

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 16, 2007

To: The Commission
(Meeting of May 24, 2007)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 918 (Torrico) Public utilities: stocks and security transactions.**
As Introduced: February 22, 2007

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would exempt those telephone corporations that are not regulated under a rate-of-return regulatory structure from Article 5 sections 816-830 of the Public Utilities Code (PU Code) governing stock and security transactions. However, the Commission may impose any requirement of this Article on a telephone corporation if the Commission finds that it is in the public interest to do so.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Commission has recently adopted in D.06-08-030 a uniform regulatory framework (URF) regulatory structure for non-rate-of-return telephone corporations that include the four largest Incumbent Local Exchange Carriers (ILECs) in California and Competitive Local Carriers (CLCs). This decision did not address the disparate treatment between these two classes of telephone corporations regarding stock and security transactions. AB 918 provides consistent regulatory treatment for the four largest Incumbent Local Exchange Carriers (ILECs) and Competitive Local Carriers (CLCs) and Non-dominant Interexchange Carriers (NDIECs).

SUMMARY OF SUGGESTED AMENDMENTS:

The Communications Division recommends amending Section 829 (c), such that it matches language currently used in Commission financing proceedings. The proposed language would replace the word “the” with “any”, such that it reads:

The commission may from time to time by order or rule, and subject to such terms and condition as may be prescribed therein, exempt any public utility or class of public utility from any provisions of this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest.

DIVISION ANALYSIS (Energy Division):

- Under current law, Article 5 (PU Code Sections 816-830) provide that public utilities must obtain CPUC approval for certain financing transactions, including the issuance of stock or other evidence of interest or ownership and bonds, notes, and other evidences of indebtedness. Specifically: (1) a public utility may only issue stock or long term debt (debt of 12 months or more) for certain purposes (sec. 817); (2) the CPUC must authorize any issuance of stock or long-term utility debt (sec. 818) and any refinancing of short term debt (sec. 823(d)); (3) CPUC approval is also required in order for a public utility to guarantee the securities of any other company, when those securities are payable at periods of more than 12 months (sec. 830); (4) stock or debt issued without or in violation of a CPUC order may be void (secs. 823, 830); (5) sizeable fees are paid by public utilities when the CPUC authorizes them to issue stock or debt (secs. 1904(b) & 1904.1) and these fees are paid into the state’s General Fund (sec. 1906); and (6) the CPUC has authority to exempt any public utility or class of public utilities from the requirements of sections 816-830 if it finds that those requirements are not necessary in the public interest (sec. 829).
- To the extent these requirements in Article 5 (sections 816-830) have not already been waived for telephone corporations not subject to a “rate-of-return regulatory structure,” this bill would amend Section 829 so that such telephone corporations would have an automatic exemption from these requirements, and the CPUC would have to conduct a formal proceeding if it wanted to re-impose some of these requirements on such telephone corporations.
- The CPUC already exempts competitive local exchange carriers (CLECs) and nondominant interexchange carriers (NDIECs) from the requirements of Article 5 set forth in PU Code Sections 816-830, noting that these carriers are subject to the “discipline of competitive market forces.” See D.85-01-008, D.86-10-007, D.88-12-076 (exempting NDIECs from Sections 816-830) and D.95-12-057, as modified by D.97-01-015 (exempting CLECs). The CPUC has also exempted wireless carriers from the requirements of Sections 816-830. See D.95-10-032.

- Currently, incumbent local exchange carriers (ILECs) have not received exemption from Article 5 Sections 816-830. Although Verizon filed an application for exemption from the requirements of Sections 816-830 a few years ago, the CPUC denied that request. D.02-04-058. Recently, the Commission adopted a Uniform Regulatory Framework (URF), D.06-08-030, where regulation would be consistent for CLCs and the four ILECs that were parties to the URF proceeding. These URF ILECs would no longer be rate-regulated. The Commission did not specifically address in the URF proceeding the issue of exemptions from Article 5 Sections 816-830, however, the purpose of the URF proceeding was to develop a uniform form of regulation for non-rate-of-return regulated telephone corporations. Consequently, the Communications Division believes that it is the Commission's intent that they be exempt from PU Code Article 5 sections 816-830.
- This bill would grant by statute an exemption that the CPUC already has the authority to grant, but has not addressed in the URF proceeding. If the CPUC believes that the proposed exemption is entirely appropriate (and if the CPUC has not already granted such an exemption) the bill might save some CPUC resources otherwise necessary to grant the exemption. If, on the other hand, the bill grants an exemption broader than the CPUC believes appropriate, then the CPUC will have to devote resources to re-imposing these requirements on some telephone corporations.
- The Communications Division does not believe that AB 918 would have a significant impact on programs, practice, or policy. It is the Communications Division understanding that the non-rate-of-return regulated telephone corporations typically issue stock and securities through their parent companies. The Communications Division does not believe that parent companies of telephone corporations are governed by Article 5, Sections 816-830 if the PU Code. Consequently, few applications by non-rate-of-return regulated telecommunications corporations for approval to issue stock or securities are filed with the Commission.

PROGRAM BACKGROUND:

N/A

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 918 is pending hearing in the Assembly Appropriations Committee.

SUPPORT/OPPOSITION: (5/11/07)

Support: Verizon (sponsor)
California's Independent Telephone Companies (CITC)

Opposition: None on file.

STAFF CONTACTS:

Bryan Crabb
Office of Governmental Affairs

brd@cpuc.ca.gov
(916) 322-8858

Charles Christensen
Communications Division

CHC [@cpuc.ca.gov](mailto:cpuc.ca.gov)
(415) 703-1901?

Jane Whang
Legal Division

JJW@cpuc.ca.gov
(415) 703-2721

Date: May 16, 2007

BILL LANGUAGE:

BILL NUMBER: AB 918 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Torrico

FEBRUARY 22, 2007

An act to amend Section 829 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 918, as introduced, Torrico. Public utilities: stocks and security transactions.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, and authorizes the commission to fix the rates and charges for every public utility. The existing Public Utilities Act regulates stock and security transactions by public utilities, and prohibits a public utility from issuing stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months, without first securing authorization to do so from the commission. The act exempts from the stock and security transaction provisions, with certain exceptions, persons delivering commodities for or to public utilities or municipal or other public corporations primarily for resale or use in serving the public or any portion of the public. The act authorizes the commission, by order or rule, to exempt any public utility or class of public utility from the stock and security transaction provisions if the commission finds that application of those provisions is not in the public interest.

This bill would provide that a telephone corporation that is not regulated under a rate-of-return regulatory structure, as defined, is exempt from the stock and security transaction provisions, but authorizes the commission to impose any stock and security transaction requirement if the commission finds, in a proceeding in which the telephone corporation is or may become a party, that application of the requirement is required by the public interest.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 829 of the Public Utilities Code is amended to read:

829. (a) This article shall not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal or other public corporations primarily for resale or use in serving the public or any

portion thereof ~~but~~ . This article shall ~~nevertheless~~ apply to any public utility if the commission finds, in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public interest. ~~The~~

(b) (1) A telephone corporation that is not regulated under a rate-of-return regulatory structure is exempt from this article. This article applies to a telephone corporation that is also an electrical corporation or a gas corporation, unless the commission determines the telephone corporation is exempt pursuant to subdivision (c). As used in this subdivision, a "rate-of-return regulatory structure" means a system under which the rates and charges of the telephone corporation are limited by a maximum permissible price that may be charged for a specific service. Telephone corporations regulated by a framework under which they may exercise pricing flexibility for all or most of the services offered are not regulated under a rate-of-return regulatory structure.

(2) Notwithstanding paragraph (1), the commission may impose any requirement of this article on a telephone corporation if the commission finds, in a proceeding in which the telephone corporation is or may become a party, that the application of any provision of this article is required by the public interest.

(c) The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from ~~the provisions of~~ this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest.