

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 23, 2011, 2011

To: The Commission
(Meeting of May 26, 2011)

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

Subject: **SB 3 (Padilla) – Telecommunications: universal service.**
As amended: April 12, 2011.

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

SB 3 would extend the sunset dates for the California High Cost Fund-B (CHCF-B) program from January 1, 2012, to January 1, 2014.

SB 3 would require the California Public Utilities Commission (CPUC) to require intrastate end users of interconnected VoIP providers to contribute to CPUC communications public purpose programs. The bill states that it does not enlarge or diminish CPUC authority over interconnected VoIP but rather grants the CPUC explicit authority to require such contributions from end users of interconnected VoIP.

SB 3 would also state that it is the intent of the Legislature that the CPUC participate in “all proceedings” of the Federal Communications Commission (FCC) relating to changes in universal service regulations and open proceedings, as necessary, to consider appropriate conforming changes to state universal service programs. And to report to the Legislature by October 1, 2012, on the status of FCC universal service proceedings and on any changes necessary to State universal service programs in light of FCC changes to federal universal service programs.

The bill is an urgency measure.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC supports the extension of the CHCF-B program. The Commission recognizes that there is a continued need for universal service support the fund provides in high cost areas.

The CPUC believes the language which would “grant explicit authority” to the CPUC to require VoIP end users to contribute to the CPUC’s universal service (public purpose) programs is unnecessary. Interconnected VoIP providers already meet the statutory definition of a “telephone corporation.” (See PU Code sections 233 and 234.) Consequently, the CPUC already has the authority to impose the surcharges, but to date, has elected not to do so.

The bill also requires “end users” of interconnected VoIP to contribute to the state universal service programs. The bill should be amended to require interconnected VoIP providers to contribute, as directed by the CPUC. This change would ensure that the CPUC can require the VoIP service provider to collect and remit to us the contributions. It also would avoid any future problems in cases where the VoIP service is prepaid.

SUMMARY OF SUGGESTED AMENDMENTS:

Amendment 1:

On page 3, at line 8, amend proposed Sec. 270.5 (b) by deleting “except to grant explicit authority to require contributions pursuant to subdivision (a)” so that it reads

(b) The requirement in subdivision (a) shall not be construed to enlarge or diminish any regulatory authority over VoIP service providers under existing law.

DIVISION ANALYSIS (Communications Division):

1. This bill would extend the sunset date of the CHCF-B program from January 1, 2012, to January 1, 2013. The CHCF-B program provides supplemental revenues to subsidize the cost of residential lines in high cost areas served by the four largest Incumbent Local Exchange Providers (ILECs) in the state (AT&T, Verizon, SureWest, and Frontier). The purpose of the subsidies is to keep basic telephone service affordable and to meet the CPUC’s universal service goal.
2. The CPUC supports the extension of the CHCF-B programs to January 1, 2014. While there is some evidence that the cost of providing telephone service in some rural areas is decreasing, there is a continued need for universal service support the fund provides in some traditionally high cost areas. Extending the program would prevent the sudden ending of subsidies (transfer payments) to the four telephone corporations that participate in the CHCF-B program. I and the very likely increases in rates to the rural ratepayers of these companies.
3. The CHCF-B Fund is budgeted at \$47.711 million for FY 11-12.

4. The bill would also require the CPUC to require interconnected VoIP end users to contribute to CPUC universal service programs. These programs include the following :
 - the California LifeLine Telephone Program (formerly known as the Universal Lifeline Telephone Service or ULTS),
 - the California High-Cost Fund A,
 - the California High-Cost Fund B,
 - the California Advanced Services Fund,
 - the California Teleconnect Fund, and
 - the Deaf and Disabled Telecommunications Program.¹
5. The FCC defines “interconnected” VoIP service as follows: (1) the service enables real-time, two-way voice communications; (2) the service requires a broadband connection from the user’s location; (3) the service requires IP-compatible customer premises equipment; and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN. (47 C.F.R. § 9.3). The FCC requires these providers to contribute to the federal Universal Service Fund.
6. The CPUC is currently conducting a rulemaking to determine if the CPUC should require interconnected VoIP providers to contribute to these programs. (See R. 11-01-008). Including VoIP service providers and customers in the Universal service surcharges could benefit all ratepayers (including VoIP ratepayers) by continuing to ensure universal access to the Public Switched Telephone Network.
7. The limited objective of this rulemaking is to ensure that the California universal service programs are supported in a competitively and technologically neutral manner, and that contributions to the programs are sufficient to preserve and advance universal service.² Currently, some VoIP providers collect surcharges and contribute to these funds voluntarily.
8. Finally, the bill also states Legislative intent that the CPUC participate in “all proceedings” of the Federal Communications Commission (FCC) relating to changes in universal service regulations. CPUC staff currently and routinely participate in *relevant* FCC proceedings on universal service. While this language is unnecessary, ,since it goes beyond current CPUC practices of participating in *relevant FCC* proceedings and instead states intent to participate in *all* FCC proceedings pertaining to universal service the bill would increase staff workload.

¹ The Commission’s Universal Service Public Programs are described at:
<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/>

² The CPUC’s Consumer Protection and Safety Division has filed a motion to expand the scope of the OIR to include the question of whether statutory consumer protections should be extended to the customers of VoIP providers. The assigned ALJ has not yet acted on the motion.

PROGRAM BACKGROUND:

5. Though initially created by CPUC order, the California High Cost Fund-B (CHCF-B) was implemented in accordance with [Public Utilities Code § 739.3](#). It provides subsidies to carriers of last resort (COLRs) for providing basic local telephone service to residential customers in high-cost areas that are currently served by AT&T California, Verizon California Inc., Frontier Communications of California, and Cox Communications. The purpose of the subsidies is to keep basic telephone service affordable and to meet the State's universal service goals.
6. The CHCF-B is funded by [a surcharge](#) assessed on the intrastate end-user billings of all telecommunications carriers providing service in California. The carriers, in turn, remit the surcharge monies to a financial institution as the CPUC has directed. Procedures for the administration of CHCF-B and guidelines for qualification of COLR are set forth in the Adopted Universal Service Rules, which the CPUC adopted in Decision 96-10-066.
7. The CPUC found in Decision 08-09-042 that the best means to assure affordable telecommunications services in high cost areas is through the use of "targeted programs and policies such as...the CHCF-B".
8. Beyond the CHCF-B, the CPUC administers several other programs aimed at achieving the state's goal of universal telephone service:
 - **The California LifeLine**, established in 1984, provides discounted basic telephone service to low-income households as a means to achieve universal.
 - **The California Teleconnect Fund (CTF)**, established in compliance with Assembly Bill (AB) 3643, provides discounts on selected telecommunications services to qualified entities.
 - **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.
 - **The California High Cost Funds** provide a source of supplemental revenues to 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 Commission identified two programs for the purpose of determining universal service subsidy support; t
 - **The California High-Cost Fund A (CHCF-A)** for the State's small LECs,
 - **The California High-Cost Fund-B (CHCF-B)** for the mid-size and large LECs.

- **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 2008.43

LEGISLATIVE HISTORY:

P.U. Code section 739.3 was originally established in 1987 by AB 1466. In 1996, section 739.3 was modified and a sunset date was added. Since that change, the program has been renewed three times through legislation, most recently by SB 780 in 2008, which established the current sunset date of January 1, 2012.

FISCAL IMPACT:

The bill would extend the CHCF-B program for 2 years. Our CPUC costs to administer this program could continue through 2013 unless the CPUC terminates the program.

The CPUC is already conducting an OIR to determine if interconnected VoIP providers should be required to contribute to our communications public purpose programs. This bill would require the CPUC to do so. The current OIR could encompass the directives in this bill should it be enacted. So there would be no increase in cost for the proceeding. However, the CPUC may incur some increases in administrative and auditing costs should interconnected VoIP be added to the entities now required to contribute to the communications public purpose programs.

The bill also states Legislative intent that the CPUC participate in all FCC universal service proceedings and report to the Legislature by October 1, 2012, on any necessary changes to State universal service programs in light of these FCC proceedings. CD would need at least one new PURA IV full time and Legal would need 1 new PU Counsel III half-time to ensure that we can respond to all such FCC proceedings.

Total new fiscal impact would be at least \$177,403.00.

STATUS:

SB 3 is currently in the Senate Appropriations Committee Suspense File and will be acted on at a later date.

SUPPORT/OPPOSITION:

Support:

Frontier Communications
Regional Council of Rural Counties

Oppose:

The Utility Reform Network (unless amended)

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BILL LANGUAGE:

BILL NUMBER: SB 3 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 12, 2011
AMENDED IN SENATE MARCH 29, 2011

INTRODUCED BY Senator Padilla
(Coauthor: Senator Fuller)

DECEMBER 6, 2010

An act to amend Section 739.3 of, to add Section 270.5 to, and to add and repeal Section 283 of, the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 3, as amended, Padilla. Telecommunications: universal service.

(1) 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. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, including telephone corporations, and to fix just and reasonable rates and charges for the public utility. Existing law establishes the state's universal service funds, including the California High-Cost Fund-A Administrative Committee Fund (CHCF-A) and the California High-Cost Fund-B Administrative Committee Fund (CHCF-B), in the State Treasury, and provides that moneys in each of the state's universal service 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 may only be expended to accomplish specified telecommunications universal service programs, upon appropriation in the annual Budget Act or upon supplemental appropriation.

Existing law, until January 1, 2012, requires the commission to develop, implement, and maintain a suitable, competitively neutral, and broadbased program to establish 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 commission. Existing law provides that it applies only to the CHCF-B program.

This bill would extend the repeal date of the CHCF-B program requirements until January 1, 2014.

(2) This bill would require the commission to require contributions from intrastate ~~end users~~ revenues of interconnected Voice over Internet Protocol service to support the universal service programs. The bill would state the intent of the Legislature that the commission participate in ongoing federal proceedings before the Federal Communications Commission relative to the federal universal service program and would require that the commission report to the Legislature by October 1, 2012, on the status of proposed changes to federal universal service regulations and whether any changes to statutes authorizing state universal service programs are necessary to ensure that they are not inconsistent with federal regulations.

(3) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the program that is extended under the provisions of this bill is within the act and a decision or order of the commission implements the program requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

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

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

SECTION 1. Section 270.5 is added to the Public Utilities Code, to read:

270.5. (a) The commission shall require contributions from intrastate ~~end users~~ revenues of interconnected Voice over Internet Protocol service , or VoIP service , as defined in Section 41019.5 of the Revenue and Taxation Code, to support the universal service programs identified in Section 270.

(b) This section shall not be construed to enlarge or diminish any regulatory authority over VoIP service providers under existing law except to grant explicit authority to require contributions pursuant to subdivision (a).

SEC. 2. Section 283 is added to the Public Utilities Code, to read:

283. (a) The Legislature finds and declares all of the following:

(1) Federal and state laws and regulations to promote universal

service have historically provided support for universal access to landline voice telephone service.

(2) The Telecommunications Act of 1996 (Public Law 104-104) provides that state regulations to preserve and advance universal service shall not be inconsistent with the universal service regulations adopted by the Federal Communications Commission (47 U.S.C. Sec. 254(f)).

(3) The Federal Communications Commission, in implementing the National Broadband Plan, released in March 2010, has proposed substantial changes to its universal service regulations in order to increase accountability and efficiency and provide support for universal access to broadband and voice service.

(b) It is the intent of the Legislature that the commission participate in all proceedings of the Federal Communications Commission relating to changes in universal service regulations and open proceedings, as necessary, to consider appropriate conforming changes to state universal service programs.

(c) By October 1, 2012, the commission shall report to the Legislature on the status of proposed changes to federal universal service regulations and whether any changes to statutes authorizing state universal service programs are necessary to ensure that they are not inconsistent with federal regulations.

(d) The report to be submitted pursuant to subdivision (c) shall be submitted in compliance with Section 9795 of the Government Code.

(e) Pursuant to Section 10231.5 of the Government Code, this section is repealed on October 1, 2016.

SEC. 3. Section 739.3 of the Public Utilities Code is amended to read:

739.3. (a) The commission shall develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone corporations serving rural and small metropolitan areas. 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.

(b) For purposes of this section, small independent telephone corporations means those independent telephone corporations serving rural areas, as determined by the commission.

(c) The commission shall develop, implement, and maintain a suitable, competitively neutral, and broadbased program to establish 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 commission. The commission shall develop and implement the program on or before October 1, 1996. 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. Except as otherwise explicitly provided, this subdivision does not limit the manner in which the commission collects and disburses funds, and does not limit the manner in which it may include or exclude the revenue of contributing entities in structuring the program.

(d) The commission shall structure the programs required by this section so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

(e) The commission shall investigate reducing the level of universal service rate support, or elimination of universal service rate support in service areas with demonstrated competition.

(f) By July 1, 2010, the commission shall prepare and submit to the Legislature a report on the affordability of basic telephone service in areas funded by the California High-Cost Fund-B Administrative Committee Fund. The report, among other things, shall provide information on prices and costs of basic telephone service, and penetration and utilization rates of basic telephone service by income, ethnicity, age, and other demographic characteristics, using surveys and other methods of identifying the factors affecting affordability of basic telephone service for customers and noncustomers. The report shall describe the characteristics of noncustomers and their reasons for not having telephone service. The report shall identify those persons most at risk of losing basic telephone service. The report shall be funded out of the California High-Cost Fund-B Administrative Committee Fund.

(g) This section shall only apply to the California High-Cost Fund-B Administrative Committee Fund program.

(h) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide the Public Utilities Commission with express authority to require providers of telephone quality voice communication utilizing Voice over Internet Protocol to contribute to the state's universal service programs, as proposed in pending Rulemaking 11-01-008, it is necessary for this act to take effect immediately.