interconnected VoIP provider can begin to base its USF contributions on a traffic study, the provider must submit its proposed traffic study to the FCC for approval.

The bill should require interconnected VoIP service providers to register with the CPUC to facilitate our collection of the PPP surcharges and our enforcement of these obligations.

SUMMARY OF SUGGESTED AMENDMENTS:

(1) On page 2, delete proposed subsection 285 (b), lines 6-14.

(2) On page 2, at line 15, delete “may” and insert in lieu thereof: “shall”.

(3) On page 2, at line 15, after “require” add: fixed or nomadic”.

(4) On page 3, add language to clarify that proposed subsection 285 (d), lines 2-10, is for the purpose of avoiding collection of surcharges on revenues earned in another state.

(5) On page 3, delete lines 11-33, and add in lieu thereof language stating the CPUC shall determine the methodology for identifying intrastate revenues, consistent

with FCC regulations. Alternatively, on page 3, at line 21, after "provider" add "and approved by the Federal Communications Commission"

(6) Add new subsection 285 (f) requiring fixed and nomadic interconnected VoIP service providers providing intrastate service in California to register with CPUC for purposes of this Section.

DIVISION ANALYSIS (Communications Division):

The CPUC has concluded that interconnected VoIP providers are "telephone corporations" as defined by the P.U Code, so the CPUC already has jurisdiction over such service providers.

The CPUC is currently conducting a proceeding to determine if interconnected VoIP service providers should be required to contribute to our communications universal service (or public purpose) programs.

The FCC to date has not resolved whether VoIP service is an information service or a telecommunications service. The issue of what it is and whether states have jurisdiction over these services and the providers is still a matter of debate. However the FCC made clear in a Declaratory Ruling in 2010 that it has not preempted the states from requiring interconnected VoIP service providers to contribute to state universal service programs.

PROGRAM BACKGROUND:

The CPUC currently oversees the following programs that rely on public purpose program surcharges on telecommunications corporations:

1. **The California LifeLine,** established in 1984, provides discounted basic telephone service to low-income households as a means to achieve universal service.

2. **The California Teleconnect Fund** (CTF), established in compliance with Assembly Bill (AB) 3643, provides discounts on selected telecommunications services to qualified entities –schools, libraries, CBOs, public health facilities.

3. **The Deaf and Disabled Telecommunications Program** (DDTP) was originally created by CPUC decision and subsequently codified in P.U. Code § 2881 *et seq*. Other legislation was added to the Code, ultimately creating four components to address the needs of separate Californian constituencies who are deaf, hard-of-hearing, or otherwise disabled. The California Relay Service is one component of the DDTP.

4. **The California High Cost Funds** provide a source of supplemental revenues to incumbent Local Exchange Carriers (LECs) who are Carriers of Last Resort, and whose basic exchange access line service rates would otherwise be increased to levels that would threaten universal service. In D.96-10-066, the CPUC identified two programs for the purpose of determining universal service subsidy support;

5. **The California High-Cost Fund A** (CHCF-A*)* for the State's small ROR ILECs,

6. **The California High-Cost Fund-B** (CHCF-B) for the mid-size and large ILECs.

7. **The California Advance Services Fund** (CASF) supports the deployment of broadband facilities and service to unserved and underserved areas of the State***.*** The Legislature codified the CASF in 2008.

LEGISLATIVE HISTORY:

47 U.S.C. 254 requires states to preserve and advance universal service.

The FCC requires interconnected VoIP providers to contribute to the federal Universal Service Fund based on a percentage of their interstate and international revenues.

The FCC made clear in a Declaratory Ruling in 2010 that it has not preempted the states from requiring interconnected VoIP service providers to contribute to state universal service programs.

FISCAL IMPACT:

None.

STATUS:

SB 841 is scheduled to be heard in the Assembly Utilities and Commerce Committee on May 4th, 2011.

SUPPORT/OPPOSITION:

Support:
AT&T (sponsor)
Verizon
Frontier Communications
CalCom
California Cable Television Association (CCTA)

Opposition:
None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 841 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 31, 2011

INTRODUCED BY Assembly Member Buchanan

FEBRUARY 17, 2011

An act to ~~amend Section 270 of~~ *add Section 285 to* the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 841, as amended, Buchanan. Telecommunications: universal ~~service.~~ *service: Voice over Internet Protocol (VoIP).*

Existing law, the federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, including telephone corporations.

Existing law establishes six funds in the State Treasury through which the state's universal service programs are funded. Existing law requires that moneys in the funds may only be expended for specified purposes and upon appropriation in the annual Budget Act or upon supplemental appropriation.

~~This bill would make a nonsubstantive, technical change to this requirement.~~

This bill would authorize the commission to require interconnected Voice over Internet Protocol (VoIP) service providers to collect and remit surcharges on their California intrastate revenues in support of the universal service funds. By authorizing extension of universal service surcharges to VoIP subscribers the bill would make a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

Vote: ~~majority~~ *2/3* . Appropriation: no. Fiscal committee: ~~no~~ *yes* .
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 285 is added to the Public Utilities Code , to read:

285. (a) As used in this section, "interconnected Voice over

Internet Protocol (VoIP) service" has the same meaning as in Section 9.3 of Title 47 of the Code of Federal Regulations.

(b) This section does not confer jurisdiction to the commission, or to any other entity, to regulate interconnected VoIP service or to regulate providers of interconnected VoIP service, except for the sole purpose to impose surcharges pursuant to this section. The sole purpose of this section is to ensure that end-use customers of interconnected VoIP service providers contribute to the funds enumerated in this section, and therefore, this section does not confer other authority or indicate legislative intent with respect to any other purpose.

(c) The commission may require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the following public purpose program funds:

(1) California High-Cost Fund-A Administrative Committee Fund under Section 275.

(2) California High-Cost Fund-B Administrative Committee Fund under Section 276.

(3) Universal Lifeline Telephone Service Trust Administrative Committee Fund under Section 277.

(4) Deaf and Disabled Telecommunications Program Administrative Committee Fund under Section 278.

(5) California Teleconnect Fund Administrative Committee Fund under Section 280.

(6) California Advanced Services Fund under Section 281.

(d) The authority to impose a surcharge pursuant to this section applies only to a surcharge imposed on end-use customers for interconnected VoIP service provided to an end-use customer's place of primary use that is located within California. As used in this subdivision, "place of primary use" means the street address where the end-use customer's use of interconnected VoIP service primarily occurs, or a reasonable proxy as determined by the interconnected VoIP service provider, such as the customer's registered location for 911 purposes.

(e) (1) For the purposes of determining what revenues are subject to a surcharge imposed pursuant to this section, an interconnected VoIP service provider may use any of the following methodologies to identify intrastate revenues:

(A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected VoIP service for federal universal service contribution purposes, as these percentages may be revised from time to time.

(B) A traffic study specific to the interconnected VoIP service provider allocating revenues between the federal and state jurisdictions.

(C) Another means of accurately apportioning interconnected VoIP service between federal and state jurisdictions.

(2) The methodology chosen pursuant to paragraph (1) shall be consistent with the revenue allocation methodology the provider uses to determine its federal universal service contribution obligations.

(3) It is the intent of the Legislature that a traffic study described in subparagraph (B) of paragraph (1) is excluded from public inspection pursuant to Public Utilities Commission General Order 66-C, because the disclosure of these studies would place the provider at an unfair business disadvantage.

~~SECTION 1. Section 270 of the Public Utilities Code is amended to read:~~

~~270. (a) The following funds are hereby created in the State Treasury:~~

~~(1) The California High-Cost Fund-A Administrative Committee Fund.~~

~~(2) The California High-Cost Fund-B Administrative Committee Fund.~~

~~(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.~~

~~(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.~~

~~(5) The Payphone Service Providers Committee Fund.~~

~~(6) The California Teleconnect Fund Administrative Committee Fund.~~

~~(7) The California Advanced Services Fund.~~

~~(b) Moneys in the funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds shall only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.~~

~~(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided in Sections 19325 and 19325.1 of the Education Code.~~