

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 19, 2013

To: The Commission
(Meeting of March 21, 2013)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 876 (Bonta) – Telecommunications: California Teleconnect Fund
Administrative Committee Fund.
As introduced: February 22, 2013**

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUMMARY OF BILL

AB 876 would add new Section 280.1 to the Public Utilities (PU) Code, requiring the California Public Utilities Commission (CPUC) to:

- Open a proceeding or amend an existing proceeding to assess whether rates charged to schools in the California Teleconnect Fund (CTF) program are comparable to rates charged to for-profit entities (Section 280.1.(a));
- Establish and maintain a database on the CPUC's public Internet Web site of services purchased by entities receiving the CTF discount so that qualifying entities can collaborate and allow for the use of common infrastructure (Section 280.1.(b)); and
- Prioritize the use of CTF monies for advanced high-quality communications services. (Section 280.1(c)).

CURRENT LAW

On January 31, 2013, the Commission issued an Order Instituting Rulemaking (OIR) to conduct a comprehensive examination of the CTF in Rulemaking 13-01-010 (CTF OIR). The CTF OIR will assess program goals and eligibility requirements for participants, service providers and services.

AUTHOR'S PURPOSE

According to the author's office, the goal of the bill is to help ensure that the funds in the CTF are being used for efficient procurements and to prioritize procuring high-tech services over the maintenance of existing and previous technology.

DIVISION ANALYSIS

Section 280.1. (a)

A proceeding to compare rates for schools versus for-profit entities can be incorporated into the existing CTF OIR, which is undertaking an all-inclusive review of the CTF program. It should be noted that:

- 1) Most schools also receive the federal E-rate discounts, which require a competitive procurement process. Information provided under the E-rate discount program may address some of the concerns that may be underlying this section.
- 2) It is not clear whether the CPUC has authority to obtain data on for-profit entities from non-CPUC regulated providers, such as VOIP providers. See Legal Section for further information.
- 3) Comparison of rates paid by schools versus those paid by for-profit entities may be difficult because both can contract for a package of varying and complex communication services. The price of any one service in the package, CTF-eligible or not, may vary depending on the other services in the package as well as the terms and conditions of the contract.

Section 280.1. (b)

Today's CPUC's CTF website lists all approved CTF entities. However, it does not list the services used by each participant nor does the CPUC collect this information on routine on-going basis. While it is technically feasible to implement Section 280.1(b), it would require significant additional resources beyond those that exist today. It should also be noted that it is not always transparent from the service name, what the service is because carriers can have different names for the same service. Additionally, development of new protocols on how multiple CTF-eligible entities can share resources may be needed. Also see Legal Section for further information.

Section 280.1. (c)

As part of the Commission's long-standing policy, the CTF program is implemented on a technology neutral basis. Currently, the program does not prioritize discounts based on service, service providers, or customers, albeit there is a cap on community college discounts. The prioritization of services could be addressed in the pending CTF OIR.

However, the specific impact of this section is difficult to assess because AB 876 is ambiguous with respect to the prioritization process as well as the definitions of advanced high quality communication services and legacy communications services. These issues should be addressed in the OIR if this bill is enacted.

If advanced high quality communications services are primarily services not regulated by the CPUC, then giving priority to these services would mean more of the CTF budget

being allocated to services that are not under the purview or jurisdiction of the Commission.

SAFETY IMPACT

The safety of Californians is not expected to change with AB 876.

RELIABILITY IMPACT

Service reliability is not expected to change with AB 876.

RATEPAYER IMPACT

Assuming that the billing and technical issues associated with sharing arrangements are resolved, in general, costs to ratepayers are expected to decrease because there would be less demand for CTF subsidized services since eligible entities would be sharing resources rather than each entity obtaining their own CTF discounted service.

FISCAL IMPACT

Additional PYs would be needed to create and maintain a database of participants and the services they use. The PYs would work with carriers on what data and associated format are needed, the appropriate protocols that should be used to receive the data, and checking the integrity and consistency of the data.

Start-up Costs

- 1.0 Two-year limited- term Senior Information Systems Analyst (Specialist) to design a web portal or other mechanism to receive data from carriers and post on website
- 1.0 Two-year limited-term PURA III to work with programmer and carriers on structuring the database and assuring consistency across carriers.

The Costs for the 2 limited term employees would be \$207,620 per year.

On-going Costs

- 0.25 Senior Information Systems Analyst (Specialist) to maintain the database
- 0.50 PURA I to check the integrity of the data as well as analyzing the data

Additionally, one new PU Counsel III would be needed to assist staff with obtaining the information that would be required by Section 280.1(b), to monitor, and to ensure compliance by the program participants.

On-going staff costs would be \$219,983 per year.

ECONOMIC IMPACT

To the extent that sharing of CTF services results in a smaller draw from the eligible entities on the CTF fund, the surcharge would be lower. This in turn would provide ratepayers additional disposal income for other purchases or savings, which could contribute to the economy. However, it is not clear there would be a material impact because the CTF surcharge is 0.59%, i.e. 59 cents for \$100 in intrastate communication charges.

LEGAL IMPACT

Section 280.1(b)

PU Code section 2891 limits telephone corporation disclosure of a variety of residential customer information (e.g. personal financial information, calling patterns etc.), in the absence of the residential customer's consent. PU Code Section 588 also limits disclosure of certain telephone customer information, the disclosure of which might be considered an unwarranted invasion of privacy. The bill's language is unclear and vague as to the types of information that would be required to be disclosed to the public.

The bill should be amended to clarify that it is not intended to require public disclosure or posting of information concerning residential customers that is subject to existing statutes restricting public disclosure (e.g. PU Code Section 2891), or telephone customer information subject to other statutory restrictions on disclosure, but is intended, notwithstanding any other provisions of law, to make available to the public information concerning the communications services purchased by qualifying schools, etc., that are not residential customers, in order to allow such entities to collaborate and use common infrastructure to reduce costs, etc. The bill should also be amended to clarify whether or not the specific per service or per unit of service costs should be included in the database.

Section 280.1(c)

For CTF as well as other public programs, the Commission has a long-standing policy of administering the program on a technologically neutral basis. It is unclear whether the author intends, by this section, to change that policy or just to provide preferential funding for higher speed services. In setting the budget for the program, the Commission has set the budget to permit funding of all possible claims regardless of technology. Therefore, we do not limit participation in the program or prioritize discounts among customers or providers.

Further, the CPUC cannot compel any service provider to offer broadband services as part of the CTF. Nor can the CPUC set rates for broadband Internet access services. The CPUC also cannot compel providers to offer broadband Internet access service at any kind of subsidized rate. States are pre-empted from

regulating broadband Internet access service, and to the extent that the bill contemplates a CPUC role in ensuring that such broadband services are a part of the CTF, the CPUC's role would be extremely limited. It is unclear whether the terms "high-quality communications services" in the bill means "broadband Internet access", and if it does, and the FCC has categorized broadband Internet access as an "information service", to which the CPUC has no jurisdiction.

In addition, the proposal that the CPUC should revise the CTF "to give priority to using moneys ... for advanced high-quality communications services over legacy communications services" would potentially create a conflict with other provisions of the PU Code governing this program, and more broadly, governing all of the CPUC's public purpose programs. This change should not be made in isolation here, but would require a more comprehensive review of companion statutes.

Furthermore, if the CTF program is required to favor broadband over legacy services, and the surcharges are collected on legacy services, the customers of legacy services would be paying to support subsidies on services they are not getting, while the customers getting the broadband service(s) would not be paying the surcharges.

LEGISLATIVE HISTORY

None.

PROGRAM BACKGROUND

The California Teleconnect Fund (CTF) subsidizes a 50% discount on specific communications and broadband Internet access services for eligible schools, libraries, government and hospital district-owned healthcare facilities, community colleges, the California Telehealth Network, and community nonprofit organizations. The subsidy is funded through a surcharge on telephone customers' bills, currently set at 0.59% of intrastate telephone charges.

The CTF is one of the Commission's universal service public purpose programs. There are currently more than 7,000 participating entities, including more than 5,000 community organizations. Program expenditures are projected at approximately \$92.4 million for fiscal year 2013-14, representing more than 16% of the Commission's universal service budget.

AB 3643

Even before the U.S. Congress passed the landmark Telecommunications Act of 1996, the California legislature recognized that the cornerstone of state and federal telecommunications policy is affordable, ubiquitously available universal telephone service. Assembly Bill 3643 (1994 Cal Stats. ch.278), enacted in 1994, called for the Commission to open a proceeding to examine the definition of universal service, declaring that, "Advanced telecommunications services should be made available as

ubiquitously and economically as possible to California's citizens, institutions, and businesses.”

D. 96-10-066

The Commission opened a proceeding (R.95-01-020 and I.95-01-021) in January 1995 and issued new universal service rules in light of the opening of monopoly markets to competition. (D.95-07-050.) In response to the federal Telecommunications Act of 1996, which intended to promote competition and reduce telecommunications regulation, and the principles expressed in AB 3643, the Commission later issued D.96-10-066 finalizing the new universal service rules. That decision created a discount program for qualifying schools, libraries, hospitals, health clinics, and community-based organizations through a California Teleconnect Fund (CTF), required end users of telecommunications services to contribute to the fund through a surcharge, and required all telecommunications carriers to collect the surcharge.

Cal.Pub.Util Code § 270

In 1999, the legislature adopted the program in statute “to compensate telephone corporations for their costs of providing universal service” (Cal.Pub.Util. Code § 270), and in 2003 the legislature created the Digital Divide Grant Fund within the CTF for pilot projects (Ca.Pub.Util Code § 280.5), although that fund has not been implemented. In addition, the Digital Infrastructure and Competition Act of 2006, provides that organizations in underserved areas that qualify for the CTF may receive services without charge from state video franchise holders. (Cal.Pub.Util Code § 5890.)

D. 08-06-020

In 2006, the Commission opened Rulemaking 06-05-028 to review the telecommunications public policy programs. This resulted in D. 08-06-020, which expanded the category of eligible schools to include community colleges, while capping the annual total amount for community colleges; added Internet access services to the types of eligible services; allowed certificated and registered carriers to offer Internet access service without those services being subject to state regulation; and extended CTF eligibility to 2-1-1 Information and Referral Service providers and California Telehealth Network participants.

OTHER STATES' INFORMATION

None.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

The proposed bill's rate comparison and prioritization proposals are consistent with the issues that the CTF OIR (R. 13-01-010) will be addressing. The database, while technically feasible, would need additional legal safeguards to ensure that no customer privacy information (protected under PU Code sections 588 and 2891 etc.) would be required to be disclosed to the public and would also require significant additional resources as detailed in the Fiscal Impact section.

SUMMARY OF SUGGESTED AMENDMENTS

The bill should be amended to clarify that it is not intended to require public disclosure or posting of information concerning residential customers that is subject to existing statutes restricting public disclosure (e.g. PU Code Section 2891). It should further clarify that it is not intended to require public disclosure of telephone customer information subject to other statutory restrictions on disclosure. It should state that it is intended, notwithstanding any other provisions of law, to make available to the public information concerning the communications services purchased by qualifying schools, etc., that are not residential customers. This way, it would allow such entities to collaborate and use common infrastructure to reduce costs, etc. The bill should also be amended to clarify whether or not the specific per-service or per-unit of service costs should be included in the database.

Additionally, the bill is not clear on the prioritization process for determining priority of advanced high quality communication services over legacy communication services. The bill should add a clause to Section 280.1 (c), at page 2, line 20, after “services” delete the period and add: “as the commission deems appropriate.” So that it reads:

“The commission shall revise the program developed pursuant to Section 280 to give priority to using moneys in the California Teleconnect Fund Administrative Committee Fund for advanced high-quality communication services over legacy communications services, as the commission deems appropriate.”

STATUS

AB 876 is pending hearing in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION

None on file.

VOTES

Not applicable.

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BILL LANGUAGE

BILL NUMBER: AB 876 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Bonta

FEBRUARY 22, 2013

An act to add Section 280.1 to the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 876, as introduced, Bonta. Telecommunications: California Teleconnect Fund Administrative Committee Fund.

Existing law requires the Public Utilities Commission to develop and implement a program funded by the California Teleconnect Fund Administrative Committee Fund to advance universal service by providing discount rates to qualifying schools, community colleges, libraries, hospitals, health clinics, and community organizations.

This bill would require the commission to revise the program described above to give priority for advanced high-quality communication services over legacy communication services. The bill would require the commission to open a new proceeding or amend an existing proceeding to determine whether the rates charged to qualifying schools receiving financial support from the program are comparable to the rates charged to for-profit entities for comparable communication services. The bill would require the commission to establish, maintain, and make available to the public a database of communication services purchased by qualifying entities receiving financial support from the program.

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

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

SECTION 1. Section 280.1 is added to the Public Utilities Code, to read:

280.1. (a) The commission shall open a new proceeding or amend an existing proceeding to determine whether the rates charged to qualifying schools receiving financial support from the program developed pursuant to Section 280 are comparable to rates charged to for-profit entities for comparable communication services.

(b) The commission shall establish and maintain a database of communication services purchased by qualifying entities receiving financial support from the program developed pursuant to Section 280 to allow qualifying entities to collaborate and allow for the use of common infrastructure to reduce costs, and make the database available to the public on the commission's Internet Web site.

(c) The commission shall revise the program developed pursuant to

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Section 280 to give priority to using moneys in the California Teleconnect Fund Administrative Committee Fund for advanced high-quality communications services over legacy communication services.