

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1257 (Patterson) – As Introduced February 19, 2021

Policy Committee: Communications and Conveyance

Vote: 12 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

**SUMMARY:**

This bill adds procedural requirements to the rate case proceedings of a small independent telephone corporation, also known as a small incumbent local exchange carrier (small ILEC) before the California Public Utilities Commission (CPUC).

Specifically, this bill:

- 1) Requires, if a rate case is submitted by application by a small telco, the CPUC to require the parties to the case to participate in at least one day of facilitated mediation with a neutral administrative law judge (ALJ) pursuant to the commission's alternative dispute resolution program. The mediation is to take place at least 30 days before the commencement of hearings.
- 2) Before filing any motion in a small telco's rate case, the moving party shall meet and confer in a good faith effort with all other parties to informally resolve the subject of the motion.
- 3) Declares, in statutory code, it is the intent of the Legislature that the CPUC adopt procedures to increase the efficiency of its ratemaking processes for small ILECs and to allow, wherever reasonably possible, a small ILEC to request adjustments to its revenue requirement or rate design through either an advice letter or an application process.
- 4) Makes uncodified findings and declarations, including that it is the intent of the Legislature that the CPUC work diligently to streamline the process for small ILECs' rate cases, making the process less cumbersome and less time consuming, thereby decreasing the regulatory burden on these companies and allowing them to continue serving their communities and territories without interruption.

**FISCAL EFFECT:**

Ongoing costs of an unknown, but likely significant, amount.

POA assumes the requirements to meet and confer and to participate in facilitated mediation will lead to fewer rate case settlements and more litigation. For this reason, PAO expects annual costs of \$280,000 for a variety of legal, analytical and support staff (special fund).

The CPUC anticipates costs of \$226,000 annually for one administrative law judge to process additional meet-and-confer requests the CPUC assumes this bill will lead to (special fund).

The CPUC also expects costs of \$165,000 annually for one analytical staff person to process requests from small ILECs to file rate cases through the advice letter process. It is reasonable to expect the CPUC to anticipate these costs. However, it is also reasonable to expect savings of some amount as more small ILEC rate cases are conducted via advice letter, not the more resource-intensive application process.

## COMMENTS:

### 1) **Purpose.** 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.

### 2) **Background.** The CPUC sets the rates of the state's investor-owned utilities, including the rates of small ILECs. Very generally, the CPUC has two processes by which it considers the revenue requirements of a regulated entity, which the CPUC will allow the entity to recover through rates charged to the entity's customers: applications and advice letters. The first process requires submission by the regulated entity of an application for rate recovery and entails a detailed, quasi-judicial process overseen by a CPUC administrative law judge and formal, evidence-based argumentation by several parties. Such processes are meant to be comprehensive and can be lengthy—and costly. In contrast, the CPUC provides for an “advice letter” process in which CPUC administrative staff considers less controversial proposals. In general, the advice-letter process is fast and cheap, when compared to the application process.

The ILECs have long complained the application process, which necessarily entails a CPUC proceeding, is slow and costly. Several members of the Legislature have authored bills on the ILECs' behalf to obligate the CPUC to allow the ILECs to initiate a rate case through either the advice letter process or the application process, based on statutorily defined criteria. Those bills have never made it through the legislative process.

This bill is, in some sense, more modest than those earlier bills. It includes uncoded language declaring the Legislature wants the CPUC to make ILEC rate case process less cumbersome and less time consuming, and codified language that the Legislature wants the CPUC to allow ILECs to use either the advice letter or application process “wherever reasonably possible.” This later statement of intent seems well enough, so long as what is reasonably possible entails what is in the interest of the rate payers, as determined by the CPUC. The bill also makes two procedural requirements—that parties to an ILEC rate case participate in at least one day of facilitated mediation and that a party filing a motion in an ILEC rate case meet and confer in a good faith effort with all other parties to informally resolve the subject of the motion. Representatives of the ILECs contend these changes will improve the rate case process. Maybe so. But it seems strange that a bill that pushes that

CPUC to make “streamline” its ILEC rate making process so it is “less cumbersome and less time consuming” would prescribe additional procedures.

Indeed, both the CPUC and the Public Advocates Office (PAO) contend the bill will burden the ILEC ratemaking process and lead to greater litigation. The CPUC notes its Administrative Law Judge Division already offers an alternative dispute resolution process by which willing parties—at no cost to the parties—may participate in processes such as facilitation, negotiation, mediation and early neutral evaluation (or a combination of those techniques), to help disputants resolve a conflict without a formal decision by the CPUC. (PAO, formerly known as the Office of Ratepayer Advocate, is an independent office within the CPUC statutorily directed to advocate before the CPUC on behalf of residential and small commercial ratepayers)

- 3) **Prior Legislation.** SB 603 (Borgeas) and AB 2189 (Arambula), both of the 2019-20 Legislative Session, would have allowed an ILEC to initiate a rate case through either the advice letter process or the application process. SB 603 was held by this committee and AB 2189 was amended by this committee and passed the Assembly, but was never heard in the Senate.

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