

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** May 14, 2014

**To:** The Commission  
(Meeting of May 15, 2014)

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

**Subject:** **AB 1693 (Perea) – Small independent telephone corporations: rates.  
As amended: April 2, 2014**

**RECOMMENDED POSITION:** OPPOSE

**SUMMARY OF BILL**

Assembly Bill (AB) 1693 as amended April 2, 2014 would:

- Require the California Public Utilities Commission (CPUC, Commission) to issue its final decision on a general rate case (GRC) application of a small independent telephone corporation also known as a Small Local Exchange Carrier (Small LEC) no later than 330 calendar days following the Small LEC's filing of its GRC application or advice letter.
- If a final decision is not issued by day 330, the bill would provide that the Small LEC's proposed rate design takes effect, absent CPUC authorization and on an interim basis, on the 360th day from the date the GRC application was filed, subject to a later accounting true-up only if a final CPUC decision or resolution concluding the rate case is issued by the 540th day.
- If a final decision is not issued by day 540, the interim rate design would become final, effective as of the 360th calendar day, notwithstanding any protests and absent any CPUC decision based on findings that the rate design is justified and reasonable and absent any true-up or refunds.
- Because of law prohibiting retroactive ratemaking, any new rate design adopted after 540 calendar days would take effect prospectively, on the effective date of the final decision or resolution.

**CURRENT LAW**

- Public Utilities (PU) Code Sections: 270, 276.5, 311, 451, 454, 455, 728, 1701.1, 1701.3, 1701.5, 1731, and 1756
- California Constitution Sections 2 and 6
- California Code of Regulations, Title 20, Sections 2.6, 14.2, and 15.1
- Commission General Order 96-B

- D.88-07-022, as modified by D.91-05-016 and D.91-09-042

## **AUTHOR'S PURPOSE**

The author alleges that until recently the PUC routinely processed small rural telephone corporation rate cases within a year of filing. However, the author suggests that because one Small LEC's rate case has taken longer than approximately one year, the interests of all Small LECs may be compromised; and because of the prohibition against retroactive ratemaking, the Small LECs' proposed rate increases may not take effect until the CPUC issues a final decision determining whether the proposed rates are just and reasonable.

Proponents' earlier proposals represented that AB 1693 is comparable to Public Utilities Code section 455.2 which concerns Class A water utilities. [NOTE: However, in enacting section 455.2 (added by Statutes 2002, chapter 1147 (A.B. 2838), § 3), the Legislature specifically found that "The provisions of this act should not be construed as precedent for any other utility."]

## **DIVISION ANALYSIS (Communications Division)**

### Introductory Note

Following the November 2011 issuance of the "Connect America Fund Decision" by the Federal Communications Commission (FCC), the CPUC opened a Rulemaking (R.11-11-007) concerning the California High Cost Fund-A (CHCF-A)<sup>1</sup> in November 2011. Nine of the Small LECs that receive CHCF-A supplemental funding have requested a stay of their general rate case (GRC) application filing dates and a freeze of the "waterfall mechanism" in that Rulemaking proceeding, and have subsequently sought extensions of the stay and freeze ordered by D.13-02-005. The tenth Small LEC that receives CHCF-A funding is Sebastian-Kerman. (The waterfall and CHCF-A subsidy are discussed on pages 5-6.) Kerman filed its Test Year 2013 GRC (A.11-12-011) six weeks after R.11-11-007 opened. From the start the Office of Ratepayer Advocates (ORA) sought a stay of Kerman's GRC and freeze of its waterfall mechanism until the Commission completes R.11-11-007. By D.13-10-051 the Commission ordered a stay and freeze in Kerman's GRC; that stay was subsequently extended until June 30, 2014. On May 5, 2014, the ALJ presiding over Application 11-12-011 set a prehearing conference to discuss, among other topics, whether the stay and freeze in the Kerman GRC should be extended or lifted. Lifting the stay would re-start the Kerman GRC.

### General Rate Cases

A General Rate Case (GRC) is the major regulatory proceeding for California utilities, and means for determining whether the utility's proposed rates, services and charge are just and reasonable, as required by law, including, Public Utilities Code sections 275.6 451, 455, and 728. The GRC ensures the CPUC performs a thorough and independent

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<sup>1</sup> The CHCF-A surcharges are collected from all wireline, wireless, VoIP providers to promote universal service, usually via charges they collect from ratepayers.

examination of a utility's operations and costs, before any such costs or charges are passed on to ratepayers. In a GRC, the CPUC conducts a broad and detailed review of a utility's revenues, expenses, and investments in plant and equipment to establish an approved revenue requirement.

#### Small LEC General Rate Cases

Small LEC rates are subject to review, in a GRC, because the carriers offer monopoly service in non-competitive areas. When filing their GRC applications, the Small LECs may choose between an informal "advice letter" or formal application for GRC review. An advice letter is an informal filing by letter to the CPUC seeking minor changes in rates and services that, unless ordered by the CPUC, do not require formal public hearings. Advice letter rate cases, as set forth in General Order (G) 96-B Telecommunication Industry Rules 3.1, et seq., must be completed in 12 months and a decision is issued by a Commission Resolution, pursuant to the Commission's Rules of Practice and Procedure (Cal. Code of Regs. Tit. 20 § 14.2). By filing an application, on the other hand, the utility makes a formal, written request for authority to establish or change its rates, terms, or conditions of service. Application rate cases are to be completed in 18 months, pursuant to Public Utilities Code section 1701.5(a), and a decision is issued for Commission opinion in accordance with the provisions of Public Utilities Code sections 311(d), (e), (f), (g) and (i), and 1701.1, 1701.3, and 1701.5. Regardless of how the rate application is submitted, a GRC filing to change rates must provide for due process of all parties and be approved by the CPUC. (Cal. Const. § 2 and 6; Pub. Util. § 451.)

#### General Rate Cases Filed by Advice Letter

An advice letter is an informal request by a utility for CPUC approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility's tariffs then in effect. (General Order 96-B.) The advice letter process provides a quick and simplified review for non-controversial utility requests not expected to raise legal or important policy questions. The advice letter process provides for protests, but does not provide for an evidentiary hearing. Small LECs can file GRC by advice letter and historically have done so.

For GRC applications involving controversial issues, the application process is generally used because an application permits evidentiary hearings and allows for a development of a full record upon which to base a decision. To the extent that the issues are determined to be non-controversial (e.g., evidentiary hearings are not needed), the simplified advice letter process provides for due process and for faster resolution. When a GRC involves disputed legal and/or factual issues, using an advice letter is not useful because the evidentiary hearing process cannot be used to resolve legal and/or factual disputes.

#### General Rate Cases Filed by Application

The CPUC processes ratesetting applications within 18 months. (Public Utilities Code section 1701.5; Cal. Code Regs., Tit. 20, § 2.6 (c) (Commission Rules of Practice and Procedures, rule 2.6 (c)).) The GRC may take longer if the proceeding becomes contentious, if hearings are needed, or by mutual agreement of the parties. The CPUC must make a written determination for any GRC to exceed the 18-month timeframe. (Public Utilities Code section 1701.5(b).)

### Rate Case Plan

A rate case plan (RCP) is a schedule that promotes timely processing of GRCs, permits a comprehensive and independent review of rates and operations of a utility, and balances the workload of the CPUC and its staff. An RCP can establish a specific schedule of when utilities can file GRCs, how often they can file, and any other limitations. A RCP sets reasonable timeframes to enable GRC completion in a stated timeframe. RCPs also provide a timeframe for CPUC staff to review the proposed GRC application, prior to its filing to ensure it is complete, and to avoid unnecessary delay.

### Interim and Emergency Rate Relief

Small LECs are permitted to request interim and also emergency rate relief during a GRC. Interim or emergency rate relief means that the CPUC is approving a change (generally an increase) in the utility's rates on an interim or emergency basis, subject to refund, pending disposition of the rate change request the utility has included in its GRC. Requests for emergency rate relief must provide evidence supporting the emergency need.

The CPUC can grant interim or emergency relief in several ways: 1) granting the utility's rate change request in full, subject to refund and pending a "true-up" with rate adjustments once the GRC is completed; 2) per the practice with water rate cases, by pegging an interim rate change to the rate of inflation; 3) grant a rate increase of some percentage between 0 and 100% of the change the utility has requested when supported by a prior practice involving that utility, another similarly situated utility, or to evidence in the utility's GRC application. The CPUC has broad discretion, especially in the context of a general rate case review, where the request is reasonable and the utility is fully regulated.

### Small Carrier General Rate Cases Set Rates and Subsidy Eligibility

Thirteen Small LECs serve telephone companies primarily in rural parts of the state. These companies are eligible to file for a subsidy from the CHCF-A, which is funded by ratepayers and may be used to supplement Small LECs' support for their service to high cost areas in their service territory. Ten of the 13 Small LECs currently receive CHCF-A support (Calaveras Telephone, Cal-Ore Telephone, Ducor Telephone, Sebastian dba Foresthill Telephone and Kerman Telephone, Pinnacles Telephone, Ponderosa Telephone, Sierra Telephone, and Siskiyou Telephone, Volcano Telephone); the TDS Telecom companies (Happy Valley, Hornitos, and Winterhaven) do not draw from the CHCF-A, but are CHCF-A eligible.

### The Connection Between the CHCF-A subsidy and GRCs for Small LECs

GRCs for Small LECs determine subsidy eligibility. Traditionally, a GRC sets rates. However, rates for utilities eligible for CHCF-A subsidies (the small carriers) are capped at a maximum authorized level (currently \$20.25). Any shortfall between the derived revenue requirement and the maximum authorized level is subsidized via the CHCF-A fund. Therefore, carrier funding requirements for CHCF-A are determined through the GRC process--the Small LEC GRCs determine how much a Small LEC can draw from the CHCF-A fund.

#### The Effect of the Proposed Bill on Small Carrier GRCs

AB 1693 would add Section 455.4 to the Public Utilities Code and would require the CPUC to issue a final decision on a Small LEC GRC application no later than 330 days (approximately 11 months) following the filing of its GRC application or advice letter initiating the GRC. If the CPUC fails to issue a final decision by the 330th day, the rate design proposed by the Small LEC in its filed application or advice letter will take effect on the 360th calendar day, absent a finding the proposed rates are just and reasonable.

Currently, Small Carriers submit GRCs according to a schedule. Nine carriers will be eligible, and could submit GRCs in 2015 for test year 2016. If AB 1693 passes without amendment, the CPUC would need to complete all 9 GRCs within 11 months of the respective filing dates or else the interim rates would go into effect and ratepayers could be greatly harmed, and their due process rights violated.

#### Small Carrier Cases are Generally Filed by Application, not by Advice Letter

Non-controversial Small LEC GRC filings were processed under the advice letter process rather than as formal applications. However, the Small LECs elected several years ago to utilize the formal application process, recognizing that GRC filings have become increasingly complex and contentious matters. In test year 2009, CPUC resolutions of Small LEC GRCs advice letters were subjected to several applications for rehearing and petitions for modification. Because GO 96-B, Section 5.1 requires that the advice letter process be used to handle issues that are not controversial and do not raise important policy questions, and because due process requires that disputed GRC issues require a formal record to resolve disputes, con and statutory law require that Small LEC GRCs are appropriately processed by application rather than by advice letter.

#### CPUC Experience Demonstrates Timely Processing of General Rate Cases

From 2006 through 2011, ten Small LECs filed GRCs with the CPUC. Nine of the ten filed GRCs were completed in 9.3 to 13.6 months from the filing date to the date of CPUC approval (see Attachment 1). Only one GRC, Kerman's which it filed on December 28, 2011, six weeks after R.11-11-007 opened. With the exception of the Kerman GRC application, the CPUC completed nine GRCs within an average 12.5 months, well under the 18-month timeframe set forth in Public Utilities Code section 1701.5 and in the CPUC's Rules of Practice and Procedure.

#### *The Kerman General Rate Case*

Kerman's test year 2013 GRC proceeding (A.13-10-051) is atypical and not representative of the history of Small LEC GRC proceedings. After Kerman filed its GRC application, the CPUC implemented a moratorium on Small LEC GRCs pending completion of the CHCF-A review proceeding in R.11-11-007. Because CHCF-A fund distribution is a consequential subject in most Small LEC GRCs, the CPUC determined that processing Kerman's GRC concurrently with the Rulemaking would not be reasonable, and would place Kerman in a different position from all other Small LECs funded by the CHCF-A. By D.13-10-051, the Commission stayed Kerman's GRC application and froze its waterfall (at 100%). Because the other nine CHCF-A recipient Small LECs had requested stays of their GRC applications and freezes of their respective waterfalls, and requested subsequent extensions of the stay ordered in R.11-11-007, D.13-10-051 in Kerman's GRC, sought to treat Kerman similarly to the other nine Small LECs and not single out any one utility for different treatment.

#### AB 1693 Proposed Timeline Adversely Impacts Other Statutes

An ALJ presiding over a GRC filed by application must issue a proposed decision within 90 days after the record of the proceeding closes (Public Utilities Code, section 311 (d)). Proposed Decisions must permit an additional 30-day comment period.

If the bill were enacted, by day 210 (approximately seven months from the GRC application filing date), a full evidentiary hearing would have to have been completed. Such a compressed schedule not only threatens the due process of all parties and a thorough and complete hearing process leading to a fully developed record upon which to base a decision, but also increases the likelihood of legal error, including that an interim rate increase would take effect absent any regulatory scrutiny, and/or finding the rates are justified and reasonable. As a practical matter, contested proceedings are difficult to complete in 12 months.

#### AB 1693 Interim Process Would Pervert the Regulatory Process

In its current form, the proposed legislation would create a situation where, if the CPUC were unable to issue a decision on a Small LEC's GRC application until day 331, that decision would essentially be void and of no effect. Instead, the Small LEC's rate proposal would automatically become effective without any finding that the rates are just and reasonable, absent any input by parties contesting the application and compromising the ratepayers' due process rights

Such an outcome would create constitutional and other legal problems, would render the hearing process ineffectual, would create an unfair advantage for the Small LEC and a disadvantage for its ratepayers and other parties, waste CPUC resources, and subject the ratepayers to rates not found to be justified and reasonable. Further, such an outcome may undermine the ability for the CPUC to resolve this matter between the 330th day and the 360th day, because—under the proposed legislation—the initially filed Small LEC rate design would have already automatically taken effect on the 360th day, regardless of a CPUC decision. Because of the prohibition of retroactive ratemaking, proposed rate increases that have automatically taken effect would not be subject to refund. Further, if a final decision did not issue before 540 days, the proposed

rates would remain effective absent any due process, ratepayer input and without CPUC review and authorization.

### AB 1693 Would Prolong General Rate Cases by Requiring Multiple CPUC Decisions

If the CPUC cannot issue a decision until after the 330th calendar day from the filing of the GRC application, AB 1693 would require the CPUC to issue two decisions: 1) its decision on the GRC application, and 2) a second decision resolving the refund/true-up issues caused by the GRC application that take effect, without CPUC review, after the 330th day. Parties have the right, under section 1731(a), to file an Application for Rehearing of each separate decision, and thereafter, depending on the outcome of the rehearing application(s), to pursue appellate review of each such decision. (Public Utilities Code section 1756.) This scenario will necessitate additional CPUC staff and resources.

### **SAFETY IMPACT**

By undertaking a thorough and complete review of all filed GRCs in an adequate time period, the CPUC ensures that the Small LECs will have the resources available to adhere to all CPUC rules, decisions, General Orders and statutes including Public Utilities Code section 451 by undertaking all actions "...necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." Efforts to accelerate the processing of GRCs in 11 months would likely limit the CPUC's review of safety issues.

### **RELIABILITY IMPACT**

AB 1693 accelerates the time frame for processing GRCs. Accelerated review means some issues cannot be fully considered and increases the likelihood of misunderstandings and legal and factual errors. This will likely negatively impact reliability.

### **RATEPAYER IMPACT**

Ratepayer impacts include loss of due process and rate charges and services that were not authorized by the CPUC after a finding that the rates are just and reasonable. Ratepayer impacts also include an increase in the overall bill amount, changes to high cost eligibility that increase or decrease the number of ratepayers eligible for a high cost subsidy, and volatility of rates where the fluctuations in the rates paid increase or decrease.

If this bill passes without amendment, a number of these impacts will be felt by ratepayers.

1. The ratepayers subject to the rates will have virtually no representation or input in the process leading to higher rates and/or changes in service if a decision is not issued by 330 days from the GRC application's filing date.

2. Opponents of GRC applications will have inadequate to no due process.
3. The interim 360-day grant of interim rates will incentivize GRC applicants to create situations that will cause extensions of rate cases beyond 360 days.
4. Rates may take effect that have not been subject to scrutiny, or to findings based on a record that the rates and/or services are just and reasonable.
5. The allowance for interim rates, absent CPUC review, will increase the volatility of rates—because rates will be increased by an interim amount and will then be “trued-up” when the CPUC adopts final rates. Collecting interim rates generally increases costs (e.g., updating billing) that increases the rate base and may further lead to increased rates.
6. Historically, Small Carriers have requested substantial rate increases. Since this bill would allow for less time to examine and justify the proposed rates in the GRC, substantial rate increases can be expected.
7. The Small Carrier draws on the CHCF-A Fund would be expected to increase. Currently, Small Carrier draws on the CHCF-A Fund decrease over time under the waterfall, so that the draw is subject to an annual decrease in subsidy levels for companies that decide to delay filing a general rate case. Because the grant of interim relief would increase the frequency of rate case applications, this would likely increase the draw on the CHCF-A (by reducing the waterfall), meaning higher surcharge remittance rates charged to all wireline, wireless, and Voice over Internet Protocol (VoIP) ratepayers.

## **FISCAL IMPACT**

As currently written (April 2, 2014 version), this bill’s intent to accelerate the GRC processing timeline poses a significant impact to staffing as it would require more staff to process cases during an accelerated 11-month period. It is also likely to increase the CPUC’s litigation and appellate costs. As detailed below, we estimate the bill will require six new CPUC staff at a cost of \$727,943.

### Communications Division

If the bill is not amended from its April 2, 2014 version, the Communications Division (CD) forecasts a fiscal impact of three (3) new Public Utilities Regulatory Analysts (PURAs) required to process GRCs under an accelerated 11-month time frame. CD estimates that it would need 1 full time employee at the Public Utilities Regulatory Analyst (PURA) III level or above for each GRC that is filed.

Factoring in existing resource levels, CD has handled 1.5 GRCs over a six-year period from 2006 through 2011. CD estimates that it would need three additional staff (two PURA IIIs and one PURA V) to handle GRCs during the accelerated 11-month period. Without the additional staff, it is anticipated that large rate increases may get automatically adopted as we would not have staff resources to advise the CPUC on the merits of GRC issues. Enactment of this legislation is estimated to cost approximately \$336,333 a year in new staffing needs for CD.

### ALJ Division

If the bill is not amended from its April 2, 2014 version, the ALJ Division forecasts a fiscal impact requiring one (1) new ALJ.

Given that there are 13 Small LECs, and assuming that three or four small LECs each file one GRC application per year, the ALJ Division will need one additional ALJ to process three applications in the 330-day (11-month time frame) set forth in the legislation. Three or four new GRC applications per year cannot be absorbed by the ALJ Division's existing resources, particularly if there is an 11-month deadline for processing the cases. The ALJ Division bases its analysis of needing one additional judge on the fact that a typical water company GRC, with hearings, uses 0.3 full time equivalents (FTE) of ALJ Division resources.

ALJ Division knows that Small LEC GRCs are likely to require hearings and will have some contention based on the history of them in the advice letter process, and subsequent rehearings of those resolutions. We also know that SB 379 (Ch. 729, Stats 2012) amended Pub. Util. Code Section 275.6 regarding the California High Cost Fund A funds allocated to Small LECS. Specifically, Section 275.6 (c) requires the CPUC to ensure that rates are just and reasonable while ensuring that support from the CHCF-A is not excessive. Section 275.6 (e) requires the Small LEC to provide the CPUC information on revenues derived from unregulated services, which the CPUC shall treat as confidential. Given these requirements of Section 275.6, the cases involving Small LEC GRCs are likely to require hearings and absorb at least the 0.3 FTE per case as described above. This would cost approximately \$158,395 per year.

#### Legal Division

If the April 2, 2014 bill is not amended, the Legal Division forecasts a fiscal impact requiring two (2) additional Public Utilities Counsel I positions.

GRCs are fact intensive legal proceedings, involving numerous subject areas for staff analysis, as well as witnesses to testify about those subject areas. Because the CPUC has transitioned away from rate-of-return regulation of the large and mid-sized incumbent telephone companies, the GRCs for the Small LECs had been handled by advice letter for about a decade from the mid-1990s. As a result of increasing controversy and the Small LECs choosing, in recent years, to file formal GRC applications, CPUC resolution of those proceedings has resulted in applications for rehearing and petitions for modification of the GRC decisions, in addition to appellate review of the decisions. (The ALJ Division generally handles petitions for modification, and the Legal Division reviews applications for rehearing, and makes recommendations to the CPUC for their disposition, in addition to representing the Commission in appellate proceedings.) Given the level of contention associated with these recent cases, and the fact that the Small LEC GRCs have used formal applications rather than advice letters as the procedural vehicle of choice, the result has been an increase in workload for various groups within the Legal Division.

Legal Division can absorb two Small LEC GRCs per year (including current workload), but assuming that the 13 Small LECs seek GRC review at the rate of approximately 4.3

companies per year, the Legal Division would need two attorney positions to handle these applications. The attorney time for those two positions would be allocated into three groups in Legal: 1) to the group providing representation to the Office of Ratepayer Advocates in each GRC proceeding; 2) to the advisory group, which provides legal advice to the ALJ Division and to the Commissioners; and 3) to the appellate group, which not only handles applications for rehearing, but represents the CPUC before state appellate courts. The time frame contemplated by this legislation renders the need for additional attorneys particularly acute if the CPUC is to meet the proposed statutory deadline for completing these proceedings in less than one year's time. And, because the 11-months is very abbreviated and would allow little, if any, opportunity for the CPUC to act in a deliberative manner, the risk of legal error is greatly enhanced (haste makes waste), thus increasing the potential for post-decision review. Four-plus new GRC applications per year cannot be absorbed by our existing Legal Division resources, particularly given the proposed 11-month deadline for processing the cases.

Comparatively, a water utility GRC, with hearings, uses .3 FTEs of attorney time. The telecommunications cases are actively litigated, with discovery, pleadings, evidentiary hearings, post-hearing briefing, and oral argument. In addition, SB 379 (Ch. 729, Stats 2012) amended Pub. Util. Code section 275.6 regarding the California High Cost Fund-A funds allocated to Small LECS. Section 275.6(c) requires the CPUC to ensure that rates are just and reasonable, and that support from the CHCF-A is not excessive. Section 275.6(e) requires the Small LECs to provide the CPUC information on revenues derived from unregulated services, which the CPUC shall treat as confidential. The scope of the information the Small LECs provide the CPUC in response to the section 275.6(e) mandate will undoubtedly prove contentious among the parties, as will the question of each company's proposed draw from the CHCF-A. Accordingly, these proceedings will be even more complicated than the typical water case, and we anticipate that the allocation of attorney time for representing ORA will be .5 PY for each GRC.

The remaining .5 PY would be dedicated to the advisory function for each GRC, including assistance to the ALJ Division, and to the attorney time needed for handling requests for review of CPUC decisions. Accounting for these additional Public Utilities Counsel/attorney needs would cost approximately \$233,216 per year.

#### Small LECs in Non-Competitive Markets Compared to Other Carriers

In 2006, the CPUC modified the process for setting rates for large carriers opting to rely on the market to control pricing practices. Under this modified practice, currently in place, the CPUC retains oversight obligations over the large "deregulated" carriers. The large telecommunications companies (AT&T, Verizon, Surewest & Frontier) remain obligated to file Advice Letters to the CPUC and submit customer notifications of rate changes. In addition, the CPUC retains oversight of terms and conditions of service for the large carriers. This means the CPUC still regulates service quality, customer service, rule compliance and reporting. Finally, the CPUC manages six universal

service programs that have, for the most part, grown since 2006. In contrast, the Small LECs are rate regulated monopolies.

## **ECONOMIC IMPACT**

As this bill is expected to trigger higher telephone rates, we would anticipate the bill would have a negative economic impact on the State's economy. Higher telecommunications costs may drive businesses elsewhere to operate. The bill will likely increase CPUC costs, which will increase the CPUC user fee.

## **LEGAL IMPACT**

### AB 1693 Conflicts with Other Mandates

This bill could create a conflict with sections of the Public Utilities Code that mandate CPUC oversight of utility operations. In particular, section 451 of the Public Utilities Code requires the CPUC to ensure that utility rates are "just and reasonable". While the CPUC has eliminated that sort of rate review for larger telephone utilities which face some measure of competition in their service territories, the CPUC is mandated to conduct that type of review for utilities subject to "rate-of-return" or "cost-of-service" regulation. The context in which the CPUC conducts that review is the periodic general rate case, which involves utility production of work papers and other documentation to substantiate the claim for increased rates, as well as for any increase in the authorized rate of return and underlying expenses associated with the rate of return, and the opportunity for parties opposing the GRC application to participate fully in the proceeding.

If the CPUC is deprived of adequate and reasonable time within which to provide its constitutional mandate of due process in its proceedings and is essentially forced to rush this type of review in order to meet a statutory deadline, it may become impossible for the CPUC to reach a reasoned basis for its findings and conclusions, and for adjusting the utility's rates. Further, the provision of the Bill that mandates that the GRC applicant's rate design is deemed approved absent a CPUC decision would effectively eviscerate Public Utilities Code sections 275.6(c)(1) and (7), 451, 454, 455, and 728. Rates would be imposed on ratepayers without any effective review of the applicant's proposal, in violation of the Commission's duty to safeguard the ratepayer's interests and ensure just and reasonable rates and services. This would create a recipe for abuse, with multiple companies concurrently filing GRCs seeking significant rate increases, thus putting tremendous pressure on the CPUC to resolve all issues in each GRC in an unworkable time line. The result could be high rate increases that without adequate review and without CPUC approval.

In addition, any Small LEC GRC application filed with the CPUC could contain complex issues aside from a proposed rate design. For example, determination of the cost of capital requires research and analysis to determine the appropriate level for each utility. An applicant may have a gain-on-sale issue deriving from disposition of utility property.

GRCs follow a template, but are not simple or “cookie cutter” proceedings; each company has unique characteristics requiring attention.

The effect of this bill would effectively prevent the CPUC from managing its workload so as to ensure it is complying with a constitutional mandate to afford all parties due process in its proceedings, and statutory mandates to ensure just and reasonable rates, and to oversee monopoly utility operations. The result could well be that consumer representatives would seek a review of the decision, and ultimately, the matter may be taken to the state appellate courts, with the outcome being uncertain.

## **LEGISLATIVE HISTORY AND PROGRAM BACKGROUND**

Carrier funding requirements for the CHCF-A are determined through GRCs. The CPUC uses the revenue requirement derived from GRCs to determine appropriate rates for telecommunications services (which are currently limited to \$20.25 per month for flat residential basic service). If Small LECs cannot meet their revenue requirement with these maximally allowed basic service rates, they are granted a CHCF-A subsidy to cover the shortfall. The CHCF-A funding level for each carrier equals the difference between its revenue requirement and its revenue at present rates. The CHCF-A support is then distributed to carriers directly on a monthly basis. The GRC process is instrumental in providing oversight in the process of prudently maintaining the CHCF-A process and an appropriate CHCF-A remittance rate and funding level.

### California High Cost Fund-A Administrative Committee Fund (CHCF-A)

Public Utilities Code section 275.6 requires the CPUC to implement a program for universal service support to reduce rate disparity in rural areas. Accordingly, D.88-07-022, as modified by D.91-05-016 and D.91-09-042, implemented the California High Cost Fund to provide a source of supplemental revenues to three mid-size and seventeen Small Local Exchange Carriers (LECs), whose basic exchange access line service rates would otherwise need to be increased to levels that would threaten universal service goals. Section 275.6(c)(1) requires the CPUC to set rates in accord with sections 451, 454, 455, and 728.

D.96-10-066 changed the name of the California High Cost Fund to the California High Cost Fund A , otherwise known as the California High Cost Fund-A Administrative Committee Fund (or CHCF-A), and also created the California High Cost Fund-B (CHCF-B) program. The decision maintained the CHCF-A for the 17 Small LECs, and created the CHCF-B program, which included the three mid-size LECs, for the purpose of determining universal service support.

The CHCF-A was initially comprised of 17 Small LECs. D.08-10-010 authorized the consolidation of three Small CHCF-A ILECs: Citizens Telecommunications Company of Tuolumne, Citizens Telecommunications Company of the Golden State and Global Valley Networks, Inc., with the midsize CHCF-B ILEC, Citizens Telecommunications Company of California Inc., (now doing business as Frontier Communications of California). Additionally, D.13-05-028 authorized another

consolidation of Frontier Communications West Coast Inc., into the larger ILEC, Citizens Telecommunications Company of California Inc. doing business as Frontier Communications of California. Accordingly, 13 Small LECs that are eligible for CHCF-A funding now provide service in rural areas of California.

CHCF-A is funded by a surcharge assessed on revenues collected from end-users (ratepayers) for intrastate telecommunications services subject to surcharge. Prior to October 2001, a tax-exempt trust was established for the receipts and disbursements of CHCF-A funds. With the enactment of Senate Bill (SB) 669 (Stats. 1999, Chapter 677) codified in October 1999, and in compliance with Public Utilities Code sections 270, et seq., the following events took place on October 1, 2001:

- The State Treasury created a CHCF-A Administrative Committee (AC) Fund for the receipts and disbursements of CHCF-A funds, and;
- The CPUC created CHCF-A AC to advise the CPUC regarding the development, implementation, and administration of the CHCF-A program.

Public Utilities Code section 270(b) states that the monies in the CHCF-A and five other funds may only be expended pursuant to Public Utilities Code sections 270-281 and upon appropriation in the annual Budget Act. Since FY 2001-2002, the CHCF-A Fund expenditures have been authorized in the state's annual Budget Act.

The CHCF-A program has a sunset date of January 1, 2015 (see Public Utilities Code section 275.6(g)).

## **OTHER STATES' INFORMATION**

Nevada – NRS 704.110 – requires the commission to act within 210 days or else the utility's application is approved as is.

Michigan - 484.2203 – requires the commission to hold a hearing and issue its final order within 180 days of the filing of the application, unless the parties agree that the complexity of issues warrant more time, then the commission has a total of 210 days.

Note that in California the Small LEC rate cases also determine CHCF-A subsidy eligibility.

## **STATUS**

AB 1693 is pending referral in the Senate.

**SUPPORT/OPPOSITION:**

**Support**

California Independent Telephone Companies  
California Communications Association (CalCom)

**Opposition**

Office of Ratepayer Advocates  
The Utility Reform Network

**VOTES**

Asm. U&C: 15-0

Asm. Appropriations 16-0 (1 not voting)

Asm. Floor 75-1 (3 not voting)

**ATTACHMENTS**

Attachment A. Rate Case Schedules

Attachment B. Information Regarding Recent Small LEC GRC Filings from 2006 to 2011

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**Attachment A**

**Rate Case Schedules**

<b>Advice Letter</b>	
<b>Schedule</b>	<b>Time Elapsed (Day)</b>
Carrier files Notice of Intent to file GRC per D.91-09-042 and GO 96B	-60
Communications Division (CD) approves Customer Notice for higher rates or charges	-15
<b>Carrier files GRC Advice Letter</b>	<b>1</b>
Notice of filing in CPUC's Daily Calendar	7
Carrier publishes Customer Notice in local newspaper	10
Carrier sends Customer Notice in bill insert	12
Carrier sends GRC book of financial data to Commission (CD)	14
Carrier customers' comments due	20
Protests to Advice Letter	20
Carrier responds to protests	25
CD reviews for completeness and sends back for supplements if necessary	30
Rate case process starts	32
Carrier files Form M with CD (final prior year financials with rate base, revenue, etc.)	81
CD sends Data Requests to Carrier	120
Carrier responds to Data Requests	135
Visit Carrier facilities to view Central Office and project	201

<b>Application</b>	
<b>Schedule</b>	<b>Time Elapsed (Day)</b>
<b>Application filed by requesting carrier</b>	<b>1</b>
Notice of Filing in CPUC's Daily Calendar	7
Resolution (public review not required) determining category (as a ratesetting) and need for evidentiary hearings	15
Ruling setting Prehearing Conference and requiring prehearing conference statement filed by each party intending to be active in the proceeding	27
Protests to Application due	30
Prehearing Conference held	48
Scoping Memo issued	83
DRA / Intervenor testimony filed	170
Applicant Rebuttal Testimony filed	191
Evidentiary Hearings, three days	210-212
Opening Briefs filed (set at conclusion of hearings)	242
Reply Briefs Filed (set at conclusion of hearings)	272
Proposed Decision issued	332
<b>Final Commission Decision</b>	<b>362-392</b>

locations	
Public Meeting in Carrier's service territory	201
CD sends draft copy of Resolution and tables to Carrier for review	304
CD meets with Carrier in San Francisco to discuss financial statements	323
CD prepares Draft Resolution for mailout	335
Comments and Reply Comments on Draft Resolution	360
<b>Commission Adopts Draft Resolution</b>	<b>365</b>

Notes. This table reflects the Advice Letter process set forth by D.91-09-042 and established in General Order 96-B. The Application follows the schedule of a recent formal GRC application. Note that the Scoping Memo issued day 83 sets forth dates for testimony filings and evidentiary hearings; the Scoping Memo also shows proposed submission dates for briefs, but specifies that actual briefing dates will be set at the end of the hearings. Proposed Decisions are anticipated 60 days after briefs submissions, and Final Decisions 30-60 days after that.

**Attachment B**

**Information Regarding Recent Small LEC GRC Filings from 2006 to 2011**

Carrier	Date GRC Filed	Advice Letter or Application	Test Year	Resolution or Application & Decision	Date GRC Adopted	Total Time to Completion (days)	Next GRC Filing Test
<b>Volcano</b>	11/20/2006	Advice Letter	2008	T-17108	11/1/2007	375	2016
<b>Sierra</b>	12/27/2006	Advice Letter	2008	T-17082	9/6/2007	280	2016
<b>Cal-Ore</b>	12/27/2007	Advice Letter	2009	T-17133	1/29/2009	395	2016
<b>Ponderosa</b>	12/28/2007	Advice Letter	2009	T-17132	1/29/2009	395	2016
<b>Pinnacles</b>	12/19/2007	Advice Letter	2009	T-17158	1/29/2009	405	2016
<b>Ducor</b>	12/19/2007	Advice Letter	2009	T-17157	1/29/2009	405	2016
<b>Calaveras</b>	12/21/2007	Advice Letter	2009	T-17184	1/29/2009	373	2016
<b>Siskiyou</b>	10/1/2009	Application	2011	A.09-10-004; D.10-11-007	11/19/2010	13 months 18 days	2016
<b>Foresthill</b>	12/22/2010	Application	2012	A.10-12-012; D.11-12-001	12/1/2011	11 months 10 days	2016
<b>Kerman</b>	12/28/2011	Application	2013	A.11-12-011	Still Open	n/a	n/a

Total: 112.5 months

Average: 112.5 divided by 9 GRCs = 12.5 months per GRC

AMENDED IN ASSEMBLY APRIL 2, 2014

California Legislature- 2013–14 Regular Session

**ASSEMBLY BILL**

**No. 1693**

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**Introduced by Assembly Member Perea**

February 13, 2014

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An act to add Section 455.4 to the Public Utilities Code, relating to telecommunications.

**Legislative Counsel Digest**

AB 1693, as amended, Perea. Small independent telephone corporations: rates.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law, with certain exceptions, prohibits a public utility from changing any rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. Existing law requires the commission to exercise its regulatory authority to maintain the California High-Cost Fund-A Program to provide universal service rate support to small independent telephone corporations, as defined, in amounts sufficient to meet the revenue requirements established by the commission through rate-of-return regulation in furtherance of the state's universal service commitment to the continued affordability and widespread availability of safe, reliable, high-quality communications services in rural areas of the state.

This bill would require the commission to issue its final decision on a general rate case of a small independent telephone corporation no

later than 330 *calendar* days following the corporation's filing of its general rate case application or advice letter initiating the general rate case. If the commission fails to issue a final decision by the 330th day, the bill would provide that the ~~application or advice letter is deemed approved and the rate design proposed by the small independent telephone corporation in its application or advice letter will take effect on the first day of the first month that begins more than 30 days following the expiration of the 330-day period.~~ *an interim basis beginning 360 calendar days following the filing of the application or advice letter, subject to an accounting true-up in a final commission decision or resolution concluding the rate case, if issued within 540 days. If a final decision or resolution concluding the case has not been issued by the commission within 540 days, the bill would provide that the interim rate design is final, effective as of the 360th calendar day following the filing of the general rate case application or advice letter, and that rate design will remain in place, until the commission issues a final decision or resolution concluding the rate case without any true-up accounting. The bill would provide that any new rate design adopted in a final decision or resolution issued by the commission after 540 calendar days following the filing of the application or advice letter will take effect on a prospective basis only, as of the effective date of the final decision or resolution.* The bill would provide that its provisions may be waived at any time by mutual consent of the executive director of the commission and the small independent telephone corporation.

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

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 455.4 is added to the Public Utilities
- 2 Code, to read:
- 3 455.4. (a) For purposes of this section, "small independent
- 4 telephone corporation" has the same meaning as defined in Section
- 5 275.6.
- 6 (b) The commission shall issue its final decision on a general
- 7 rate case of a small independent telephone corporation no later
- 8 than 330 *calendar* days following the corporation's filing of its
- 9 general rate case application or advice letter initiating the general
- 10 rate case.

1 (c) Notwithstanding Section 454, if the commission fails to  
2 issue a final decision as required by subdivision (b), the ~~application~~  
3 ~~or advice letter shall be deemed approved and the rate design~~  
4 proposed by the small independent telephone corporation in its  
5 application or advice letter will take effect on ~~the first day of the~~  
6 ~~first month that begins more than 30 days following the expiration~~  
7 ~~of the 330-day period in subdivision (b).~~ *an interim basis beginning*  
8 *360 calendar days following the filing of the application or advice*  
9 *letter; subject to an accounting true-up in a final commission*  
10 *decision or resolution concluding the rate case, if issued within*  
11 *540 days. The accounting true-up shall be performed consistent*  
12 *with commission policies and practices. If a final decision or*  
13 *resolution concluding the case has not been issued by the*  
14 *commission within 540 days, the interim rate design will become*  
15 *final, effective as of the 360th calendar day following the filing of*  
16 *the general rate case application or advice letter, and that rate*  
17 *design will remain in place, until the commission issues a final*  
18 *decision or resolution concluding the rate case without any true-up*  
19 *accounting. Any new rate design adopted in a final decision or*  
20 *resolution issued by the commission after 540 calendar days*  
21 *following the filing of the application or advice letter will take*  
22 *effect on a prospective basis only, as of the effective date of the*  
23 *final decision or resolution.*

24 (d) The requirements of subdivisions (b) and (c) may be waived  
25 at any time by mutual consent of the executive director of the  
26 commission and the small independent telephone corporation.