

Decision PROPOSED DECISION OF COMMISSIONER PEEVEY
(Mailed 1/28/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Require
Interconnected Voice Over Internet Protocol
Service Providers to Contribute to the Support of
California's Public Purpose Programs.

Rulemaking 11-01-008
(Filed January 13, 2011)

DECISION CLOSING RULEMAKING 11-01-008

The Commission opened this Rulemaking nearly two years ago to add California providers of interconnected Voice over Internet Protocol (VoIP) service to the category of voice service providers who are required to fund California's universal service programs. These programs include the California LifeLine Telephone Program (formerly known as the Universal LifeLine Telephone Service or ULTS), the California High-Cost Fund A, the California High-Cost Fund B, the California Advanced Services Fund, the California Teleconnect Fund, and the Deaf and Disabled Telecommunications Program.

The Commission initiated the Rulemaking because we were persuaded of the importance of requiring contributions from intrastate end-users of interconnected VoIP service. The Federal Communications Commission (FCC) had already determined that interconnected VoIP providers must report and contribute to the federal Universal Service Fund (USF) on all of their interstate and international end – user revenues, and had also determined that “the application of state universal service contribution requirements to interconnected

VoIP providers does not conflict with federal policies, and could, in fact, promote them.”¹ The FCC had also ruled “that states may extend their universal service contribution requirements to future intrastate revenues of nomadic interconnected Voice over Internet Protocol (VoIP) service providers....”²

At the time the Commission initiated the Rulemaking, there was no requirement for interconnected VoIP providers offering service in California to contribute to California’s universal service public purpose programs. The limited objective in the Rulemaking was to ensure that the California universal service programs are supported in a competitively and technologically neutral manner and that contributions to the programs are sufficient to preserve and advance universal service.

This was of significant concern at the time the proceeding was initiated and has grown more so by the passage of time due to the dramatic expansion of the telecommunication services being provided using VoIP technology, including the expansion of such services provided by the traditional land line companies such as Pacific Bell Telephone Company and Verizon California Inc.

¹ *Declaratory Ruling, In the Matter of Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling, or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds may Assess Nomadic VoIP Intrastate Revenues*, WC No. 06-122, rel. November 5, 2010 (*Declaratory Ruling*), ¶16.

² *Id.*, ¶1; see also *Universal Service Contribution Methodology Proceeding*, Report and Order of Proposed Rulemaking (WC Docket No. 06-122) (2006) 21 FCC Rcd 7518 at ¶34.

While a significant number of parties participated in this proceeding and filed comments, completion of the proceeding was obviated by the introduction and passage of a measure by the California Legislature that achieved the goal of the Rulemaking. Assembly Bill (AB) 841 by Assemblywoman Joan Buchanan (Ch. 841, Stats. 2011) enacted the requirement for such contributions by interconnected VoIP providers (as defined in the legislation in conformity with federal definitions and rules) to each of the required funds. It also spelled out the methodologies for determining the revenues subject to the individual program surcharges. In effect its enactment rendered totally moot the formally articulated purpose of this Rulemaking.

During the pendency of the Rulemaking, the Consumer Protection and Safety Division³ (CPSD) filed a motion requesting that the scope of this proceeding be expanded to extend to VoIP telecommunications service providers the consumer protection rules applicable to other telecommunications service providers already considered to be telephone corporations for purposes of the California Public Utilities Code.⁴ CPSD noted both the similarity between interconnected VoIP services and traditional telephone services and the number of complaints the Commission had received regarding VoIP provided services. Many parties filed responses to the motion. It has not, to date, been acted upon.

³ CPSD subsequently changed its organization name to the Safety and Enforcement Division.

⁴ Motion of the Consumer Protection and Safety Division for Modification of the Scope of Rulemaking to Include Consumer Protection, March 8, 2011.

During this past year the Legislature also took up the topic of the regulatory status of VoIP services and enacted Senate Bill (SB) 1161 by Senator Alex Padilla (Ch. 733, Stats. 2012, effective January 1, 2012) which addresses the jurisdiction of this Commission and any other state agency to regulate VoIP providers.⁵ While there remain some questions regarding the interpretation of specific sections of the bill, it effectively resolved all of the matters suggested for resolution by the CPSD motion.

Since both the initial intended scope of this proceeding and the request for an augmented scope have been rendered moot by the passage of legislation that specifically addressed all of the issues involved, there is no further need for this proceeding to remain open. If and when there is a need to consider further the status of VoIP service providers, other or new proceedings will be utilized.

⁵ SB 1161 among other provisions, added Section 710, in part as follows:

710. (a) The commission shall not exercise regulatory jurisdiction or control over Voice over Internet Protocol and Internet Protocol enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute or as set forth in subdivision (c). In the event of a requirement or a delegation referred to above, this section does not expand the commission's jurisdiction beyond the scope of that requirement or delegation.

(b) No department, agency, commission, or political subdivision of the state shall enact, adopt, or enforce any law, rule, regulation, ordinance, standard, order, or other provision having the force or effect of law, that regulates VoIP or other IP enabled service, unless required or expressly delegated by federal law or expressly authorized by statute or pursuant to subdivision (c). In the event of a requirement or a delegation referred to above, this section does not expand the commission's jurisdiction beyond the scope of that requirement or delegation.

Comments on Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with § 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 jointly on February 19, 2013 by The Utility Reform Network and the Center for Technology Accessibility (Joint Commenters), and reply comments were filed on February 25, 2013 by Pacific Bell Telephone Company D/B/A AT&T California; AT&T Corp.; and Teleport Communications America, LLC, and Verizon California, Inc. (Verizon).

The Joint Commenters do not oppose closing this proceeding, but urge the Commission to create a roadmap of the outstanding issues to be considered in other proceedings. As Verizon noted in its reply comments, the proposed decision states that "[i]f and when there is a need to consider further the status of VoIP service providers, other or new proceedings will be utilized."

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. This proceeding was initiated to address contributions of VoIP providers to the telecommunications public purpose programs.
2. AB 841, by Assemblyman Joan Buchanan, as enacted, rendered that purpose of the proceeding moot.
3. CPSD filed a motion to add to the scope of this proceeding requiring VoIP providers to comply with various consumer protection statutes.
4. SB 1161 by Senator Alex Padilla, as enacted, rendered that motion request moot.

Conclusion of Law

All of the adopted requested elements of the scope of this proceeding are moot and there is nothing remaining to be considered.

O R D E R

IT IS ORDERED that:

1. Any motions not previously granted or denied are hereby denied.
2. Rulemaking 11-01-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.