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Decision 98-01-023 January 7, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643.

R.95-01-020
(Filed January 24, 1995)

Investigation on the Commission's Own Motion into Universal Service and to Comply with the Mandates of Assembly Bill 3643.

I.95-01-021
(Filed January 24, 1995)

ORIGINAL

INTERIM OPINION

This decision authorizes the Interim Administrative Committee (Interim Committee) for the California High Cost Fund-B (CHCF-B) and the California Teleconnect Fund (CTF) to apply to the Internal Revenue Service (IRS) for private letter rulings granting federal tax-exempt status to CHCF-B and CTF. This decision also instructs telecommunications carriers to place into interest-bearing accounts the CHCF-B and CTF surcharge revenues they are collecting and to remit the interest so earned to the CHCF-B and CTF. Finally, this decision orders that carriers are to receive interest on payments owed to them for services rendered under the CTF program.

I. Background

In Decision (D.) 86-06-115, the California Public Utilities Commission (Commission) created the California High Cost Fund-A (CHCF-A) to finance the provision of affordable telephone service to customers of small local exchange carriers (LECs). In D.96-10-066 the Commission established the CHCF-B to finance the provision of affordable telephone service to residential customers located in high-cost areas served by the five largest LECs in California. Decision 96-10-066 also established the CTF to finance the deployment of advanced telecommunications services to schools,

libraries, and other designated organizations. The CHCF-A, CHCF-B, and CTF are each financed by its own Commission-determined surcharge on all end users.

In D.97-01-020 the Commission established one "interim" committee to oversee the CHCF-A and CHCF-B, and a second "interim" committee to oversee the CTF. Each interim committee was to be composed of three Commission staff members appointed by the Executive Director. However, on February 24, 1997, the Executive Director approved a staff request to form just one interim committee to oversee the CHCF-A, CHCF-B, and CTF (i.e., the Interim Committee). The Executive Director also appointed three staff members to the Interim Committee on the same date. The purpose of the Interim Committee is to form the CHCF-B and CTF; and to administer the day-to-day operations of the CHCF-A, CHCF-B, and CTF until qualified persons or entities are hired to assume these duties.¹ The Interim Committee was created for administrative convenience only, and the Commission retains all authority and control over the Interim Committee and the funds administered by the Committee.

In D.97-01-020 the Commission established a procedure to transfer the duties of the Interim Committee to two "permanent" committees -- one to oversee the CHCF-A and CHCF-B, and the second to oversee the CTF (Permanent Committees).² Like the Interim Committee, the Permanent Committees are for administrative convenience only.³ To date, neither of the Permanent Committees has been formed, and the Interim Committee continues to oversee all three Funds.

Pursuant to D.96-10-066, telecommunications carriers have been collecting the CHCF-B and CTF surcharges from their customers since February 1997.⁴ The carriers were instructed to hold these monies until trusts for the CHCF-B and CTF could be

¹ D.97-01-020, mimeo., p. 4.

² Ibid., p. 5.

³ The Interim Committee and the two Permanent Committees shall be referred to collectively as the Administrative Committees.

⁴ D.96-10-066, Ordering Paragraphs 8.h and 9.e.

formed, financial institutions retained, and bank accounts opened.⁵ Disbursement of funds from the CHCF-B and CTF was to begin no later than May 30, 1997.⁶ However, no disbursements have been made since no trusts have been formed, no financial institutions retained, and no bank accounts opened. All revenues collected by the CHCF-B and CTF surcharges since February 1997 have remained with the carriers.

In Resolution T-16071, issued on August 1, 1997, the Commission directed the Interim Committee to meet with the IRS to discuss the procedures the Commission should follow to obtain tax-exempt status for the CHCF-B and CTF.⁷ Resolution T-16071 also instructed the Interim Committee, following its meeting with the IRS, "to make appropriate recommendations to [the Commission] in the form of a motion to be filed in the Universal Service proceeding" regarding the next steps the Commission should take to implement the CHCF-B and CTF.

The Interim Committee met with the IRS on August 19, 1997, and in compliance with Resolution T-16071, the Interim Committee submitted a motion on October 29, 1997, which recommended that the Commission issue a decision taking the following actions: (1) Direct the Interim Committee to seek private letter rulings from the IRS granting tax-exempt status to the CHCF-B and CTF; (2) Approve the Interim Committee's proposed trust agreements for the CHCF-B and CTF; (3) Approve the proposed charters for the CHCF-B and CTF Administrative Committees; (4) Approve the proposed investment policy for the monies held by the CHCF-B and CTF; and (5) Provide clarification and further direction on a number of operational and oversight issues.

A response to the Interim Committee's motion was filed by the Cellular Carriers Association of California (CCAC). In its response, CCAC recommended that the Commission preclude the Interim Committee from seeking tax-exempt status for any

⁵ D.97-01-020, mimeo., p. 7.

⁶ Ibid., p. 8.

⁷ The IRS granted tax-exempt status to the CHCF-A on February 28, 1997.

interest earned on CHCF-B and CTF surcharge revenues. CCAC also asked for a Commission determination that telecommunications carriers should not be required to collect and remit interest on the CHCF-B and CTF surcharge revenues held by carriers. A reply to CCAC's response was filed by The Utility Reform Network (TURN) in which TURN strongly opposed CCAC's recommendations.¹

The remainder of this decision addresses (1) the Interim Committee's request for authority to seek private letter rulings from the IRS that grant tax-exempt status to the CHCF-B and CTF; and (2) CCAC's recommendations regarding interest on CHCF-B and CTF surcharge revenues. A subsequent Commission decision will address all other matters contained in the Interim Committee's motion.

II. Request for Private Letter Rulings

In its motion, the Interim Committee asks for Commission authority to obtain private letter rulings from the IRS granting tax-exempt status to the CHCF-B and CTF. The Interim Committee also asks for Commission approval of the following documents included with its motion: (1) the proposed charters for the CHCF-B and CTF Administrative Committees (Charters); and (2) the proposed trust agreements for the CHCF-B and CTF (Trusts Agreements). The Interim Committee states that Commission approval of the proposed Charters and Trust Agreements is required since these documents are essential in justifying tax-exempt status for the CHCF-B and CTF. Except as discussed below, there was no opposition to the Interim Committee's request for authority to seek tax-exempt status for the CHCF-B and CTF. Nor are we aware of any opposition to the proposed Charters and Trust Agreements.

We believe it would be prudent to secure formal tax-exempt status for the CHCF-B and CTF. Accordingly, we shall direct the Interim Committee to submit, as soon as possible, requests to the IRS for private letter rulings granting tax-exempt status to these two Funds.

¹ TURN's motion for leave to submit a reply to CCAC's response was granted in a ruling issued by assigned Administrative Law Judge Kenney on December 3, 1997.

Because we are still reviewing the proposed Charters and Trust Agreements, we cannot grant final approval of these documents today. However, we have seen enough of these documents to conclude that they reflect our intention to have complete authority and control over all matters pertaining to the CHCF-B, CTF, and the Administrative Committees. Therefore, so that the Interim Committee may proceed as soon as possible with its requests for private letter rulings, we shall approve in principle the proposed Charters and Trust Agreements; and we shall authorize the Interim Committee to attach these documents to its requests for private letter rulings with the understanding that that the documents shall be subject to later revision and final approval by the Commission.

We anticipate that once we complete our review of the proposed Charters and Trust Agreements, we may require these documents to be revised to comply with our policies regarding the procurement of services, per diem, expense reimbursement, conflicts of interest, indemnification of board members, compliance with the Bagley-Keene Open Meeting Act, and other governance issues. Such revisions to the proposed Charters and Trust Agreements will only serve to strengthen our authority and control over the CHCF-B, CTF, and the Administrative Committees.

III. Application Fees for Private Letter Rulings

The Interim Committee states that the IRS charges an application fee of \$3,650 for each request for a private letter ruling. Since neither the CHCF-B nor CTF is operational, the Interim Committee asks for authority to borrow the money needed for the application fees from the CHCF-A. In the alternative, the Interim Committee recommends that Pacific Bell be ordered to advance money for the application fees using funds Pacific has collected from the CHCF-B and CTF surcharges.

According to the Interim Committee, Resolution L-254, issued on May 21, 1997, provides a precedent for borrowing money from the CHCF-A to fund the activities of the CHCF-B and CTF. In that resolution, the Commission authorized the use of money from the CHCF-A to compensate outside counsel for the preparation of charters for the Administrative Committees. Resolution L-254 also ordered that money from the

CHCF-A be advanced, as necessary, to pay for the start-up expenses of the CHCF-B and the CTF.

Consistent with our practice in Resolution L-254, we shall authorize the Interim Committee to borrow money from the CHCF-A to pay the IRS application fees. The Interim Committee may also borrow from the CHCF-A to pay for other necessary and reasonable costs the Committee may incur to timely form the CHCF-B and the CTF. Any money borrowed from the CHCF-A should be paid back with interest based on the average seven-day compound yield on taxable money market funds as published in The Wall Street Journal each Thursday.⁹

IV. Interest on Surcharge Monies

In its response to the Interim Committee's motion, CCAC recommends against seeking tax-exempt status for interest earned on surcharge revenues "on the grounds that carriers are not required to collect, accrue or pay interest on surcharge revenues." CCAC also urges the Commission to find that carriers should not have to pay interest on surcharge revenues. CCAC's recommendations were strongly opposed by TURN.

We reject CCAC's recommendation to forgo seeking tax-exempt status for interest earned on surcharge revenues. It is our expectation that once the CHCF-B and CTF are fully operational, money deposited to these Funds will be placed into interest-bearing accounts. If the interest earned by these Funds is taxable, there will be less money available to support the programs underwritten by the CHCF-B and CTF. Therefore, we believe it would be in the public interest for the Interim Committee to seek tax-exempt status for any interest earned by the CHCF-B and CTF.

We also find little merit in CCAC's recommendation that telecommunications carriers should not have to pay interest on surcharge revenues. We note that since February 1997, every customer of intrastate telecommunications services in California

⁹ The average seven-day compound yield on taxable money market funds published in The Wall Street Journal on Thursday, December 18, 1997, was 5.23%. To compute the amount of interest owed, the rate of interest shown in The Wall Street Journal should be compounded on a weekly basis.

has been paying CHCF-B and CTF surcharges of 2.87% and 0.41%, respectively. These two surcharges are intended to collect \$402 million per year.¹⁰ We believe it would be unreasonable for carriers to reap a potentially sizeable windfall by keeping any interest they may be earning on the hundreds-of-millions of dollars in surcharge revenues they currently hold.

In light of the substantial and growing amounts of surcharge revenues being held by the carriers, we shall require carriers to immediately invest in interest-bearing accounts all the CHCF-B and CTF revenues they have collected to date. We shall also make carriers responsible for remitting interest on accumulated surcharge revenues equal to the average seven-day compound yield on taxable money market funds as published in The Wall Street Journal each Thursday.¹¹ The assigned Administrative Law Judge (ALJ), in consultation with the assigned Commissioner, shall issue a ruling instructing carriers when and where to remit all interest earned after the date of this decision.¹² The requirement for carriers to invest surcharge revenues in interest-bearing accounts and to remit interest shall end once the carriers have forwarded to the CHCF-B and CTF all surcharge revenues they have accumulated since February 1997.¹³

It is also our intent that carriers should remit to the CHCF-B and CTF any interest they may have earned prior to the date of this order on the hundreds-of-millions of dollars in surcharge revenues they are holding. We realize, however, that

¹⁰ D.96-10-066, mimeo., Appendix E.

¹¹ The requirement to remit interest affects all carriers in California. So that carriers are aware of their new obligation, the Executive Director should serve a copy of this decision on all telecommunications carriers in California.

¹² D.97-01-020 stated that "the assigned ALJ, in consultation with the assigned Commissioner's office, shall issue a ruling notifying carriers where and when to remit these accumulated monies." (D.97-01-020, mimeo., p. 8.)

¹³ On an ongoing basis, carriers that are late in remitting CHCF-B and CTF surcharges shall pay interest on the overdue amounts equal to a 10% annual rate applied from the date the remittances are due.

this is a new requirement. Therefore, pursuant to Public Utilities Code § 1708,¹⁴ we shall instruct the assigned ALJ to issue one or more rulings allowing parties to request evidentiary hearings on whether carriers should be required to remit any interest they may have earned thus far on the surcharge revenues they hold. We expect any party requesting an evidentiary hearing to: (1) state why the hearing is legally required; (2) identify material contested issues of fact; (3) identify evidence to be offered; and (4) propose a hearing schedule. Any party who does not request a hearing in response to the ALJ ruling(s) shall have waived any right to a hearing that may exist.

We recognize that carriers have been providing services under the CTF program without reimbursement since February 1997.¹⁵ Furthermore, there is no firm date for when the carriers will begin to be reimbursed for these services. In order to make the carriers whole for the time value of money associated with this growing debt, we shall require that carriers receive interest on the amounts owed to them based on the average seven-day compound yield on taxable money market funds published in The Wall Street Journal.¹⁶ The requirement to accrue and pay interest to carriers shall end once the CTF begins regular disbursements and all payments in arrears have been made to the carriers. However, the requirement to pay interest on amounts owed to carriers for services rendered under the CTF program prior to this decision may be subject to evidentiary hearings under PU Code § 1708. Therefore, the assigned ALJ shall issue one or more rulings allowing parties to request evidentiary hearings on this matter.

¹⁴ PU Code § 1708 states: "The Commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision."

¹⁵ No reimbursement is currently owed to carriers for services provided under the CHCF-B program.

¹⁶ The Administrative Committees should audit the CHCF-B and CTF to examine the following: (a) whether carriers have remitted interest on surcharge revenues in accordance with the terms of this decision; and (b) whether interest was paid to carriers for services provided under the CTF program in accordance with the terms of this decision. If necessary, the Administrative Committee may use monies from their respective funds to engage outside auditors to perform this audit. The results of this audit should be provided to the Directors of the Consumer Services Division and the Telecommunications Division.

Findings of Fact

1. D. 86-06-115 established the CHCF-A to finance the provision of affordable telephone service to customers of small LECs.
2. D.96-10-066 established the CHCF-B to finance the provision of affordable telephone service to residential customers located in high-cost areas served by the five largest LECs.
3. D.96-10-066 established the CTF to finance the deployment of advanced telecommunications services to schools, libraries, and other designated organizations.
4. The CHCF-A, CHCF-B, and CTF are each financed by a separate surcharge on all end users.
5. D.97-01-020 established two interim committees -- one to oversee both the CHCF-A and the CHCF-B, and the second to oversee the CTF. On February 24, 1997, the Executive Director approved a staff request to form just one interim committee to oversee the CHCF-A, CHCF-B, and CTF.
6. D.97-01-020 directed the Interim Committee to (a) form the CHCF-B and CTF; and (b) to administer the CHCF-A, CHCF-B and CTF until qualified persons or entities could be hired to assume the Interim Committee's duties.
7. D.97-01-020 intended the Interim Committee's duties to be transferred to two Permanent Committees. To date, the Permanent Committees have not been formed, and the Interim Committee continues to oversee the CHCF-A, CHCF-B, and CTF.
8. The Interim and Permanent Committees were established for the administrative convenience of the Commission.
9. The Commission has complete authority and control over the CHCF-A, CHCF-B, CTF, and the Interim and Permanent Committees.
10. Pursuant to D.96-10-066, carriers have been collecting the CHCF-B and CTF surcharges since February 1, 1997.
11. D.97-01-020 instructed carriers to hold CHCF-B and CTF surcharge revenues until trusts for the CHCF-B and CTF could be formed, financial institutions retained, and bank accounts opened. To date, none of these steps have been completed, and the carriers continue to collect and accumulate CHCF-B and CTF surcharge revenues.

12. The IRS granted tax-exempt status to the CHCF-A on February 28, 1997.

13. Resolution T-16071 authorized the Interim Committee to meet with the IRS to discuss obtaining tax-exempt status for the CHCF-B and CTF. The Interim Committee met with the IRS on August 19, 1997.

14. Resolution T-16071 instructed the Interim Committee, following its meeting with the IRS, to submit a motion in this proceeding with recommendations on the next steps the Commission should take to implement the CHCF-B and CTF. The Interim Committee filed its motion on October 29, 1997, which contained: (a) proposed Trust Agreements for the CHCF-B and CTF; (b) proposed Charters for the Administrative Committees; and (c) a proposed investment policy for the CHCF-B and CTF.

15. In its motion, the Interim Committee asked the Commission to issue a decision that: (a) directed the Interim Committee to request private letter rulings from the IRS granting tax-exempt status to the CHCF-B and CTF; (b) approved the Interim Committee's proposed Trust Agreement, Charters, and investment policy; and (c) provided clarification and further direction on a number of governance issues.

16. The Interim Committee recommended that requests to the IRS for private letter rulings granting tax-exempt status to the CHCF-B and CTF include Commission-approved Charters and Trust Agreements on the grounds that such documents are needed to justify tax-exempt status for the CHCF-B and CTF.

17. CCAC's response to the Interim Committee's motion recommended that the Commission: (a) Forgo seeking tax-exempt status for any interest earned on CHCF-B and CTF surcharge revenues; and (b) Determine that telecommunications carriers are not required to remit interest on CHCF-B and CTF surcharge revenues held by the carriers.

18. TURN filed a reply to CCAC's response in which TURN strongly opposed CCAC's recommendations.

19. There was no opposition to the proposed Charters and Trust Agreements.

20. The Commission has not completed its review of the proposed Charters and Trust Agreements with respect to compliance with certain governance rules and policies. The review to date indicates that these documents reflect the Commission's

intention to have complete authority and control over the CHCF-B, CTF, and the Administrative Committees.

21. The IRS charges an application fee of \$3,650 for each request for a private letter ruling.

22. Since neither the CHCF-B nor CTF is operational, the Interim Committee asked for authority to borrow money from the CHCF-A to pay the IRS application fees.

23. Resolution L-254 ordered that money from the CHCF-A be used, as necessary, to pay the start-up expenses of the CHCF-B and the CTF.

24. Since February 1997, all end users of intrastate telecommunications services have been paying CHCF-B and CTF surcharges equal to 2.87% and 0.41%, respectively.

25. The CHCF-B and CTF surcharges are intended to collect \$402 million per year.

26. Telecommunications carriers currently hold hundreds-of-millions of dollars in CHCF-B and CTF surcharge revenues.

27. Carriers would reap a sizable windfall if they were able to keep all interest they may have earned or will earn from the hundreds-of-millions of dollars in CHCF-B and CTF surcharge revenues they have accumulated since February 1997.

28. It is in the public interest to require carriers to place the CHCF-B and CTF surcharge revenues they are accumulating into interest-bearing accounts and to remit the interest so earned to the two Funds.

29. It is in the public interest to place monies held by the CHCF-B and CTF into interest-bearing accounts and to obtain tax-exempt status for any interest earned by the CHCF-B and CTF.

30. Since February 1997 carriers have been providing services under the CTF program without reimbursement from the CTF.

31. Carriers incur a significant cost associated with the time value of money when there is a long delay between the time carriers provide services under the CTF program and the time carriers are reimbursed for these services from the CTF.

32. This decision affects all telecommunications carriers in California.

Conclusions of Law

1. The Interim Committee should submit, as soon as possible, requests to the IRS for private letter rulings granting tax-exempt status to the CHCF-B and CTF.
2. The Interim Committee should be authorized to attach the proposed Charters and Trust Agreements to its requests for private letter rulings with the understanding that these documents shall be subject to later approval and revision by the Commission.
3. The proposed Charters and Trust Agreements should be revised, as necessary, to conform to Commission policies regarding the procurement of services, per diem, expense reimbursement, conflicts of interest, indemnification of board members, compliance with the Bagley-Keene Open Meeting Act, and other governance issues.
4. The Interim Committee should be authorized to borrow money from the CHCF-A to pay the application fees for IRS private letter rulings, and to pay other necessary and reasonable costs the Interim Committee may incur to timely form the CHCF-B and CTF.
5. Any money borrowed from the CHCF-A should be paid back with interest calculated using the average seven-day compound yield on taxable money market funds published in The Wall Street Journal each Thursday.
6. Once the CHCF-B and CTF are fully operational, money deposited into these Funds should be placed into interest-bearing accounts.
7. CCAC's recommendation to forgo seeking tax-exempt status for interest earned by the CHCF-B and CTF should not be adopted.
8. CCAC's recommendation that telecommunications carriers should not remit interest on the substantial and growing amounts of CHCF-B and CTF surcharge monies they are holding should not be adopted.
9. Telecommunications carriers should immediately invest in interest-bearing accounts all the CHCF-B and CTF surcharge revenues they have collected to date.
10. Telecommunications carriers should continue to invest in interest-bearing accounts all surcharge revenues they collect in the future.
11. Carriers should remit the interest they earn after the date of this decision on the CHCF-B and CTF surcharge revenues they are accumulating. The amount of interest to

be remitted should be based on the average seven-day compound yield on taxable money market funds published in The Wall Street Journal each Thursday.

12. The assigned ALJ, in consultation with the assigned Commissioner, should issue a ruling instructing carriers when and where to remit the interest on surcharge revenues earned after the date of this decision.

13. The requirement for carriers to place CHCF-B and CTF surcharge revenues into interest-bearing accounts and to remit the interest so earned should end once carriers have forwarded to the CHCF-B and CTF all surcharge revenues they have accumulated since February 1997.

14. Carriers that are late in remitting surcharge revenues to the CHCF-B and CTF should pay interest equal to a 10% annual rate applied from the date that the remittances are due.

15. Carriers should remit any interest they may have earned prior to this order on the hundreds-of-millions of dollars in CHCF-B and CTF surcharge revenues they have collected since February 1997.

16. Payments owed to carriers for services provided under the CTF program since February 1997 should include interest calculated using the seven-day compound yield on taxable money market funds published in The Wall Street Journal each Thursday. The requirement to accrue and pay interest to carriers should end once the CTF begins regular disbursements and all payments in arrears have been made to the carriers.

17. The Administrative Committees should arrange for an audit of the CHCF-B and CTF to examine: (a) whether carriers have remitted interest on surcharge revenues in accordance with the terms of this decision; and (b) whether interest was paid to carriers for services provided under the CTF program in accordance with the terms of this decision.

18. The assigned ALJ should issue one or more rulings allowing parties to request evidentiary hearings on whether carriers should: (a) be required to remit any interest they may have earned prior to the date of this decision on the CHCF-B and CTF surcharge revenues they have collected since February 1997; and (b) receive interest on reimbursements owed for services rendered under the CTF program prior to the date of

this decision. Any party requesting an evidentiary hearing on these matters should: (a) state why the hearing is legally required; (b) identify material contested issues of fact; (c) identify evidence to be offered; and (d) propose a hearing schedule. Any party who does not request a hearing in response to the ALJ ruling(s) should be considered to have waived any right to a hearing that may exist.

19. The Executive Director should serve a copy of this decision on all telecommunications carriers in California.

INTERIM ORDER

IT IS ORDERED that:

1. The Interim Administrative Committee (Interim Committee) for the California High Cost Fund-B (CHCF-B) and the California Teleconnect Fund (CTF) shall apply as soon as possible to the Internal Revenue Service (IRS) for private letter rulings granting tax-exempt status to the CHCF-B and CTF.

2. The Interim Committee may include the following documents in its requests to the IRS for private letter rulings: (a) the proposed charters for the CHCF-B Administrative Committee and the CTF Administrative Committee (Charters); and (b) the proposed trust agreements for the CHCF-B and CTF (Trust Agreements).

3. The Interim Committee may borrow money from the California High Cost Fund-A (CHCF-A) to pay the following costs: (a) application fees for IRS private letter rulings; and (b) other necessary and reasonable costs the Interim Committee may incur to timely form the CHCF-B and CTF.

4. Any money the Interim Committee borrows from the CHCF-A shall be paid back with interest calculated using the average seven-day compound yield on taxable money market funds published in The Wall Street Journal each Thursday.

5. Surcharge revenues received by the CHCF-B and CTF shall be placed into interest-bearing accounts.

6. Telecommunications carriers (carriers) shall immediately invest in interest-bearing accounts all CHCF-B and CTF surcharge revenues they have collected prior to

this order. Carriers shall continue to invest in interest-bearing accounts all CHCF-B and CTF surcharge revenues they collect after this order.

7. Each carrier shall remit to the CHCF-B and CTF interest earned by the carrier after the date of this order on the carrier's accumulating CHCF-B and CTF surcharge revenues. The dollar amount of interest to be remitted shall be equal to the surcharge revenues accumulated by the carrier multiplied by an annual rate of interest to be determined by reference to the average seven-day compound yield on taxable money market funds published in The Wall Street Journal each Thursday.

8. Each carrier shall remit to the CHCF-B and CTF any interest it has earned prior to the date of this order on the CHCF-B and CTF surcharge revenues collected by the carrier. This requirement may be altered or rescinded depending on the outcome of any evidentiary hearings that may be held in accordance with Ordering Paragraph 15 of this order.

9. The assigned ALJ, in consultation with the assigned Commissioner, shall issue a ruling instructing carriers when and where to remit interest on their accumulated CHCF-B and CTF surcharge revenues.

10. The requirement for carriers to place surcharge revenues into interest-bearing accounts and to remit interest on surcharge revenues shall cease once carriers have forwarded to the CHCF-B and CTF all of the surcharge revenues they have accumulated since February 1997.

11. On an ongoing basis, carriers that are late in remitting CHCF-B and CTF surcharges shall pay interest on the overdue amounts equal to a 10% annual rate applied from the date that the remittances are due.

12. Carriers that are owed reimbursement for services provided under the CTF program since February 1997 shall receive interest on the amounts owed based on the seven-day compound yield on taxable money market funds published in The Wall Street Journal. The requirement to accrue and pay interest to carriers for services provided under the CTF program shall end once the CTF begins regular disbursements and all payments in arrears have been made to the carriers.

13. The requirement to pay interest on amounts owed to carriers for services rendered under the CTF program prior to this order may be may be altered or rescinded depending on the outcome of any evidentiary hearings that may be held in accordance with Ordering Paragraph 15 of this order.

14. The CHCF-B and CTF Administrative Committees shall arrange for an audit of the CHCF-B and CTF to examine the following: (a) whether carriers have remitted interest on surcharge revenues in accordance with the terms of this decision; and (b) whether interest was paid to carriers for services provided under the CTF program in accordance with the terms of this decision. The results of this audit shall be provided to the Directors of the Consumer Services Division and the Telecommunications Division.

15. The assigned ALJ shall issue one or more rulings allowing parties to request evidentiary hearings on whether carriers should: (a) be required to remit interest they may have earned prior to the date of this order on the CHCF-B and CTF surcharge revenues they have collected since February 1997; and (b) receive interest on payments owed for services rendered under the CTF program prior to the date of this order. Any party requesting an evidentiary hearing on one or both of these matters shall: (a) state why the hearing is legally required; (b) identify material issues of fact; (c) identify evidence to be offered; and (d) propose a hearing schedule. Any party who does not request a hearing in response to the ALJ ruling(s) shall have waived any right to a hearing that may exist.

16. The Executive Director shall serve a copy of this order on all telecommunications carriers in California.

This order is effective today.

Dated January 7, 1998, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners