
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

Senator Ben Hueso, Chair

2021 - 2022 Regular

Bill No:	AB 1257	Hearing Date:	6/28/2021
Author:	Patterson		
Version:	2/19/2021	Introduced	
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Smith		

SUBJECT: Small independent telephone corporations: ratemaking

DIGEST: This bill establishes alternative dispute resolution requirements for small independent telephone corporation rate cases.

ANALYSIS:

Existing law:

- 1) Gives the Federal Communications Commission (FCC) the authority to administer federal universal service programs to ensure that consumers in rural areas have access to telecommunications and information services at rates that are reasonably comparable to similar services provided in urban areas. (47 U.S.C. §254)
- 2) Authorizes the California Public Utilities Commission (CPUC) to fix the rates and charges for every public utility, including telephone corporations, and requires that those rates and charges be just and reasonable. (California Constitution Article XII §6 and Public Utilities Code §451)
- 3) Requires the CPUC to maintain the California High Cost Fund-A (CHCF-A) program, which provides support to small independent telephone companies in rural, high-cost areas of the state to ensure residents' access to affordable telecommunications services in these communities. Existing law sunsets the CHCF-A program on January 1, 2023. (Public Utilities Code §275.6)
- 4) Authorizes the CPUC to on its own order, whenever it determines it to be necessary, conduct financial audits, of the revenues required to be collected and submitted to universal service funds, including the CHCF-A program. (Public Utilities Code §274)
- 5) Requires the CPUC to resolve issued raised in the scoping memo of ratesetting or quasi-legislative cases within 18 months of the date the proceeding is

initiated. The CPUC may make a written determination that the deadline cannot be met, it must specify the reasons why the deadline cannot be met, and must issue an order extending the deadline. (Public Utilities Code §1701.5)

This bill:

- 1) States legislative intent that the CPUC adopt procedures to increase the efficiency of its ratemaking processes for small independent telephone corporations and, where possible, allow a small independent telephone corporation to conduct its rate case using either an advice letter or application process.
- 2) Requires the parties for a small independent telephone corporation rate cases to participate in at least one day of facilitated mediation with a neutral administrative law judge (ALJ) pursuant to the CPUC's alternative dispute resolution program. This day of mediation must occur at least 30 days before rate case hearings start and the mediation must be included as an event in the proceeding's scoping memo.
- 3) Requires a party that makes a motion in a small independent telephone corporation rate case to meet and confer with all other parties prior to filing the motion. This bill requires all motions to include facts demonstrating the moving party's good faith effort to meet and confer before filing the motion.

Background

Small independent telephone companies and the High Cost Fund. The CPUC established California's High Cost Fund in 1988 pursuant to AB 1466 (N. Waters, Chapter 755, Statutes of 1987), which required the CPUC to develop a program to reduce telephone rate disparities between small independent telephone companies serving rural areas and companies serving urban areas. California's High Cost Fund includes two separate programs that subsidize telephone service in mostly rural, high cost areas of the state: the CHCF-A program and the CHCF-B program. While the CHCF-B program provides subsidies to larger carriers, the CHCF-A program provides rate support to small independent telephone corporations. These corporations are carriers of last resort (COLRs) that have a duty to provide customers with telephone service. The CHCF-A rate assistance is intended to ensure that residents in rural communities can access telecommunications services, including broadband services, at rates comparable to those for similar services in urban areas. Rural telecommunications rates can significantly exceed urban rates due to higher infrastructure costs and a lack of economies of scale. The CHCF-A program is funded by a surcharge on in-state telecommunications services applied

to all consumers' bills. This surcharge is collected by carriers and deposited into an account administered by the CPUC.

The Neverending Story: small telephone rate cases. Unlike the larger carriers, the small independent telephone corporations in the CHCF-A program are rate-regulated by the CPUC. Existing law generally authorizes a rate-regulated utility to recover just and reasonable expenses through rates. The CPUC generally authorizes utilities to complete rate cases through a formal general rate case or an informal advice letter process. CPUC General Order (GO) 96-B outlines rules governing the advice letter process. GO 96-B notes that the advice letter process is intended to provide a faster mechanism for addressing non-controversial issues without an evidentiary hearing, which would require the assignment of an ALJ. GO 96-B states: "The primary use of the advice letter process is to review a utility's request to change its tariffs in a manner previously authorized by statute or CPUC order, to conform the tariffs to the requirements of a statute or CPUC order, or to get CPUC authorization to deviate from its tariffs."

While the CPUC's general orders authorize the use of an advice letter process, the CPUC has largely prohibited the small independent telecommunications providers from using the advice letter process, even in circumstances where the telephone corporation is not seeking to raise its rates. Over the past 20 years, the CPUC switched from conducting almost all of these cases through an advice letter to process to conducting all of these cases through a formal rate proceeding. This switch coincided with significant delays in completing rate cases. Between 2001 and 2009, only one small independent telephone corporation rate proceeding occurred through a general rate case process. Since 2009, the CPUC has conducted ratemaking for the small telephone corporations through general rate cases. A number of these proceedings have exceeded the timelines adopted by the CPUC for these cases.

This bill focuses on alternative dispute resolution in rate cases. Since 2014, this committee has heard a number of bills aimed at establishing more clear criteria for allowing the small telephone corporations to use the advice letter process, which can limit the need for lengthy rate cases and limit demands on CPUC ALJs. This bill differs from prior bills on this subject matter by establishing requirements for alternative dispute resolution during the rate case process. This bill requires the parties for the small telephone corporations' rate cases to participate in a day of mediation through the CPUC's existing alternative dispute resolution process. This bill also requires a party that files a motion in these rate cases to meet and confer with the other parties before filing the motion.

Existing CPUC rules authorize, but do not require, parties to engage in alternative dispute resolution. Under existing CPUC rules, parties making certain motions (e.g. motions to compel and motions to extend time) are required to meet and confer with other parties prior to the motion but existing CPUC rules do not require parties to meet and confer for other motions. The CPUC's alternative dispute resolution program is free and provided through ALJs trained and experienced in the process. Parties may also hire an independent contractor at their own expense to resolve disputes instead of using an ALJ. Benefits of alternative dispute resolution rely heavily on the parties' ability to engage in a non-adversarial manner to narrow the scope of disagreements. To the extent that parties continue to engage in adversarial interactions during the process, these meetings may extend the duration of rate cases.

This bill may conflict with recent CPUC decisions related to CHCF-A rate cases. The CPUC has an ongoing rulemaking proceeding (R.11-11-007) to make changes to the CHCF-A program. The CPUC recently completed the second phase of this rulemaking. As part of a recent decision (D.21-06-004), the CPUC declined to adopt mandatory alternative dispute resolution. While the CPUC has said that voluntary alternative dispute resolution is effective at helping reach settlements earlier in rate cases, the CPUC's decision stated the following regarding mandatory alternative dispute resolution: "...involuntary ADR (mandatory ADR) usually is far less successful, far more time consuming, and often leads to proceeding delays. Thus, we reject mandating ADR because it may further delay a proceeding instead of speeding up its resolution." While the CPUC's existing voluntary alternative dispute resolution process is theoretically available to the small independent telephone corporations, the lack of other parties' willingness to participate in the existing voluntary process likely limits the small independent telephone corporations' ability to use the existing voluntary process. The inability to use an advice letter process and meaningfully use the voluntary alternative dispute resolution process restricts rate case options for the small independent telephone corporations.

Prior/Related Legislation

AB 2189 (Arambula, 2020) would have established criteria through which the small independent telephone corporations could initiate a rate case through an advice letter or an application process. The bill died in the Senate.

SB 603 (Borgeas, 2019) would have established criteria through which the small independent telephone corporations could initiate a rate case through an advice letter or an application process. The bill was held in the Assembly Committee on Appropriations.

AB 1959 (Wood, Chapter 256, Statutes of 2018) extended the sunset dates for the CHCF programs A and B from January 1, 2019, to January 1, 2023.

SB 1122 (Cannella, 2016) would have required the CPUC to issue a final decision for a small independent telephone corporation rate case no later than 390 days after the corporation files its application or advice letter initiating the case. The bill also would have authorized the small independent telephone corporations to file tariffs implementing interim rates if CPUC failed to issue a final decision by the 390th day. The bill died in the Assembly.

AB 1693 (Perea, 2014) would have required the CPUC to issue a final decision for a small independent telephone corporation rate case no later than 390 days after the corporation files its application or advice letter initiating the case. The bill also would have established a process for implementing an interim rate proposed by the corporations if the CPUC failed to meet the deadline. The bill was vetoed.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

California Communications Association (Co-sponsor)
California Independent Telecommunications Companies (Co-sponsor)

OPPOSITION:

Public Advocates Office

ARGUMENTS IN SUPPORT: According to the author:

AB 1257 will encourage the CPUC to decrease the regulatory burden and expense of its rate case process for small rural telephone companies. These companies fulfill a critical role in keeping our rural communities connected by ensuring affordable voice service and access to advanced services over broadband-capable telecommunications networks. The CPUC's current practice of taking a year and a half to two years to complete a formal rate case unnecessarily delays critical investment in telecommunications infrastructure and diverts limited company resources away from providing high quality service to our rural communities.

ARGUMENTS IN OPPOSITION: In opposition, the Public Advocate's Office states:

A mandatory “meet and confer” for other types of motions is a poor use of resources that may make it harder to meet proceeding deadlines. For example, a motion to strike portions of another party’s testimony would rarely benefit from a prior “meet and confer” as reaching an agreement is highly unlikely. The same goes for a motion for reconsideration of an administrative law judge’s ruling. Other examples of motions where prior “meet and confer” requirements would require parties to expend more time and resources, yet serve no useful purpose, include motions to file materials under seal, and motions for leave to serve confidential testimony or file confidential comments.

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