
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1257 (Patterson) - Small independent telephone corporations: ratemaking

Version: February 19, 2021

Urgency: No

Hearing Date: July 15, 2021

Policy Vote: E., U., & C. 14 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would establish alternative dispute resolution requirements for small independent telephone corporation rate cases.

Fiscal Impact:

- The California Public Utilities Commission (CPUC) estimates ongoing costs of \$391,000 annually (CA High-Cost Fund A) for staff to perform additional alternative dispute resolution (ADR) tasks, perform additional review and analysis, and support any proceedings to determine when to convert an advice letter to an application.
- The Public Advocates Office (PAO) 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 (special fund) for a variety of legal, analytical, and support staff.

Background: The CPUC sets the rates of the state's investor-owned utilities, including the rates of small independent telephone corporations. 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 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 small independent telephone corporations 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 small independent telephone corporations' behalf to obligate the CPUC to allow the small independent telephone corporations 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.

Proposed Law: This bill would add 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 would:

1. Require, 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. Declare, 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. Make 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.

This bill differs from prior bills on this subject matter by establishing requirements for alternative dispute resolution during the rate case process. This bill would require 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. It would also require a party that files a motion in these rate cases to meet and confer with the other parties before filing the motion.

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.

Staff Comments: Both the CPUC and the 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.)

The Senate Energy, Utilities, & Communications Committee analysis notes that 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.

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