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**Agenda ID #2022-03002**  
**Ratesetting**

TO PARTIES OF RECORD IN RULEMAKING 21-03-002:

This is the proposed decision of Administrative Law Judge Hazlyn Fortune. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 6, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:nd3

Attachment

Decision **PROPOSED DECISION OF ALJ FORTUNE** (Mailed 9/2/2022)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to  
Update Surcharge Mechanisms to  
Ensure Equity and Transparency of  
Fees, Taxes and Surcharges Assessed  
on Customers of  
Telecommunications Services in  
California.

Rulemaking 21-03-002

**DECISION UPDATING THE MECHANISM  
FOR SURCHARGES TO SUPPORT  
PUBLIC PURPOSE PROGRAMS**

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Table 1. Current PPP Surcharge Distribution

Table 2. New Access Line PPP Surcharge Distribution

Attachment A - Listing of Parties to Rulemaking 21-03-002 and Their Acronyms,  
Abbreviated Names or Collective Names for Each Filing

## **DECISION UPDATING THE MECHANISM FOR SURCHARGES TO SUPPORT PUBLIC PURPOSE PROGRAMS**

### **Summary**

This decision adopts a new surcharge mechanism to fund California's Universal Service Public Purpose Programs (PPPs). The new mechanism assesses surcharges based on the number of active access lines a carrier operates.<sup>1</sup> This decision defines "access line." Instead of the current system of an individual surcharge line item for each of the six PPPs, a customer's bill will now show a single consolidated surcharge amount for the six PPPs. LifeLine customers and incarcerated persons are exempt from paying the surcharges. This decision does not change the current mechanism to collect and report the California Public Utilities Commission's user fee. This proceeding remains open.

### **1. Background**

#### **1.1. Factual Background**

The Commission is responsible for administering the state's six Universal Service (Telco) Public Purpose Programs (PPPs). This includes the collection of surcharges to fund these programs, as well as the Commission's "User Fee,"<sup>2</sup> which supports the Commission's operational costs. The six PPPs, as set forth in Public Utilities (Pub. Util.) Code Sections 270 to 281, are:

1. Universal LifeLine Telephone Service (ULTS): provides discounted home phone and cellular phone services to qualifying households;

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<sup>1</sup> Carrier or provider describes a telecommunications company authorized to operate in California. A telecommunications company operating in this state for compensation is a "telephone corporation" as defined in Pub. Util. Code Section 234.

<sup>2</sup> See Pub. Util. Code §§ 401-405, 431-435.

2. Deaf and Disabled Telecommunications Program (DDTP): provides telecommunications devices to deaf or hearing impaired consumers;
3. California High Cost Fund-A (CHCF-A): provides subsidy to 10 of the 13 small local exchange carriers (LECs) for providing telephone service to residential customers in rural high cost areas;<sup>3</sup>
4. California High Cost Fund-B (CHCF-B): provides subsidy to carriers of last resort for providing telephone service to residential customers in rural high-cost areas;
5. California Teleconnect Fund (CTF): provides a discount on select communications services to schools, libraries, hospitals, and other non-profit organizations; and
6. California Advanced Services Fund (CASE): supports the deployment of broadband facilities and broadband services adoption in unserved and underserved areas through project-specific grant funding.

Today, the PPP surcharges and the user fee are assessed on intrastate telecommunications services sold in California. These surcharges are assessed and collected by carriers as a percentage of an end user's telecommunications bill. Carriers report and remit the surcharges monthly or bi-annually to the Commission.

Continuous, year-over-year declines in the intrastate billing base for surcharges has resulted in lower surcharge revenue collected for all PPPs compared to the amount forecasted. The Commission initiated this Order Instituting Rulemaking (OIR) to implement a more sustainable, straightforward,

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<sup>3</sup> Cal-Ore Telephone Company, Calaveras Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, Siskiyou Telephone Company, and Volcano Telephone Company receive CHCF-A support. Happy Valley Telephone Company, Hornitos Telephone Company, and Winterhaven Telephone Company do not currently receive CHCF-A support but may apply in the future.

and flexible structure for telecommunications providers to collect and remit surcharges to support the PPPs, while also collecting user fees. The OIR consists of two phases. Phase 1 is focused on exploring adjustments, changes, and revisions to the current surcharge collection mechanism, including the adoption of a per-access line flat-rate end-user mechanism effective January 1, 2023. Phase 2 will be focused on reviewing the reasonableness of the fees, taxes, and surcharges, charges that may appear on a customer's bill.

### **1.2. Procedural Background**

The California Public Utilities Commission (Commission or CPUC) issued the instant OIR on March 4, 2021. The Rulemaking was served on the following existing Rulemakings, as well as agencies and organizations below:

- Order Instituting Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service, Rulemaking (R.) 18-07-006;
- Order Instituting Rulemaking to Update the California Universal Telephone Service (California LifeLine) Program, R.20-02-008;
- Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund, R.20-08-021;
- Order Instituting Rulemaking into the Review of the California High-Cost Fund-A Program, R.11-11-007;
- League of California Cities;
- California State Association of Counties;
- Rural County Representatives of California;
- Consumer Reports;
- National Consumer Law Center;
- The Utility Reform Network;
- The Greenlining Institute; and
- The Center for Accessible Technology.

Parties filed opening comments to the Rulemaking on April 5, 2021.<sup>4</sup> On April 12, 2021, the assigned Administrative Law Judge (ALJ) issued a ruling granting a motion requesting an extension of time to file comments from April 16, 2021, to April 23, 2021. On April 15, 2021, California Emerging Technology Fund (CETF) filed a motion for party status. The assigned ALJ granted CETF's motion. On April 16, 2021, CETF filed a motion for an extension of time to file opening comments. On April 16, 2021, CETF filed comments on the OIR.

Reply comments to the Rulemaking were filed on April 23, 2021.<sup>5</sup> On May 7, 2021, the Commission noticed the virtual prehearing conference (PHC) set for May 20, 2021. On May 20, 2021, a PHC was held.

On June 7, 2021, the PHC transcript was made available. On June 17, 2021, TURN filed a notice of intent to claim intervenor compensation. On June 18, 2021, Center for Accessible Technology (CforAT) filed a notice of intent to claim intervenor compensation. On June 21, 2021, the Utility Consumers' Action Network filed a notice of intent to claim intervenor compensation.

On June 28, 2021, the assigned Commissioner issued the scoping ruling in this proceeding along with Staff Report Part 1 (SR1). On June 30, 2021, the assigned ALJ issued a ruling clarifying a data request due date.

On July 2, 2021, the assigned ALJ issued a ruling directing parties to respond to questions in the scoping memo. On July 26, 2021, the ALJ issued a ruling granting a two-week extension to August 13, 2021, for data requested in the scoping ruling. On July 27, 2021, the ALJ issued a ruling clarifying that the

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<sup>4</sup> A guide to the parties in this proceeding is provided at Attachment A. Parties are referred to in the text to this decision by their shortened names.

<sup>5</sup> See Attachment A.



two-week extension, to August 13, 2021, applied to all parties. On July 28, 2021, parties filed opening comments on the scoping memo. On August 12, 2021, parties filed reply comments on the scoping memo. On August 13, 2021, the Cellular Telecommunications and Internet Association (CTIA) filed reply comments on the scoping memo. On August 13, 2021, parties filed response to the data request in the scoping memo.

On September 21, 2021, the Greenlining Institute filed a motion for party status. On September 23, 2021, the assigned ALJ issued a ruling granting Greenling Institute's request for party status. On October 8, 2021, the assigned ALJ issued a ruling updating the proceeding schedule. On October 18, 2021, the assigned ALJ issued a ruling correcting an error in the proceeding number referenced in the October 8, 2021, ruling. On October 29, 2021, the ALJ issued a ruling updating the proceeding schedule and provided Staff Report Part 2 (SR2).

On November 10, 2021, the assigned ALJ granted an AT&T motion for extension of time. On November 30, 2021, the Securus Technologies, LLC filed a motion for party status. On December 2, 2021, the ALJ granted Securus Technologies' request for party status. On November 30, 2021, parties filed comments to the ALJ ruling and SR2. On December 15, 2021, parties filed reply comments to the ALJ ruling and SR2.

On January 14, 2022, AT&T filed a Joint Response Regarding Results of January 5, 2022, Meet and Confer Meeting among parties. Regarding potential workshops in this proceeding, all parties agreed that, if a workshop or all-party meeting is held, parties should be allowed to file comments and reply comments. There was consensus that evidentiary hearings were not needed for this proceeding. On January 27, 2021, the Commission noticed a virtual evidentiary hearing set for February 14, 2021, to February 18, 2021. On January 6, 2022, the

ALJ received a procedural e-mail from parties requesting that the evidentiary hearings currently scheduled for February 14, 2022, through February 18, 2022 – as well as the January 21, 2022 and February 1, 2022 dates for submitting opening and reply testimony, respectively – be removed from the Commission’s calendar. On February 25, 2022, the ALJ issued a ruling modifying the proceeding calendar to eliminate the evidentiary hearing dates and future dates for opening and reply briefs.

On March 30, 2021, the ALJ issued a ruling presenting, for party comment, a revised access line definition. On April 29, 2022, parties filed comments to the ALJ ruling on the revised access line definition; and Securus filed a confidential attachment to its comments. On May 13, 2022, the Commission issued a notice of Commissioner reassignment for the proceeding from Commission President Marybel Batjer to Commission President Alice Reynolds. On May 16, 2022, parties filed reply comments to the ALJ ruling on the revised access line definition.

## **2. Jurisdiction**

The California Constitution and Public Utilities Code vest in the Commission regulatory authority over public utilities, including telephone corporations.<sup>6</sup> The Public Utilities Code defines “telephone corporations” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.”<sup>7</sup> The California Legislature,

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<sup>6</sup> Cal. Const., Art. XII, §§ 3, 6; *see also* Pub. Util. Code § 216(b) (“Whenever any . . . telephone corporation . . . performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that . . . telephone corporation . . . is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.”).

<sup>7</sup> Pub. Util. Code § 234(a).

pursuant to Pub. Util. Code Section 709 and the Moore Universal Telephone Service Act (§ 871), contemplated a significant role for the Commission in closing the digital divide in California and bringing advanced communications services to all Californians. The Commission has a statutory mandate to ensure that a public utility's rates, terms, and services are just and reasonable,<sup>8</sup> and has plenary authority to carry out this mandate.<sup>9</sup> Pub. Util. Code Sections 270-285 and Section 431 authorize the Commission to administer and fund the PPPs and collect user fees.

The federal Communications Act, 47 United States Code (U.S.C.) Section 254, provides authority and guiding provision for requiring telecommunications provider contributions to state universal service programs. These federal statutes require telecommunications carriers to contribute to universal service, at both the federal and state level, on an equitable and non-discriminatory basis. On July 1, 2022, the Federal Communications Commission (FCC) increased the Universal Service Fund (USF) rates to 33.0 percent. The increase was caused, in part, by decreasing reportable interstate revenue as telecommunications carriers identify more and more services as internet based and therefore not surcharged. A statement by FCC Commissioner Brendan Carr to an FCC Report<sup>10</sup> acknowledged that “the USF program is funded through a mechanism that made sense back — in the 1990s — and

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<sup>8</sup> Pub. Util. Code § 451.

<sup>9</sup> Pub. Util. Code § 701. The Commission may not, of course, exercise its authority where pre-empted by federal law (*see* U.S. Const., Art. VI, cl. 2) or where to do so would expressly contradict state law (*see Assembly v. Pub. Util. Com.* (1995) 12 Cal.4th 90, 103).

<sup>10</sup> Report on the Future of the Universal Service Fund, Report, WC Docket No. 21-476 at 62.

suggested that a sustainable path forward would require large technology companies to start contributing a fair share to the USF.”<sup>11</sup>

### **3. Issues Before the Commission**

The Commission’s June 28, 2021, Assigned Commissioner’s Scoping Memo and Ruling identified the following issues for Phase 1 of this Rulemaking:

1. Are the telecommunications carriers that currently are required to remit surcharges doing so, and is the current level of their remittance appropriate given the carriers’ revenue and scope of operations?
2. What specific adjustments to the current surcharge collection mechanism, if any, should be explored, changed or revised?
3. What are the impacts, effects and consequences, if any, of a flat-fee surcharge on residential and business customers?

### **4. Discussion and Analysis**

#### **4.1. Surcharge Reporting and Remittance**

Universal service<sup>12</sup> is the principle that all Americans should have access to robust, reliable communications services — including broadband connectivity — at affordable rates, regardless of where they live.<sup>13</sup> According to SR1, universal service policies and programs have helped make telephone service ubiquitous, even in remote rural areas.<sup>14</sup> The six PPPs in California provide societal benefits to Californians who are deaf, disabled, low-income, live in rural locations, as well as to community institutions such as schools,

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<sup>11</sup> <https://www.newsweek.com/ending-big-techs-free-ride-opinion-1593696>.

<sup>12</sup> For California, these principles are articulated in Pub. Util. Code Section 709 and the federal Communications Act, 47 U.S.C. Section 254.

<sup>13</sup> SR1 at 6.

<sup>14</sup> *Ibid.*

universities, libraries, hospitals, and other non-profit organizations.<sup>15</sup> This decision focuses on the first two issues in Section 3.

California directs all telecommunications carriers to contribute to universal service programs by assessing a surcharge on the intrastate portion of their customers telecommunications services.<sup>16</sup> This is consistent with federal law, which provides:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate<sup>17</sup> telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within

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<sup>15</sup> SR1 at 7.

<sup>16</sup> See, e.g., D.96-10-066, in R.95-01-020, Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643; Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643. In this decision, the Commission exempted the following services from the PPP surcharges: ULTS billing; coin-sent paid calling; debit card messages; one-way radio paging; usage charges to Coin operated paid telephones; customers receiving services under existing contracts that were executed on or before September 15, 1994; and directory advertising. (See also General Order (GO) 153.2.)

<sup>17</sup> "Intrastate means a telecommunications service that originates and terminates within California. Generally, services subject to tariff (or formerly tariffed) with the CPUC are subject to California surcharges, whereas interstate services, taxes and surcharges, and financial charges and fees, are not. Intrastate services that are subject to surcharges include, but are not limited to, residential or business lines; wireline services; pre and postpaid wireless services and any associated services, including, but not limited to:

- Custom calling features (such as Caller ID, Voice Store and Forward, Call waiting);
- Private line service;
- 800/900 service; and
- Non-recurring charges (such as installation and connection charges).

that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

“Telecommunications” defined in 47 U.S.C. Section 153(50) means “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” The FCC determines which services are “telecommunications services.”

The Commission adopted an intrastate revenue-based end-user surcharge mechanism in Decision (D.) 94-09-065<sup>18</sup> and D.96-10-066,<sup>19</sup> which formed the foundation of the Commission’s surcharge mechanism to support the PPPs. “End-users” are the customers of each telecommunications company and are also referred to as “subscribers.” SR1 indicated that the total number of telecommunications subscribers in California has increased substantially over the past decade. In 2012, there were 52.8 million voice subscribers in the state. By June 2019, the most recent data available, that number had increased to 56.8 million voice subscribers. Yet, over the same period, the PPP surcharges revenues decreased. SR1 also showed that the decline in surcharges is linked to the shrinking “intrastate revenue billing base;” in other words, the amount of revenue that providers report as being subject to state surcharges. In fact, SR1 reported that the intrastate revenue billing base declined by 58 percent between

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<sup>18</sup> D.94-09-065, in Investigation (I.) 87-11-033, In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers and Related Matters.

<sup>19</sup> See D.96-10-066, Ordering Paragraph 7 and Appendix B.

2012 and 2020. In 2012, the total reported intrastate revenue subject to surcharge was \$15.4 billion. By 2020, it decreased to \$6.433 billion.<sup>20</sup>

#### **4.1.1. Parties' Comments**

In their comments to the Assigned Commissioner Scoping Memo and Ruling (Scoping Memo) and SR1, Cox stated that “while it may be true that intrastate revenues have decreased, that doesn’t necessarily mean such decrease is a problem that requires a complete overhaul of the existing rules, or that the decrease equates to existing rules being unfair, unreasonable or requiring significant changes.”<sup>21</sup> That doesn’t mean any given type of provider is contributing “less” or not contributing its fair share.<sup>22</sup> Cox also stated that any “disparity” in surcharges being reported by different types of providers in either the contributed surcharge amounts or the percentage of billed amounts shown in Table 3 (in SR1) should be presumed to result from different regulatory classifications and applicable law, and/or to the permissible collection method a provider has implemented.

Verizon’s comments on the Scoping Memo and SR1 asserted that it is impossible to compare customers’ bills and surcharges across the spectrum of providers because these rate plans do not offer the same types of services and include differing combinations of services, such as bundled telecommunications and data services, pure telecommunications services, and only broadband data services, which are not subject to state (PPP surcharge) assessment.<sup>23</sup>

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<sup>20</sup> *Ibid.*

<sup>21</sup> Comments of Cox on Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 6.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> Opening Comments of Verizon on the Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 2.

CTIA in their comments to the Scoping Memo and SR1 stated that, “...providers are, in fact, ‘contributing to the state’s universal service programs on an equitable and nondiscriminatory basis, as required by 47 U.S. Code § 254(f).’” Specifically, each provider contributes the exact same percentage of their intrastate telecommunications revenue to the PPPs, so their contributions and the contribution system are equitable and nondiscriminatory.<sup>24</sup>

VON’s comments objected to the implication, in Cal Advocates’ comments<sup>25</sup>, that Voice over Internet Protocol (VoIP) providers are remitting little surcharge revenue. Such claims are “unsubstantiated and unsupported by evidence,” according to VON.<sup>26</sup>

In contrast to the preceding comments, Cal Advocates contends that, “...communications service providers are not contributing to the PPPs on an equitable basis in violation of 47 United States (U.S.) Code Section (§) 254.”<sup>27</sup> Cal Advocates asserted that the inequitable system of calculating the PPPs contributions allows VoIP providers to remit less surcharge revenue to the Commission, which results in inequitable outcomes among customers.<sup>28</sup> Moreover, Cal Advocates’ comments indicate that VoIP subscribership is increasing while Plain Old Telephone Service (POTS) subscribership continues to

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<sup>24</sup> Comments of CTIA on the Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 3.

<sup>25</sup> Opening Comments of Cal Advocates on June 28, 2021, Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 1.

<sup>26</sup> VON Comments in Response to the Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 2-3.

<sup>27</sup> Opening Comments of Cal Advocates on June 28, 2021, Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 1.

<sup>28</sup> Opening Comments of Cal Advocates on June 28, 2021, Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 1.



decrease, which further exacerbates current inequities. As POTS subscriber counts diminish, Cal Advocates provides an illustrative example for the impact on PPP revenues. For each POTS subscriber that discontinues service, there would need to be a corresponding addition of 10.3 Frontier VoIP subscribers or 4.6 Sonic VoIP subscribers (added to the intra-state revenue pool) for revenue to remain neutral in terms of aggregate PPP surcharge contributions.<sup>29</sup>

Prepaid and VoIP providers acknowledge that surcharge collections for their services may be lower. Regarding prepaid customers (and PPP contributions), TracFone stated in its comments on the Scoping Memo and SR1 that “... for direct sales made online using TracFone’s website, TracFone can assess, collect from customers, and remit to the Commission. However, for indirect sales made at third-party retailers, TracFone has no opportunity to collect PPP surcharges and user fees from customers.”<sup>30</sup> TracFone also claimed that “...TracFone’s customers pay for their prepaid service in advance of receiving their service. As such, the customer does not receive a service bill. Because there is no service bill for these customers, surcharges cannot be itemized on bills.”<sup>31</sup>

Sonic’s comments address the question about why VoIP services remit disproportionately little surcharge revenue as compared to other communications providers. According to Sonic, “...Voice over Internet Protocol services have vastly lower costs compared with traditional [independent local

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<sup>29</sup> Opening Comments of Cal Advocates Office on June 28, 2021, Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 5.

<sup>30</sup> Comments of TracFone on the Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 3.

<sup>31</sup> *Ibid.*

exchange carrier] wireline service providers, or even with wireless providers. Such other providers must deploy and maintain extensive ‘middle mile’ networks and must recover the high costs of such networks via higher rates for their customers. These higher rates then lead to higher PPP surcharge revenues. In contrast, VoIP providers use an existing broadband connection to transmit voice telecommunications. This allows VoIP providers to offer voice telecommunications services at much lower prices, which results in much lower PPP surcharge revenues.”<sup>32</sup>

Cal Advocates’ comments about VoIP align with the observations in Sonic’s comments. According to Cal Advocates, VoIP services remit proportionately little surcharge to the PPPs for a variety of reasons. Cal Advocates’ comments maintain that VoIP service tends to be part of a bundled service, causing the surcharge to be assessed on a relatively small portion of a VoIP subscriber’s overall bill, since broadband related charges are currently exempt from surcharge.<sup>33</sup>

#### **4.1.2. Discussion**

Parties’ comments indicated that providers implement different policies regarding what services are eligible for PPP surcharges and how they should be assessed. Different federal and state legislative policies have also contributed to each provider developing different approaches for assessing and collecting PPP surcharges. Cox’s comments highlighted this point as follows, “any ‘disparity’ in surcharges being submitted by different types of providers should be presumed

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<sup>32</sup> Opening Comments of Sonic on Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 2-3.

<sup>33</sup> Opening Comments of Cal Advocates on June 28, 2021, Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 5.

to result from different regulatory classifications and applicable law, and/or to the permissible collection method a provider has implemented.”<sup>34</sup>

Verizon’s comments also indicated that “because (provider) rate plans do not offer the same types of services and include differing combinations of services, such as bundled telecommunications and data services, pure telecommunications services, and only broadband data services, which are not subject to state assessment it is impossible to compare customers’ bills and surcharges across the spectrum of providers.”<sup>35</sup>

However, SR1 indicated that there was significant variation between wireline and wireless providers in the percentage of intrastate revenue providers allocate.<sup>36</sup> The percentage varies significantly depending on the provider as well as the service being offered, ranging from as high as 75 percent of the end user bill for traditional wireline telephone service to 3 percent for facilities-based wireless services, and zero percent for broadband internet access service.<sup>37</sup>

These conditions make it difficult to determine whether the level of surcharges service providers individually or collectively contribute to the universal service PPP programs is appropriate. With the current FCC classification of telecommunications services, it is improbable that the Commission could definitively determine whether the current level of telecommunication companies’ surcharge remittance is appropriate, equitable, and nondiscriminatory given the carriers’ revenue, scope of operations, and

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<sup>34</sup> *Id.* at 3.

<sup>35</sup> Opening Comments Verizon on the Assigned Commissioner’s Scoping Memo and Ruling, July 28, 2021, at 2.

<sup>36</sup> SR1 at 22.

<sup>37</sup> *Ibid.*

service offerings. However, what is clear from the information presented in SR1 is that changes need to be made to surcharge collection for California to continue to adequately support universal service and its related programs.

For the Commission to support universal service in California, it must create an unambiguous and equitable approach for all carriers to assess PPP surcharges. In their comments prepaid providers argued that if there is no service bill for prepaid customers, surcharges cannot be itemized on bills. We rejected the notion that prepaid carriers' business models prevent them from appropriately collecting PPP surcharges and user fees, as required of all other telecommunications service providers.<sup>38</sup> Regardless, the access line-based surcharge mechanism we are considering would not be affected by differences in carriers' billing or business models. All carriers would be required to count and report access lines in the same manner.

#### **4.1.3. Conclusion**

Parties' comments demonstrate that telecommunications carriers although required to remit PPP surcharges are doing so in a non-uniform manner. Cox's comments point to different regulatory classifications and applicable law as an explanation for the disparity. Verizon's comments point to rate plans that do not offer the same types of services and include differing combinations of services, such as bundled telecommunications and data services, pure telecommunications services, and only broadband data services.

Telecommunications technology has advanced since the 1990s decisions at the

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<sup>38</sup> See, e.g., I.09-12-016, **Order Instituting Investigation on the Commission's own motion into the alleged failure of TracFone Wireless, Inc. (U4321C) to collect and remit public purpose program surcharges and user fees on revenue from its sale of intrastate telephone service to California consumers, in violation of the laws, rules and regulations of this State; Order to Show Cause why Respondent should not immediately be ordered to pay all such outstanding sums plus interest, and be subject to penalties for such violations.**

federal and state levels that established the policies and procedures for universal service. The dramatic decline in subscribers to POTS telecommunications is a trend that will continue to deepen. The investigation in SR1 has determined that the existing surcharge mechanism is uneven at best and potentially anti-competitive and discriminatory at worst. The customers of some types of carriers (wireless and VOIP) often pay less to support universal service than the customers of carriers using a wireline to provide telecommunications services. With this OIR we acknowledge this trend and have determined that it is time to adjust the former mechanism to align with the changes in the telecommunications market. The Commission must address the significant variation between wireline and wireless PPP surcharge allocations. The Commission must address the sharp decline in intrastate revenue billing base, 58 percent between 2012 and 2020; and the gap in total reported intrastate revenue subject to surcharge, \$15.4 billion in 2012 versus \$6.433 billion in 2020.

## **4.2. Surcharge Collection Mechanism**

### **4.2.1. SR1 Proposals**

SR1<sup>39</sup> presented several possible proposed solutions to reform the current surcharge collection mechanism. The following section examines each of the PPP surcharge proposals in SR1.

1. The Commission could investigate the discrepancies — illustrated in Table 3 (in SR1) — in (surcharge) contributions remitted by various companies and provider types;
2. The Commission could request the FCC reclassify services as telecommunications services subject to both intrastate and interstate revenues;

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<sup>39</sup> *Id.* at 25-27.

3. The Commission could expand the services that contribute to the billing base by including broadband services;
4. The Commission could transition the current revenue-based surcharge mechanism to a single flat-rate end-user surcharge mechanism; and
5. The Commission could also consider a hybrid mechanism whereby surcharges on large business customers are still assessed on an intrastate-revenue basis, while small business and residential customers surcharges are assessed on a flat-rate basis.

#### **4.2.1.1 Parties' Comments on SR1 Proposal 1**

Regarding whether the Commission should investigate the discrepancies in PPP surcharge remittance among carriers, Cox asserts that the OIR itself does not indicate that an investigation or an adjudicatory phase is necessary.<sup>40</sup>

Therefore, Cox argues that such an investigation would be beyond the scope of the proceeding, unless the Commission amends the scope to include it.

Cal Advocates contends that the Commission should launch an investigatory proceeding if it determines that some communications service providers are under reporting surcharge revenue and therefore under remitting PPP surcharges.<sup>41</sup>

#### **4.2.1.2 Parties' Comments on SR1 Proposal 2**

Regarding whether the Commission should request that the FCC reclassify services as telecommunications services subject to both intrastate and interstate revenues, TURN and CforAT's comments mentioned that the State Members of

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<sup>40</sup> Comments of Cox on Assigned Commissioner's Scoping Memo and Ruling, July 28, 2022, at 5.

<sup>41</sup> Opening Comments of Cal Advocates on June 28, 2021, Assigned Commissioner's Scoping Memo and Ruling, July 28, 2021, at 1.

the Federal-State Joint Board found that it is squarely in the public interest to include broadband services in the contribution base. The Joint Board also found that this strong public interest supports state jurisdiction assessing broadband service for its own mechanisms.

Moreover, according to TURN and CforAT's comments, the Board found that reclassification of broadband as an information service does not preempt or eliminate a state's statutory authority to promote universal service and does not conflict with the FCC's regime.<sup>42</sup>

#### **4.2.1.3 Parties' Comments on SR1 Proposal 3**

Regarding having the Commission expand the services that contribute to the billing base by including broadband services, many parties provided comments about this proposal. CETF's reply comments to the OIR addressed Broadband Internet Access Services (BIAS) as follows: "...there are purely intrastate aspects of BIAS services, and so excluding 100 percent of BIAS service as interstate does not make any logical sense and urged the Commission to make a clear statement on its state authority to include intrastate BIAS revenues into the contribution base for the state PPPs in order to ensure fairness and sustainability of the programs."<sup>43</sup>

CCTA, AT&T, Consolidated, Frontier, Small LECs, CTIA, and Comcast, in their respective comments, all opposed the Commission expanding the PPP surcharge to include broadband. CCTA's reply comments specifically requested

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<sup>42</sup> Opening Comments of TURN and CforAT on the Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 15.

<sup>43</sup> Reply Comments of the CETF on the OIR to Update the Surcharge Mechanism for Public Purpose Programs, April 23, 2021, at 2.

that the Commission reject TURN/CforAT's proposal to expand the base of the surcharge mechanism to include broadband.<sup>44</sup>

In their comments, TURN and CforAT asserted that "... until the Commission assesses PPP surcharges on broadband services to support universal service efforts, funding for universal service programs will almost assuredly remain unbalanced, unfair, and unsustainable."<sup>45</sup> TURN and CforAT urged the Commission to consider broadening the (billing) base of the surcharge mechanism to include broadband.<sup>46</sup>

Cal Advocates' comments recommended that the Commission should assess the stability of the billing base to determine if levying the PPP surcharge on all communication services subscribers, including broadband, is appropriate.<sup>47</sup>

AT&T's opening comments on the Scoping Memo and SR1 opposes the proposal in SR1 to expand the billing base to include BIAS.<sup>48</sup> According to AT&T, states lack authority to assess BIAS for state USF or similar contributions because BIAS is a jurisdictionally interstate service. Moreover, the FCC has held that broadband services are "information services" within the meaning of the federal Communications Act.<sup>49</sup> In reply comments to the OIR, AT&T asserted that the

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<sup>44</sup> Reply Comments of the CCTA, April 23, 2021, at 12.

<sup>45</sup> Opening Comments of TURN and CforAT on the Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 4.

<sup>46</sup> *Id.* at 11.

<sup>47</sup> Comments of Cal Advocates on Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California, April 5, 2021, at 14.

<sup>48</sup> Opening Comments of AT&T on Assigned Commissioner Memo and Ruling, July 28, 2021, at 6.

<sup>49</sup> *Ibid.*



Commission should reject any proposal to assess broadband services to support PPPs.<sup>50</sup> AT&T's comments do acknowledge that it no longer makes sense to assess voice services alone to fund all six PPPs, most of which now support wholly or in part the expansion of broadband.<sup>51</sup> According to AT&T, switching from an intrastate revenue-based methodology to a per-line methodology that still relies solely on assessing voice service, even as voice service revenues continue to decline irreversibly, fails to address the structural changes in services and funding sources necessary to maintain relevance and sustainability of the PPPs.<sup>52</sup>

#### **4.2.1.4 Parties' Comments on SR1 Proposal 4**

Many parties commented on the proposal to transition from the current revenue-based surcharge mechanisms to a single flat-rate end-user surcharge mechanism. VON's comments on the Scoping Memo and SR1, recommends that the Commission maintain the existing revenue-based funding and not transition to a per-line fee.<sup>53</sup> VON states that the revenue-based model is consistent with the current federal structure, complies with California law, will not cause disruptions to any group of ratepayers or changes to the accounting and billing systems of contributing service providers.<sup>54</sup>

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<sup>50</sup> AT&T Reply Comments on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 23, 2021, at 1-3.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.* at 5.

<sup>53</sup> VON Comments in Response to the Assigned Commissioner's Scoping Memo and Ruling, July 28, 2021, at 3.

<sup>54</sup> *Ibid.*

CTIA states that the Commission's consideration of the PPP surcharge mechanism should recognize that the current revenue-based mechanism is equitable and non-discriminatory, and that other potential mechanisms raise potential problems that the Commission has not yet fully analyzed.<sup>55</sup> CTIA further argues that a flat-rate, per-connection charge would assess the same contribution obligation on a low-volume, potentially low-income customer as it does on a high-volume, potentially higher-income customer.<sup>56</sup>

Comcast states that, "...it generally does not oppose a line-based surcharge mechanism provided that such a transition is consistent with California and federal law, the definition of "line" is technologically neutral, and the proportionate amounts paid by residential and business customers remain relatively consistent under a line-based assessment system.<sup>57</sup>

Charter states that, "...it does not oppose transitioning to a single flat-rate end user surcharge mechanism, provided that any such flat-rate surcharge must be equitable, technologically neutral, and readily implementable.<sup>58</sup>

Frontier supports the fourth proposal<sup>59</sup> to transition the current revenue-based surcharge mechanism to a per-access line flat-rate approach.<sup>60</sup> Frontier states that, "...this is the only proposal that is likely to provide a viable,

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<sup>55</sup> Comments of CTIA on the Assigned Commissioner's Scoping Memo and Ruling, July 28, 2021, at 13.

<sup>56</sup> *Id.* at 11.

<sup>57</sup> Comments of Comcast on Staff Report and Scoping Memo and Ruling to Update the Surcharge Mechanisms for Public Purpose Programs, July 28, 2021, at 4.

<sup>58</sup> Comments of Charter on the Assigned Commissioner's Scoping Memo and Ruling Requesting Comments on Questions Relating to the Prehearing Conference and Staff Report Part 1, July 28, 2021, at 2.

<sup>59</sup> SR1 at 25-27.

<sup>60</sup> Frontier Opening Comments on OIR at 1.

long-term solution to the declining intrastate billing base for the PPP surcharges.<sup>61</sup>

The Small LECs also support the fourth proposal<sup>62</sup> to transition the current revenue-based surcharge mechanism to a per-access line flat-rate approach.<sup>63</sup> According to the Small LECs, "...the other proposals are unlikely to provide a viable, long-term solution to the declining intrastate billing base for the PPP surcharges."<sup>64</sup> Moreover, the Small LECs state that the "per-access line" approach also avoids the jurisdictional allocations, which are required under the existing revenue-based approach.<sup>65</sup> In their Opening Comments to the OIR, the Small LECs noted that, "... if the Commission reasonably and clearly defines an 'access line' and provides carriers with adequate implementation time to address any needed changes to their billing or information technology systems, the transition to the per-access line flat-rate approach should achieve the Commission's goals of simplifying the collection process and providing stability to the Fund balances."<sup>66</sup>

#### **4.2.1.5 Parties' Comments on SR1 Proposal 5**

Several parties commented on the hybrid mechanism proposal, whereby large business customers are still assessed on an intrastate-revenue basis, while small business and residential customers are assessed on a flat-rate basis.

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<sup>61</sup> *Ibid.*

<sup>62</sup> SR1 at 25-27.

<sup>63</sup> Small LECs Opening Comments on OIR, April 5, 2021, at 1.

<sup>64</sup> Opening Comments of the Small LECs on Assigned Commissioner's Scoping Memo and Ruling, Staff Report Part 1, and Prehearing Conference, July 28, 2021, at 6.

<sup>65</sup> *Ibid.*

<sup>66</sup> Small LECs Opening Comments to the OIR at 1.

Charter stated that, "...to the extent the CPUC decides to move forward with a line-based approach for assessing surcharges, its application should be limited to residential customers, while continuing to use a revenue-based approach for business customers."<sup>67</sup> According to Charter, the reason for this hybrid approach is simple and compelling; residential customers tend to have single lines which are easy to assess in billing systems and easily audited. Conversely, business customers tend to have multiple lines, and many types of lines, which can cause challenges for internal systems and audit processes. Charter further argued that an across-the-board (access) line-based assessment may disproportionately impact businesses, which in many cases have already been hard hit by the pandemic.<sup>68</sup> Charter recommends that, "...if the Commission does not adopt a hybrid model, then it agrees with other commenters, including Cox, Frontier, and Comcast, who support capping the number of lines that would be assessed a per-access line surcharge."<sup>69</sup>

Cox mentioned that "the Commission could consider whether it could adopt a hybrid model, which would keep business customers, which continue to have a strong use of voice lines, under the revenue-based model, and transition residential customers to a per-line approach."<sup>70</sup>

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<sup>67</sup> Charter's Opening Comments to the OIR, April 5, 2021, at 2.

<sup>68</sup> *Ibid.*

<sup>69</sup> Reply Comments of Charter to OIR, April 23, 2021, at 5.

<sup>70</sup> Comments of Cox on Order Instituting Rulemaking to Update Surcharge and User Fee Collection Mechanisms, April 5, 2021, at 5.

CETF noted that (the Commission should explore) hybrid approaches where large business may fund some of the PPP, to help keep charges reasonable for residential and small businesses.<sup>71</sup>

TURN and CforAT stated that a hybrid approach could effectively reflect the fact that while federal and state law require surcharge collection to be nondiscriminatory and fair, it does not require that the mechanism must be the same for all customer classes.<sup>72</sup> TURN and CforAT recommended that the Commission adopt a hybrid approach that holds residential customers “proportionally harmless” from changes in the collection of PPP contributions.<sup>73</sup>

Frontier opposed the hybrid approach because it would result in additional administrative costs and burdens.<sup>74</sup> CTIA also opposed line caps and hybrid funding models.<sup>75</sup> CTIA stated that, “... the Commission has already identified issues related to the unnecessary and unfortunate complexity of its TUFFS system.<sup>76</sup> It should not introduce new surcharge complexity via a hybrid funding model.<sup>77</sup>

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<sup>71</sup> Reply Comments of CETF on the OIR to Update the Surcharge Mechanism for Public Purpose Programs, April 23, 2021, at 5.

<sup>72</sup> Opening Comments of TURN and CforAT on the Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 11.

<sup>73</sup> *Id.* at 23.

<sup>74</sup> Reply Comments of Frontier on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 23, 2021, at 7.

<sup>75</sup> Reply Comments of CTIA on the Order Instituting Rulemaking, April 23, 2021, at 2.

<sup>76</sup> *See* OIR at 10.

<sup>77</sup> Reply Comments of CTIA on the Order Instituting Rulemaking, April 23, 2021, at 5.

According to the Small LECs the hybrid approach would also complicate their billing systems.<sup>78</sup>

#### **4.2.2. Discussion**

Launching an investigation to examine discrepancies in surcharges remittances would not be an effective use of resources and would not solve the drop in PPP funding. The time that the FCC is taking to consider reclassification of telecommunications services will not help California address the immediate need to stop further reductions in PPP surcharge collection. The Commission is limited in its ability to expand the billing base to include broadband. A hybrid mechanism whereby surcharges on large business customers are still assessed on an intrastate-revenue basis, while small business and residential customers surcharges are assessed on a flat-rate basis would be difficult to implement for carriers and Commission staff.

One of the proposed solutions presented in SR1 was transitioning the current intra-state revenue-based surcharge mechanism to a single flat-rate end-user surcharge mechanism. This proposed solution would consolidate the PPP surcharges and the user fee<sup>79</sup> into a single per-access line (or equivalent) surcharge.<sup>80</sup> This approach would also simplify the surcharge assessment, collection, and remittance process. A single flat-rate end-user surcharge mechanism will allow each service provider, regardless of the technology mode (*e.g.*, VoIP or wireless) or business model (*e.g.*, prepaid or postpaid), to collect

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<sup>78</sup> Reply Comments of the Small LECs on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs at 7.

<sup>79</sup> Until there is a legislative change the user fee will continue to be assessed based in intrastate revenues. Once a legislative change is made the Commission envisions a single line item that combines the user fee and the end-user surcharge supporting PPPs.

<sup>80</sup> SR1 at 26.

and remit PPP surcharges based on one standard — the number of access lines each provide operates. This ensures that, consistent with federal law, telecommunications carriers will contribute to universal service on an equitable and nondiscriminatory basis through a specific, predictable, and sufficient mechanism that does not rely on or burden Federal universal service support mechanisms.

Parties' comments demonstrate that while telecommunications carriers have been remitting PPP surcharges, these surcharge remittances have decreased over time for a variety of reasons. These reasons include differences between state and federal jurisdictions, different business models, and differences among carriers' reporting about which services are subject to surcharges. Comments also noted customer behavior as another contributing factor to falling PPP surcharge remittance, in that customers have moved from wireline to wireless technologies for two-way telecommunications voice services.

#### **4.2.3. Conclusion**

It was reasonable for the Commission to launch this OIR to examine why the PPP surcharge remittances have declined, and whether the Commission should maintain the current revenue-based surcharge mechanism, or adopt a different mechanism, including one based on the number of carriers' access lines in California.

#### **4.3. Proposals for New Surcharge Mechanism Evaluated in SR2**

In SR2, CD staff evaluated six surcharge mechanism proposals, which parties presented in comments on the OIR: (1) Per Access line (Flat-Rate); (2) Per Access line with Cap for Multi-Line Telephone Systems (MLTS); (3) Per Access line Flat-Rate Differentiated by Customer Class; (4) Hybrid Access

Line/Revenue; (5) Hybrid Residential Safe Harbor Access/Revenue; and (6) funding through the State General Fund.

Under a Per Access line with Cap a single flat-rate end-user surcharge, in which all amounts are applied to all customer classes (residential, small business, large business), with a cap on the number of access lines for multiple connections would be implemented. Parties that supported this approach to PPP surcharge reform, Cox, Frontier, Comcast and Charter did not include a sample calculation that illustrated how this approach would be implemented.<sup>81</sup> Nor did they provide sufficient justification and analyses to demonstrate their proposed rates or vet their impacts, which the ALJ's Ruling seeking comments on the SR2 had requested.

The Per Access line Flat-Rate Differentiated by Customer Class would have residential and small business customers charged a lower PPP surcharge rate than large business customers. The differential surcharge amounts would be calculated by using a ratio of statewide average business plan price to average residential plan price.<sup>82</sup> Comcast, Frontier, Small LECs, and CTIA opposed this mechanism.<sup>83</sup> CTIA argues this multifaceted surcharge approach would be complicated for carriers to administer and it would add complexity for the Commission's TUFFS.<sup>84</sup>

The Hybrid Access Line Revenue approach would maintain a revenue-based approach for large business customers but move to a flat fee for

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<sup>81</sup> SR1 at 8 and 9.

<sup>82</sup> *Id.* at 9-10.

<sup>83</sup> Comcast's OIR Reply Comments (April 23, 2021) at 7-8; Frontier's OIR Reply Comments (April 23, 2021) at 6-7; Small LECs OIR Reply Comments (April 23, 2021) at 7; and CTIA's OIR Reply Comments (April 23, 2021) at 5.

<sup>84</sup> CTIA's OIR Reply Comments, April 23, 2021, at 5.



residential and small business customers. Large business customers would still be assessed surcharges on an intrastate-revenue basis, while small business and residential customers would be assessed a flat-rate surcharge on an access line basis. Like the Per Access line with Cap proposal, parties did not include a sample calculation that illustrated how this approach would be implemented.

Under the Hybrid Residential Safe Harbor Access/Revenue approach residential customers would be assessed surcharges on a per-access line basis and business customers are assessed surcharges on a revenue basis. Residential proportions are capped based on current residential contributions supporting PPPs, and the balance of needed PPP funding is obtained from assessments on non-residential voice revenues. Implementation challenges with the Hybrid Residential Safe Harbor Access/Revenue caused CD staff to look further at other approaches for PPP surcharge reform.

Using the California State General Fund to support PPP programs was not an option for addressing surcharge reform given the urgency to make a change in the collection mechanism as soon as possible.

As SR2 explained, CD staff found the Per-Access line (Flat-Rate line) surcharge mechanism to be the most equitable and beneficial for PPP fund stability. Moreover, this approach for PPP surcharge reform would not be affected by the differences in carriers' business models, methods of reporting surchargeable intrastate revenue, or jurisdictional classifications of services.

#### **4.3.1. Parties' Comments on SR2**

Frontier, the Small LECs, and CETF supported CD staff's recommendation to adopt the per-access line surcharge mechanism because it simplifies the

surcharge collection process.<sup>85</sup> Specifically, CETF contends that this mechanism is fair and technology neutral. Frontier believes this mechanism would provide stability to the PPP fund balance. The Small LECs believe this mechanism is more equitable, which would likely result in an appropriate decrease in surcharges paid by their rural customers, many of whom have limited or fixed incomes, including elderly, farmworkers and struggling small businesses.<sup>86</sup>

AT&T, Verizon, CTIA, VON, The Utility Reform Network (TURN) and CforAT, in their respective comments, all opposed the per access line surcharge mechanism for different reasons.<sup>87</sup> Many parties made a common argument that the Per Access line will have a negative effect on wireless customers that are lower income customers and don't qualify for LifeLine. TURN and CforAT argued the Per Access line may be equal where every user pays the same amount but is not equitable. TURN/CforAT argued that lower-income users would spend a larger proportion of their income to pay for the surcharge as compared to higher-income users and many Environmental and Social Justice communities throughout California may potentially fall in this segment.<sup>88</sup>

In commenting on SR2, parties continued to reiterate their original positions, which were contained in their comments on SR1.<sup>89</sup> Cal Advocates reiterated its original proposal that a Per Access line Flat-Rate Differentiated by Customer Class surcharge mechanism "is a more equitable solution because it

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<sup>85</sup> Frontier's Comment on Staff Report Part 2 (November 30, 2021) at 1; Small LECs' Comment on Staff Report Part 2 (November 30, 2021) at 2; and CETF's Reply Comment on Staff Report Part 2 (December 15, 2021) at 3.

<sup>86</sup> See SR2 at 8, Section IV.A. Per Access Line (Flat Rate) Mechanism.

<sup>87</sup> Parties Comment on Staff Report Part 2 (November 30, 2021).

<sup>88</sup> TURN and CforAT's Comment on Staff Report Part 2 (November 30, 2021).

<sup>89</sup> See Attachment A for a roster of comments filed in this proceeding.

would differentiate large business customers from residential and small business customers based on their ability to pay.” Cal Advocates relied on a on gross domestic product to derive its proposed 3:1 ratio of business to residential surcharge rate. Both CETF and TURN and CforAT supported this proposal should the Commission adopt Cal Advocates’ proposal.<sup>90</sup> CCTA and the Small LECs opposed Cal Advocates’ proposal and argued the use of the GDP is not reasonable.<sup>91</sup>

Wireless Carriers (AT&T, Verizon, and CTIA) reiterated its original position to pursue funding the state’s PPP through the State General Fund.<sup>92</sup> Small LECs, CETF, TURN and CforAT opposed the State General Fund proposal. Small LECs argue “AT&T’s and CTIA’s claims ignore the Commission’s statutory obligations in administering the state’s PPPs as set forth in Pub. Util. Code Sections 270-281, and legislative and Commission’s policies to advance universal service and close the digital divide.”<sup>93</sup> TURN and CforAT believe utilizing the State’s General Fund to support the PPPs is flawed as “it would almost certainly threaten the sustainability and stability of these programs” and the “Commission on its own does not have authority to adopt such a proposal.”<sup>94</sup>

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<sup>90</sup> CETF’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 4; TURN and CforAT’s Reply Comment (December 15, 2021) at 10.

<sup>91</sup> CCTA’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 9; Small LECs’ Reply Comment on Staff Report Part 2 (December 15, 2021) at 6.

<sup>92</sup> AT&T’s Comment on Staff Report Part 2 (November 30, 2021) at 1-2; CTIA’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 12; Verizon’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 2.

<sup>93</sup> Small LEC’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 5.

<sup>94</sup> TURN and CforAT’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 11-12.

CETF also argued this approach “does not serve the OIR goal of sustainable fund.”<sup>95</sup>

#### **4.3.2. Discussion**

Regardless of the underlying reasons for the decline in carrier remittances of PPP surcharges, it is clear from the record that the Commission must act now to ensure universal service. We find that the current revenue-based surcharge mechanism is no longer adequate to support our universal service programs. This finding is consistent with the information provided in both SR1 and SR2, as well as in parties’ comments. Therefore, it is reasonable for the Commission to consider adopting a new surcharge mechanism which would not be affected by the aforementioned factors such as difference among carriers in how to allocate which telecommunications services are eligible for PPP surcharge assessment.

SR2 reviewed the various proposals that parties presented in comments concerning PPP surcharge reform. The federal Communications Act authorizes states to require every communications carrier to contribute to states’ universal service programs on an equitable and nondiscriminatory basis to preserve and advance universal service in the State of California. SR2 examined whether each proposal satisfied this requirement and whether each proposal would be able to preserve and advance universal service by ensuring that PPP funding remains stable. To preserve and advance universal service, the per access line surcharge mechanism would provide PPP fund stability.

The current revenue-based mechanism is problematic because it allows carriers to determine their intrastate telecommunications revenue amount based on various methodologies. This is not sustainable or equitable. As noted in the

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<sup>95</sup> CETF’s Reply Comment on Staff Report Part 2 (December 15, 2021) at 2.

SR1, PPP funds have significantly decreased under the current revenue-based approach, due partly to the trend with wireless carriers reporting declining intrastate telecommunications revenue amounts, while at the same time reporting increased amounts for revenue associated with non-telecommunications services that are not subject to state or federal universal service obligations. Specifically, the FCC's reclassification of voicemail, text messaging, and Internet/data services from telecommunications services (Title II) to information services (Title I) removed these services from inclusion in intrastate revenue calculations. This limits the number of services and amount of revenues contributing to state universal service programs.

We reject the per access line with a cap for MLTS PPP surcharge reform proposal, and the per-access line differentiated by customer class proposal because those mechanisms are not equitable, as explained in the SR2.<sup>96</sup> For the reasons indicated above, we also reject any form of revenue-based approach such as the Hybrid Access line/Revenue and the Safe Harbor Access/Revenue mechanisms because it creates inequality among customers who use different communication services, and it does not resolve the current problem of fund sustainability. The Safe Harbor Access/Revenue mechanism can protect all residential customers from surcharge increases, but it does not specifically target "lower income" customers. Under this Safe Harbor mechanism, all residential customers are protected regardless of their income level, which will shift the burden to business customers; and thus, is inequitable.

The PPP surcharge reform proposal involving using the State's General Fund to support PPP programs is rejected as it is an inappropriate funding

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<sup>96</sup> SR2 at 17.

source and would not provide fund stability.<sup>97</sup> Parties proposing the State's General Fund failed to propose details about how such a transition to general fund administration would be administered, while abandoning the carrier intrastate revenue reporting and payment process.

The record in parties' comments and CD staff's review of alternative approaches to PPP surcharge reform support a shift to a per access line PPP surcharge mechanism. Specifically, with the per-access line surcharge mechanism, all users (residential, small business, large business) and all service types would pay the same amount. This would create equity where the current burden on wireline customer will be shifted to all customers (wireline, VoIP, and wireless) regardless of service type. While we understand the concern raised by several parties that this may, theoretically, have a negative effect on lower income customers that don't qualify for LifeLine, we cannot actually identify these "lower income" customers, nor do we have a set of criteria for constituting "lower income." Like a sale tax on grocery bill, there is no sale tax differentiated by customer income. A better place to address the "lower income" issue is in the LifeLine proceeding where the number customers may be expanded. The per-access line surcharge mechanism would ensure the stability and sufficiency of the universal service contribution over time because access line counts would not be subject to differences in carrier reporting and business models or FCC service classifications. Considering the analysis set forth in the SR2 and parties' comments, we adopt a per-access line (flat-rate) surcharge mechanism.

#### **4.3.3. Conclusion**

The Commission should shift from an intrastate revenue base to a

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<sup>97</sup> SR2 at 18-19.

per-access line flat fee for assessing and collecting PPP surcharges. The per-access line (flat-rate) mechanism would consolidate the PPP surcharges into a single per-access line (or equivalent) surcharge. A per-access line surcharge would apply the surcharge amount equally to all customer classes (residential, small business, large business) and all service types.

#### **4.4. LifeLine and Incarcerated Persons Exemption from PPP Surcharges**

Several parties expressed concern about how a transition to a flat-fee surcharge on residential customers would affect LifeLine customers, low-income customers, and incarcerated individuals. We address these concerns below.

##### **4.4.1. Parties' Comments**

National LifeLine et. al. stated that, "...if the Commission favors transition to a per-access line flat-rate-based contribution methodology for the PPPs, the Commission must exempt LifeLine access lines."<sup>98</sup> Cal Advocates' also urged the Commission to, "...exempt all low-income customers subscribing to either LifeLine or low-income broadband plans that are bundled with voice services from paying PPP surcharges."<sup>99</sup> Comcast recommended that, "... the Commission should continue to exempt LifeLine services from PPP surcharges if it transitions to a line-based surcharge mechanism."<sup>100</sup>

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<sup>98</sup> Comments of National LifeLine et. al. on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 2.

<sup>99</sup> Comments of Cal Advocates on Order Instituting Rulemaking to Update Surcharge Mechanisms to Ensure Equity and Transparency of Fees, Taxes and Surcharges on Customers of Telecommunications Services in California, April 5, 2021, at 12.

<sup>100</sup> Comments of Comcast on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 6.

Greenling also recommended that LifeLine eligible individuals and incarcerated individuals should be exempt from PPP surcharge mechanism.<sup>101</sup> According to Greenlining, “the Commission should exempt the surcharge for people who are enrolled in low-income broadband plans or would otherwise qualify for LifeLine — because many people who are eligible for programs like LifeLine, which provides a surcharge exemption, are actually not enrolled in this program.”<sup>102</sup> TURN and CforAT’s comments stated that, “...the exclusion of LifeLine service from assessment continues to make sense”<sup>103</sup> and urges the Commission to exempt incarcerated telephone service providers from paying the surcharge.<sup>104</sup>

Securus Technologies’ comments<sup>105</sup> on SR2 asserted that its services<sup>106</sup> are not of the nature of what might commonly be considered end user access lines. According to Securus, it does not have the ability to determine or assess surcharges using the proposed per-access line flat-rate end-user mechanism.<sup>107</sup> Securus’ comments recommended that the Commission (a) allow Securus to continue to be subject to a revenue-based surcharge; (b) provide an alternative

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<sup>101</sup> Opening Comments of Greenlining to the Staff Report on Surcharge Mechanisms, November 30, 2021, at 2.

<sup>102</sup> *Id.* at 3.

<sup>103</sup> Opening Comments of TURN and CforAT on the Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 31.

<sup>104</sup> Comments of TURN and CforAT on the ALJ’s Ruling, April 29, 2022, at 9.

<sup>105</sup> Comments of Securus Technologies, LLC on Communications Division’s Staff Report Part 2, November 30, 2021, at 2.

<sup>106</sup> Securus provides services using Internet protocol-enabled transport facilities, which have Internet access data connections at the confinement facilities (prisons). *See* comments at 2.

<sup>107</sup> Comments of Securus Technologies, LLC on Communications Division’s Staff Report Part 2, November 30, 2021, at 3.



method of applying the charge for those companies that do not provide services on a connection or access line basis; or (c) exempt those companies from assessing and paying charges.<sup>108</sup> In comments on the March 30, 2022 ALJ Ruling requesting comments on CD staff's revised access line definition, Securus reiterated that incarcerated persons and their families should be exempt from PPP surcharges and user fees on policy, legal, and technical infeasibility grounds.<sup>109</sup>

The Small LECs object to creating any new exemptions, which would complicate the Small LECs' billing systems and impose additional burdens and costs for which they have no cost recovery.<sup>110</sup>

#### **4.4.2. Discussion**

The Commission already exempts individuals enrolled in the LifeLine program from paying PPP surcharges and user fees, and this policy will not change. Although Greenlining proposes to wrap LifeLine eligible individuals currently not enrolled into the exemption, the Commission agrees with comments filed by the Small LECs and other parties that this would impose additional administrative burden to implement and does not appear feasible to implement.

Incarcerated individuals represent a special population eligible for attention. The Commission is persuaded by parties' comments to exempt incarcerated individuals from the PPP surcharge mechanism and from paying the user fee.

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<sup>108</sup> *Id.* at 4.

<sup>109</sup> Comments by Securus on Proposed Staff Revisions to Access Line Definition and Additional Questions Posed by ALJ's March 30, 2022, Ruling, April 29, 2022, at 2 and 7.

<sup>110</sup> Opening comments of the Small LECs on Staff Report Part 2, November 30, 2021, at 4.

#### **4.4.3. Conclusion**

The Commission will continue to exempt LifeLine subscribers from the PPP surcharge mechanism and from paying the user fee. In addition, the Commission will exempt incarcerated individuals from paying PPP surcharges and the user fee.

### **5. Components of the New Access Line Surcharge Mechanism**

Many parties identified the “access line” definition as the most important issue for the Commission to resolve in adopting a new access line-based surcharge mechanism. For instance, the Small LECs stated that “... if the Commission reasonably and clearly defines an ‘access line’ and provides carriers with adequate implementation time to address any needed changes to their billing or information technology systems, the transition to the per-access line flat-rate approach should achieve the Commission’s goals of simplifying the collection process and providing stability to the Fund balances.”<sup>111</sup> In response to comments, CD staff issued SR2, in which staff proposed an “access line” definition, reviewed the parties’ various surcharge mechanism proposals, discussed implementation issues with a new surcharge mechanism, and posed further questions for parties. The ALJ issued an e-mail ruling on October 29, 2021, attaching SR2 and requesting comments.<sup>112</sup>

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<sup>111</sup> Small LECs Opening Comments to the OIR at 1.

<sup>112</sup> Administrative Law Judge’s Ruling seeking comments on Staff’s proposal to revise the access line definition, March 30, 2022.

### **5.1. SR2 Proposed Access Line Definition**

Existing law defines an access line in California Revenue and Taxation Code Section 41007.1 to include wireline, wireless, and VoIP service lines.<sup>113</sup> An access line describes a connection that, without regard to the mode of service,<sup>114</sup> allows a customer to initiate or receive a voice connection, thereby establishing a two-way voice communication. SR2's proposed access line definition incorporated existing law and added a phone number component:

"Access Line" means a "telephone line" as defined in Public Utilities Code Section 233 and is associated with one assigned California phone number, and shall include, but is not limited to, a "wireline communications service line," a "wireless communications service line," and a "Voice over Internet Protocol service line."

"Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

"Wireline communications service line" means a local exchange service provided at a physical location in this state which allows for a "real-time, two-way voice communication that originates from, or terminates at, the user's location [whether it uses a Public Switched Telephone Network (PSTN)], VoIP or a successor protocol.

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<sup>113</sup> Cal. Rev. & Tax. Code Section 41007.1 states:

"Access line" shall mean any of the following:

- (a) A wireline communications service line;
- (b) A wireless communications service line; or
- (c) A VoIP service line, as defined by Section 41016.5 as added by the Act adding this section.

<sup>114</sup> The mode can be use of a wireline, wireless or some other means of establishing a two-way voice connection.

“Wireless communications service line” means a “telecommunications service provided to an end user with a place of primary use in this state” that allows for a “real-time, two-way voice communication that originates from, or terminates at, the user’s location [whether it uses a PSTN] or a (VoIP).” It also means any communication service regardless of whether the communication is voice, data, or video.

Voice over Internet Protocol or “VoIP” service line means voice communications service as defined in Public Utilities Code Section 239.<sup>115</sup>

#### **5.1.1. Parties’ Comments on SR2 Access Line Definition**

CCTA’s comments supported modifications to the access line definition to focus on the number of PSTN concurrent call sessions<sup>116</sup> and advocated for a technology neutral definition.<sup>117</sup> CCTA argued for a surcharge limit, in which “the number of surcharges imposed shall not exceed the total number of PSTN concurrent calls supported by the provisioning service at a single point in time.”<sup>118</sup>

The Small LECs “urged the Commission to remain focused on the end goal and maintain consistency with established industry definitions and practices to avoid implementation difficulties that would unnecessarily increase costs and burdens”.<sup>119</sup> The Small LECs encouraged the Commission to define access line according to the federal definition used by the National Exchange Carrier

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<sup>115</sup> SR2 at 25-26.

<sup>116</sup> Comments of CCTA on Part 2 of Staff Report to Update the Surcharge Mechanism for Public Purpose Programs, November 30, 2021, at 1 and 6.

<sup>117</sup> *Id.* at 4.

<sup>118</sup> *Id.* at 7.

<sup>119</sup> Opening comments of the Small LECs on Staff Report Part 2, November 30, 2021, at 7.

Association (NECA).<sup>120</sup> However, NECA's access line definition is not public and therefore not available for consideration in this decision.

Frontier urged the Commission not to deviate from established industry standards for access line definition and exemptions.<sup>121</sup> Frontier proposed that the Commission's definition be consistent with the 911 surcharge definition<sup>122</sup> and specifically exclude Direct Inward Dialing lines.<sup>123</sup>

Cox supported the concurrent comments of CCTA, and it also recommended additional language to insert in the SR2 access line definition, which includes among other things, a 25 access line cap and referencing Pub. Util. Code Section 285 for what constitutes a VoIP access line.

CCTA's reply comments suggested minor modifications to the SR2 "access line" definition and requested that the Commission consider the reasonableness of PPPs' budgets in light of the historic influx of public funding for broadband that can mitigate consumer burden from ever-increasing monthly surcharges.<sup>124</sup> In particular, the comments emphasized that it is critical that the Commission adopt safeguards to incentivize businesses to maintain models where they continue to contribute to PPPs, as opposed to seeking to use non-assessable services to avoid surcharge rate shock.<sup>125</sup>

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<sup>120</sup> *Id.* at 1.

<sup>121</sup> Opening Comments of Frontier on Staff Report Part 2, November 30, 2021, at 6.

<sup>122</sup> The California 911 Surcharge definition was established by The Emergency Telephone Users Surcharge Act Definition pursuant to Senate Bill (SB) 96 and is administered by the California Governor's Office of Emergency Services.

<sup>123</sup> Opening Comments of Frontier on Staff Report Part 2, November 30, 2021, at 5.

<sup>124</sup> Reply Comments of CCTA on Part 2 of Staff Report to Update the Surcharge Mechanism for Public Purpose Programs, December 15, 2021, at 15.

<sup>125</sup> *Id.* at 6.

## **5.2. Staff's Revised Access Line Definition**

In response to comments on SR2, on March 30, 2022, the ALJ issued an e-mail ruling seeking comments on CD staff's proposed modifications to the access line definition, as set forth in the ruling.<sup>126</sup> Staff proposed to replace the access line definition in SR2 with the following:

"Access Line" means a wire, radio frequency, other medium of transmission, or protocol used to provide telecommunications service or VoIP service to or from any device utilized by an end-user, regardless of technology, which is associated with a wireline, wireless, VoIP or other service account assigned a 10-digit number or other unique identifier and has a California billing address or registered location in California.

"Telecommunications" has the same meaning in 47 U.S.C. Section 153(50): "The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

"VoIP service" means service as defined in Pub. Util. Code Section 239.

"Registered location" means the location associated with service for a subscriber's telecommunications device. The Registered Location must be a valid postal address in California.<sup>127</sup>

### **5.2.1. Parties' Comments on Revised Access Line Definition**

The Small LECs agreed with the revised definition incorporating important clarifications and revisions recommended by the parties, including the

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<sup>126</sup> See ALJ E-mail Ruling Updating Proceeding Schedule and Providing Communications Division Staff Report Part 2, October 29, 2021.

<sup>127</sup> For purposes of this definition, private branch exchange (PBX) lines and Centrex lines are "access lines."

Small LECs' proposal to use NECA<sup>128</sup> protocols or other applicable industry standards to count "access lines" for higher-capacity services, and multiple carriers' proposals to define "VoIP service" according to Public Utilities Code Section 285.<sup>129</sup> They emphasized that using established, consistent definitions will avoid inconsistencies between the identification of access lines for surcharge purposes and the reported access line counts for other regulatory purposes.<sup>130</sup> Small LECs further asserted that similar to the 911 surcharge definition, the definition of "access line" should be clear and limited to a wireline communications service line, a wireless communications service line, and a VoIP service line.<sup>131</sup>

Frontier recommended that the Commission confirm that multi-line business services, such as high-capacity circuits, be counted under industry standards, such as the FCC's Form 477 definitions.<sup>132</sup>

Cal Advocates recommended an access line definition that is equitable, fair, transparent, and simple to implement to ensure that the state's public purpose programs are adequately funded.<sup>133</sup> Cal Advocates urged the Commission to disregard CTIA's claims that the current surcharge definition is sustainable and equitable. The comments stated that as currently drafted, Staff's revised March 30, 2022, definition of "access line" would exclude many businesses from paying PPP surcharges because of the definition's reliance on a

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<sup>128</sup> NECA's definition is not public. Therefore, we could not include it in this discussion.

<sup>129</sup> Opening Response of the Small LECs to ALJ Ruling Issued March 30, 2022, at 1-2.

<sup>130</sup> *Id.* at 3.

<sup>131</sup> *Id.* at 4.

<sup>132</sup> Opening Response of Frontier to ALJ Ruling Issued March 30, 2022, at 2.

<sup>133</sup> Opening Comments of the Public Advocates Office on March 30, 2022, ALJ's Ruling Requesting Comment, April 29, 2022, at 6.

10-digit phone number rather than a billing address.<sup>134</sup> Cal Advocates' comments further stressed that the revised definition of access line should be technology neutral, and any access line associated with a telecommunications service account with a California billing address or registered location in California should be subject to the flat fee surcharge.<sup>135</sup> The comments further recommended that the Commission define access line based on an account tied to the service, not what type of service, business service, or type of equipment or technology is being utilized.<sup>136</sup> The comments further recommended that the Commission reject the revised access line definition proposed by industry parties.

VON, as in previous comments, recommended that the Commission maintain the current revenue-based assessment methodology until Congress and/or the FCC complete federal USF reform.<sup>137</sup> The comments supported that "Primary Place of Use" be defined as the "street address where the end-use of customer's use of the service primarily occurs."<sup>138</sup> According to VON, by revising the "access line" definition to refer to Place of Primary Use, the Commission would adopt a term already used in California and would allow providers to align their contribution practices across PPP and 911 surcharges as well as other state taxes.<sup>139</sup> VON further recommended that the definition not

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<sup>134</sup> *Id.* at 1.

<sup>135</sup> *Id.* at 2.

<sup>136</sup> *Id.* at 2-3.

<sup>137</sup> Voice on the Net Coalition's Comments in Response to ALJ Ruling, April 29, 2022, at 4.

<sup>138</sup> *Id.* at 2.

<sup>139</sup> *Id.* at 3.



include toll free numbers, premium rate numbers, or other types of numbering services.<sup>140</sup>

CTIA continued to assert that revenue-based surcharges are equitable and sustainable, and therefore it does not see a need for the Commission to define “access line” in this proceeding.<sup>141</sup> CTIA maintained that the Commission should reject a connections-based surcharge mechanism.<sup>142</sup>

CCTA recommended that the Commission remain focused on implementing a straightforward and flexible structure for providers to collect user fees and remit surcharges to support the PPPs.<sup>143</sup> CCTA proposed a revised access line definition that accounts for operational and implementation issues.<sup>144</sup> CCTA stated that the Commission should consider: (1) line-based assessments be assessed on voice services; and (2) intrastate private line and intrastate data transport services that are currently subject to PPP surcharges remain assessed as a percentage of revenues.<sup>145</sup> According to CCTA, Nebraska adopted this approach.<sup>146</sup>

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<sup>140</sup> *Ibid.*

<sup>141</sup> Comments of CTIA on Staff’s Revised Access Line Definition, April 29, 2022, at 8.

<sup>142</sup> *See, e.g.,* Comments of CTIA on Staff’s Revised Access Line Definition, April 29, 2022, at 1. CTIA’s comments reiterated its position that a per-access line surcharge would have a regressive impact on California’s consumers, particularly harming low-income consumers and shifting the surcharge burden from business users to residential users.

<sup>143</sup> Opening Comments of the CCTA on the ALJ’s March 30, 2022, ruling Seeking Comments on the Staff’s Proposed Revisions for Defining an Access Line, April 29, 2022, at 2.

<sup>144</sup> *Id.* at 2-3.

<sup>145</sup> *Id.* at 2.

<sup>146</sup> *Ibid.*

Securus stated that in its view the term “access line” cannot be revised in a meaningful way to capture Securus’ services to incarcerated persons.<sup>147</sup>

AT&T argued that the SR2 revised “access line” definition attempted to require a nexus to California through the phrases “California billing address” or “registered location in California” but made no reference to “place of primary use” or “PPU”<sup>148</sup>. For example, according to AT&T, a customer with a billing address in California but an out-of-state PPU would be improperly assessed the surcharge, whereas a customer with a California PPU but with an out-of-state billing address would not be assessed the surcharge.<sup>149</sup> AT&T also objected to a line cap if a per-access line surcharge mechanism is adopted.<sup>150</sup> AT&T’s comments repeated previous recommendations about maintaining the current intrastate revenue-based surcharge mechanism, determining whether additional PPP funding is necessary in light of new funding for broadband deployment and adoption, and seeking additional PPP funding from the State’s general fund.<sup>151</sup> Staff had previously responded to this recommendation in SR2 and explained why taking money from the general fund would be an unreasonable approach.<sup>152</sup>

TURN/CforAT asserted that the assigned ALJ Ruling needed more data and context for parties to fully evaluate staff’s revised access line definition,

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<sup>147</sup> Comments by Securus on Proposed Staff Revisions to Access Line Definition and Additional Questions Posed by ALJ’s March 30, 2022, Ruling, April 29, 2022, at 5.

<sup>148</sup> PPU means place of primary use.

<sup>149</sup> Opening Comments of AT&T on Commission Communications Division Staff’s Proposed Revisions for Defining an Access Line, April 29, 2022, at 3-4.

<sup>150</sup> *Id.* at 6.

<sup>151</sup> Opening Comments of AT&T on Commission Communications Division Staff’s Proposed Revisions for Defining an Access Line, April 29, 2022, at 1-2.

<sup>152</sup> SR2 at 14-15, 18-19.

including its impact on residential wireline and wireless consumers.<sup>153</sup> TURN and CforAT argued this revised definition does not remedy the prior definition's problem with what they allege as shifting surcharge recovery from business customers to residential customers.<sup>154</sup>

Parties filed reply comments to the ALJ's revised access line definition ruling on May 16, 2022. Cal Advocates suggested retaining the term "other unique identifier" and include "NPA-NXX" as a descriptor for 10-digit numbers.<sup>155</sup> Cal Advocates also raised concerns that industry parties' proposed access line definition could exclude customers from the billing base by giving service providers discretion to choose which customers to include in their access line counts.<sup>156</sup>

The Small LECs' reply comments emphasized that the Commission should use the industry parties' revised access line definition to promote the goals of this rulemaking "to implement a straightforward and flexible structure for providers to collect and remit surcharges to support the PPPs."<sup>157</sup> Small LECs asserted that parties need additional guidance and the definition needs revisions to avoid ambiguities and implementation difficulties and to ensure the definition applies to intrastate telecommunications services within the Commission's jurisdiction.<sup>158</sup> Small LECs opposed surcharge line proposals in which business

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<sup>153</sup> Comments of TURN and CforAT on the ALJ's Ruling, April 29, 2022, at 1 and 10.

<sup>154</sup> *Id.* at 4.

<sup>155</sup> Reply Comments of Cal Advocates at 2.

<sup>156</sup> *Ibid.*

<sup>157</sup> Reply of the Small LECs to ALJ Ruling Issued March 30, 2022, May 16, 2022, at 4.

<sup>158</sup> *Id.* at 1.

customers would continue to be assessed based on intrastate revenues.<sup>159</sup> They recommended further clarification as to whether industry standards for reporting access lines, such as NECA or FCC protocols, should be used to determine the number of “access lines” for multi-line business services subject to surcharge assessments.<sup>160</sup>

CCTA’s reply comments recommended that the Commission adopt the industry proposed access line definition.<sup>161</sup> The reply comments suggested that Commission staff issue another staff report to ensure that there is an adequate record in this proceeding upon which the Commission can adopt relevant findings.<sup>162</sup> Moreover, the reply comments suggested the industry proposed access line definition is clear, technologically neutral, equitable, lawful, and readily implementable.<sup>163</sup> The reply comments continued to urge the Commission to consider the hybrid model.<sup>164</sup> The reply comments also asserted the following: assessing high-capacity circuits as access lines would introduce significant complexity and disparity, a numbering feature is not an access line but rather, a feature of an access line, and the Commission should reject the “outlier” access line definitions proposed by other parties.<sup>165</sup>

Frontier’s reply comments support the additional revisions contained in the Industry Proposed Definition to resolve remaining ambiguities and facilitate

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<sup>159</sup> *Ibid.*

<sup>160</sup> Reply of the Small LECs to ALJ Ruling Issued March 30, 2022, May 16, 2022, at 2.

<sup>161</sup> Reply Comments of CCTA on the ALJ’s March 30, 2022, Ruling Seeking Comments on the Staff’s Proposed Revisions for Defining an Access Line, May 16, 2022, at 8.

<sup>162</sup> *Id.* at 9.

<sup>163</sup> *Id.* at 1.

<sup>164</sup> *Id.* at 2.

<sup>165</sup> *Id.* at 3-7.

implementation of the new surcharge mechanism.<sup>166</sup> According to the reply comments, the Commission should also provide additional guidance on how to determine access lines for high-capacity circuits and similar business services.<sup>167</sup> The reply comments stated that the Commission should reject this proposal out of hand.<sup>168</sup>

TURN and CforAT's reply comments further noted that funding for infrastructure is not the same as ongoing support to foster affordable service.<sup>169</sup> TURN and CforAT supported CCTA's proposed revision to the Staff's use of the term "California Billing Address," by replacing those words with "customer service address, place of primary use, or place of purchase."<sup>170</sup>

CTIA's reply comments reiterated its previous comments<sup>171</sup>

### **5.2.2. Discussion**

Comments on staff's revised access line definition, as set forth in the March 30, 2022, assigned ALJ Ruling, ranged from establishing caps, exempting certain business models, using established industry definitions, and asserting that the current mechanism does not need to change.

Parties' comments and reply comments on the March 30, 2022, assigned ALJ ruling introduced specific categories of services of components that each party asserted should be included or excluded from the access line definition. Some comments reiterated a previous party position. For example,

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<sup>166</sup> Reply Comments of Frontier to ALJ Ruling Issued March 30, 2022, May 16, 2022, at 4.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Reply Comments of TURN and CforAT on the ALJ's Ruling, May 16, 2022, at 2.

<sup>171</sup> Reply Comments of CTIA on Staff's Revised Access Line Definition, May 16, 2022, at 1 and 4.

Cal Advocates' comments pointed out that the access line definition's treatment of toll-free numbers, premium rate numbers, and other numbering services be included in the revised definition of access lines only to the extent that the access line is assigned a 10-digit number or other unique identifier and associated with a California billing address or registered location in California subject to the surcharge.<sup>172</sup>

TURN and CforAT reiterated the need for more data and their previous comments supporting a hybrid system where residential customers would pay a per-line surcharge, subject to a hold harmless constraint, while business customers would continue to be assessed based on intrastate revenues.<sup>173</sup> In reply comments TURN and CforAT urged the Commission to adopt TURN and CforAT's hybrid approach, which will hold residential customers' contribution to the PPPs to the same percent of total PPP contributions as they currently pay and reject CCTA's hybrid proposal that would not hold residential customers harmless and would likely result in residential customers bearing an inequitable share of surcharge assessments.<sup>174</sup>

Among other issues, VON's comments stated that the Commission's proposed definition does not and should not include toll free numbers, premium rate numbers, or other types of number services. These number services are not access lines and are not a "medium of transmission, or protocol" in and of

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<sup>172</sup> Opening Comments of the Public Utility Advocates Office on March 30, 2022, Administrative Law Judge's Ruling Requesting Comment, April 29, 2022, at 4.

<sup>173</sup> Comments of the Utility Reform Network and the Center for Accessible Technology on the Administrative Law Judge's Ruling, April 29, 2022, at 1.

<sup>174</sup> Reply Comments of the Utility Reform Network and the Center for Accessible Technology on the Administrative Law Judge's Ruling, May 16, 2022, at 3.

themselves.<sup>175</sup> CD staff reviewed parties' comments and reply comments and rejected those comments that reiterated previously stated party positions or advanced changes that would only benefit a specific carrier or category of carrier. However, CD staff did make changes to universal issues common to all carriers. CD staff's work focused on creating a simple and unambiguous access line definition and PPP surcharge reform process.

Based upon the record and input from parties, the Commission finds that further revision to the SR2 access line definition is warranted. Accordingly, for purposes of the new surcharge mechanism we adopt in today's decision, we define "access line" as follows:

"Access Line"<sup>176</sup> means a wire or wireless connection that provides a real-time two-way voice telecommunications service or VoIP service to or from any device utilized by an end-user, regardless of technology, which is associated with a 10-digit NPA-NXX number or other unique identifier and has a service address or Place of Primary Use in California.

"Telecommunications" has the same meaning as in 47 U.S.C. Section 153(50): "The term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

"VoIP service" means service as defined in Pub. Util. Code Section 239.

"Service address" means the physical address in California where fixed telecommunication service is provided.

"Place of primary use" is defined (a) for mobile telecommunications service in Pub. Util. Code

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<sup>175</sup> VON Comments in Response to Administrative Law Judge's Ruling, April 29, 2022, at 3.

<sup>176</sup> The number of access lines a service provider provides to an end-user shall be deemed equal to the number of inbound or outbound two-way communications by any technology that the end-user can maintain at the same time as provisioned by the service provider's service.

Section 247.1(c)(6); and (b) for interconnected VoIP service providers in Pub. Util Code Section 285(d).

We have considered suggestions from some parties to hold a workshop or other similar opportunity to further discuss issues in this proceeding.<sup>177</sup> Given the urgent need for Commission action to address the continuous decline in PPP surcharge funding, we decline to hold a workshop at this time. The record demonstrates that the Commission should move forward now with adopting an access line-based surcharge mechanism. We anticipate that implementation issues will be addressed in a resolution prepared by CD staff within a reasonable time frame after the Commission adopts this decision. Parties may file a motion to hold a workshop or other meeting should the need arise thereafter.

### **5.2.3. Conclusion**

The access line definition we adopt in the instant decision is reasonable in that it is technology neutral and incorporates existing relevant definitions with which carriers are already familiar. This access line definition is also reasonable in that it captures a broader surcharge base than the current revenue-based mechanism and is therefore a better funding mechanism to ensure PPP stability.

### **5.3. User Fee**

The California Legislature codified the user fee in 1983.<sup>178</sup> In doing so, the Legislature found that “the public interest is best served by a commission that is

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<sup>177</sup> Reply Comments of CTIA on Staff’s Revised Access Line Definition, May 16, 2022, at 4. Reply Comments of AT&T on Commission Communications Division Staff’s Proposed Revisions for Defining Access Line, May 16, 2022, at 9.

<sup>178</sup> Pub. Util. Code Section 401 (Article 1 Collection and Disposition of Fees, and Article 3 Other Public Utilities, both added by Stats. 1983, Ch. 323, Sec. 71, effective July 1, 1983).



appropriately funded and staffed, that can thoroughly examine the issues before it..." (Pub. Util. Code Section 401(a)).<sup>179</sup>

Pub. Util. Code Sections 270-285 and Section 431 authorize the Commission to administer and fund the PPPs and collect user fees. The Commission determines the appropriate annual CPUC fee to be paid by telecommunications carriers.<sup>180</sup> This fee is currently based on a telecommunications carrier's gross intrastate revenue excluding inter-carrier sales, equipment sales and directory advertising. The purpose of this fee is to finance the Commission's annual operating budget.

Telecommunications carriers with annual gross intrastate revenues more than \$750,000 are required to remit this fee quarterly, by the 15th of April, July, October, and January. Telecommunications carriers with annual gross intrastate revenues of \$750,000 or less are directed to remit the fee annually on or before January 15.<sup>181</sup>

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<sup>179</sup> Pursuant to Pub. Util. Code Section 431,

The commission shall annually determine a fee to be paid by every electrical, gas, telephone, telegraph, water, sewer system, and heat corporation and every other public utility providing service directly to customers and subscribers and subject to the jurisdiction of the commission other than a railroad, except as provided in Article 2 (commencing with Section 421). The annual fee shall be established to produce a total amount equal to that amount established in the authorized Commission budget for the same year, including adjustments for increases in employee compensation, other increases appropriated by the Legislature, and an appropriate reserve to regulate public utilities less the amount to be paid from special accounts or funds pursuant to section 402, reimbursements, federal funds, and any other revenues, and the amount of unencumbered funds from the preceding year.

<sup>180</sup> [CPUC User Fee](#) (ca.gov).

<sup>181</sup> *Ibid.*

At this time, the reporting and remittance of the user fee for telephone corporations will continue to use the revenue-based formula because Pub. Util. Code Section 432 requires it to be calculated based on carriers' gross intrastate revenue. We do, however, see the benefits to aligning or combining the user fee mechanism with the new access line-based PPP surcharge mechanism we adopt today. Reporting and remittance could be more streamlined. We reserve this issue for Phase 2 or until changes are made to the user fee governing statutes.

#### **5.3.1. Parties' Comments on User Fee Changes**

Parties agreed that the user fee must continue to be assessed based on the current intrastate revenue mechanism. For example, Comcast stated that, "...as the Commission is aware, certain provisions of the Public Utilities Code tie PPP surcharges to intrastate revenues (Pub. Util. Code § 432(c)(3), the CPUC user fee for telephone corporations must be based on 'the ratio that each corporation's gross intrastate revenues bears to the total gross intrastate revenues for the class')." <sup>182</sup> RingCentral stated that Section 285(c) expressly requires the Commission to require interconnected VoIP providers registered under Section 285 to "collect and remit surcharges on their California intrastate revenues". <sup>183</sup> RingCentral further asserted that VoIP providers registered under Section 285 are required to pay PPP surcharges but not the user fee and thus a single line-item, per-line fee that would cover both PPP surcharges and the user fee is not feasible and should not be pursued. <sup>184</sup>

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<sup>182</sup> Comments of Comcast on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, April 5, 2021, at 2.

<sup>183</sup> RingCentral Comments in Response to Order Instituting Rulemaking, April 5, 2021, at 2.

<sup>184</sup> *Id.* at 3.

Sonic pointed out that, "...combining all six PPP surcharges, plus the User Fees, into a single surcharge mask (the ability of customers to judge whether they think each (PPP) program's funding level is appropriate) this detail, and would discourage public investigation, engagement and participation in the review of PPPs and the User Fee."<sup>185</sup> Charter recommended staff review Sections 431-432, among other sections, to identify which code sections may require amendment prior to converting to a line-based surcharge.<sup>186</sup>

Cox also expressed concern that this approach (one line-item, per-access line for PPP surcharges) deprives consumers of transparency as they would no longer have any visibility into what portion of the consolidated surcharge would be allocated to each PPP fund (or all PPPs combined), and what amount would be allocated to the Commission's budget."<sup>187</sup> In that same vein, Cal Advocates recommended that, "...the Commission ensure that information about the PPP surcharges and the user fee are clear and accessible on the CPUC website."<sup>188</sup> Cal Advocates further suggested the Commission include on its website, in plain, straightforward language a description of each of the six public purpose programs and the user fee, a surcharge table breaking down the fund allocations

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<sup>185</sup> Opening Comments of Respondent Sonic on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs at 5.

<sup>186</sup> Comments of Charter to Order Instituting Rulemaking 21-03-002, April 5, 2021, at 8.

<sup>187</sup> Comments of Cox on Order Instituting Rulemaking to Update Surcharge and Use Fee Collection Mechanisms, April 5, 2021, at 7.

<sup>188</sup> Opening Comments of Cal Advocates on October 29, 2021, Communications Division Staff Report Part 2, November 30, 2021, at 9-10.

to each program and the user fee, contact information for questions, and links to any prior and subsequent proceedings related to telecommunications surcharges and user fees.<sup>189</sup>

### **5.3.2. Discussion**

Due to the specific statutory requirements for calculating the user fee based on telephone corporation's gross intrastate revenue, the Commission cannot adopt a different funding mechanism for the user fee at this time. While there may be benefits and drawbacks to adopting a flat-rate single access line based mechanism that includes both the PPP surcharges and user fee mechanism, we cannot evaluate its merits unless and until the necessary legislative changes are made.

### **5.3.3. Conclusion**

The user fee funding mechanism will not change and will continue to be revenue-based. The Commission will evaluate any proposals concerning changes to the user fee when and if the requisite legislative amendments are made.

## **6. Implementation of the New Access Line-Based Surcharge Mechanism**

The shift to an access line-based PPP surcharge mechanism will require reporting, technological, and logistical updates to the current surcharge and remittance process. One key update will be creating a new access line reporting system for Telecommunications and User Fee Filing System (new TUFFS), which will not be ready until approximately January 1, 2023. Carriers will report access line counts on the same monthly schedule as they currently report their intrastate telecommunications revenue, which is 40 days after the last calendar day of the month.

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<sup>189</sup> *Ibid.*

To allow time for the updates to take effect, it is necessary for the Commission to adopt an interim access line-based PPP surcharge rate pending these updates. As discussed further below, effective January 1, 2023, the interim flat-rate PPP surcharge will be \$1.11. Once carriers report their access line counts by no later than March 12, 2023,<sup>190</sup> we expect to have sufficient data to calculate a final surcharge rate for Fiscal Year 2023-2024.

We will continue to adopt universal service surcharge and user fee rates through the resolution process, as well as determine the amount of any necessary adjustments to the access line-based PPP surcharge rate to ensure proper funding for all six of California's universal service programs. For the remainder of 2022 (until December 31, 2022), carriers will continue to report their intrastate telecommunications revenue use the existing TUFFS system. However, as of January 1, 2023, all wireline, wireless, and VoIP carriers or providers must report their access line data in the new TUFFS, and this new TUFFS will process carriers' access line data to calculate the applicable flat-rate PPP surcharge. The process to calculate the user fee will remain unchanged.

### **6.1. Developing a New TUFFS**

The new access line-based surcharge mechanism will require a new TUFFS. Once new TUFFS is available starting approximately January 1, 2023, all telecommunications providers shall report their access lines as defined in this decision and remit surcharges through the new TUFFS.

Table 1 is embedded in the legacy TUFFS to facilitate fund payment and allocation. Currently, PPP surcharges are allocated by program, as shown below:

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<sup>190</sup> As with the current surcharge mechanism, interest will accrue after the 40-day remittance deadline.

**Table 1.** Current PPP Surcharge Distribution

<b>REMITTANCE RATES FOR EACH PUBLIC PURPOSE PROGRAM</b>		
<b>Program #</b>	<b>Program Name</b>	<b>Remittance Rate Percent</b>
0464	CHCF-A	0.70%
0470	CHCF-B	0.00%
0471	ULTS	4.75%
0483	DDTP	1.11%
0493	CTF	0.78%
3141	CASF	1.019%
		<b>8.359%</b>

Table 2 below depicts an example of how the access line-based mechanism would allocate the surcharges carriers remit in new TUFFS. This type of table will be embedded in the new TUFFS to facilitate automatic fund allocations under the access line surcharge mechanism. To calculate the weighted percent allocation, Staff utilized the Commission's 2022-2023 Fiscal Year authorized PPP budgets, resulting in a weighted average fund distribution.

**Table 2.** New Access Line PPP Surcharge Distribution

<b>WEIGHTED AVERAGE PROGRAM FUND ALLOCATION TABLE</b>		
<b>Program #</b>	<b>Program Name</b>	<b>Weighted Percent of Authorized Budget</b>
0464	CHCF-A	7.54%
0470	CHCF-B	0.00%
0471	ULTS	53.99%
0483	DDTP	9.62%
0493	CTF	16.04%
3141	CASF	12.82%
		<b>100.00%</b>

Collected funds will be distributed to the associated programs based on a weighted average of authorized funding for each PPP. This distribution will be internally controlled by TUFFS. Changes to the allocation mechanism will be determined by the Commission's Communications Division staff, based on the operational needs of each program and approved by the Commission via Resolution in accordance with existing requirements.

Starting January 1, 2023, carriers are directed to report and remit PPP surcharges through the new TUFFS portal and to follow all directions in the new TUFFS. The new TUFFS will consist of the carrier determining the number of access lines serviced in California and entering the number of access lines into the new system. Then, the new system will automatically calculate the single end-user surcharge remittances due. The carrier will take the total amount due and remit one payment into the payment portal.

Access line counts will not be capped at 25 lines or other number at a location, as some parties had suggested. Frontier initially supported a cap, but "after considering the revisions to the 'access line' definition and upon further evaluation, Frontier does not believe it would be possible to reasonably implement a cap to its current billing system."<sup>191</sup> AT&T opposed a cap, arguing that its "billing systems are not set up to easily identify customers by location..."<sup>192</sup> CTIA also expressed concern about the impact a cap could have on wireless users,<sup>193</sup> stating that "a line cap on business and institutional connections inappropriately would shift the burden of funding the PPPs from

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<sup>191</sup> Comments of Frontier on ALJ's Ruling Requesting Comment on the Revised Access Line Definition, April 29, 2022, at 8.

<sup>192</sup> Comments of AT&T on ALJ's Ruling Requesting Comment, April 29, 2022, at 6.

<sup>193</sup> See April 29, 2022, comments of CTIA on Staff's revised access line definition at 8.

wireline business users to wireless users — a class that, as the record shows, is more likely to include low-income consumers. This runs contrary to traditional universal service funding policy that favors higher assessments on business users to equitably distribute the funding burden.”<sup>194</sup> CCTA stated that presenting a proposal for a line cap would be premature.<sup>195</sup> We are persuaded by these concerns and therefore reject an access line cap.

## **6.2. The New Access Line-Based PPP Interim Surcharge Rate**

The access line flat-rate end-user surcharge mechanism will be effective January 1, 2023. The new surcharge mechanism will apply to all customer classes and will be based on the number of telecommunications access lines in the state, as defined in this decision.

Because the new TUFFS will not for be ready for carriers to report their access line data until approximately January 1, 2023, and carriers have until March 12, 2023, to report their access line counts for January 2023, the Commission finds it necessary to adopt an interim access line surcharge rate in this decision, so that it can be effective January 1, 2023. Given the need to first have the new TUFFS available for carrier reporting, we find it reasonable to adopt an interim rate of \$1.11. This was the projected monthly per access line surcharge rate for Fiscal Year 2023-2024 that staff calculated in SR2 based on existing 2020 subscriber data carriers reported to the FCC.<sup>196</sup> As SR2 explained, staff utilized subscriber numbers carriers reported in FCC Form 477 as a proxy

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<sup>194</sup> Comments of CTIA on ALJ’s Ruling Requesting Comment on the Revised Access Line Definition, April 29, 2022, at 8.

<sup>195</sup> Comments of CCTA on ALJ’s Ruling Requesting Comment on the Revised Access Line Definition, April 29, 2022, at 11.

<sup>196</sup> FCC Form 477 as of June 2020.



for access line counts in its calculation.<sup>197</sup> This rate, however, does not include adjustments that may be needed to account for the LifeLine and incarcerated persons exemptions adopted in this decision. Thus, all California universal service programs will implement the \$1.11 surcharge rate until the Commission updates the rate in a subsequent resolution.

We are aware that the budget for the CASF program has statutorily increased significantly<sup>198</sup> and therefore, anticipate that this \$1.11 surcharge rate may need to be adjusted upwards, once we receive carriers' actual access line data in new TUFFS after January 2023. Adjustments will be made to ensure that we receive sufficient funds to cover California's universal service programs for 2023. Accordingly, we direct all wireline, wireless, and VoIP carriers or providers to report their access line data by March 12, 2023,<sup>199</sup> unless otherwise notified by the Communications Division.

We will continue to adjust or adopt new surcharge rates pursuant to our resolution process.

### **6.3. Updates to the CPUC Website**

Cal Advocates'<sup>200</sup> comments recommended that the Commission's website include clear, accessible, and easily searchable information on both the PPPs and the user fee. The Small LECs<sup>201</sup> support this proposal. We agree that the Commission should update its website to allow for a smooth transition to the

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<sup>197</sup> See SR2 at 19-21.

<sup>198</sup> D.22-05-029 at 5 (Pub. Util. Code Section 281(d), as amended by SB 4, authorizes the Commission to collect up to \$150,000,000 per year through surcharges to fund the CASF program).

<sup>199</sup> This date is 40 days after the last calendar day of January 2023.

<sup>200</sup> Cal Advocates Opening Comments on Staff Report Part 2, November 30, 2021, at 9-10.

<sup>201</sup> Reply Comments of the Small LECs on Staff Report Part 2, December 15, 2021, at 4.

access line-based surcharge mechanism. We direct the Communications Division to update the Commission's website to reflect the changes we adopt in this decision.

#### **6.4. De Minimis Status Under Access Line Mechanism**

The funding mechanism for a per-access line surcharge will consist of assessing a charge on individual access lines monthly, except when a carrier falls under the de minimis status/reporting classification. The de minimis rule describes those carriers averaging below \$10,000 in monthly intrastate revenue, which are allowed to report biannually. Currently, carriers report and pay surcharges monthly, unless carriers report under the de minimis rule. These carriers are classified as having a de minimis status. With the new access line surcharge mechanism, we will continue to have a de minimis reporting classification for carriers operating a certain number of access lines that is functionally equivalent to the \$10,000 threshold. Carriers currently reporting under the de minimis rule will continue to do so unless otherwise notified by CD staff. CD staff will notify carriers of the new access line de minimis amount once staff determines it in the implementing resolution we intend to issue.

#### **6.5. Reporting and PPP Surcharges Remittances in Legacy TUFFS Through December 31, 2022**

As outlined in SR1, currently all service providers report intrastate telecommunications revenue and remit PPP surcharges online through the CPUC's existing TUFFS system (legacy TUFFS) on a monthly basis, except de minimis carriers report bi-annually.<sup>202</sup> Once a carrier has determined its aggregate intrastate revenues subject to surcharge for that month, the carrier

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<sup>202</sup> [CPUC Telephone Surcharges Reporting and Payment Filing Directions](#) (ca.gov).

enters that amount into the TUFFS system. The system then calculates the resulting surcharge amount due for each program fund. The carrier then makes payment to each fund and the user fee by Automated Clearing House (ACH) debit through the Electronic Funds Transfer (EFT) system. Telecommunications carriers or providers will continue to report in this manner for all intrastate surchargeable revenue made in the remaining months of 2022 through December 31, 2022.

All carriers will be required to assess and collect surcharges as a percentage of an end user's telecommunications bill through December 31, 2022 and will continue to use the legacy TUFFS for reporting and remittances through that period. This means that for all reporting periods through December 2022, carriers will continue to report intrastate revenues subject to surcharge for the month (or bi-annually for de minimis carriers); then, enter the collected funds in the legacy TUFFS. The legacy TUFFS will calculate the resulting surcharge amount due per each program. To remit the resulting surcharges due, the carrier will be redirected to a Payment Portal to make payments to each fund and the user fee by ACH debit through the EFT system.

## **7. Comments on Proposed Decision**

The proposed decision of ALJ Hazlyn Fortune in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

## **8. Assignment of Proceeding**

Commission President Alice Reynolds is the assigned Commissioner and Hazlyn Fortune is the assigned ALJ in this proceeding.

**Findings of Fact**

1. The Commission implemented the Moore Universal Telephone Service Act, which established universal service in California, in D.84-04-052.
2. Pub. Util. Code Sections 270-285 and Section 431 authorize the Commission to administer and fund the PPPs and collect user fees.
3. All telecommunications carriers operating in California must comply with the federal Communications Act, 47 U.S.C. Section 254, which requires carriers to contribute to universal service on an equitable and non-discriminatory basis.
4. The Commission adopted an intrastate revenue-based end-user surcharge mechanism in D.94-09-0658 and D.96-10-066.
5. The intrastate revenue billing base declined by 58 percent between 2012 and 2020.
6. Each telecommunications company providing full Facilities-Based/Limited-Facilities Based, Resold Competitive Local Exchange Services, and Facilities-based Interconnected VoIP services in California must receive operating authority through a Certificate of Public Convenience and Necessity from the Commission, subject to Pub. Util. Code Section 1001.
7. Each telecommunications company providing non-dominant interexchange carrier service in California must receive operating authority from the Commission through a simplified registration application, subject to Pub. Util. Code Section 1013 and D.97-06-107.
8. Each telecommunications company providing wireless service in California must register through a wireless identification registration with the Commission subject to D.13-05-035.

9. Telecommunications service providers must report the number of subscriber lines or connections (including voice grade equivalents) served in California biannually through the FCC 477 report.

10. Pursuant to Section 8.1.9 of the CPUC GO 153, California LifeLine subscribers are exempt from paying PPP surcharges and the user fee.

11. Access line is defined by Section 41007.1 of the State Taxation Code to include wireline, wireless, and VoIP service lines.

### **Conclusions of Law**

1. The Commission must support universal service for all Californians pursuant to the Moore Act.

2. The Commission must maintain the user fee assessment and collection based on intrastate telecommunications revenue at this time.

3. It is reasonable for the Commission to shift from an intrastate revenue base to a per access line flat-rate for assessing and collecting PPP surcharges.

4. The Commission should exempt incarcerated individuals from paying PPP surcharges and the user fee.

5. The Commission should continue to exempt LifeLine subscribers from paying PPP surcharges and the user fee.

## **O R D E R**

### **IT IS ORDERED** that:

1. All telecommunications providers holding a Certificate of Public Convenience and Necessity, an approved simplified registration application, or a Wireless Identification Registration, and authorized to operate in California, shall comply with the Public Purpose Program surcharge mechanism outlined in this decision.

2. All wireline, wireless and Voice over Internet Protocol carriers or providers shall report their access lines used to provide two-way communication, as defined in this decision.
3. The user fee shall continue to be assessed and collected based on intrastate telecommunications revenues.
4. Incarcerated individuals are exempt from the Public Purpose Program surcharges and the user fee.
5. LifeLine subscribers shall continue to be exempt from the Public Purpose Program surcharges and user fees.
6. All wireline, wireless and Voice over Internet Protocol carriers or providers shall implement the new access line surcharge collection and remittance mechanism adopted in this decision, beginning January 1, 2023.
7. A per-access line surcharge rate of \$1.11 will go into effect on January 1, 2023 and shall remain in effect until the Commission adopts a different rate.
8. The \$1.11 access line-based surcharge rate effective January 1, 2023 is intended to fund all of California's universal service programs until the Commission updates the rate using its resolution process.
9. By March 12, 2023, all wireline, wireless and Voice over Internet Protocol carriers or providers shall report their access line data, as required by this

decision, in the CPUC's new Telecommunications and User Fee Filing System portal.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California

# **ATTACHMENT A**



**LISTING OF PARTIES<sup>203</sup> TO RULEMAKING 21-03-002  
AND THEIR ACRONYMS, ABBREVIATED NAMES  
OR COLLECTIVE NAMES FOR EACH FILING**

California Public Utilities Commission may be referred to as “Commission” or “CPUC”.

<b>OPENING COMMENTS TO THE OIR</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Extenet Systems Inc.	Extenet Systems
Sonic Telecom, LLC	Sonic
National LifeLine Association, Boomerang Wireless, LLC, Amerimex Communications Corp. DBA Safety Net Wireless, American Broadband & Telecommunications Company, Global Connection Inc. of America DBA Standup Wireless, Truconnect Communications, Inc. and I-Wireless, LLC.	National LifeLine et. al.
Time Warner Cable Information Services (California), LLC and Charter Fiberlink CA-CCO, LLC	Charter
Cox California Telecom, LLC DBA Cox Communications	Cox
Public Advocates Office	Cal Advocates
Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc.	(collectively) Frontier
Telrite Corporation DBA Life Wireless	Telrite
Consolidated Communications of California Company	Consolidated

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<sup>203</sup> Parties filed comments individually or in groups; these groups changed for each set of responses, comments and reply comments.

OPENING COMMENTS TO THE OIR	
Party Name	Name, Acronym or Abbreviated Name
Tracfone Wireless, Inc.	Tracfone
Velocity Communications Inc.	Velocity
Comcast Phone of California, LLC	Comcast
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT
Comcast Phone of California, LLC	Comcast
Utility Consumers' Action Network	UCAN
CTIA <sup>204</sup>	CTIA
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
MCI Communications Services LLC, MCI metro Access Transmission Services Corp., and Cellco Partnership DBA Verizon Wireless	Verizon
RingCentral, Inc.	RingCentral
Extenet Systems (California) LLC	Extenet Systems California

<sup>204</sup> The Wireless Association (members include wireless carriers, device manufacturers, suppliers as well as apps and content companies).

OPENING COMMENTS TO THE OIR	
Party Name	Name, Acronym or Abbreviated Name
California Emerging Technology Fund	CETF

<b>REPLY COMMENTS TO THE OIR</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
Time Warner Cable Information Services (California), LLC and Charter Fiberlink CA-CCO, LLC	Charter
California Emerging Technology Fund	CETF
California Cable and Telecommunications Association	CCTA
Public Advocates Office	Cal Advocates
Consolidated Communications of California Company	Consolidated
Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc.	(collectively) Frontier
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
Comcast Phone of California, LLC	Comcast
Voice on the Net Coalition	VON
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT
Cox California Telecom, LLC DBA Cox Communications	Cox
CTIA	CTIA

<b>OPENING COMMENTS ON SCOPING MEMO RULING AND STAFF REPORT PART 1</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Cox California Telecom, LLC DBA Cox Communications	Cox
MCI Communications Services LLC, MCImetro Access Transmission Services Corp., and Cellco Partnership DBA Verizon Wireless	Verizon
Public Advocates Office	Cal Advocates
CTIA	CTIA
TracFone Wireless Inc.	TracFone
Comcast Phone of California, LLC	Comcast
Sonic Telecom, LLC	Sonic
Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc.	(collectively) Frontier
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
Voice on the Net Coalition	VON
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT

<b>OPENING COMMENTS ON SCOPING MEMO RULING AND STAFF REPORT PART 1</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Time Warner Cable Information Services (California), LLC and Charter Fiberlink CA-CCO, LLC	Charter

<b>REPLY COMMENTS ON SCOPING MEMO RULING AND STAFF REPORT PART 1</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
Public Advocates Office	Cal Advocates
California Emerging Technology Fund	CETF
California Cable and Telecommunications Association	CCTA
Cox California Telecom, LLC DBA Cox Communications	Cox
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT
CTIA	CTIA

<b>COMMENTS ON STAFF REPORT 2</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
CTIA	CTIA
MCI Communications Services LLC, MCImetro Access Transmission Services Corp., and Cellco Partnership DBA Verizon Wireless	Verizon
The Greenling Institute	Greenlining
California Cable and Telecommunications Association	CCTA
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT
Public Advocates Office	Cal Advocates
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc.	(collectively) Frontier
Voice on the Net Coalition	VON
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
Securus Technologies, LLC	Securus



<b>REPLY COMMENTS ON STAFF REPORT 2</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
CTIA	CTIA
California Emerging Technology Fund	CETF
MCI Communications Services LLC, MCImetro Access Transmission Services Corp., and Cellco Partnership DBA Verizon Wireless	Verizon
Public Advocates Office	Cal Advocates
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
Cox California Telecom, LLC DBA Cox Communications	Cox
California Cable and Telecommunications Association	CCTA
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
Time Warner Cable Information Services (California), LLC and Charter Fiberlink CA-CCO, LLC	Charter
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT

<b>OPENING COMMENTS TO ALJ RULING ON ACCESS LINE DEFINITION</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc.	(collectively) Frontier
Public Advocates Office	Cal Advocates
Voice on the Net Coalition	VON
CTIA	CTIA
California Cable and Telecommunications Association	CCTA
Securus Technologies, LLC	Securus
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT

<b>REPLY COMMENTS TO ALJ RULING ON ACCESS LINE DEFINITION</b>	
<b>Party Name</b>	<b>Name, Acronym or Abbreviated Name</b>
Public Advocates Office	Cal Advocates
Calaveras Telephone Company, Cal-ORE Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Company, The Ponderosa Telephone Company, Sierra Telephone Company, The Siskiyou Telephone Company, Volcano Telephone Company, Winterhaven Telephone Company	Small LECs
California Cable and Telecommunications Association	CCTA
Frontier California Inc., Citizens Telecommunications Company of California Inc. DBA Frontier Communications of California, Frontier Communications of the Southwest Inc.	(collectively) Frontier
The Utility Reform Network and the Center for Accessible Technology	TURN and CforAT
Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., SBC Long Distance, LLC, Teleport Communications America, LLC, Cricket Wireless, LLC, AT&T Mobility	(collectively) AT&T
CTIA	CTIA

**(END OF ATTACHMENT A)**