

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 6, 2016

To: The Commission
(Meeting of April 7, 2016)

From: Hazel Miranda, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 2395 (Low) – Telecommunications: replacement of public switched telephone network.
As amended: March 17, 2016**

RECOMMENDED POSITION: OPPOSE

SUMMARY OF BILL

The bill would modify California universal service requirements by replacing telephone corporation (carrier) obligations to serve customers with single line voice service with a process by which any carrier could discontinue voice service beginning January 1, 2020. After the carrier notifies the California Public Utilities Commission (CPUC) and the customer, and if no alternative providers are available, the customer could petition the CPUC to order the existing carrier to provide voice service only for the next 12 months. The CPUC is directed to setup a universal connectivity fund by Sept 1, 2019 to provide service for the customers without alternative providers after their 12-month period of service has expired.

CURRENT LAW

Public Utilities (PU) Code Sections 233 and 234 define telephone line to include wires and wireless, and telephone corporation to include every corporation managing a line for compensation in the state.

PU Code Sections 270 – 281 created the programs for the California High Cost Funds A and B, Universal Lifeline Telephone Service Trust, the Deaf and Disabled Telecommunications Program and the California TeleConnect Fund.

PU Code Section 451 "...Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

PU Code Sections 431 – 435 set forth user fees to support CPUC operations.

PU Code Section 709 “The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: a) to continue our universal service commitments by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians...”

PU Code Section 871 is the implementation of the Moore Universal Telephone Service Act.

PU Code Section 2881 describes the implementation of the deaf and hearing impaired program.

AUTHOR’S PURPOSE

The bill “sets out a plan” for California to “promote widespread access to advanced communications services and help California meet its carbon reduction goals.”

DIVISION ANALYSIS (Communications Division)

The analyses below outlines the bill based on the framework below.

- (1) Universal Service. The bill would undermine the California and federal government commitment to universal service—the statutes and rules for a network for essential communications for all Californians.
- (2) Public Safety. The service withdrawal contemplated in the bill would negatively impact public safety by undermining safe and reliable telephone service for people who live in rural, high cost areas, and people statewide who participate in LifeLine if they do not have an alternative communication provider.
- (3) Safe and Reliable Service. The bill would undermine CPUC authority over safe and reliable service.
- (4) Is Unnecessary. California has rules for service withdrawal, and these rules are technology neutral—service can be provided by VoIP, wireless, or other technologies. In addition, the bill is not necessary for the stated purpose of promoting the adoption of IP services. Network infrastructure is already being upgraded to IP technology, something the CPUC supports.

(1) Universal Service

California legislation, including Public Utilities (PU) Code § 709 and the Moore Universal Service Act, mandates universal service, and this bill provides a path for telephone corporations who are carriers of last resort to withdraw service without a reasonably comparable alternative.

- The CPUC has a fundamental duty to provide safe and reliable utility service embodied in PU Code § 451, and this bill would replace existing service withdrawal rules of carriers of last resort which insure that all Californians have access to telephone service. The adoption of this bill would leave thousands of Californians, predominantly rural customers, without access to landline telephone service, and hence access to 9-1-1 and other necessary communications.

- Carriers of last resort have the responsibility to provision services that are provided by the public purpose programs, including basic service, and so elimination of the obligations of carriers to provide these services would essentially eliminate the programs.
- California LifeLine service (the ULTS program) provides discounted landline phone and wireless phone services to qualified households. In 2016, 627,000 low income customers have wireline voice service through this program, and this bill provides a path to turn off telephone service for them without providing an equivalently affordable alternative.
- The DDTP program oversees telecommunications devices to deaf or hard-of-hearing consumers, and the California Relay Service, which enables deaf customers to communicate with hearing customers through a communications assistant. Access to this program is not included in the alternative service elements of this bill, and without carriers to provide these services, the affected communities would lose access to voice communications.

Four Commission universal service or “public purpose” programs would be adversely affected by this bill. These programs were set up to implement universal service in California, a fundamental tenant of public policy in California since the Moore Act over 40 years ago. Carriers of last resort have the responsibility to provision services that are provided by these programs, including basic service. Elimination of the obligations of carriers to provide these services would essentially eliminate the programs.

The Commission’s Public Purpose Programs are set forth in PU Code §§ 270 to 281:

Universal Lifeline Telephone Service (ULTS): California LifeLine provides discounted landline phone and wireless phone services to qualified households. In 2016, 627,000 low income customers have wireline voice service through this program. The program allows the customers to choose landline or wireless or VoIP service, and it is a fundamental principle of the program that consumers can choose the service that best suits their needs. Since the consumer has the choice of the carrier for the subsidy, these customers would already have chosen another preferred provider if there were one. Carriers of Last Resort are required to offer LifeLine service. The CA LifeLine wireless program is voluntary.

Deaf and Disabled Telecommunications Program (DDTP): The DDTP program provides telecommunications devices to deaf or hard-of-hearing consumers, and the California Relay Service, which enables deaf customers to communicate with hearing customers through a communications assistant. Access to this program is not included in the alternative service elements of this bill, and without carriers to provide the service these hearing-affected customers would lose access to voice communications.

California High Cost Fund-A (CHCF-A) and California High Cost Fund-B (CHCF-B): The A-Fund fund provides subsidies to 10 of the 13 eligible small local exchange carriers (LECs) for providing landline telephone service to residential customers in rural high-cost areas of the state. The B-Fund fund provides subsidies to the larger carriers of

last resort (COLRs) for providing landline telephone service to their residential customers in the portions of their service territories classified as high-cost areas.

If this bill is implemented, those companies funded by these two programs and under an obligation to serve high cost areas would be free to discontinue service. With no other providers with facilities in these areas, they would go without service unless the A and B Funds were expanded to fund the deployment of entirely new facilities to replace the abandoned facilities of the departing COLRs.

(2) Public Safety

This service withdrawal would have a negative effect on public safety by removing safe and reliable telephone service from people who live in rural, high cost areas, and/or participate in LifeLine, and are basic service customers, because these consumers may not have effective alternative communication providers.

- This bill would undermine the foundation of universal service in California by allowing telephone corporations to abandon the obligation to serve customers with voice service in areas where the providers no longer want to offer traditional voice service. The consumers most likely to be adversely impacted are those who live in rural, high cost areas, and/or participate in LifeLine, and are basic service customers, because these consumers may not have effective alternative communication providers.
- The bill assumes that undefined alternative services are available in all areas of California. The facts do not support this assumption, whether those putative alternative providers are landline-based (such as cable) or wireless. The availability of voice over IP (VOIP) service depends on the deployment of broadband, which is not available in many places in California at affordable rates or at all, particularly in rural areas.

(3) Safe and Reliable Service

- This bill would potentially remove landline voice service from users without providing viable options. It is expected that many of the requests to remove voice service will be in high cost, rural areas. Rural Californians rely on landline voice service for calling 9-1-1, emergency communications, and staying in touch because wireless is frequently not available.
- The existing service quality rules in GO 133-C are based on traditional telephone service lines. If voice service over those lines is removed and PU Code § 710 does not allow for the collection of service quality information, then the CPUC will receive no information about residential telephone service in California, nor will California's telecommunications customers or the Legislature. This result contradicts PU Code § 451, to insure that utilities provide safe and reliable service for all Californians, because the CPUC will not have the ability to ensure that services are safe and reliable – and secure.

- Service outages for VOIP are not currently reported to the CPUC, so as more consumers move to VOIP, less information is available to the CPUC and the Legislature. Major service outages, and their impact on the ability to reach emergency services by all Californians, are a critical safety concern.

(4) The Bill Is Not Necessary to Achieve the Stated Policy Objectives

California has rules for service withdrawal and the provision of basic service, and they are technology neutral. Any carrier of last resort can provide basic service using any technology that meets the requirements, and carriers should be able to comply with these rules without regard to technology or the digital format of the telecommunications traffic.

- The CPUC already has service withdrawal rules for carriers of last resort (COLR), recently updated in the proceeding (R.09-06-019) for the California B-Fund (which is one of the two funds set aside for universal service provision in high cost areas in California). As a part of this proceeding, Decision D.12-12-038 updated the requirements for voice service –called the basic service elements -- and the COLR rules, including the procedures under which COLRs can withdraw service.
- This bill would supersede the CPUC basic service decision which defined the services essential to meet universal service. A uniform definition of basic service is required so that all residential telephone customers, no matter where they live in California, can expect a certain minimum level of service.
- The California rules for carrier of last resort are technology-neutral, giving telephone corporations the freedom to choose how to provide the service as long as the basic service elements are met. This bill leaves the provider’s choice of technology as the basis for the service offering, independent of whether that choice provides safe and reliable telephone service for all Californians, which is the universal service imperative.
- This bill does not explicitly address copper retirement, whether through neglect or service withdrawal; however; the result of allowing removal of voice service and the abandonment of copper loops as constituent elements of universal service, would have impact on California’s alternative carriers and hence the already-limited competitive environment for residential service. Allowing the withdrawal of service over copper wires would similarly mean abandoning the many rules attached to wireline service. One of the key rules is that competitive local exchange carriers have access to wholesale copper infrastructure to offer their services. This is important because these services, both the residential and business wholesale service and “special access” service, are essential to the operation of a healthy competitive telecommunications marketplace.
- The bill’s proposal to create a “universal connectivity program” is unclear; it fails to consider the limits the Legislature has placed on alternative services, which would make creating such a program problematic at best. It is unrealistic to expect universal service without the jurisdictional authority and financial means to support

that service. It is unclear how the universal connectivity program will be funded. It is also unclear whether the contemplated fund is intended to fund provision of traditional wireline service *during* the 12-month period the CPUC may order, or *after* that 12-month period has expired, or whether the current array of public purpose programs is to be replaced in either the short or long term.

- If the fund is supposed to be about building facilities in areas the existing California telephone corporations find too costly to serve, then the CPUC already has in place the California High Cost A- and B-Funds to address the provision of service in high cost areas. Their status is unclear under the proposed legislation. At the same time, the California Advanced Services Fund (CASF) provides grants for broadband facilities construction in underserved and unserved areas. Its function becomes problematic if the CASF broadband facilities lack enforceable interconnection rights with entities replacing carriers of last resort. If the contemplated “universal connectivity” fund is meant to subsidize end users for wireless service, the ULTS fund already funds low-income Californians to have access to telephone service. But, again, it is unclear if the proposed measure allows for the continuation of the state’s LifeLine program or participation in the Federal Lifeline program.

This bill is unnecessary for its stated purpose of promoting the adoption of IP services, and its green credentials are not substantiated.

- The PSTN has been evolving since the first day it was built, and decades ago the PSTN transitioned to digital phone service and then the introduction of IP-enabled services over that network. Unlike the earlier transition to Time Division Multiplex digital technologies, the bill positions the removal of traditional voice service and the subsequent provision of IP voice as a technology imperative requiring the end of regulation, as though the rearrangement of zeros and ones in packets justified the end of a public telephone network. At the same time, the bill concedes that some form of universal service and consumer and safety protections, however uncertain, remain fundamental in both state and federal law.
- The bill’s focus on a cutover date for the adoption of end user IP services belies the fact that the IP transition is a technology migration that has been going on for decades. The migration proposed, since it is already happening, is less a technological imperative than a deregulatory ambition. The telecommunications infrastructure remains a network of networks, composed of a variety of technologies: physical (copper, fiber, wireless, etc.), protocol (IP, TDM, SS7, SIP), and plant architecture (central office, cloud, enterprise), with interconnection and call completion as foundational. These technologies co-exist and change over time; however many the changes, one service offering – voice – is fundamental to human understanding, and therefore the unavoidable rationale for universal service.
- Copper last mile facilities can and do provide both IP services *and* traditional voice services. For instance, AT&T’s U-verse service, and IP-enable service bundle, which provides voice service using VoIP, is currently provisioned over copper last-mile facilities. The IP-transition has already occurred with U-Verse, and without the severe regulatory gymnastic the bill proposes. Verizon/Frontier’s last mile fiber

service, called FiOS, provides both VoIP and traditional phone service over fiber, and has gone on under the current regulatory regime.

- The energy savings in this bill are not documented, quantified or substantiated by the author. Central office telephone switch replacement is already a part of a carrier's transition to IP services. Energy savings from switch replacement are not related to the removal of or maintenance of the telephone line; in any case, those savings are already occurring without the need for a changed regulatory landscape. As previously stated, IP voice services can and do operate over copper lines; and fiber and coaxial cable are being used and deployed already.

Facility Construction Programs

The bill's proposal to create a "universal connectivity program" is unclear. The bill fails to consider the limits the Legislature has placed on alternative services (such as VoIP), which would make creating such a connectivity program problematic. It is unclear how the universal connectivity program will be funded. It is also unclear whether the contemplated fund is intended to fund provision of traditional wireline service *during* the 12-month period the CPUC may order, or *after* that 12-month period has expired or both.

If the contemplated universal connectivity fund is intended to subsidize end user wireless service, the ULTS fund is available already for low-income Californians to have access to telephone service. California LifeLine provides subsidies to end users through their carriers for telephone service in a technology-neutral fashion.

CPUC Authority and Utility Licensing

To the extent that this bill uses the withdrawal of voice service as a proxy for the removal of CPUC authority, there are impacts on the protections and benefits of CPUC licensing. One protection of CPUC licensing is the review and approval of tariffs. Tariffs are public documents which detail the services, equipment and pricing offered by telephone corporations, which are common carriers, to all potential customers. Tariffing rules for carriers in California include the requirement to offer unbundled basic service and also to provide 9-1-1 connection to and from public safety answering points (PSAPs). Tariffed services are also critical for electric, gas, and water corporations.

Tariffed services are key for special access facilities, including those that connect wireless carriers to central offices. A small number of companies control the majority of special access facilities in California. If special access facilities do not need to be tariffed as a result of the bill, the Local Exchange Carriers can use their control over those facilities to raise rivals' costs, including those of wireless companies. Without licensing, there would be no tariffing, and hence no obligation to offer service to all potential customers at a published price. Businesses and residents could potentially be refused essential communication services without an alternative or face discriminatory rates without remedy under law.

Copper Retirement

This bill does not explicitly address copper retirement, whether through neglect or service withdrawal, however the result of allowing removal of voice service and thus the abandonment of copper loops, would have impact on California's alternative carriers and hence the competitive environment. Allowing the abandonment of service over copper wires would similarly mean abandoning the many rules attached to wireline service. One of the key rules is that competitive local exchange carriers have access to wholesale copper infrastructure to offer services. This is important because these services, both the residential and business wholesale service and "special access" service, are essential to the operation of a healthy competitive telecommunications marketplace.

Related to a COLR's duty to provide service is the definition of its given franchise territory. If that COLR responsibility is removed, then it is not clear with which company an alternative provider would connect to offer service. The duty to interconnect is set forth in the Telecommunications Act of 1996, and the CPUC has a role in the interconnection process through adjudication of interconnection disputes according to sections 251/252 of the Act.

SAFETY IMPACT

This bill would potentially remove landline voice service from users without providing comparable options. Based on service quality data, it is expected that many of the requests to remove voice service will be in rural areas. Rural Californians rely on landline voice service for calling 9-1-1, emergency communications, and staying in touch because wireless is frequently not available.

The ability to substitute wireline voice service with another wireline or wireless alternative is a market-specific and geographic determination. The bill assumes that alternative services are available in all areas of California, and the facts do not support this assumption, whether those alternative providers are landline based or wireless.

CPUC mobile field test data, independently gathered twice each year, shows that wireless coverage maps presented to consumers by the wireless carriers are vague and misleading. The maps do not show actual speeds and usable coverage, sometimes showing only technology, e.g. LTE. Further, CPUC data suggests that the coverage for mobile voice over LTE (a VoIP service) is smaller than the carriers' advertised coverage footprints.

The CPUC has extensive data on landline service quality, submitted by the carriers according to GO 133-C, which shows service quality data (outages and durations) for every central office in California. This data shows that rural wireline service quality, as measured in the average time a customer is out of service, is worse than in urban areas. More urban and suburban areas show higher service quality. Currently, approximately 5.8M lines are reported by the carriers under GO 133-C (excluding VoIP from local exchange carriers or cable), so a 10% year-over-year reduction in lines by 2020 will yield approximately 3.4 M customers who will be impacted by this bill.

This bill would supersede the CPUC basic service decision which defined the services essential to meet universal service needs. A uniform definition of basic service is required so that all residential telephone customers, no matter where they live in California, can expect a certain minimum level of service. The bill proposes four criteria for alternative service: voice grade access to the PSTN, real time two way communications, access to 9-1-1 and residential power per the FCC backup power rules. The CPUC adopted basic service elements which further require a carrier to provide access to telephone relay services for deaf and disabled consumers, to directory services, to toll-free numbers; to provide equal access to interexchange carriers; to inform consumers about their conditions of service; and to provide billing protections for consumers. The bill makes no allowance for the continued provisioning of these forms of access at affordable rates and at reliable service levels.

An area impacted by CPUC licensing is telephone pole attachments. Utilities must comply with General Orders 95 and 128, which set for the rules for telephone pole attachments and undergrounding of lines, respectively. If CPUC licensing authority is removed, these critical public safety regulations would not be enforced, putting thousands of Californians and millions of dollars of public infrastructure and private property at risk.

RELIABILITY IMPACT

This bill would decrease the reliability of telephone service in California for the following reasons.

1) Wireless coverage does not cover every part of California and wireless carriers are not required to offer service everywhere in California. Wireless services currently do not offer the same data rates as landline broadband, as reliably, or at reasonably comparable rates.

Mobile broadband data gathered in California by the CPUC was recently shared with FirstNET and filed in the public safety docket at the FCC. The data points were collected with six rounds of testing at almost 2,000 locations across the state in rural (58%), tribal (9%) and urban (33%) areas. The data suggests that 1) California's mobile networks are not yet data-streaming ready (VoIP); 2) rural and tribal areas have worse coverage than urban areas; 3) longer latency in rural and tribal areas are due to backhaul distances and more "hops" to reach the measurement point; and 4) the measured level of service is considerably less than the carrier's advertised service.

2) This bill could move customers onto VoIP services. VoIP services are not regulated by the CPUC. The CPUC does not have service quality data or major outage data on VoIP service in California due to PU Code § 710, although these outages are reported to the FCC, and so a determination of VOIPs relative reliability in California cannot be made.

3) The deployment of VoIP depends on broadband, and it is not available in many places in California at affordable rates or at all, particularly rural areas.

4) The fourth criteria that the bill proposes for alternative service is that the service must comply with the FCC's rules for residential backup power. Many customers, particularly

in rural areas, have chosen to retain central office powered lines because of the reliability and voice quality of this service. The requirement for battery backup for power of alternative service presumes that such an alternative service exists, and in many cases it does not.

RATEPAYER IMPACT

The bill would significantly impact ratepayers.

- Rural ratepayers in high cost areas stand to lose communications services completely if no alternative provider can be found. This presents public health and safety issues if people lose the ability to communicate with their families, medical providers, their children's schools and 911 emergency services. Rural businesses may be negatively impacted as well causing economic loss to California.
- Ratepayers currently receiving the LifeLine subsidy will potentially lose their subsidy under changes to COLR obligations in the bill. A proportion of ratepayers will be able to sign up with a wireless provider that offers Lifeline, but potentially not others because alternatives will not be available where they live. In any case, wireless alternatives for LifeLine are dependent on the underlying wireline (for special access) and wireless infrastructure that wireless resellers depend upon when offering LifeLine in areas where they lack facilities of their own.

FISCAL IMPACT

Preliminary information indicates potentially significant fiscal impact for to implement and perform the petition process set forth in the bill.

ECONOMIC IMPACT

This bill could negatively impact areas where landline telephone service is withdrawn if consumers and businesses do not have access to reliable telephone service alternatives. This is particularly true in rural areas.

Although economic impact is difficult to measure, the Communications Division has data from the Broadband Alliance of Mendocino County. This group filed a report with the FCC citing impacts, including economic impacts, to local residents during a local fiber cut in late 2014. The residents lost access to 9-1-1 service for over two days and many businesses could not process credit card transactions, contact suppliers and make other business contacts. The report estimated the direct cost at approximately \$200,000 though the surveyed residents thought that the long term impact would be in the millions of dollars. The bill does not address how outages are to be treated or whether reliability is a worthwhile consideration in assessing carriers who may replace COLRs.

LEGAL IMPACT

This bill contains several provisions that conflict with existing state and federal policies, as well as with other provisions of state law.

Section 1(f)(4) of AB 2395 asserts that "[t]his act will ensure that advanced services are available to replace legacy services before the transition [to an IP network], so that all

Californians are able to benefit from the opportunities presented by advanced technologies and services.” That may be the intent of the bill, but the details do not bear out that assertion because, as is discussed below, the bill allows for withdrawal of legacy services [which may include services other than voice] even if no alternative service is available.

1. Universal Service / Basic Service

California’s policies pertaining to universal service are set forth in a number of sections of the Public Utilities (PU) Code. Of most immediate relevance to AB 2395 is the Moore Universal Telephone Service Act, § 871 *et seq.* There, the Legislature set forth the plan for a universal “connectivity” fund for California. The CPUC has implemented that statute in a number of decisions, the most recent issued in 2014, which added wireless service to the LifeLine program. In addition, the CPUC has been guided by § 709 of the PU Code, which reads in relevant part as follows:

The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and *widespread availability of high-quality telecommunications services to all Californians.* (Emphasis added.)

* * *

(c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and *encourages the ubiquitous availability* of a wide choice of state-of-the-art services.

The Legislature has consistently adopted policies which promote provision of service at affordable prices to all Californians. The code sections cited above conflict with the contemplated disconnection of service for customers who may have no alternative service available to them. Should AB 2395 be enacted, the CPUC would be caught between prior Legislative directives to promote universal service, and the contemplated directive in this bill to discontinue traditional service regardless of whether any other service is available.

Further, the CPUC, Decision D.12-12-038 most recently established the elements of “basic” telephone service, by which the Commission means basic voice service. Those elements include the following:

1. The ability to place and receive voice-grade calls over all distances; this provision includes a requirement that customers must be able to receive a voice-grade connection to the residence, and requires the service provider to take specified steps once informed by the customer of a service failure.
2. Free access to 911/ Enhanced (E) 911 service
3. Access to Directory Services

4. Various provisions pertaining to billing options
5. Access to 800 and 8YY Toll-Free Services
6. Access to Telephone Relay Service as Provided for in PU Code § 2881
7. Free Access to Customer Service for information about LifeLine Service, including service activation, termination, repair, and billing inquiries
8. One-Time Free Blocking for information services, and one-time billing adjustments for charges incurred inadvertently, mistakenly, or without authorization
9. Access to operator services

In contrast, proposed § 711(C) contains only three elements of voice service: (1) “voice grade access to the public switched telephone network or its successor”,¹ (2) “real-time, two-way voice communications,” and (3) access to 9-1-1 service consistent with the provisions of the Warren-911-Emergency Assistance Act. In so limiting the elements of voice service, the bill is at odds with the CPUC’s definition of basic service. The Legislature has previously delegated to the CPUC authority to define basic service. Provisions of the Moore Act refer to “basic service” without defining it. Yet, the Legislature contemplated that the CPUC would include a range of services within that definition. Section 871.7(c) states as follows:

It is the intent of the Legislature that the commission initiate a proceeding investigating the feasibility of redefining universal telephone service by incorporating two-way voice, video, and data service as components of basic service. It is the Legislature’s further intent that, to the extent that the incorporation is feasible, that it promote equity of access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits that include all of the following:

- (1) Improving the quality of life among the resident of California.
- (2) Expanding access to public and private resources for education, training, and commerce.
- (3) Increasing access to public resources enhancing public health and safety.
- (4) Assisting in bridging the “digital divide” through expanded access to new technologies by low-income, disabled, or otherwise disadvantaged Californians.

¹ As is addressed elsewhere in this analysis, there is only one telephone network. The trunks, cables, wires, and fiber facilities all can be and are used to provide service using multiple technologies, including traditional “Time-Division Multiplex” (TDM), or traditional wireline service, as well as Voice over Internet Protocol (VoIP) service and other Internet Protocol services. The notion that the existing telephone network or collection of trunks, cables, wires, and fiber facilities is being or will be “succeeded” by a new and different network is erroneous.

- (5) Shifting traffic patterns by enabling telecommuting, thereby helping to improve air quality in all areas of the state and mitigating the need for highway expansion.

As mentioned above, AB 2395 would conflict with the Moore Act, which was intended to guarantee that all Californians have access to “universal telephone service” that incorporates new technologies and features. Specifically, AB 2395 would conflict with the requirement in PU Code § 873 that the CPUC annually “[d]esignate a class of lifeline service necessary to meet minimum communications needs”. Rather, AB 2395 would require telephone corporations only to notify customers that service will be withdrawn, and § 711(f) provides a process for customers to appeal the withdrawal to the Commission within a restrictive timeframe. That same section contemplates that, once a telephone corporation has provided the required notice, and the Commission has determined that “no alternative service is available to the customer at the customer’s location”, the Commission may “order [a] withdrawing telephone corporation to provide service to the customer at the customer’s location for a *period no longer than 12 months after withdrawal.*”

Further, by so limiting the elements of the mandatory voice-grade service contemplated to be offered under AB 2395, access to staple services, such as those for the deaf and hard-of-hearing, repair service, directory assistance, blocking services, operator services, and information about LifeLine would no longer be guaranteed.

The bill contains no provision for a customer without an alternative service available to continue to receive legacy service, which is at odds with the very concept of universal service embodied in the Moore Act. In addition, proposed section 711(e) would provide that telephone corporations “shall have no obligation to provide legacy telephone service to any new customers in the affected area.” This provision would also apply even if no alternative service is available to customers in the area where service is being withdrawn. Again, this conflicts with the Moore Act’s intent to provide telephone service universally to all Californians.

It is important to note that the goal of universal service has been the policy of the CPUC and the Legislature for many decades. It also remains the policy of Congress and the FCC. Specifically, § 253 of the 1996 Federal Telecommunications Act sets forth national policies for (1) quality and rates, (2) access to advanced services, (3) access in rural and high cost areas, and (4) equitable and nondiscriminatory contributions [to support universal service], among others. This national policy is intended to further the availability of service, not allow withdrawal of service with the potential for no alternative service to be available.

2. Inadequacy of Customer Notice

The process for customer appeal is inadequate in that it provides for a very short notice period, allowing a customer only 30 days to “petition the commission to review the availability of the alternative service at the customer’s location.” The bill contains no guidance for what would comprise the customer education and outreach program. The Commission could open a proceeding to develop rules for how such a program would be designed and executed.

However, the alternative services AB 2395 seems to assume are available in the marketplace include VoIP, over which the CPUC's authority is limited by PU Code § 710, and wireless service, over which the CPUC's authority is constrained by Federal law. See 47 USC 332 (explicitly barring states from regulating wireless rates or entry). The CPUC could design a customer education and outreach program, and order VoIP providers to comply, but those providers could refuse. With no oversight of the customer education and outreach program, providers could choose to spend the least amount of money and provide the least amount of notice. Customers might miss a footnote on a bill informing them that their legacy service will be discontinued in 45 days unless they file an appeal within 30 days.

Further, because the bill does not direct the CPUC to establish a process for service providers to give customers notice of the transition, but rather, would codify the notice process, the CPUC would lack any flexibility to accommodate members of the public who miss the 30-day deadline. If a customer submits a petition to the Commission on day 31 or day 32, the CPUC would be legally bound to reject that petition. This would be a very harsh outcome, and may be unsustainable if challenged in court. In addition, the prescription in statute of each step of the process would not allow the CPUC to respond to changing conditions as the technology transition unfolds.

3. Potential Effects on Competitive Markets

Competition in the telecommunications marketplace is premised on competitors' access to existing network facilities. The 1996 Federal Telecommunications Act set forth as the primary obligation of telecommunications carriers the "duty" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...." (See 47 USC 251(a).) Further, the Act preserved state "enforcement of any regulation, order, or policy of a State commission that – (A) establishes access and interconnection obligations of local exchange carriers [local telephone companies]." (See 47 USC 251(d)(3)(A).) The Act contemplated that telecommunications service providers would enter into negotiations to interconnect and would establish interconnection agreements (ICAs). The Act further set forth a clear role for state commissions to mediate or arbitrate ICAs where the negotiating parties could not reach agreement on specific provisions of their agreement. In addition, the Act authorized states to set "just and reasonable" rates for interconnection.

Should AB 2395 become law, its existence will cast doubt on the ability of service providers to enter into interconnection agreements, or to have the CPUC arbitrate an agreement where the negotiating parties cannot reach full agreement. This is because the entire construct of the 1996 Act is premised on the parties being "telecommunications carriers" and on their being authorized by the relevant state commission to provide service. In California, the operative designation of a "telecommunications provider" is a "telephone corporation", a term used throughout AB 2395. Neither the CPUC nor the Legislature have deemed VoIP providers, which appear to be one of the type of "alternative providers" envisioned in AB 2395, to be

“telephone corporations”, nor are they required to obtain operating authority from the CPUC.²

Because VoIP providers are not required to be licensed, they similarly are not required to file tariffs with the CPUC. Accordingly, to the extent that a VoIP provider seeks to interconnect with an incumbent provider, its ability to successfully negotiate an ICA is in doubt. Certainly, if a VoIP provider seeks assistance from the CPUC to mediate or arbitrate an ICA, the CPUC’s legal authority to provide that assistance is unclear at best.

Nor could the CPUC enforce access to the public Rights-of-Way, as that access is tied to a service provider holding a Certificate of Public Convenience and Necessity (CPCN).³ And, pursuant to both state and Federal rules, carriers today collocate their facilities in the Central Offices of the incumbent providers, such as AT&T and Verizon. Once a customer has been transitioned from TDM to an “alternative service”, the rules regarding collocation may cease to apply to the alternative service provider.

These same limits apply to providers of “IP enabled services”, because PU Code § 710 restricts the CPUC’s authority over those services in addition to VoIP services. To the extent that the competitive telecommunications marketplace in California is dependent on a “cop” to ensure maintenance of a level playing field, and to ensure that the players are playing by the rules, the CPUC could no longer perform that function.

4. Universal Connectivity Program

Section 711(g) provides that the “commission shall establish a universal connectivity program to ensure that those customers for whom the commission has ordered the withdrawing telephone corporation to provide voice services for the 12-month period in subdivision (f) will continue to receive voice service.” This provision is vague and ambiguous. For example, it is not clear what “universal connectivity” means. This may be a reference to a plan comparable to the existing LifeLine program, in which case, the provision would be duplicative of the Moore Act and the CPUC’s numerous precedents. Alternatively, it may refer to a plan to provide for deployment of facilities, in which case it would be duplicative of the California Advanced Services Fund. See PU Code § 281. If the legislation contemplates a new program to assure “universal connectivity,” it is unclear how such a fund could be designed to act either independent of or in concert with LifeLine or the CASF.

If the bill contemplates that the CPUC would create a program to “ensure” that customers will receive service *after* the 12 month-period has ended, it is unlikely the CPUC could create such a program without other amendments to § 710. As noted previously, “alternative” providers are likely VoIP providers or wireless providers. The CPUC is prohibited by Federal law from regulating wireless rates or entry into the marketplace. (See 47 USC 332(c)(3)(A).) Thus, the CPUC could not compel wireless

² PU Code § 285 requires the CPUC to require VoIP providers to collect and remit surcharges (but not CPUC user fees) to support the Commission’s public purpose programs.

³ It is worth noting that some VoIP providers, such as Comcast and Time Warner, hold CPCNs that they obtained before transitioning their customer base to VoIP.

providers to participate in a “universal connectivity program”.⁴ Section 710 severely limits the CPUC’s authority over VoIP or IP-enabled services. VoIP providers would challenge any universal connectivity program the CPUC established if a component of that program was mandatory participation by VoIP providers.

Consequently, it does not appear that the CPUC could create the “universal connectivity program” that AB 2395 envisions.

PROGRAM BACKGROUND

Related Open Commission Proceedings:

Competition OII (I.15-11-007) was opened to investigate the state of competition among telecommunications providers in California, and to determine whether competition is delivering dependable, high quality communications for Californians. The result of this investigation is expected to provide information on whether or not competitive alternatives exist, and what they might be, for landlines. This bill would task the Communications Division with making the determination of effective competition, when the commission already has an investigation underway to examine the state of competition in the California telecommunications market.

Service Quality OIR (R.11-12-001) was initiated to examine the service quality performance of wireline carriers according to GO 133-C service quality measures and standards. The two most recent service quality reports (compiled in 2011 and 2014) demonstrated poor performance by the two largest providers in California (AT&T and Verizon, with the latter’s wireline facilities now owned by Frontier). The Commission’s underlying data, provided by the carriers, contains detailed information showing the poor service quality in rural areas according the measures in GO 133-C.

ULTS OIR (R.11-03-013) is an on-going proceeding to revise the California LifeLine Program.

General Order 133-C sets forth service quality measures for facilities-based carriers, and the major service reporting rules.

GO 133-C contains the telephone service quality measures, which currently reflect carrier’s wireline voice subscriptions. There are five measures for facilities-based telephone corporations (out of service, answer time, trouble reports, answer time installation interval) and major service outage reporting following the FCC’s Network Outage and Reporting System.

General Orders 95 and 128 set forth the Commission’s rules for the safety of overhead and underground transmission facilities, including telephone lines on poles.

Carrier of Last Resort (COLR). Decision D.12-12-038 adopted updated requirements for residential basic telephone service, which include elements of basic service and responsibilities of carriers of last resort.

⁴ Indeed, currently, wireless companies participate in the California LifeLine program on a voluntary basis.

Carriers of last resort are those carriers which are required to serve upon request all customers within their designated service area. California has approximately 25 carriers of last resort, which generally include all the incumbent local exchange carriers (both general rate case LECs and price cap LECs). Most of these carriers received their designation as a result of being incumbent LECs in D.96-10-066. Carrier of last resort obligations have their roots in common carrier regulation (Title II of the 1934 Communications Act) and universal service law.

A carrier seeking to become a COLR needs to file a notice of intent with the CPUC in order to have access to high cost fund subsidies. Once a carrier is designated as a COLR, it must obtain the Commission's approval to opt out of its obligation to serve, via an advice letter (where there is an alternate provider) or an application (where there is not).

Decision D.06-10-021 adopted the Commission's Mass Migration Guidelines for CLECs withdrawal of local exchange service.

Basic Service. Decision D.96-10-066 defined universal service in a competitive environment, established that incumbent local exchange carriers (including the largest carriers in California and the general rate case LECs) would be carriers of last resort in their respective areas, set rules in place for basic service responsibilities and gave the CPUC programmatic guidance for universal service.

To maintain a minimum level of voice service available to everyone in California at a reasonable rate, the CPUC has mandated basic service elements for voice service for all carriers of last resort (COLRs). These service elements can be provided using *any technology* provided that the carrier meets the requirements and is a COLR.

In addition, California PU Code § 876 requires telephone corporations that offer basic residential telephone service to offer California LifeLine service (the California low-income telephone program). A carrier of last resort must have a certificate of public convenience and necessity (CPCN pursuant to PU Code § 1001), as a telephone corporation.

Since 2012, all holders of CPCNs providing residential service or Lifeline service must also provide basic service, as the CPUC has defined it, on an unbundled basis.

OTHER STATES' INFORMATION

According to National Regulatory Research Institute(NRRI) half the states currently require incumbent local exchange carriers to provide carrier of last resort services. At the end of 2014, the other twenty-five states had eliminated or revised COLR requirements, based on the elimination of regulation generally or the determination of effective competition.

The FCC is currently evaluating the IP transition in several dockets, based on various aspects of the IP transition. The FCC appointed a task force to assist with advising the federal commission. The open dockets are:

- Technology trials and copper retirement: *Technology Transitions*, GN Docket No. 13-5; *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353
- Disability Access: *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123
- 9-1-1 Reliability and text to 9-1-1: *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153, 10-255, Further Notice of Proposed Rulemaking, 27 FCC Rcd 15659 (2012)
- Special Access: See *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012)
- Numbering: *Numbering Policies for Modern Communications; IP-Enabled Services; Telephone Number Requirements for IP-Enabled Services Providers; Telephone Number Portability; Developing a Unified Intercarrier Compensation Regime; Connect America Fund; Numbering Resource Optimization; Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources; Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission's Rules*, WC Docket Nos. 13-97, 04-36, 07-243, 10-90, CC Docket Nos. 95-116, 01-92, 99-200, Notice of Proposed Rulemaking, Order, and Notice of Inquiry, FCC 13-51 (rel. Apr. 18, 2013)

In 2011, the FCC comprehensively reformed the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. See *Connect America Fund, et al.*, WC Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17978, (2011) (*USF/ICC Transformation Order and FNPRM*), FCC 11-161

LEGISLATIVE HISTORY

AB 1758 (Stone) California Advanced Services Fund

AB 2130 (Quirk) California Advanced Services Fund

SB 745 (Hueso) California Advanced Services Fund

SB 1212 (Hueso) "2-1-1" information and referral network

SB 1250 (McGuire) Major rural outage notifications and reporting

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This bill should be OPPOSED for the following reason(s):

- (1) Universal Service. California legislation, including the Moore Universal Service Act and its supporting programs, mandates universal service, and this bill provides a path for telephone corporations who are carriers of last resort to withdraw service without a reasonably comparable alternative.
- (2) Public Safety. This service withdrawal would have a negative effect on public safety by removing safe and reliable telephone service from people who live in rural, high cost areas, and/or participate in LifeLine, and are basic service customers, because these consumers may not have effective alternative communication providers.
- (3) Safe and Reliable Service. The bill would undermine CPUC authority over safe and reliable utility service.
- (4) Unnecessary.
 - a. California has rules for service withdrawal, and these are technology neutral. Any carrier of last resort can provide basic service using any technology that meets the requirements, and carriers should comply with these rules.
 - b. This bill is unnecessary for its stated purpose of promoting the adoption of IP services, and its green credentials are not substantiated.

STATUS

Set for hearing in Assembly Utilities and Commerce on April 13, 2016.

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BILL LANGUAGE:

AB 2395 (Low), as amended March 17, 2016, Telecommunications: replacement of public switched telephone network.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2395