

AMENDED IN ASSEMBLY JULY 1, 2014

AMENDED IN SENATE MAY 27, 2014

SENATE BILL

No. 1364

Introduced by Senator Fuller

**(Coauthors: Senators Berryhill, Evans, Gaines, Nielsen, Padilla,
Vidak, and Wolk)**

(Coauthors: Assembly Members Conway, Dahle, Beth Gaines, Gray,
Grove, Logue, Olsen, Pan, *Patterson*, Perea, V. Manuel Pérez, and
Yamada)

February 21, 2014

An act to amend Sections 247.1, 270, 275, 275.6, and 276 of, and to amend and renumber Section 739.3 of, the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1364, as amended, Fuller. Telecommunications universal service programs.

Existing law, the federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably

comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, including telephone corporations, and to fix just and reasonable rates and charges for the public utility. Existing law establishes the state's 6 universal service funds in the State Treasury, including the California High-Cost Fund-A Administrative Committee Fund and the California High-Cost Fund-B Administrative Committee Fund, and provides that moneys in each of the state's universal service funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended to accomplish specified telecommunications universal service programs, upon appropriation in the annual Budget Act or upon supplemental appropriation. Existing law, until January 1, 2015, requires the commission to develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by universal service rate support to small independent telephone corporations that serve rural areas and are subject to rate-of-return regulation by the commission (the CHCF-A program). Existing law, until January 1, 2015, requires the commission to develop, implement, and maintain a suitable, competitively neutral, and broadbased program to establish a fair and equitable local rate support structure aided by universal service rate support to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission (the CHCF-B program).

This bill would delete the provision stating that moneys in each of the state's universal service funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their cost of providing universal service *and would instead provide that moneys in the funds are held in trust*. The bill would ~~require~~ *encourage* the commission, in administering the universal service program funds, and in administering state participation in federal universal service programs, ~~to make it a priority, and to take all reasonable steps consistent with the state's universal service policies and goals,~~ to maximize the amount of federal funding to California ~~and to California~~ participants in the federal programs. The bill would extend the repeal date of the CHCF-A program and CHCF-B program

requirements until January 1, 2019. The bill would renumber the statute establishing the programmatic requirements for the CHCF-B program so that it is located in the code adjacent to the statute establishing the California High-Cost Fund-B Administrative Committee Fund, would delete outdated language, and would make other conforming changes.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the CHCF-A program and CHCF-B program, that are extended under the provisions of this bill, are within the act and a decision or order of the commission implements the programs' requirements, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 247.1 of the Public Utilities Code is
2 amended to read:
3 247.1. (a) The Mobile Telecommunications Sourcing Act
4 (Public Law 106-252) was enacted for the purpose of establishing
5 nationwide uniform sourcing rules for the imposition of state and
6 local taxes, fees, and surcharges on mobile telecommunications
7 services. In order to establish a single, uniform sourcing rule, the
8 federal act partially preempted state and local law imposing taxes,
9 fees, and surcharges on a mobile telecommunications services
10 customer whose place of primary use is outside of the state in
11 which the state and local taxes, fees, or surcharges are imposed.
12 (b) In accordance with the Mobile Telecommunications Sourcing
13 Act, which is incorporated herein by reference, and notwithstanding
14 Sections 275.6, 276.5, 280, 431, 879, and 2881, the surcharges or
15 fees under these sections do not apply to any charges for mobile
16 telecommunications services billed to a customer where those

1 services are provided, or deemed provided, to a customer whose
2 place of primary use is outside this state. Mobile
3 telecommunications services shall be deemed provided by a
4 customer's home service provider to the customer if those services
5 are provided in a taxing jurisdiction to the customer, and the
6 charges for those services are billed by or for the customer's home
7 service provider.

8 (c) For purposes of this section:

9 (1) "Charges for mobile telecommunications services" means
10 any charge for, or associated with, the provision of commercial
11 mobile radio service, as defined in Section 216.8, or any charge
12 for, or associated with, a service provided as an adjunct to a
13 commercial mobile radio service, that is billed to the customer by
14 or for the customer's home service provider, regardless of whether
15 individual transmissions originate or terminate within the licensed
16 service area of a home service provider.

17 (2) "Customer" means either (A) the person or entity that
18 contracts with the home service provider for mobile
19 telecommunications services, or (B) if the end user of mobile
20 telecommunications services is not the contracting party, the end
21 user of the mobile telecommunications service. This paragraph
22 applies only for the purpose of determining the place of primary
23 use. The term "customer" does not include either (A) a reseller of
24 mobile telecommunications service, or (B) a serving carrier under
25 an arrangement to serve the customer outside the home service
26 provider's licensed service area.

27 (3) "Home service provider" means the facilities-based carrier
28 or reseller with which the customer contracts for the provision of
29 mobile telecommunications services.

30 (4) "Licensed service area" means the geographic area in which
31 the home service provider is authorized by law or contract to
32 provide commercial mobile radio service to the customer.

33 (5) "Mobile telecommunications service" means commercial
34 mobile radio service, as defined in Section 216.8.

35 (6) "Place of primary use" means the street address
36 representative of where the customer's use of the mobile
37 telecommunications service primarily occurs, that must be:

38 (A) The residential street address or the primary business street
39 address of the customer.

40 (B) Within the licensed area of the home service provider.

1 (7) (A) “Reseller” means a provider who purchases
2 telecommunications services from another telecommunications
3 service provider and then resells the services, or uses the services
4 as a component part of, or integrates the purchased services into
5 a mobile telecommunications service.

6 (B) “Reseller” does not include a serving carrier with which a
7 home service provider arranges for the services to its customers
8 outside the home service provider’s licensed service area.

9 (8) “Serving carrier” means a facilities-based carrier providing
10 mobile telecommunications service to a customer outside a home
11 service provider’s or reseller’s licensed area.

12 (9) “Taxing jurisdiction” means any of the several states, the
13 District of Columbia, or any territory or possession of the United
14 States, any municipality, city, county, township, parish,
15 transportation district, or assessment jurisdiction, or any other
16 political subdivision within the territorial limits of the United States
17 with the authority to impose a tax, charge, or fee.

18 ~~SEC. 2. Section 270 of the Public Utilities Code is amended~~
19 ~~to read:~~

20 ~~270. (a) The following funds are hereby created in the State~~
21 ~~Treasury:~~

22 ~~(1) The California High-Cost Fund-A Administrative Committee~~
23 ~~Fund.~~

24 ~~(2) The California High-Cost Fund-B Administrative Committee~~
25 ~~Fund.~~

26 ~~(3) The Universal Lifeline Telephone Service Trust~~
27 ~~Administrative Committee Fund.~~

28 ~~(4) The Deaf and Disabled Telecommunications Program~~
29 ~~Administrative Committee Fund.~~

30 ~~(5) The Payphone Service Providers Committee Fund.~~

31 ~~(6) The California Teleconnect Fund Administrative Committee~~
32 ~~Fund.~~

33 ~~(7) The California Advanced Services Fund.~~

34 ~~(b) Moneys in the funds may only be expended pursuant to this~~
35 ~~chapter and upon appropriation in the annual Budget Act or upon~~
36 ~~supplemental appropriation.~~

37 ~~(c) The commission, in administering the universal service~~
38 ~~program funds listed in subdivision (a), and in administering state~~
39 ~~participation in federal universal service programs, shall make it~~
40 ~~a priority, and take all reasonable steps consistent with the state’s~~

1 universal service policies and goals, to maximize the amount of
 2 federal funding to California and to California participants in the
 3 federal programs.

4 ~~(d) Moneys in each fund shall not be appropriated, or in any
 5 other manner transferred or otherwise diverted, to any other fund
 6 or entity, except as provided in Sections 19325 and 19325.1 of the
 7 Education Code.~~

8 *SEC. 2. Section 270 of the Public Utilities Code is amended*
 9 *to read:*

10 270. (a) The following funds are hereby created in the State
 11 Treasury:

12 (1) The California High-Cost Fund-A Administrative Committee
 13 Fund.

14 (2) The California High-Cost Fund-B Administrative Committee
 15 Fund.

16 (3) The Universal Lifeline Telephone Service Trust
 17 Administrative Committee Fund.

18 (4) The Deaf and Disabled Telecommunications Program
 19 Administrative Committee Fund.

20 (5) The Payphone Service Providers Committee Fund.

21 (6) The California Teleconnect Fund Administrative Committee
 22 Fund.

23 (7) The California Advanced Services Fund.

24 (b) Moneys in the funds are ~~the proceeds of rates and are held~~
 25 ~~in trust for the benefit of ratepayers and to compensate telephone~~
 26 ~~corporations for their costs of providing universal service. Moneys~~
 27 ~~in the funds held in trust and may only be expended pursuant to~~
 28 this chapter and upon appropriation in the annual Budget Act or
 29 upon supplemental appropriation.

30 *(c) The commission, in administering the universal service*
 31 *program funds listed in subdivision (a), and in administering state*
 32 *participation in federal universal service programs, is encouraged,*
 33 *consistent with the state’s universal service policies and goals, to*
 34 *maximize the amount of federal funding to California participants*
 35 *in the federal programs.*

36 ~~(e)~~

37 (d) Moneys in each fund ~~may~~ shall not be appropriated, or in
 38 any other manner transferred or otherwise diverted, to any other
 39 fund or entity, except as provided in Sections 19325 and 19325.1
 40 of the Education Code.

1 SEC. 3. Section 275 of the Public Utilities Code is amended
2 to read:

3 275. (a) There is hereby created the California High-Cost
4 Fund-A Administrative Committee, which is an advisory board to
5 advise the commission regarding the development, implementation,
6 and administration of a program to provide for transfer payments
7 to small independent telephone corporations providing local
8 exchange services in high-cost rural and small metropolitan areas
9 in the state to create fair and equitable local rate structures, as
10 provided for in Section 275.6, and to carry out the program
11 pursuant to the commission's direction, control, and approval.

12 (b) All revenues collected through surcharges authorized by the
13 commission to fund the program specified in subdivision (a) shall
14 be submitted to the commission pursuant to a schedule established
15 by the commission. The commission shall transfer the moneys
16 received to the Controller for deposit in the California High-Cost
17 Fund-A Administrative Committee Fund. All interest earned by
18 moneys in the fund shall be deposited in the fund.

19 (c) Moneys appropriated from the California High-Cost Fund-A
20 Administrative Committee Fund to the commission shall be utilized
21 exclusively by the commission for the program specified in
22 subdivision (a), including all costs of the board and the commission
23 associated with the administration and oversight of the program
24 and the fund.

25 (d) The Legislature finds and declares that, because maintenance
26 of universal public switched telephone network service throughout
27 the state and maintenance of public safety answering points in
28 high-cost areas of the state rely on appropriations from the
29 California High-Cost Fund-A Administrative Committee Fund,
30 maintaining adequate funding levels for the fund is critical to public
31 health and safety.

32 SEC. 4. Section 275.6 of the Public Utilities Code is amended
33 to read:

34 275.6. (a) The commission shall exercise its regulatory
35 authority to maintain the California High-Cost Fund-A ~~Program~~
36 *Administrative Committee Fund program (CHCF-A program)* to
37 provide universal service rate support to small independent
38 telephone corporations in amounts sufficient to meet the revenue
39 requirements established by the commission through rate-of-return
40 regulation in furtherance of the state's universal service

1 commitment to the continued affordability and widespread
 2 availability of safe, reliable, high-quality communications services
 3 in rural areas of the state.

4 (b) For purposes of this section, the following terms have the
 5 following meanings:

6 (1) “Carrier of last resort” means a telephone corporation that
 7 is required to fulfill all reasonable requests for service within its
 8 service territory.

9 (2) “Rate base” means the value of a telephone corporation’s
 10 plant and equipment that is reasonably necessary to provide
 11 regulated voice services and access to advanced services, and upon
 12 which the telephone corporation is entitled to a fair opportunity to
 13 earn a reasonable rate of return.

14 (3) “Rate design” means the mix of end user rates, high-cost
 15 support, and other revenue sources that are targeted to provide a
 16 fair opportunity to meet the revenue requirement of the telephone
 17 corporation.

18 (4) “Rate-of-return regulation” means a regulatory structure
 19 whereby the commission establishes a telephone corporation’s
 20 revenue requirements, and then fashions a rate design to provide
 21 the company a fair opportunity to meet the revenue requirement.

22 (5) “Revenue requirement” means the amount that is necessary
 23 for a telephone corporation to recover its reasonable expenses and
 24 tax liabilities and earn a reasonable rate of return on its rate base.

25 (6) “Small independent telephone corporations” are rural
 26 incumbent local exchange carriers subject to commission
 27 regulation.

28 (c) In administering the ~~California High-Cost Fund-A Program,~~
 29 *CHCF-A program* the commission shall do all of the following:

30 (1) Continue to set rates to be charged by the small independent
 31 telephone corporations in accordance with Sections 451, 454, 455,
 32 and 728.

33 (2) Employ rate-of-return regulation to determine a small
 34 independent telephone corporation’s revenue requirement in a
 35 manner that provides revenues and earnings sufficient to allow the
 36 telephone corporation to deliver safe, reliable, high-quality voice
 37 communication service and fulfill its obligations as a carrier of
 38 last resort in its service territory, and to afford the telephone
 39 corporation a fair opportunity to earn a reasonable return on its

1 investments, attract capital for investment on reasonable terms,
2 and ensure the financial integrity of the telephone corporation.

3 (3) Ensure that rates charged to customers of small independent
4 telephone corporations are just and reasonable and are reasonably
5 comparable to rates charged to customers of urban telephone
6 corporations.

7 (4) Provide universal service rate support from the California
8 High-Cost Fund-A Administrative Committee Fund to small
9 independent telephone corporations in an amount sufficient to
10 supply the portion of the revenue requirement that cannot
11 reasonably be provided by the customers of each small independent
12 telephone corporation after receipt of federal universal service rate
13 support.

14 (5) Promote customer access to advanced services and
15 deployment of broadband-capable facilities in rural areas that is
16 reasonably comparable to that in urban areas, consistent with
17 national communications policy.

18 (6) Include all reasonable investments necessary to provide for
19 the delivery of high-quality voice communication services and the
20 deployment of broadband-capable facilities in the rate base of
21 small independent telephone corporations.

22 (7) Ensure that support is not excessive so that the burden on
23 all contributors to the ~~California High-Cost Fund-A Program~~
24 *CHCF-A program* is limited.

25 (d) In order to participate in the ~~California High-Cost Fund-A~~
26 ~~Program~~, *CHCF-A program*, a small independent telephone
27 corporation shall meet all of the following requirements:

28 (1) Be subject to rate-of-return regulation.

29 (2) Be subject to the commission's regulation of telephone
30 corporations pursuant to this division.

31 (3) Be a carrier of last resort in their service territory.

32 (4) Qualify as a rural telephone company under federal law (47
33 U.S.C. Sec. 153(44)).

34 (e) Upon request from the commission, a small independent
35 telephone corporation that receives support from the ~~California~~
36 ~~High-Cost Fund-A Program~~ *CHCF-A program* shall provide
37 information regarding revenues derived from the provision of
38 unregulated internet access service by that corporation or its
39 affiliate within that corporation's telephone service territory. The

1 commission shall treat as confidential any information provided
2 pursuant to this subdivision.

3 (f) The commission shall structure the ~~programs required by~~
4 ~~this section~~ *CHCF-A program* so that any charge imposed to
5 promote the goals of universal service reasonably equals the value
6 of the benefits of universal service to contributing entities and their
7 subscribers.

8 (g) This section shall remain in effect only until January 1, 2019,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2019, deletes or extends that date.

11 SEC. 5. Section 276 of the Public Utilities Code is amended
12 to read:

13 276. (a) There is hereby created the California High-Cost
14 Fund-B Administrative Committee, which is an advisory board to
15 advise the commission regarding the development, implementation,
16 and administration of a program to provide for transfer payments
17 to telephone corporations providing local exchange services in
18 high-cost areas in the state to create fair and equitable local rate
19 structures, as provided for in Section 276.5, and to carry out the
20 program pursuant to the commission's direction, control, and
21 approval.

22 (b) All revenues collected through surcharges authorized by the
23 commission to fund the program specified in subdivision (a) shall
24 be submitted to the commission pursuant to a schedule established
25 by the commission. The commission shall transfer the moneys
26 received to the Controller for deposit in the California High-Cost
27 Fund-B Administrative Committee Fund. All interest earned by
28 moneys in the fund shall be deposited in the fund.

29 (c) Moneys appropriated from the California High-Cost Fund-B
30 Administrative Committee Fund to the commission shall be utilized
31 exclusively by the commission for the program specified in
32 subdivision (a), including all costs of the board and the commission
33 associated with the administration and oversight of the program
34 and the fund.

35 SEC. 6. Section 739.3 of the Public Utilities Code is amended
36 and renumbered to read:

37 276.5. (a) The commission shall develop, implement, and
38 maintain a suitable, competitively neutral, and broadbased program
39 to establish a fair and equitable local rate support structure aided
40 by universal service rate support to telephone corporations serving

1 areas where the cost of providing services exceeds rates charged
2 by providers, as determined by the commission. *The program shall*
3 *be known, and may be cited, as the California High-Cost Fund-B*
4 *Administrative Committee Fund program or CHCF-B program.*
5 The purpose of the program shall be to promote the goals of
6 universal telephone service and to reduce any disparity in the rates
7 charged by those companies. Except as otherwise explicitly
8 provided, this subdivision does not limit the manner in which the
9 commission collects and disburses funds, and does not limit the
10 manner in which it may include or exclude the revenue of
11 contributing entities in structuring the program.

12 (b) The commission shall structure the ~~programs required by~~
13 ~~this section~~ *CHCF-B program* so that any charge imposed to
14 promote the goals of universal service reasonably equals the value
15 of the benefits of universal service to contributing entities and their
16 subscribers.

17 (c) The commission shall investigate reducing the level of
18 universal service rate support, or elimination of universal service
19 rate support in service areas with demonstrated competition.

20 ~~(d) This section shall only apply to the California High-Cost~~
21 ~~Fund-B Administrative Committee Fund program.~~

22 (e)

23 (d) This section shall remain in effect only until January 1,
24 2019, and as of that date is repealed, unless a later enacted statute,
25 that is enacted before January 1, 2019, deletes or extends that date.

26 SEC. 7. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 SEC. 8. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health, or safety within
37 the meaning of Article IV of the Constitution and shall go into
38 immediate effect. The facts constituting the necessity are:

39 In order to ensure that the Public Utilities Commission has the
40 necessary statutory direction to fund the state's universal service

- 1 programs at the earliest possible time, it is necessary for this act
- 2 to take effect immediately.

O