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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into the Review of the California High Cost Fund-A Program	R. 11-11-007

OPENING COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON FIFTH AMENDED ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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OPENING COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON FIFTH AMENDED ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

The California Cable and Telecommunications Association ("CCTA")[1] hereby submits to the California Public Utilities Commission ("CPUC" or "Commission") these comments in response to the "Fifth Amended Assigned Commissioner's Scoping Memo and Ruling" dated December 13, 2019 ("Fifth Scoping Memo").

CCTA respectfully urges the CPUC to first resolve the important, outstanding issues in this proceeding before expanding to the new issues presented in the Fifth Scoping Memo. Namely, CCTA requests that the CPUC expeditiously issue a Proposed Decision removing the ban on competitive local exchange carrier ("CLEC") operations in the rural incumbent service territories. After resolving this outstanding issue, when considering the new issues presented in the Fifth Scoping Memo, the CPUC should avoid diverting customer surcharge funds collected pursuant to statute for one fund to another fund or purpose because doing so is prohibited by the Legislature. Instead, the CPUC should focus on existing universal service programs that are already authorized in statute to address the needs identified in the Fifth Scoping Memo.

[1] CCTA is a trade association consisting of cable providers that have collectively invested more than $40 billion in California's broadband infrastructure since 1996 with systems that pass approximately 96% of California's homes.

I. BACKGROUND

A. Current California universal service programs offer support to rural, tribal, and low-income customers.

The Fifth Scoping Memo proposes diverting funds from the California High Cost Fund B ("B Fund"),[2] one of California's six universal service programs funded by surcharges that California customers pay on monthly bills for intrastate telecommunications and VoIP service.[3] For each of these programs, the Legislature has authorized collecting surcharges from consumers to be used for the specific purpose of the program and has prohibited use of the funds for any other purpose.[4] These universal service programs include:

- California High Cost Fund A ("A Fund") program – provides subsidies to small incumbent local exchange carriers ("ILECs") under rate-of-return regulation in rural high-cost areas, in order to keep rates for landline phone service affordable, and to improve deployment of broadband-capable facilities.
- B Fund program – provides subsidies to the large ILECs that are "carriers of last resort" ("COLRs") for providing landline phone service in rural high-cost areas, in order to keep rates affordable.
- California LifeLine program – provides discounted landline basic telephone and mobile phone service to eligible low-income consumers throughout California.
- Deaf and Disabled Telecommunications program – provides support for assistive telecommunications equipment, speech generating devices, and relay services to consumers with hearing, vision, speech, cognitive, and mobility disabilities.
- California Teleconnect Fund program – provides discounts on voice service to schools, community colleges, libraries, government-owned hospitals and other nonprofit organizations.
- California Advanced Services Fund – provides grants to support broadband deployment and adoption.

The following is the current surcharge rate that California customers pay to fund these

[2] Fifth Scoping Memo at 3.
[3] Public Utilities Code Section 270.
[4] Public Utilities Code Section 270(d) and Section 282 (prohibiting diversion of funds from any of the universal service programs for another purpose); and Section 276(c) (moneys collected for the B Fund to be used "exclusively" for the B Fund). See Section II-A of these comments.

programs, reflecting the percent of monthly charges for intrastate service:[5]

Effective	ULTS	DDTP*	CHCF-A	CHCF-B	CTF	CASF
09/01/2018	4.750%	0.500%	0.350%	0.000%	0.78%	0.560%

B. CPUC Staff recommended in 2018 against diverting surplus funds in the B Fund and keeping the customer surcharge at zero while funds are used for the purpose authorized in statute.

In April 2017, a CPUC internal audit group issued a report of its audit of the B Fund, which found that the B Fund had a large fund balance ($161 million as of August 2016) and recommended that Communications Division ("CD") Staff conduct an analysis and report to the Commission on options for disposition of excess funds.[6] In May 2018, CD Staff presented a report to the Commission with several options, including the "Status Quo" option of allowing the fund balance to continue to decrease gradually through the regular monthly payments to the B Fund providers[7]. CD Staff recommended that the Commission follow this Status Quo option, which also keeps the B Fund customer surcharge at zero.[8] The staff report stated that diverting the B Fund surplus to another program or use is prohibited by statute and that the Commission lacks authority to take that step absent new legislation.[9]

[5] The history of surcharges paid for each program is available at:https://www.cpuc.ca.gov/General.aspx?id=1124In.
In addition to these surcharges that fund the CPUC public purpose programs, communications service customers also pay the state 911 fee, currently set at $.30 per access line per month, federal universal service surcharges, and local utility taxes.
[6] *See* Attachment A – "Internal Audit Unit Report on Telecommunications Public Purpose Program – California High Cost Fund B" (April 26, 2017).
[7] *See* Attachment B -- "The California High Cost Fund B Options for Decreasing the Fund Balance (5-page memorandum prepared by CD staff) (May 2018) ("CD Staff Options Memo").
[8] CD Staff Options Memo at 5.
[9] CD Staff Options Memo at 4 and 5.

II. COMMENTS

The Fifth Scoping Memo states that the CPUC is expanding this proceeding to consider using the B Fund surplus "as an additional source of funds for several purposes, including, but not limited to, the following:

1. To build capacity for communications services (voice and broadband services) in tribal, rural, low-income and underserved areas. We will explore various options, including pilots, issuing grants, and conducting technical and feasibility studies, to determine and meet the capacity need; and

2. To build communications network redundancy and resiliency for public safety purposes."[10]

The Fifth Scoping Memo asks for comment on:

1. Use of the B Fund surplus for the new purposes in numbers 1 and 2 above.

2. Specific priorities and recommendations for preferred strategies the CPUC should consider to implement these purposes.

3. Procedural mechanism the CPUC should consider to implement these purposes, including factual and legal questions that require evidentiary hearings or briefs."[11]

A. Diverting the B Fund surcharge funds would violate current law.

As stated in CD Staff's report to the CPUC in May 2018, any diversion of the B Fund surcharge funds for another purpose would require a change in law. Public Utilities Code Section 270(d) provides the following with respect to all customer surcharge funds:

> (d) Moneys in each fund shall not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided in Sections 19325 and 19325.1 of the Education Code [unique exception for State Librarian].[12]

Moreover, Public Utilities Code Section 276(c) provides the following regarding the surcharges collected for the B Fund:

[10] Fifth Scoping Memo at 3.

[11] Fifth Scoping Memo at 4.

[12] *See also* Public Utilities Code Section 282 (prohibiting use of public purpose program funds for any other purpose, with exception for loans to the General Fund under Government Code Sections 16310 and 16381).

> (c) Moneys appropriated from the California High-Cost Fund-B Administrative Committee Fund to the commission shall be utilized ***exclusively*** by the commission for the [B Fund program], including all costs of the board and the commission associated with the administration and oversight of the program and the fund. (emphasis added)

Thus, although not mentioned in the Fifth Scoping Memo, the proposed diversion of the B Fund surplus or any B Fund surcharge funds faces a significant threshold legal challenge. Absent a statutory change, the proposal in the Fifth Scoping Memo does not align with current law.

B. The CPUC should use existing universal service programs as authorized in statute to meet the purposes identified in the Fifth Scoping Memo.

The proposal to use the B Fund surcharge funds to "build capacity" for voice and broadband services in tribal, rural, low-income and underserved areas is not necessary because several existing universal service programs already offer support and funding for these purposes.

As described above, the California LifeLine program is available to any eligible low-income California resident, including any tribal member. The ILECs that draw support from the A Fund and B Fund programs serve tribal, rural, and low-income areas of California. Similarly, the California Teleconnect Fund rules allow for participation by tribal entities. CCTA also understands that tribal members are eligible for the Deaf and Disabled program.

Further, the proposed uses of the B Fund surcharge funds in the Fifth Scoping Memo are entirely duplicative of the CASF program. As authorized by the Legislature in Public Utilities Code Section 281, the CASF program provides grants for broadband deployment in areas that are "unserved," most of which are in rural California.[13] The "Broadband

[13] Public Utilities Code Section 281(f)(5). *See also* Public Utilities Code Section 281(b)(2)(B)(i) (requiring the CPUC to "give preference to projects in areas where Internet connectivity is available only through dial-up service that are not served by any form of wireline or wireless facility-based broadband service or areas with no Internet connectivity").

Infrastructure Account Requirements, Guidelines and Application Materials" ("CASF Program Rules"), adopted in D.18-12-018, authorize significantly higher funding levels for projects in low-income areas.[14] Broadband adoption grants serving low-income communities have a statutory preference for priority funding.[15] Moreover, the CASF Program Rules clearly state that "tribal governmental entities may also apply for CASF grants."[16] Several CASF grants have been awarded to tribal applicants and for projects serving tribal areas.[17]

The Fifth Scoping Memo fails to mention these existing programs or to explain how the proposed uses of the B Fund surcharge funds within the A Fund program would differ from these programs already established by statute and already funded by other surcharges that customers pay. In addition, the Scoping Memo does not acknowledge that the B Fund surcharge funds continue to be used for the purpose for which they were collected – to promote goals of universal telephone service and to reduce any disparity in the rates charged by COLRS eligible to draw from the B Fund. As the CD Staff recommended, the Commission can and should allow the B Fund balance to continue to decrease gradually through the regular monthly payments to the eligible B Fund providers.

C. Existing state and federal programs that align with the purposes identified in the Fifth Scoping Memo have billions of dollars in available funds.

The Fifth Scoping Memo proposes diverting the B Fund surcharge funds for purposes

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[14] CASF Program Rules at 6, available at https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/CASF%20InfrastructurePublished%20Rules%20Revised.pdf.

[15] Public Utilities Code Section 281(j)(5).

[16] CASF Program Rules at 8 n. 8.

[17] *See, e.g.*, Resolution T-17623 (August 9, 2018) (awarding CASF infrastructure grant to Siskiyou Telephone Company); and Resolution T-17418 (October 17, 2013) (awarding CASF infrastructure grant for Klamath River Rural Broadband Initiative). CASF project applications summaries and approved projects are available at https://www.cpuc.ca.gov/General.aspx?id=1040.

that mirror other existing programs yet does not mention the funding that is already available for these existing programs. The LifeLine program has accumulated a large fund balance of more than $200 million, according to a 2019 audit by the Legislative Analyst Office.[18] The Legislature authorized a new $330 million for the CASF program in 2017,[19] and the first round of once-a-year infrastructure grants under the new CASF Program Rules awarded only about $25 million, leaving substantial funds still available to fund more broadband deployment in rural California.[20]

Moreover, just last month, the Federal Communications Commission approved about $20 billion over 10 years in the Rural Digital Opportunity Fund ("RDOF") to support broadband deployment in rural and tribal areas.[21] More than $2 billion could potentially go to California based on RDOF program eligibility.[22] Given that California consumers pay the surcharges that fund the RDOF, CCTA strongly urges the CPUC to take steps to ensure California obtains its fair share of these federal funds for broadband.

D. The proposed uses of the B Fund surplus lack standards and accountability.

Even if the CPUC had legal authority to divert the B Fund surplus to "build capacity" for communications services, the proposed uses in the Fifth Scoping Memo are improperly open-ended and wide-ranging. The "including, but not limited to," list of potential uses refers

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[18] "A Review of LifeLine Budget Estimates and Enrollment Process," Office of Legislative Analyst (April 3, 2019) at https://lao.ca.gov/Publications/Report/3995.
[19] AB 1665 (Garcia 2017) Stats. 2017, Ch. 851 (amending Public Utilities Code Section 281).
[20] CPUC News Release (December 23, 2019) at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M322/K808/322808022.PDF.
[21] *Rural Digital Opportunity Fund*, Report and Order (February 7, 2020) Para. 16 (providing preferential bidding conditions to "account for the unique challenges of deploying broadband to rural Tribal communities").
[22] https://www.fcc.gov/document/fcc-estimates-state-state-impact-rural-digital-opportunity-fund.

to "various options, including pilots, issuing grants, and conducting technical and feasibility studies." This proposal has no clear limits or standards, which raises questions of accountability and transparency.

E. The proposed use of customer surcharge funds for network redundancy and resiliency is inappropriate in this proceeding.

In addition to all of the problems discussed above, the proposal in the Fifth Scoping Memo to use the B Fund surplus "as an additional source of funds…[t]o build network redundancy and resiliency for public safety purposes" is flawed for several other reasons. First, "redundancy and resiliency for public safety purposes" is not defined and is so broad that it fails to give stakeholders notice of what the CPUC intends. Second, the CPUC is considering network redundancy and resiliency in the Emergency Disaster Relief proceeding, where a threshold issue is how to define "resiliency."[23] Moreover, the reference to network redundancy and resiliency for "public safety purposes" would include network elements funded by the State Emergency Telephone Number Account, which customers fund through the state 911 fee as administered by the California Governor's Office of Emergency Services.[24] In short, this proposed use involves stakeholders and issues that exceed the scope and participants in this proceeding.

F. The Fifth Scoping Memo lacks a factual foundation for expanding the proceeding and for the new proposed uses of customer surcharge funds.

The Fifth Scoping Memo asks for comment on factual and legal questions related to the proposal to divert the B Fund surplus for the new proposed spending. At the same time,

[23] R.18-03-011, "Assigned Commissioner and Administrative Law Judge's Ruling Soliciting Additional Scoping Topics for Phase II Consideration" (December 18, 2019) at 3.
[24] Government Code Sections 53100 to 53121, and Revenue and Taxation Code Section 41030.

the Fifth Scoping Memo includes several assertions of fact and law as justification for the proposed diversion of customer surcharge funds, including the following:

- "Many commenters made clear that there are widespread problems with both availability of service and service offerings."
- "COLR service is not adequately meeting community needs, some of which fall outside COLR service territories."
- "The Commission has a duty to ensure universal service and a responsibility to explore all options to ensure universal service, especially since climate change and safety issues have emerged as major concerns throughout California."
- "Given concerns about effective communications in the event of emergencies and Public Safety Power Shutoffs, the CHCF-A and CHCF-B funds may be the best sources of funding for potential urgently needed communications upgrades, including investments in redundancy and resiliency, to support public safety."

These broad conclusions do not have citation to any record evidence or authority and raise serious questions of fact and law. No adequate factual record exists to support these statements. Moreover, the statements do not actually support the proposal to make B Fund surcharge funds available to the small ILEC COLRs that are eligible to draw from the A Fund.

The Fifth Scoping Memo refers to "a series of workshops to gather direct input from tribal areas about the adequacy of their communication services."[25] However, the agenda for these workshops indicate that "tribal consultations" were not open to the public.[26] CCTA is not aware of any transcript of the public portion of the tribal workshops, and the Fifth Scoping Memo cites to none. Moreover, questions arise to the extent the broad conclusions in the Fifth Scoping Memo are based on comments at a public participation hearing and not subject to any review, public comment or cross-examination. Under state law, informal public comments

[25] Fifth Scoping Memo at 3 n. 4 listing three tribal workshops.

[26] *See* Attachment C – "Northern CA Tribal Workshop and Consultation Agenda" (September 30, 2019).

like these are not part of the evidentiary record.[27] If the CPUC were to proceed with the diversion of the B Fund surplus or any B Fund surcharge funds for the proposed new spending as set forth in the Fifth Scoping Memo, the CPUC must develop a record to support findings of fact and conclusions of law.[28]

G. An unresolved issue in this 8-year proceeding is lifting the ban on CLECs offering new service options in rural California.

This proceeding began in 2011 for the purpose of reviewing the A Fund and, in part, authorizing alternative providers to offer new service options in the territories of the 13 incumbent rural local exchange carriers.[29] Competing carriers are poised to provide new advanced services in these rural markets, and wireless and over-the-top VoIP providers already offer service in those territories without impacting revenues or draws from the A Fund, yet the CPUC still has not addressed the ban on CLEC competition.

In the meantime, more delay results as the Fifth Scoping Memo seeks comment on expanding this proceeding again, this time in order to use surcharge funds from a different program to address "availability of service and service offerings."[30] CCTA urges the CPUC to start by lifting the ban on CLEC competition so that rural Californians can gain increased

[27] *See* Public Utilities Code Section 1701.1(g) ("The commission shall permit written comments received from the public to be included in the record of its proceedings, but the comments shall not be treated as evidence. The commission shall provide parties to the proceeding a reasonable opportunity to respond to any public comments included in the record of proceedings."); *see also* D.16-12-066 in Rural Call Completion I.14-05-012, Dissent of Commissioner Randolph and Commissioner Peterman ("A recurring theme is that the record was not fully developed. Parties were not given proper notice and opportunity for comment. Numerous public participation hearings were held, and the Decision gives great weight to the anecdotal comments made at those hearings. But parties were not given a specific opportunity to comment on the representations. Nor were the comments put into any type of context. While specific consumers' experiences are relevant and important, it is not appropriate to make policy simply based on individual experiences without a better sense whether they are widespread or possible to be addressed on a statewide basis.").

[28] As discussed in Section II-A, the statutory prohibition against such diversion of customer surcharge funds is a threshold legal question.

[29] OIR (November 18, 2011) at 2 and 30 to 31.

[30] Fifth Scoping Memo at 3.

access to more advanced service options.[31]

III. CONCLUSION

CCTA appreciates the opportunity to submit these comments and looks forward to reviewing the comments of other parties.

Respectfully submitted,

/s/ Jacqueline R. Kinney

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Dated: February 28, 2020

[31] CCTA Comments (filed January 6, 2020).

ATTACHMENT A

California Public Utilities Commission

Internal Audit Unit Report on

Telecommunications Public Purpose Program - California High Cost Fund B

April 26, 2017

April 26, 2017

Finance and Administration Committee
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Final Report – California Public Utilities Commission Internal Audit Report on the Telecommunications Public Purpose Program – High Cost Fund B

Dear President Picker:

The Internal Audit Unit of the California Public Utilities Commission (CPUC) has completed its audit of the CPUC's management and oversight of the telecommunications public purpose program California High Cost Fund B as of the fiscal year end June 30, 2015.

The enclosed report is for your information and use. The findings and recommendations in our report are intended to assist management in improving the effectiveness and efficiency of management operations. Management agreed with most of our findings and provided comments that were helpful to the refinement of our analysis. Management's responses are attached in Appendix A.

We appreciated the assistance and cooperation of agency management in the conduct of this audit. If you have any questions regarding this report, please feel free to contact me at 415-703-1823 or CRD@cpuc.ca.gov.

Sincerely,

Carl Danner
Chief Internal Auditor, California Public Utilities Commission

Enclosure

cc: Commissioners
Ryan Dulin, Deputy Executive Director
Arocles Aguilar, General Counsel
Michael C. Amato, Acting Director, Communications Division
CHCF-B Administrative Committee Members

MEMBERS OF THE AUDIT TEAM

Carl Danner – Chief Internal Auditor
Benjamin Schein, CPA – Auditor in Charge

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Executive Summary

The Internal Audit Unit (IA) performed an audit of the California Public Utilities Commission's (CPUC) management and oversight of the telecommunications public purpose program, California High Cost Fund B (CHCF-B).

Our audit sought to document an understanding of the CPUC's fiscal and managerial oversight of the funds collected from ratepayers for the stated purpose of the program, including how the funds are collected, how they are managed while under the agency's custodianship, and that distributions are made strictly in accordance with the rules set forth by the governing documents of the program.

Our summary finding is as follows: With the exception of the audit requirement of PU Code §274, the CHCF-B program is in compliance with all relevant legislation and Commission Decisions. We note that PU Code §274 requires a periodic financial and compliance audit of this program. The program is also being run in a fiscally responsible and transparent manner, although we have a concern with the size of the ongoing Fund balance and outstanding loans as noted below.

Finally, this program shares some financial and accounting support systems with the California High Cost Fund A program, and some other CPUC programs and functions. These concern the utility contact information database, the surcharge reporting software, and the accounting control process for submitting requests to the Fiscal Office. Our internal audit report on the CHCF-A program provided analysis and some findings and recommendations in this regard, whose resolution will also benefit the CHCF-B and other public programs. We do not reiterate those discussions here.

Findings and Recommendations

Compliance:

1. The CPUC's operation of the CHCF-B program is in compliance with PU Code §§ 270, 271, 273, and 275, and with all currently-applicable Commission Decisions and Resolutions referenced in Appendix C.
2. The CPUC is not in compliance with the audit requirement of §274.

   - Recommendation: To attain compliance with §274, IA recommends that management address the requirement for a financial and compliance audit promptly, and then again within each subsequent three year period.

Management and Best Practices - Financial:

1. The CHCF-B program has assets that greatly exceed its current requirements. There is a surplus of about $161 million ($82 million in cash equivalents plus $79 million in outstanding loans) that represents about ten years of operating expenses at current levels. There is a question under §276.5b whether the charges that were imposed on customers to create this surplus are producing benefits of a reasonably equal size.

- Recommendation: We recommend that an analysis of necessary financial reserves be undertaken by staff, and that options be presented to the Commission for its consideration as to what should be done with excess funds (e.g. customer refunds, use for other purposes authorized under the program, etc.).

2. Claims received for fiscal year 2014/15, but not paid, were not accrued in the fiscal year's accounts.

   - Recommendation: Fiscal Office and CHCF-B management should determine how best to update policies and procedures to accrue claims payable in the Fund's year-end accounting.

3. Budget management for CHCF-B could benefit from increased attention. IA noted material errors (in the millions of dollars) in the monthly reconciliation process for the Fund.

   - Recommendation: CHCF-B management should reconcile the Fund balance on a periodic basis.

Management and Best Practices –Transparency:

We observed a number of beneficial practices here, and made no findings.

We submitted an initial draft copy of this report to the Communications and Administrative Services divisional management on February 14, 2017. Management's responses to our findings and recommendations are in Appendix A. We benefitted also from informal comments provided by agency management, while retaining our own independent responsibility for the contents of this report.

Beyond a corrective action plan, we also ask that management provide a summary of actions taken in response to this audit by December 1, 2017.

The issues in this report are based on fieldwork performed during mid to late 2016. We took opportunities to discuss our findings and recommendations with the related divisions, units, and management throughout our fieldwork, and are pleased to credit their full cooperation with our effort. A listing of documents supplied to IA is included in Appendix B.

This report is intended for the information and use of the Commission and is not intended for use by anyone other than the specified parties. However, this limitation is not intended to restrict the distribution of this report as a matter of public record.

Objective

Through our audit we sought to determine if the CPUC has complied with applicable requirements set forth in statute and in Commission Decisions and Resolutions, and established clear and documented fiduciary and managerial controls with regard to its administration of the California High Cost Fund B telecommunications public purpose program. We also sought to identify control weaknesses and inefficient operations, policies, procedures, systems, and practices.

Scope

The scope of our audit was the CHCF-B program for the fiscal year end June 30, 2015. Our testing included reviewing procedures and practices in both the Fiscal Office and the Communications Division.

Standards

We tested the CHCF-B program for compliance with applicable sections of the PU Code, Commission Decisions and Resolutions, and the State Administrative Manual (SAM). Additionally, we reviewed the program's processes and controls to determine if they are effective and efficient and operational risks have appropriate mitigation.

Methodology and Testing

We performed a risk analysis of the compliance requirements of the Fund based on the governing documents of the Fund as a means to focus our testing procedures. We interviewed program management and Fiscal Office representatives and reviewed financial records and operational documents they provided.

We performed an analysis of compliance requirements based on applicable legislation and Commission Decisions and Resolutions. A list can be found in Appendix C.

We reviewed all aspects of cash flows in and out of the Fund, including the relevant policies and practices of the Fiscal Office and the Fund's overall budgeting process (per §275.6 c (7)). We reviewed all aspects of revenue collection, including billing base calculations, surcharge percentage allocation, and the surcharge remittance system. We reviewed all manners in which money leaves the Fund. This includes administrative costs such as salaries and benefits, overhead costs both internal and external to the agency, contract allocation costs, and monthly carrier claims against the Fund.

We also performed an operational assessment of internal controls, including the documentation of program policies, practices, and controls.

We reviewed all aspects of the claims review process, and payments made to third parties under applicable contracts.

Audit Evidence and Analysis

Compliance:

As noted, the applicable standard of review for compliance was governing legislation (primarily in the Public Utilities Code) and applicable Commission Decisions and Resolutions - including (among other provisions) language governing administrative requirements and the Administrative Committee (AC); requiring that the Fund be governed in a manner that benefits the residents of the state of California, that funds be expended consistent with the Fund's mission; and that basic telephone rates paid by rural customers not exceed a set percentage of those charged to urban customers.

The highest compliance risks in our judgment included the audit requirement of §274 and the mandate to administer the Fund so that any charge imposed to support the goals of universal service reasonably equals the value of the benefits created (§276.5b).[1] Under §274, the Commission is obligated to conduct a financial and compliance audit of program-related costs and activities at least once every three years, starting on July 1, 2002. We did not find evidence of prior financial and compliance audits for this program.

Findings:

- The CPUC's operation of the CHCF-B program is in compliance with PU Code §§270, 271, and 273, and with all currently-applicable Commission Decisions and Resolutions referenced in Appendix C.
- The CPUC is not in compliance with the audit requirement of PU Code §274.

Recommendations:

- To attain compliance with §274, IA recommends that management address the requirement for a financial and compliance audit promptly, and then again within each subsequent three year period.

[1] See discussion in the Budgeting section below.

Management and Best Practices - Financial:

Budgeting:

Budgeting involves the forecasting of program funding needs and assets, tracking of inflows and outflows, and financial adjustments to maintain a reasonable level of reserves. Applicable standards for program budgeting, revenues and expenditures include PU Code Sections 270c, 273, and Decision (D.) 98-09-039. Also relevant is §276.5b, which provides that charges imposed under this program to promote universal service reasonably equal the value of the benefits that are created.

As of August 2016, the CHCF-B balance was $161 million, including $79 million in outstanding loans, as described below:

- $35 million on October 20, 2008 to the General Fund to be repaid on June 30, 2018
- $24 million on April 1, 2009 to the General Fund to be repaid on June 30, 2018
- $10 million on June 26, 2015 to the Regional Railroad Accident Preparedness and Immediate Response Fund to be repaid on July 1, 2017
- $10 million on August 23, 2016 to the Regional Railroad Accident Preparedness and Immediate Response Fund to be repaid on July 1, 2018

According to management, there is a possibility of a one-year postponement in the repayment of the General Fund loans.

The Fund currently pays out about $17 million per year for claims and administration, while receiving limited revenues as noted below. Despite a one-time claim payment increase of about $100,000 after Frontier acquired Verizon's California operations in March 2016, overall claims against the Fund have decreased by about 1% per month. In light of the gap between Fund reserves and the cash flows needed for program management (claims and administration), the Commission reduced the surcharge revenue collection percentage to 0% effective February 1, 2014.

The concern is that customers as a group have prepaid almost ten years' worth of CHCF-B expenditures at their current pace, thereby bearing a financing or opportunity cost that is not necessary to the program's operation.[2] Those particular customers who have been charged to create this surplus are not receiving any benefits today with regard to amounts not needed for current program operations, and may not receive associated future benefits (such as avoidance of paying surcharges) due to changes in the customer base over time, or intervening modifications to the program. Additionally, assuming that this Fund will draw down over a lengthy period of years may not be a reasonable approach with respect to support payments to an industry that continues to undergo change. The large surplus in the Fund has also resulted in multiple loans made to other government programs, with some uncertainty as to repayment dates.

[2] See, for example, the time value of money discussion in Office of Management and Budget (OMB) Circular A-94 (https://www.whitehouse.gov/omb/circulars_a094), and OMB Circular A-4 (https://www.whitehouse.gov/omb/circulars_a004_a-4). The OMB 2015 Discount Rates memorandum updated relevant interest rates for these purposes (https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-05.pdf).

In terms of working capital, an organization should maintain a liquidity balance to meet reasonable and predictable needs for the immediate future. That level can change based on such factors as the size and predictability of expenditures, as well as the timing of receipts. The Government Finance Officers Association (GFOA) recommends establishing a target balance as part of a financial plan.[3] The California State Auditor (CSA) has spoken to this question in a number of its audits, including:

- 2011-121 (Probationers' Domestic Violence Payments, Pg. 64) that accepted a recommendation of a fund reserve balance of six to nine months;
- 2015-030 (State Bar of California, Pg. 68) which recommends a two months' reserve;
- 2015-102 (Central Basin Municipal Water District, Pg. 39) which references the GFOA standards.

The CPUC also has a standard for determining a working cash allowance for regulated water companies (U-16-W),[4] and working cash is a standard utility rate case issue.

In terms of management activities, CD staff maintains a calculation spreadsheet that tracks a balance sheet for the program. However, its calculations are not reconciled, and each month's statement contained material variances. More accurate tracking would become a greater concern if the Fund's reserves were reduced so that its finances needed to be managed more closely.

Fiscal staff performs a variety of reconciliations that appropriately track financial transactions involving the Fund and the State Controller's Office, which pays program claims by providing pay warrants to participating carriers.

Finally, a review of the DoF follow-up engagement into the CPUC's budgetary practices (dated August 2014) confirmed that there are no outstanding audit recommendations related to CHCF-B (Fund 0470).

<u>Findings:</u>

- The CHCF-B has assets that greatly exceed its current requirements. There is a surplus of about $161 million ($82 million in cash equivalents plus $79 million in outstanding loans) that represents about ten years of operating expenses at current levels. There is a question under §276.5b whether the charges that were imposed on customers to create this surplus are producing benefits of a reasonably equal size.
- Budget management for CHCF-B could benefit from increased attention. IA noted material errors (in the millions of dollars) in the monthly reconciliation process for the Fund.

<u>Recommendations:</u>

- We recommend that an analysis of necessary financial reserves be undertaken by staff, and that options be presented to the Commission for its consideration as to what should be done with excess funds (e.g. customer refunds, use for other purposes authorized under the program, etc.).
- CHCF-B management should reconcile the Fund balance on a periodic basis.

3 http://www.gfoa.org/determining-appropriate-levels-working-capital-enterprise-funds
4 http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M055/K059/55059235.PDF

Revenue:

Given that there is no surcharge currently being collected for CHCF-B, the Fund receives only minor revenues as follows:

• Investment Income – Surplus Money	$249,644.50
• Other Regulatory Fees	$ 16,210.30
• Escheat	$ 7,308.03

We found no issue with these amounts or their management. A discussion of the authority to collect revenue for the program can be found in Appendix E.

Program Expenditures:

Expenditures from the CHCF-B are mandated by its budget, proposed each year by the Administrative Committee and approved by Commission vote. The expenditures for the audit period of 2014/15 were approved in Resolution T-17399, which included a forecast of projected carrier claims.

Three general categories of expenditures were made:

1. Support payments to the participating carriers totaled $15,389,688.01 in the audit period.
2. CPUC staff salary and other overhead expenses were categorized as State Operations, and totaled $660,371.08 in the audit period. Of that amount, CPUC staff salaries and benefits were $189,880.00, and other overheads and allocations were $470,491.08.
3. Statewide Assessments totaling $24,063.60 for the audit period were charged to the program related to Fi$Cal and the State Controller's Office.

Support Payment s (Local Assistance)

The claims paid to participating carriers are recorded as Local Assistance, and were made as for 2014/15 for a total of $15,389,688.01 as follows:

Carrier Support Payments Charged to CHCF-B During FY 2014/15 as Local Assistance

Carrier	Amount
Pacific Bell, dba AT&T of California	$ 7,935,541.06
Verizon California, Inc. Contel	$ 2,440,177.15
Citizens Telecom Co. of California	$ 2,005,470.51
Verizon California, Inc.	$ 1,612,407.79
Frontier Southwest, Inc.	$ 1,239,621.96
Cox California Telecom, LLC	$ 119,539.35
MCI Metro Access Transmission	$ 36,930.19
	$15,389,688.01

Using the applicable formulas, we recalculated a stratified random sample of claim payments made to carriers on a census block group basis (the geographic units for which subsidies are calculated). We noted two payment errors, and one policy change to recommend.

Due to a typographical error, MCI Metro was paid $4,460.59 for September 2014, when the actual claim was for $3,152.37. During the audit CD contacted MCI Metro, and a refund was paid back to the Fund in December 2016.

We also observed that the Fund is not accruing payables for claims received and not paid in the fiscal year. The SAM, Section 19305 requires that accruals be booked by state Funds. For the fiscal year under audit, all the carriers had June 2015 claims unrecorded in the fiscal year (AT&T had both May and June claims payable). Total cost to the Fund should have been recorded as $2,081,123.74.

CPUC Overheads (State Operations)

CPUC overheads charged to the program included staff salaries and benefits totaling $189,880.00, and other overheads and allocations totaling $470,491.08. These various expenditures were verified individually, including tracing salary and benefit allocations to particular staff with CHCF-B responsibilities. Errors totaling $17,352.48 had previously been found by staff in two categories, and these had already been reversed in the subsequent fiscal year's accounts. A one-digit typo in an accounting code caused a further error of $2,668.09, which was corrected by Fiscal Office staff when identified by IA.

The table below reports the items that comprised the other overheads and allocations.

Other Overheads and Allocations Charged to CHCF-B During FY 2014/15 as State Operations

Expenditure	Recipient	Amount
Overhead	CPUC	$220,059.31
Intervenor Compensation	Center for Accessible Technology	$102,689.70
External Services – Auditing	Crowe Horwath, LLP	$ 60,472.52
External Services – Information Technology	Blue Crane, Inc.	$ 30,987.57
Overhead	State of California	$ 26,756.00
Strategic Planning (MTS Program)	Various	$ 12,135.61
Overhead	Director – Communications Division	$ 10,257.42
External Services – Legal	Sheppard Mullin	$ 5,216.87
Legal Processing Fee	VCG	$ 1,664.21
Overhead	Director - CSID	$ 134.26
Late Payment Penalty	Center for Accessible Technology	$ 117.61
		$470,491.08

Findings:

- Claims received for fiscal year 2014/15, but not paid, were not accrued in the fiscal year's accounts.

Recommendations:

- Fiscal Office and CHCF-B management should determine how best to update policies and procedures to accrue claims payable in the Fund's year-end accounting.

Management and Best Practices – Transparency:

Consistent with the requirements of the Public Utilities Code and the SAM for effective and efficient management and the presumption that state government's activities should be operated in a transparent manner, we reviewed several aspects of the program's general management and provision of relevant information to the public.

CD management provided a description of duties performed by staff, management, the Administrative Committee (AC), and other stakeholders including Legal and senior management. All the descriptions are reasonable, and demonstrated an understanding of segregation of duties and management oversight. A detailed description of the staff activities to support the efficient operation of the CHCF-B Fund was included in the Zero Based Budget Report dated January 2015 (pages 136-138).

The CHCF-B AC has an adopted charter describing its duties and responsibilities, and includes five members – two representatives of the large local exchange carriers (the ones eligible for CHCF-B subsidy), two consumer advocates, and a representative of the Office of Ratepayer Advocates (ORA). Their role is to advise the Commission on CHCF-B matters and to propose a budget for approval. The AC also produces an annual report that includes a current balance, number of lines served by the CHCF-B eligible carriers, a budget versus annual comparison, and meeting minutes.

The CHCF-B AC meets quarterly to provide feedback as needed and propose an annual budget for Commission vote. The meetings are open to the public and are noticed on the Commission Daily Calendar.

In addition to the aforementioned CHCF-B AC, the program maintains a webpage on the CPUC's public website.[5] Information available include fact sheets, meeting minutes, eligible carriers, links to the open proceeding, the CHCF-B AC page (which includes links to budget Resolutions), and the identity of current CHCF-B AC members. CD also maintains a public library of important Commission actions and relevant legislation on a webpage.[6]

5 http://www.cpuc.ca.gov/General.aspx?id=996
6 ftp://ftp.cpuc.ca.gov/Telco/Important%20Decisions/

Findings:

- None.

Recommendations:

- None.

Appendix A – Management Responses

State of California

Memorandum

Date: March 7, 2017

To: Carl Danner, Chief
Internal Audit Unit

From: Michelle Morales, Fiscal Office
Eric Van Wambeke, Communications Division

Subject Telecommunications Public Purpose Program
California High Cost Fund B

The Communications and Administrative Service Divisions have reviewed the findings and recommendations from the Telecommunications Public Purpose Program High-Cost Fund-B Audit. We have provided our responses below.

Recommendation: To attain compliance with §274, IA recommends that management address the requirement for a financial and compliance audit promptly, and then again within each subsequent three year period.

> Response:
> The Communications Division will pursue a plan on auditing the program to satisfy the financial and compliance components of the requirement when resources and funding are available.

Recommendation:
We recommend that an analysis of necessary financial reserves be undertaken by staff, and that options be presented to the Commission for its consideration as to what should be done with excess funds (e.g. customer refunds, use for other purposes authorized under the program, etc.).

> Response: CD will provide recommendations for Commission review, and is prepared to follow the Commission's directions about how to treat CHCF-B financial reserves on an ongoing basis.

Recommendation:
Fiscal Office and CHCF-B management should determine how best to update policies and procedures to accrue claims payable in the Fund's year-end accounting.

> Response:
> Fiscal contacts CD every June—prior to end of fiscal year—to request public purpose program claims expenditures accruals in a pre-formatted spreadsheet. On this sheet, CD reports program claims through the end of the fiscal year (June), which have not yet been paid; for claims that

have not yet been received, an estimate is given. This process has been in place since 2013, but last year's expenditure request may have not reached all Public Purpose Program fund administrators. Beginning this year, the Fiscal Office will review that all PPP funds have either payments or accruals posted for months through June, and will follow up with CD if necessary. The Fiscal Office will also review submitted accruals against payment history to ensure accruals are reasonable.

Recommendation:
CHCF-B management should reconcile the Fund balance on a periodic basis.

Response:
A reconciliation process already exists. The Fiscal Office Accounting Unit performs monthly reconciliations between SCO CalSTARS, and also SCO and the Fiscal Office checking accounting. These reconciliations are approved and signed by a supervisor. Additionally, Fiscal cannot submit the year-end financial statements to SCO without clearing all prior reconciling items. Any overrides are approved by the Department of Finance CalSTARS unit, and SCO, to ensure transaction validity.

The Internal Audit (IA) unit appreciates the comments provided by management above. IA would like to add the following observations:

> On the question of the Fund reconciliation, the underlying question is whether CD (as the program's manager) has a fully accurate accounting of the CHCF-B Fund's finances at any given time, as is appropriate for a program involving substantial sums. CD does not have this capability now.
>
> We retain our recommendation that a periodic reconciliation be performed, or an equivalent procedure through which CD will have the capability to monitor the Fund on an ongoing basis. If the Fiscal Office reconciliation will provide this capability (including disaggregated information at the Fund level), then we recommend that CD obtain and review a copy monthly.

Appendix B – Documents Reviewed

TUFFS

- User Guide
- Carrier Contact List
- Example - Variance Report

CHCF-B Administrative Committee

- Charter
- Minutes

Invoices / Invoice Tracking / Contract Request Forms

- Crowe Horwath
- BlueCrane
- M Corp
- Infiniti Consulting
- Meta Vista Consulting

Fiscal Reports

- Fund 0470 Breakdown
- Program 30 Expenditures (Overhead Costs)
- MTS Expenditures and Encumbrances
- AP Procedure Documents
- Fiscal Flow Chart
- PCA, Object, Index Code Lists
- Communications Division PCA Code "Cheat Sheet"
- State of California Pro Rata Overhead Allocation (2014/15)

Claims

- All carrier claims from July 2014 to June 2015
- Payment letters
- Claim summary spreadsheets
- Census Block Group documentation

Commission's Zero Based Budget Report – January 2015

Appendix C – Bibliography

Legislation	PU Code	Decisions	Resolutions	SAM Manual
AB 1466, Ch. 755 (1987)	270	85-06-115	T-16018	19305
AB 3643, Ch. 278 (1994)	271	88-07-022	T-17311	
SB 669, Ch. 677 (1999)	273	94-09-065	T-17399	
SB 1276, Ch. 847 (2004)	274	95-07-020	T-17417	
SB 1364, Ch. 1364 (2014)	276.5	96-10-066		
		98-09-039		
		06-08-030		
		06-12-044		
		07-09-020		
		07-11-039		
		08-04-061		
		12-12-038		
		14-06-008		
		15-01-047		

Appendix D – Program Background

The California High Cost Fund B (CHCF-B) program provides basic rate subsidies to large telecommunication carriers of last resort (COLRs) to provide service in high cost areas of California. As a program that promotes universal service, CHCF-B helps carriers to provide rates in high cost areas comparable to rates charged in urban areas. For the period under audit (2014/15), the budget approved for the program was about $22.4 million.

Based on an organizational risk analysis performed by Internal Audit (IA), with the assistance of CPUC management and staff, an audit of the CPUC's public purpose programs (both in energy and telecommunications) was recommended to review the fiduciary and managerial oversight of funds that jointly comprise over $1 billion annually. This is the second of those audits, which was approved during 2015 by the Commission's Finance and Administrative Committee.

The Commission has a requirement under Public Utilities Code §274 to audit some of these programs every three years. In addition, there were a number of risk factors we believed warranted attention regarding this program:

- Carriers pay surcharges to support the program based on their "billing base," which is the total annual revenues they receive from providing California jurisdictional services. Potential concerns involved knowledge of how many carriers are operating in California, what their current contact information is, the precise calculations or methods by which they were determining and reporting their billing base, and the possibility that some carriers might not be remitting surcharges they properly owe.
- Whether Fund balances are being tracked and reconciled on a regular (e.g. monthly) basis.

Historically, the Commission originally authorized the creation of a "High Cost Fund to assure that no ratepayers of any exchange carrier will face basic local rates more than 100% higher than the rates charged by Pacific [Bell] in comparable neighboring areas."[7] In 1987, the California Legislature required the Commission "to develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by transfer of payments to small independent telephone companies serving rural and small metropolitan areas."[8] The High Cost Fund (HCF) program was created by Decision (D.) 88-07-022 and is codified in Public Utilities (PU) Code §270. This Decision created the HCF to provide rate subsidies to carriers in difficult-to-serve areas. D.95-07-050 set proposed rules for the state's universal service goals in response to AB 3643. D.96-10-066, OP 8 established the adjusted Cost Proxy Model for large carrier rate support. OP 8a established CHCF-B, separating it from the original HCF. OP 8h set the first surcharge rate for CHCF-B at 2.87%. The establishment of a threshold benchmark $36.00 per line to be eligible for subsidy was established in D.07-09-020 (OP 1). D.14-06-008 (OP 1) set the cost figures per Census Block Group (CBG) in use during the audit period. Resolution T-17417 (OP 1) reduced the CHCF-B surcharge rate assessed on ratepayers to 0% effective February 1, 2014.

PU Code §270(b) states that funds in the CHCF-B program may only be expended pursuant to PU Code §§270-281 (for purposes related only to the stated goals of the program) and upon appropriation in the

[7] D.85-06-115

[8] Assembly Bill 1466, Chapter 755 (1987)

annual state Budget Act. PU Codes §§270-281 were codified in October 1999 as a result of the enactment of Senate Bill (SB) 669 (Stats. 1999, Chapter 677).

The CHCF-B program is currently set to expire on January 1, 2019 unless the date is extended by enacted statute.

Appendix E – Program Funding Legislation

PU Code §275(b) provides funding authority for the surcharge used to support the program. Additional support for the surcharge collection mandate includes:

> "It is reasonable to fund the CHCF by a surcharge on all end-users as adopted by this decision."[9]
>
> "It is reasonable to exempt from the surcharge coin-sent paid calling, one-way radio paging, ULTS billing, and services provided under existing contracts."[10]
>
> "Effective January 1, 1995, all certified telecommunications utilities shall collect a surcharge of 0.5% on revenues from the expanded billing base described in this decision to fund the CHCF. Pacific [Bell] shall continue the administration of the CHCF. CACD [Commission Advisory and Compliance Division] shall work with Pacific [Bell] to establish administrative guidelines for implementation by January 1, 1995."[11]
>
> "All End User Surcharge (AEUS): A funding mechanism used to collect money for Commission-mandated programs. The AEUS is applicable to all telecommunications carriers, with the exception of one-way paging companies. The surcharge is a percentage of the customers' total expenditures on telecommunication services. The surcharge is visible on customers' bills as a line item charge."[12]
>
> "Regardless of how the user fees and PPP [Public Purpose Program] surcharges are collected, the carrier is ultimately responsible for paying these amounts to the Commission."[13]
>
> "Carriers shall report and remit their California LifeLine surcharge revenues based on intrastate end-user billings less estimated uncollectible amounts. Carriers shall true-up their estimated California LifeLine surcharge uncollectible amounts with their actual uncollectible amounts."[14]

Surcharges are assessed on intrastate billing base at a percentage defined by the Commission in Resolutions. For CHCF-B, the current surcharge rate is 0.0% as of February 1, 2014.[15]

The basis for the surcharge collection is the monthly intrastate billing base of the carriers. There are a number of accepted methods for computing intrastate billing base for CPUC purposes.

> "The July 11, 2012 instructions from the Communications Division expressly state that reasonable methodologies include (a) the inverse of the FCC safe harbor percentage and (b) traffic studies."[16]

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[9] D.94-09-065 Conclusion of Law (COL) 205
[10] Ibid, COL 231
[11] Ibid, OP 71
[12] D.96-10-066, Appendix B, 1A
[13] D.14-01-037, COL 12
[14] General Order 153, Section 11.3.1
[15] Resolution T-17417
[16] D.14-01-037 Finding of Fact (FOF) 9

"Reasonable methodologies for calculating intrastate revenue include: inverse of FCC safe harbor percentages, traffic studies, books and records, FCC Inverse, and the methods permitted by the BOE [Board of Equalization]."[17]

[17] D.14-01-037, COL 11

ATTACHMENT B

May 2018

The California High-Cost Fund B
Options for Decreasing the Fund Balance

Introduction

The California Public Utilities Commission's (CPUC or Commission) Internal Audit Group conducted an audit of the California High Cost Fund B (CHCF-B or B Fund), for the fiscal year (FY) ending June 30, 2015. The audit report, dated April 26, 2017, found that the CHCF-B Program has a large fund balance (i.e., $161 million as of August 2016) and it recommended that the Communications Division (CD) staff perform an analysis of necessary financial reserves, to present options to the Commission addressing the disposition of excess funds (e.g. customer refunds, used for other purposes authorized under the program, etc.). CD prepared this white paper in compliance with the audit recommendation.

Background

In Decision (D.) 08-09-042, the Commission significantly modified the CHCF-B program's subsidy support system in response to the transition to market-based pricing that had been adopted for large telephone carriers under the Commission's Uniform Regulatory Framework (URF). Two of these carriers (i.e., AT&T and Frontier) also serve as Carriers of Last Resort (COLR's) in high cost, rural areas of the state and are eligible for B fund subsidies as allowed by D.08-09-042. In that decision, the Commission increased the cost threshold level at which COLR's receive support, resulting in reduced annual subsidy needs for eligible carriers by about $300 million. In addition, the CHCF-B program subsidy has also been impacted by the year-over-year decrease in the number of landlines that COLRs serve. Consequently, the CHCF-B annual program funding (which consists of local assistance carrier claim payments and state operations expenses to run the program) decreased significantly from about $350 million per year to approximately $22 million annually over a ten-year span.

In recognizing this significant subsidy reduction, the Commission reduced the CHCF-B surcharge thereafter as the program had an accumulated reserve balance at that time of approximately $435 million. In February 2014,[1] the Commission, recognizing the B Fund balance was still rather high, further lowered the B Fund surcharge rate to its current level of 0.00%, meaning the CHCF-B program has not collected surcharges for four years.

Consequently, the CHCF-B program balance has been reduced. As shown in Table 1 below, the program has an unappropriated fund reserve of approximately $41.4 million and an array of outstanding loans of $86.4 million. In total, the CHCF-B program balance has been reduced to approximately $127.8 million as of April 2018.

Table 1

CHCF-B Program Balance	
Amount	Status
$41,413,000	Unappropriated Balance (Liquid)
$86,406,000	Amount Loaned (Five Loans)
$127,819,000	**Total Fund Balance**

[1] By the authority of Commission Resolution T-17417 dated December 5, 2013.

Table 2 below itemizes the $86.4 million from the five outstanding loans, the respective loan recipients, and associated fund transfer and scheduled repayment dates, subject to change:[2]

Table 2

Loan Amount	Loan Recipients	Transfer Date	Repayment Date
$35,000,000	General Fund	10/20/2008	12/31/2018
$24,000,000	General Fund	4/1/2009	12/31/2018
$10,000,000	Regional Railroad Accident Preparedness and Immediate Response Fund (RRAPIR)	6/26/2015	FY 2019-20
$10,000,000	RRAPIR Fund	8/23/2016	FY 2020-21
$7,406,000	Department of Forestry and Fire Protection	6/27/2017	7/1/2019
$86,406,000			

CD staff understands that the CHCF-B loans may be repaid sooner than the scheduled repayment date listed above to the extent the Commission needs funds to pay program expenses.

The CHCF-B program is currently scheduled to sunset on January 1, 2019 per Public Utilities Code Section 276.5 (Section 276.5). However, AB 1959 (Wood) has been introduced to extend the CHCF-B Fund program for four more years through January 1, 2023.

Options for Addressing CHCF-B Fund Balance

Pursuant to the Internal Audit Group's recommendation, CD staff has prepared this analysis of four options to address the surplus in the CHCF-B program balance as follows.

Option 1— Status Quo: Allow the Fund Balance to Decrease Gradually: This is the status quo option and it would allow the B Fund balance to continue to decrease gradually through monthly claim payments to the B Fund carriers and for other administrative expenses of the fund. Applying this method has resulted in the B Fund program balance decreasing from $435 million to $127.8 million over a ten-year period (i.e., 2008-2017), Some points to consider are:

- With total expenditures authorized at approximately $22.3 million per year, it would take approximately two years to decrease the unappropriated liquid balance of $41.4 million to zero, not accounting for unpaid loans.
- Considering the total fund balance including unpaid loans of $127.8 million, it would take approximately five-and-a-half more years to decrease the balance to zero at the rate of current spending.

[2] The CHCF-B Fund is not receiving interest during the pendency of these loans. However, the Commission's Fiscal Office has indicated that loan repayment will include interest paid and calculated at the rate earned by the Pooled Money Investment Account.

Implementation Steps: None required for implementing. Simply means business as usual.

Option 2 – Industry Option: Use Program Funds in High Cost Fund Areas to Facilitate Commission Safety Directive for Fire Preparedness: This option would seek to use CHCF-B program funds to reimburse B-Fund COLR recipients to comply with the requirements set forth in D.17-12-024 (R.15-05-006, Order Instituting Rulemaking to Develop and Adopt Fire-Threat Maps and Fire-Safety Regulations). The option was suggested by B Fund carriers as participants in the CHCF-B Administrative Committee. Under this option, the B fund carriers propose that the excess CHCF-B program funds could be used as a reimbursement to implement safety compliance measures associated with various fire prevention implementation costs; additional costs of mandated annual fire-prevention plan reports; and, increased frequency of vegetation trim guidelines in the high cost rural areas covered by the CHCF-B program. Although D. 17-12-024 set forth necessary safety requirements for all regulated entities, the decision concluded that there was no need to establish a cost recovery mechanism for those utilities that are not rate regulated (COL 9) and stated that those entities could pass on costs to consumers via a line-item charge. Additional factors to consider:

- There is a correlation between the maps of the California fire zones and CHCF-B service areas, so arguably the B program funds can be utilized to ensure safety regulations are being implemented in high cost areas. However, the carriers are obliged to meet the requirements of D.17-12-024 without a subsidy, as set forth in that decision.
- Before implementing this option, we would need more information and detail about costs, such as: 1) what are the annual total expenses for B Fund COLRs to comply with D. 17-12-024; 2) how such compliance expenses in non-high cost areas would be excluded from subsidy support in accordance with the statute; 3) how overheads and capitalized costs would be treated; 4) how such funding could be determined and authorized without a GRC cost of service type analyses and) whether a cap is needed or other limits are needed.
- Since non-rate regulated carriers already have full rate flexibility, they are already free to absorb the cost to comply with the Commission order or pass on the costs to consumers themselves, to either all of their customers or to the customers who reside in the fire threat regions. Also this option could be viewed as contrary to the conclusion about cost recovery in D. 17-12-024 that asserted there was no need to establish a cost recovery mechanism for non-rate regulated utilities (COL 9) and inconsistent with the CHCF-B statutory purpose as expressed in Section 276.5.

Implementation Steps: A Commission order would be necessary to implement this option. Staff would likely need to prepare a Rulemaking Order (OIR) so that a record can be established and a decision prepared by an ALJ. Alternatively, a more expedient approach would be for staff to draft a proposed resolution to adopt a Commission Directive to allow CHCF-B Program fund to be used to reimburse B Fund carriers for implementing safety directives in high cost fund areas. Legislation may also be necessary to expand Section 276.5 to explicitly cover costs for fire preparedness.

The California High-Cost Fund B
Options for Decreasing the Fund Balance

Option 3 – Fund Transfer Option: Move Excess B Fund Balance Amounts to Other Public Purpose Program(s): This option would seek to transfer excess B Fund amounts to one or more Commission Public Purpose Programs (PPPs). The transfer can be to one designated program, some, or all PPP's. Some points related to this option are:

- This option would require determination of the amount to be distributed to other public purpose programs. Presumably we would determine a base reserve and distribute funds above that level.
- A distribution calculation methodology would need to be determined. An equitable proposal may be to distribute funds on a program-weighted average basis (by comparison of each of the other five programs' relative surcharge rate), which would result in the Universal Lifeline Telephone Service (*LifeLine*) program receiving the largest share.
- Some parties may question the appropriateness of moving funds collected for rural high cost support for another universal service purpose(s)

Implementation Steps: We would need to seek legislation to facilitate a CHCF-B fund transfer, as the existing statute allows CHCF-B funds to be used only for specific program purposes.

Option 4 –Customer Refund Option: This final option would address a recommendation by the internal auditor, to have the approximately 700 authorized carriers that remit B Fund surcharges issue refunds to their respective customers, for the overpayment of CHCF-B surcharges from prior years. CD has consulted with AT&T, Frontier, and Ponderosa Telephone Company about this option's feasibility. All surveyed carriers expressed strong concerns, stating that this option would be expensive, time consuming and problematic to implement. Detailed responses from these carriers indicated that:

- A refund would require numerous hours of programming and testing, using carrier resources which are already allocated among other company projects.
- Some carriers may not have system-programmable mechanisms in place to issue a negative surcharge or surcredit.
- The estimated programming cost of a one-time refund would be as much as $5,000 per carrier and there would be an estimated one-time cost of a refund notification billing insert which would be approximately $5,000.
- Refunds would cost an estimated $0.70 per check issued
- Carriers expect that refunds would require retrieving archived data if there was a directive it goes to customers that paid the surcharge. As wireline count has declined for years, many former accounts are no longer customers. For such customers, the addresses on file are not current, which would mean funds from uncashed checks would eventually escheat to the State and waste program dollars.
- Refunds could end up going to current customers for each carrier and would not necessarily go to the customers that paid the initial B Fund surcharges that generated the high program fund balance.

CD staff is also concerned with this option. Specifically, CD would need to determine whether the Telecommunications User Fees Filing System (TUFFS) (the database used to collect surcharges) can effectively process negative surcharges. Moreover with 700 carriers involved currently with TUFFs, there is concern that a significant staff effort would need to be expended to assure all carriers comply properly with the surcharge refund. CD staff also notes that some carriers that had formerly collected B Fund surcharges are no longer in operation and would not be able to implement a refund.

Implementation Steps: A Commission order would be needed to direct carriers to implement a negative surcharge (or a credit), either on a one-time or limited- time basis, as well as to address implementation issues and related costs for making such a refund.

Conclusion

CD recommends the Option 1 (Status Quo) approach, as the B Fund balance has steadily declined over the past 10 years by about $300 million.

However, if the Commission wants to utilize CHCF-B funds in a timelier manner for other universal service programs, CD believes Option 3 (Fund Transfer Option) can be a viable alternative. This option, however, would require legislation to allow funds to be transferred.

CD does not recommend Option 2 (Industry Option) or Option 4 (Customer Refund Option), given reasons discussed above.

ATTACHMENT C

Northern CA Tribal Workshop and Consultation Agenda

When: Monday, September 30, 2019, 10 a.m. - 4 p.m.

Where: Sapphire Palace Event Center at Blue Lake Rancheria
428 Chartin Road, Blue Lake, CA 95525
Hosted by the Blue Lake Rancheria

TRIBAL WORKSHOP - OPEN TO THE PUBLIC – 10:00am-12:00pm

Remote Access

Meeting link: https://bit.ly/2kcsTgw
Meeting number: 712 118 635
Password: bluelake

1-877-820-7831 Local access number
1-720-279-0026 Access number
Attendee access code: 212 296

Welcome and Introductory Remarks (10:00-10:20am)

- Details and practicalities about how the workshop and consultation will be managed
- Staff report process

Telecommunications Session 10:20-12:00

- Introduction to the CA High Cost Funds and California High Cost Fund A Rulemaking 10 min
- Case studies and other public purpose programs 20 min
    - Other public purpose programs
        - CA Advanced Services Fund
        - CA Lifeline
    - Case studies
        - Warm Springs, OR
        - Havasupai, AZ using the Educational Broadband Service
- Provider presentations 15 min
    - CA High Cost Fund A companies
    - Other providers
- Discussion on Tribal and rural needs 15 min
- Group discussion and brainstorm 45 min

Questions to Keep in Mind for the Telecommunications Session

Current voice and broadband service

- What service does your community have now?
- For tribal government, or tribal and individual businesses?
- For residential?
- Does the service meet needs?

Models and solutions

- Upgrade existing service?
- Nearby provider extends service?
- Start a Tribal enterprise?
- Are voice or broadband improvements needed, or both?
- For Tribal government, businesses, residences, or all three?

Lunch 12:00-1:00

- Sapphire Palace will remain open to the public for networking during the lunch hour.
- Attendees will have an opportunity to pre-order lunches during the morning meeting for faster service and/or takeaway. Onsite lunch options are Alice's Restaurant and the Lily Pad Café.

TRIBAL CONSULTATION - NOT OPEN TO THE PUBLIC – 1:00-4:00pm

Land Transfer Policy Session (1:00-2:00pm)

- Introduction
- Questions and answers
- Providing comments

Individual and Group Consultations (2:00-4:00)

- Contact Michael Minkus to schedule in advance: Michael.Minkus@cpuc.ca.gov, 415-703-1681