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Decision 98-03-031 March 12, 1998

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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)

**INTERIM OPINION APPROVING TRUST AGREEMENTS AND
INVESTMENT OBJECTIVES FOR THE CALIFORNIA HIGH COST FUND-B
AND THE CALIFORNIA TELECONNECT FUND**

This decision approves, with modifications, the proposed trust agreements for the California High Cost Fund-B (CHCF-B) and the California Teleconnect Fund (CTF) submitted by the Interim Administrative Committee for the CHCF-B and CTF (Committee).¹ This decision also approves the Committee's proposed investment objectives for the CHCF-B and CTF.

I. Background

In Decision (D.) 96-10-066, the California Public Utilities Commission (Commission) created the CHCF-B to fund the provision of affordable telephone service to residential customers located in high-cost areas served by the five largest local exchange carriers in California. Decision 96-10-066 also established the CTF to fund the deployment of advanced telecommunications services to schools, libraries, and other designated organizations. The CHCF-B and CTF are financed by Commission-determined surcharges on all end users of intra-state telecommunications services.

¹ The approved trust agreements are contained in Attachments A and B to this decision.

In Resolution T-16071, issued on August 1, 1997, the Commission directed the Committee to meet with the IRS for the purpose of securing tax-exempt status for the CHCF-B and CTF. Resolution T-16071 also instructed the Committee, following its meeting with the IRS, to submit a motion in this proceeding regarding the steps the Commission should take to implement the CHCF-B and CTF.

The Committee met with the IRS on August 19, 1997, and in compliance with Resolution T-16071, the Committee submitted a motion on October 29, 1997, which recommended that the Commission issue a decision taking the following actions: (1) Direct the Committee to seek private letter rulings from the IRS granting tax-exempt status to the CHCF-B and CTF; (2) Approve the Committee's proposed trust agreements for the CHCF-B and CTF; (3) Approve the Committee's proposed investment objectives for the monies held by the CHCF-B and CTF; (4) Approve the Committee's proposed charters for the CHCF-B and CTF; and (5) Provide clarification and further direction on a number of operational and oversight issues. There were no responses filed regarding the portion of the Committee's motion pertaining to trust agreements and investment objectives for the CHCF-B and CTF.¹

In D.98-01-023 the Commission directed the Committee to seek private letter rulings from the IRS granting tax-exempt status to the CHCF-B and CTF.² Today's decision addresses the Committee's requested approval of its proposed trust agreements and investment objectives for the CHCF-B and CTF. A subsequent Commission decision will address all other matters contained in the Committee's motion.

¹ The only response to the Committee's motion was filed by the Cellular Carriers Association of California (CCAC). In its response, CCAC recommended that the Commission take various actions pertaining to interest earned on CHCF-B and CTF surcharge revenues. CCAC's recommendations were addressed by the Commission in D.98-01-023.

² To date there has been no formal IRS action on this matter.

II. Proposed Trust Agreements for the CHCF-B and CTF

We have reviewed the proposed trust agreements⁴ and find they conform to our general principles and requirements for such agreements.⁵ In particular, the proposed agreements clearly establish that the Commission retains ultimate authority and control over the Committee, the trustee, and the funds held by the trusts. Furthermore, the proposed agreements are substantially similar to the trust agreements we adopted in D.98-02-040 for the California Board for Energy Efficiency (CBEE) and the Low-Income Governing Board (LIGB), and thus reflect our preference that Commission-approved trust agreements use common, uniform provisions whenever possible. Therefore, except as noted below, we shall approve the proposed trust agreements for the CHCF-B and CTF.⁶

Our first modification to the proposed trust agreements concerns the designation of trustors. According to the Committee, obtaining tax-exempt status for the CHCF-B and CTF is contingent upon the Commission being in clear control of the Committee. To demonstrate this control, the Committee drafted the trust agreements to name the Commissioners as the trustors.

It is not necessary to designate the Commissioners as trustors in order to demonstrate our control over the Committee; the proposed trust agreements are already quite clear about our having complete control over the Committee. Moreover, in D.98-02-040 we directed the CBEE and LIGB to sign trust agreements on the basis that establishment of trusts and oversight of trustees are administrative functions that should be performed by these Boards. Therefore, consistent with our practice for previously established Boards and trusts, we modify the proposed trust agreements to

⁴ The proposed trust agreements are attached to the Committee's motion.

⁵ Resolution T-16071, issued on August 1, 1997, approved "in principle" the trust agreements for the CHCF-B and the CTF, subject to further Commission review.

⁶ By this decision we merely adopt the proposed trust agreements. We do not authorize the Committee to establish bank accounts or trusts for the CHCF-B and CTF at this time.

designate the members of the Committee⁷ as the trustors and signatories. In directing the Committee members to be the trustors and signatories, it is our understanding that the Commission retains sufficient control over the Committee and the trusts to receive federal tax-exempt status for the CHCF-B and CTF. If the Committee has compelling information that naming the Committee's members as trustors will not satisfy IRS requirements for tax-exempt status, the Committee should bring this issue before us for further consideration.

The Committee states that the proposed trust agreements may occasionally need to be amended in order to maintain tax-exempt status. When amendments become necessary, the Committee recommends that the Executive Director should be given authority to approve ministerial changes on behalf of the Commission, while the Commission should retain authority over all substantive changes. We agree with the Committee's recommendations. Accordingly, the Committee should seek approval for ministerial amendments by letter requests submitted to the Executive Director. Each request should describe the proposed amendment and explain the need for the amendment. The Committee should cause notice of its letter requests to appear in the Commission's Daily Calendar.⁸ Following the receipt of a letter request, the Executive Director should consult with the Legal Division, if appropriate, and approve or disapprove the proposed ministerial amendment in a written response to the Committee.⁹

If the Committee proposes a substantive amendment, it should cause notice of the proposed amendment to appear in the Daily Calendar along with instructions on how to submit written comments within 30 days. Following the expiration of the

⁷ The signatories as trustors should be the members of the Administrative Committee(s), interim or permanent, for the CHCF and CTF at the time the trust agreements are signed.

⁸ The Committee does not need to solicit comments in the Daily Calendar regarding proposed ministerial changes. Further, the Committee does not need to post notice in Daily Calendar of typographical and other changes to trust agreements which are clearly minor and nonsubstantive in nature.

⁹ The Executive Director shall have the discretion to direct the Committee to treat proposed ministerial changes as substantive changes.

comment period, the Director of the Telecommunications Division shall prepare for our consideration a resolution recommending whether or not to adopt the proposed amendment(s). Any approved changes to the trust agreements, whether ministerial or substantive, shall be executed by the Committee on behalf of the Commission.

Our second modification is to Article 6.2 of each trust document which allows the trustee to resign after giving 60 days written notice. We believe a longer notification period is warranted since we may not be able to obtain a new trustee in only 60 days. Accordingly, we modify the trust agreements so that the trustee must give 120 days of notice before resigning.

Our next modification of the proposed trust agreements concerns the audits of the CHCF-B and CTF. As currently drafted, Article Nine of each trust document calls for an annual audit of the financial statements and transactions of the trusts. We modify this provision to clarify that the annual audit shall be paid for with funds from the trusts. We also modify the trust agreements to state that the scope of the audit to be paid for with trust funds shall include the following: (1) Whether expense reimbursements and per diem amounts paid to Committee members were made in accordance with Commission policy; (2) Whether goods and services paid for with CHCF-B and CTF monies were actually provided, and whether payments for goods and services were made in accordance with contractual terms and conditions; and (3) Whether entities receiving the monies from the CHCF-B and CTF have full, complete, and valid support for their claims submitted to the Funds.”

With respect to the remainder of the proposed trust agreements, we make minor modifications for the purpose of clarifying our control over the Committee and/or the

¹⁰ The examination of whether claims to the CHCF-B and CTF are adequately supported should be performed once every three years. If the triennial audit uncovers claims that lack adequate support, the Committee should seek reimbursement of the unsupported amounts, plus interest equal to an annual rate of 10%.

funds governed by the agreements. We also make numerous non-substantive changes so that the text of the CHCF-B and CTF trusts, to the extent practical, conforms with a more standardized format adopted for the CBEE and LIGB trusts in D.98-02-040. Our revisions to the proposed trust agreements are shown in Attachments A and B.

III. Investment Objectives for the CHCF-B and CTF

The Committee proposes that the Commission adopt a policy requiring that monies held by the CHCF-B and the CTF be invested with the objectives of safety of principle, liquidity, and yield. To achieve these objectives, the Committee recommends that monies held by the CHCF-B and the CTF be placed only in specified types of investments, such as certificates of deposits, money market mutual funds, and direct obligations of the federal government.

We agree with the general objectives of Committee's proposed investment policy, with the highest priority being safety of principal. However, we shall not specify the specific types of investments which may be best suited to accomplishing our adopted investment objectives. Rather, the Committee should determine the appropriate investments consistent with the terms of Article 7.2 of each trust agreement.

Findings of Fact

1. The proposed trust agreements for the CHCF-B and CTF conform to the Commission's general principles and requirements for trust agreements.
2. The proposed trust agreements contain provisions which clearly establish that that the Commission has ultimate authority and control over the Committee, the trustee, and the funds held by the trusts.
3. The proposed trust agreements for the CHCF-B and CTF are similar to the trust agreements adopted in D.98-02-040 for the CBEE and the LIGB.
4. Establishment of trusts and interaction with trustees are administrative functions of the Committee.
5. In D.98-02-040, the members of the CBEE and LIGB were designated as the trustors and signatories on the CBEE and LIGB trust documents.

6. The proposed trust agreements may need to be amended from time to time.
7. The proposed trust agreements allow the trustee to resign after 60 days of notice.
8. If a trustee resigns, the Commission may need more than 60 days to obtain a replacement trustee.
9. The proposed trust agreements do not state whether audits of the trusts will be paid for with monies held by the trusts. Nor do the proposed trust agreements provide detail regarding the scope of the audits to be funded with monies from the trusts.
10. The Committee's proposed investment objectives for the trusts are safety of principal, liquidity, and yield.
11. The trust agreements adopted by this decision are for the administrative convenience of the Commission. The Commission shall at all times have full and complete control over the funds held by the trusts.

Conclusions of Law

1. Commission-approved trusts agreements should use common, uniform trust provisions whenever possible.
2. The proposed trust agreements for the CHCF-B and CTF should be modified, to the extent practical, to be consistent with the trust agreements that the Commission approved for the CBEE and LIGB in D.98-02-040.
3. The proposed trust agreements should be modified to: (a) name the Committee members as the trustors and signatories to the documents; (b) require the trustee to provide the Commission with 120 days of written notice prior to resigning; (c) clarify that the annual audit of the CHCF-B and CTF shall be paid for with funds from the trusts; (d) specify the scope of the audits that will be paid for with funds from the trusts; and (e) to incorporate the minor and/or nonsubstantive modifications shown in Attachments A and B of this decision.
4. The Executive Director should have authority to approve ministerial changes to the CHCF-B and CTF trust agreements, while all substantive changes to the trust agreement should be approved by the Commission.

5. Changes to the trust agreements that have been approved by the Executive Director or the Commission should be executed by the Committee on behalf of the Commission.

6. The investment objectives for funds held by the CHCF-B and CTF trusts should be safety of principal, liquidity, and yield. Safety of principal should be the highest priority when investing monies held by the CHCF-B and CTF trusts.

7. In order for the Committee to proceed expeditiously in making the CHCF-B and CTF fully operational, this order should be effective today.

8. The Committee's proposed investment objectives are reasonable.

INTERIM ORDER

IT IS ORDERED:

1. The trust agreement for the California High Cost Fund-B (CHCF-B) contained in Attachment A of this order is adopted.

2. The trust agreement for the California Teleconnect Fund (CTF) contained in Attachments B of this order is adopted.

3. The Interim and Permanent Administrative Committees for the CHCF-B and CTF (Committee) shall seek approval for ministerial amendments to the trust agreements adopted herein by submitting letter requests to the Executive Director the California Public Utilities Commission (Commission). Each request shall describe the proposed amendment and explain the need for the amendment.

4. The Committee shall cause notice of proposed ministerial amendments to appear in the Commission's Daily Calendar.

5. The Executive Director may approve all ministerial changes to the trust agreements adopted by this order. Ministerial changes to the trust agreements approved by the Executive Director shall be executed by Committee on behalf of the Commission.

6. All substantive changes to the trust agreements adopted by this order require the approval of the Commission. Substantive changes to the trust agreements approved by the Commission shall be executed by the Committee on behalf of the Commission.

7. The Committee shall cause notice of the proposed substantive amendments to the CHCF-B and CTF trusts to appear in the Commission's Daily Calendar along with instructions on how to submit written comments to the Director of the Commission's Telecommunications Division within 30 days of the notice appearing in the Daily Calendar. Following the expiration of the comment period, the Director of the Telecommunications Division shall prepare for the Commission's consideration a resolution on whether to adopt the substantive amendment(s).

8. The primary investment objective for monies held by the CHCF-B and CTF shall be safety of principal. Secondary objectives shall be liquidity and yield.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

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

ATTACHMENT A

Trust Agreement for the California High Cost Fund-B

CALIFORNIA HIGH COST FUND-B TRUST AGREEMENT"

The CALIFORNIA PUBLIC UTILITIES COMMISSION ("CPUC"), in exercising its governmental authority, has designated the Interim and Permanent Administrative Committees for the California High Cost Fund-B (Administrative Committee) to carry out administrative functions necessary is hereby entering into this TRUST AGREEMENT for the purpose of delegating authority to receive, distribute and invest CALIFORNIA HIGH COST FUND-B monies to a third party. NOW THEREFORE, the CALIFORNIA HIGH COST FUND-B TRUST AGREEMENT is entered into by and between the CPUC by its Administrative Committee as Trustor and _____ as Trustee.

ARTICLE ONE

Introduction

1.1 Control of Funds. This agreement is for administrative convenience only; the California Public Utilities Commission ("the CPUC") controls the funds governed by this agreement instrument.

1.2 Purpose of Agreement. The Legislature of the State of California has, in Sections 728 and 739.3(c) of the Public Utilities Code, mandated that the CPUC develop and implement a suitable program to promote the goals of universal telephone service throughout the State, and to reduce any disparity in the rates charged by small independent telephone corporations. To help achieve the goal of universal service, the CPUC in By-Decision 96-10-066, as amended, the CPUC created extended its program to include a fund, the California High Cost Fund-B (CHCF-B), that will to provide the source of for payments to any designated carriers of last resort (COLRs) to subsidize service to subscribers in high cost areas of the State. The funding for the CHCF-B comes

" Additions made to the Administrative Committee's proposed trust agreement are indicated by double underline. Deletions are indicated in strikethrough.

from a CPUC-determined will be by means of surcharge on all end users of intrastate telecommunications services~~an end user surcharge, as determined by the CPUC, for telecommunications services represented by a line item on the end user's bill.~~ The CPUC has ordered that an interim Administrative Committee ("Committee") be appointed to oversee the administration of CHCF-B until a permanent Administrative Committee is in place. The term "Committee" as used throughout this document shall refer to both the interim Administrative Committee and the permanent Administrative Committee. The Committee hereby enters into this Trust Agreement to fulfill its duties under California Public Utilities Code section 739.3(c) and Decision 96-10-066, as amended, regarding the creation and implementation of CHCF-B.

1.3 Composition of the Committee. The interim Committee shall consist of the following three (3) members: Michael C. Amato, Rufus G. Thayer, Jr. and David M. Shantz. The permanent Committee shall be composed of up to six (6) members who may be appointed or removed at any time by the CPUC. Notice of any such change in Committee membership will be provided in writing to the Trustee. The Trustee shall be subject to the control and direction of the Committee, but if any disagreement arises between the CPUC and the Committee concerning the Trust, the Trustee shall act in accordance with the written direction given by the CPUC.

1.4 Beneficiaries. The Trust is ultimately for the benefit of telecommunications customers in high cost areas as designated by the CPUC for the purpose of promoting the goal of universal telephone service. Such benefit shall be accomplished by means of transfer payments from ~~out of~~ the Trust ~~account~~ to certain COLRs as designated by the CPUC.

1.5 Effective Date. This agreement shall be effective immediately upon execution by all ~~both parties and subsequent approval by the CPUC or its Executive Director.~~

ARTICLE TWO

Establishment of Trust

2.1 Trust Assets. At the direction of the CPUC, the Committee hereby establishes a trust for: (a) ~~The CPUC has established the CHCF-B as a fund for the receipt of any and all monies collected and remitted to the CHCF-B which are from time to time charged by California telecommunications service providers as a result of CHCF-B surcharges authorized set by the CPUC pursuant to Decision 96-10-066, as amended, and collected and remitted to the CHCF-B by such providers, for~~ (b) the receipt of any other money or property remitted to ~~the~~ this CHCF-B as ordered by the CPUC, and (c) ~~for the receipt of any income earned attributable to the CHCF-B thereto.~~ Such receipts of principal and income earned thereon shall comprise the assets of the Trust. The Trustee shall hold, administer and distribute the Trust assets as provided in this Trust Agreement.

2.2 Acceptance of Trust. The Trustee hereby accepts the Trust subject to all of the terms and conditions of this Trust Agreement.

2.3 Remittances to the Trust. Remittances to the Trust shall be made to the Trustee by service providers at such times and in such amounts as the CPUC shall from time to time determine. The Trustee shall be responsible only for sums actually received by it as Trustee under this Trust Agreement and shall not have any duty or right to dispute any amount it pays ~~to be paid by it~~ pursuant to this Trust Agreement or to collect any sums from CHCF-B providers.

ARTICLE THREE

Distributions

3.1 Purpose of Distributions. At the written direction of the Committee and subject to Section 3.3 herein, the Trustee shall make distributions from the Trust for the following purposes:

- (a) Payments as authorized by the CPUC, or the Committee as authorized by the CPUC, to COLRs that qualify for CHCF-B support.

- (b) Payment of reasonable administrative costs incurred by or on behalf of the Committee in the performance of its duties.
- (c) Reimbursement or direct payment of reasonable expenses incurred by the Committee or any other party as ordered by the CPUC for administration of the Fund.

3.2 Time of Distributions. Distributions from the Trust shall be made not more often than once per month unless the Committee or the CPUC specifically directs otherwise. After CPUC approval of the Committee's budget, reimbursement from the Trust to Committee members, and to consultants and support service providers under contract with the Committee, from the Trust shall be made on a monthly basis unless a longer time frame (e.g., quarterly) is specified in contracts with consultants and service providers. In the event of a delay in the CPUC's approval of a new annual budget for the Committee, reimbursements should continue to be made in accordance with the most recent CPUC-approved budget.

3.3 Non-liability of Trustee. The Trustee shall incur no liability for the acts, omissions, or defaults of any of its agents (other than its officers or employees) or depository selected with reasonable care. The Trustee shall incur no liability for any distribution it makes according to the written directions of the Committee or CPUC, nor for action upon any written direction or document it believes in good faith to be genuine. The Trustee shall not be responsible for the adequacy of the Trust assets to discharge any and all of its obligations. Any payment by the Trustee may be made by mailing its check to the address furnished by the Committee by electronically transferring funds to the payee.

ARTICLE FOUR

Amendment, Revocation, and Termination;

Distribution Upon Termination

4.1 This Trust Agreement may be terminated, revoked, or amended at any time pursuant to the CPUC's written direction.

4.2~~1~~ Upon any revocation or termination pursuant to the CPUC's ~~a~~ written direction ~~of the CPUC~~, the assets of the Trust shall be distributed by the Trustee as and when directed by the CPUC or the Committee in accordance with the CPUC's direction ~~of the CPUC~~. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

ARTICLE FIVE

Powers and Duties of the Committee

5.1 Administrative Powers and Duties of the Committee. The Committee shall address and resolve any questions regarding receipt or collection of remittances by the CHCF-B or payment of amounts by the CHCF-B. In administering the CHCF-B, ~~(The~~ Committee shall act exclusively in accordance with its Charter and for the benefit of the Beneficiaries, the set of which may change from time to time as directed by the CPUC. For example, a Actions of the Committee shall be taken by majority vote and shall be recorded in minutes, copies of which shall be provided to the CPUC and to the Trustee upon their ~~its~~ request. In performing their duties under this Trust Agreement, the members of the Committee shall at all times be subject to the CPUC's direction, control, and approval ~~of the CPUC~~. The CPUC shall have the power to conclusively decide any question involving the Trust.

ARTICLE SIX

Provisions Regarding Trustee

6.1 The CPUC shall approve the Trustee appointed by the Committee. The Trustee shall hold all assets of the Trust and receive all income of the Trust as directed by the Committee. The Trustee shall maintain or cause to be maintained the records of Trust activity. After the end of each month and each fiscal year of the Trust (as established by the Committee), the Trustee shall prepare reports as provided in Article Nine showing how the Trust funds are invested ~~property of the Trust is invested and~~

the receipts and disbursements of the Trust for the preceding period, and shall furnish copies of such reports ~~statements~~ to the Committee and the CPUC.

6.2 Resignation or Removal of Trustee. Subject to Paragraph 6.3, the Trustee may resign at any time upon the giving of one hundred and twenty (120) ~~sixty (60)~~ days written notice to the Committee. The Committee may remove the Trustee at any time upon the giving of sixty (60) days written notice to the Trustee.

6.3 Successor Trustee. Upon the resignation or removal of the Trustee, the Committee shall appoint a successor Trustee or Trustees, subject to CPUC approval. The resignation or removal shall become effective upon acceptance of the appointment by a successor Trustee unless otherwise agreed between the Committee and the Trustee. Any successor Trustee shall have the same rights, powers, and duties as it would have had as an original Trustee.

6.4 Own Acts and Omissions. All rights, powers, authority, immunity and discretion herein granted or conferred upon the original Trustee shall survive to and may be exercised or applied in the same manner and to the same extent by or for any successor Trustee that may at any time be acting hereunder. Each Trustee shall be responsible only for its own acts or omissions. A successor Trustee shall not be required to audit or investigate the acts or administration of any predecessor unless otherwise directed by the Committee or by the CPUC.

6.5 Successor to Corporate Business. Reference herein to the Trustee shall include any corporation or association that may become a successor Trustee or any successor corporation which may succeed to a corporate Trustee's business.

ARTICE SEVEN

Trustee's Powers

7.1 General Powers. Subject to the investment policy described in Section 7.2, in administering the Trust, the Trustee shall have all of the powers and discretion conferred upon Trustees by California law.

7.2. Investment Policy. In accordance with its Charter, and subject to approval by the CPUC, the Committee, with the possible assistance of an appropriate financial consultant, shall determine from time to time an investment policy and method consistent with the objectives of the Fund, implement the investment policy for the fund as determined by the CPUC taking into consideration the Fund's short-term and long-term financial needs. The Committee shall advise the Trustee of this investment policy and method, which shall be implemented by the Trustee in conformity with the Committee's instructions. ~~banking procedures that shall be disclosed to the Committee.~~

7.3 Standard of Care. In carrying out each of its responsibilities under this Trust Agreement, the Trustee shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use.

7.4. Limitation on Trustee's Power. The Trustee shall be subject to the control and direction of the Committee, but if any disagreement arises between the CPUC and the Committee concerning the Trust, the Trustee shall act in accordance with the CPUC's written direction given by the CPUC.

ARTICLE EIGHT

Compensation of Trustee and Expenses

8.1 Compensation of Trustee. The Trustee and any agents it reasonably employs shall be entitled to reasonable compensation for services under this Trust Agreement and for any extraordinary services at a rate to be agreed upon from time to time between the Trustee and Committee.

8.2 Expenses. The Trustee shall be reimbursed for reasonable expenses incurred on behalf of the Trust after written approval by the Committee.

8.3 Limitations on Fees and Costs. The amount of fees and costs to be paid to or at the request of the Trustee for services under this Trust Agreement shall be limited to that fixed amount contained in a written letter agreement between the Trustee and the Committee.

8.4 Allocation of Expense to Principal or Income. The Trustee shall charge its compensation and expenses to the Trust's principal or income as agreed upon from time to time between the Trustee and the Committee.

ARTICLE NINE

Books, Records, and Reports, and Audits

9.1 Books and Records. The Trustee shall keep accurate books and records reflecting investments, receipts, and disbursements of the Trust. The books and records shall be open to inspection at all reasonable times by the CPUC, ~~and the Committee,~~ or ~~by their designated representatives of the CPUC and/or the Committee.~~

9.2 Daily Reports. The Trustee shall submit daily receipt activity reports to the designated representative of the Committee.

9.3 Monthly Reports. Not more than ten (10) business days after the end of each month, the Trustee shall submit to the designated representative of the CPUC and to the designated representative of the Committee (for distribution to each Committee member) reports for such month setting forth the following information:

- (a) Monthly bank statements;
- (b) The amount of funds disbursed Disbursement of funds to each COLR beneficiary;
- (c) Purchases, sales, redemptions, or exchanges of all securities and other financial instruments;
- (d) Receipt of all interest or other income on invested assets;
- (e) Other disbursements;
- (f) Asset list showing market values, cost and approximate annual income of all holdings;
- (g) Such other information as the Committee or the CPUC may require from time to time.

9.4 Annual Reports. ~~The Trustee shall provide, W~~within sixty (60) ~~ten (10)~~ days after the close of each fiscal year, the Trustee shall provide to the CPUC and the Committee detailed financial statements that show all of the Trust's revenues,

disbursements to beneficiaries, administrative and other expenses, assets, and liabilities, an annual reconciliation statement summarizing Trust activity:

9.5. Annual Audit. The Trustee shall disburse sufficient funds to pay for The Committee shall arrange for an annual audit of the financial statements and transactions of the Trust and its distributions. The Committee shall contract with an independent auditor to carry out the annual audit. The scope of the annual audit shall include: (a) whether amounts paid to Committee members for expense reimbursements and per diem were made in accordance with CPUC policies and supported with adequate documentation; (b) whether goods and services paid for with monies from the CHCF-B were actually provided, and whether payments for goods and services were made in accordance with contractual terms and conditions; (c) on a triennial basis, examine whether the entities receiving monies from the CHCF-B have full, complete, and valid support for their claims submitted to the Fund; and (d) The audit shall contain such other detail as may be requested by the CPUC or the Committee. The Trustee shall assist and cooperate in any reasonable manner to achieve the timely completion of the annual audit. The Committee shall provide the CPUC and the Trustee with copies of the annual audit report.

ARTICLE TEN

Amendment, Revocation and Termination

~~10.1 This Trust Agreement may be terminated, revoked or amended at any time pursuant to a written direction of the CPUC.~~

ARTICLE TEN ELEVEN

Miscellaneous

101.1 Accounting Method.

- (a) The Committee shall designate the Trust's fiscal year shall be designated by the Committee.
- (b) The accounting for annual reports shall use generally accepted accounting principles.

101.2 Request for Instructions. The Trustee may at any time seek written instructions from the Committee or the CPUC on any matter.

101.3. Indemnification. The Trust shall indemnify and hold harmless the members of the Committee and their successors, against all liabilities, demands, claims, actions, losses, taxes, and expenses (including reasonable attorney's fees) arising out of the Committee members' acts or omissions in the administration of the Trust, to act with respect to the purposes of the Trust except in the case of Committee member's willful misconduct, gross negligence, fraud, or illegal acts. For purposes of this Trust Agreement, any payments to be made under this Paragraph shall be considered payment of reasonable administrative costs incurred by or on behalf of the Committee in the performance of its duties under Paragraph 3.1(b) above.

101.4 Diversion of Assets Prohibited. Except as may be required by order of the CPUC, the Committee is responsible for directing the Trustee in a manner so that no portion of the assets or income of the Trust shall be diverted to purposes other than to provide for the purposes described in Article 3.1, or CPUC authorized funds to the Beneficiaries or for reasonable expenses of administering the Trust, and to provide CPUC authorized funds to the Beneficiaries of the Trust.

101.5 Applicable Law. All questions concerning the validity, interpretation, and administration of this Trust Agreement shall be governed by the laws of the State of California, regardless of the domicile of any Trustee or Beneficiary.

101.6 Severability Clause. If any provision of this Trust Agreement is invalid, that provision shall be disregarded, and the remainder of this Trust Agreement shall be construed as if the invalid provision had not been included.

101.7 Counterparts. This document may be executed in counterparts.

IN WITNESS WHEREOF, the Trustor and Trustee hereby execute this Agreement on
_____, 1998.

TRUSTOR:

The Members of the Administrative Committee
for the California High Cost Fund-B

Committee Member Richard A. Bilas, President

Committee Member P. Gregory Conlon,
Commissioner

Committee Member Jessie J. Knight, Jr.,
Commissioner

Committee Member Henry M. Duque,
Commissioner

Committee Member Josiah L. Neeper,
Commissioner

TRUSTEE:

By: _____

Its: _____

By: _____

Its: _____

ATTACHMENT B

Trust Agreement for the California Teleconnect Fund

CALIFORNIA TELECONNECT FUND TRUST AGREEMENT¹²

The CALIFORNIA PUBLIC UTILITIES COMMISSION ("CPUC"), in exercising its governmental authority, has designated the Interim and Permanent Administrative Committees for the California Teleconnect Fund (Administrative Committee) to carry out administrative functions necessary ~~is hereby entering into this TRUST~~ AGREEMENT for the purpose of delegating authority to receive, distribute, and invest CALIFORNIA TELECONNECT FUND monies to a third party. NOW THEREFORE, the CALIFORNIA TELECONNECT FUND TRUST AGREEMENT is entered into by and between the CPUC ~~by its Administrative Committee as Trustor and~~ _____ as Trustee.

ARTICLE ONE

Introduction

1.1 Control of Funds. This agreement is for administrative convenience only; the California Public Utilities Commission ("CPUC") controls the funds governed by this instrument agreement.

1.2 Purpose of Agreement. The CPUC in 1996 issued Decision No. 96-10-066, as amended, ordering the creation of the California Teleconnect Fund (the "CTF") as a means of reimbursing telecommunications service providers for providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community based organizations as determined by the CPUC. The CTF is funded by a surcharge, as determined by the CPUC, on end users' bills for telecommunications services beginning as of February 1, 1997. The CPUC has ordered that an interim Administrative Committee ("Committee") be appointed to oversee the administration obligations of the CTF until a permanent Committee is in place. The term "Committee" as used

¹² Additions made to the Administrative Committee's proposed trust agreement are indicated by double underline. Deletions are indicated in strikethrough.

throughout this document shall refer to both the interim Administrative Committee and the permanent Administrative Committee. The Committee hereby creates and establishes this agreement to fulfill its duties under California Public Utilities Code section 739.3 and Decision 96-10-066, as amended, regarding the creation and implementation of CTF.

1.3 Composition of the Committee. The interim Committee shall consist of the following three (3) members: Michael C. Amato, Rufus G. Thayer, Jr. and David M. Shantz. The permanent Committee shall be composed of up to six (6) members who may be appointed or removed at any time by the CPUC. Notice of any ~~such change~~ in Committee membership will be provided in writing to the Trustee. The Trustee shall be subject to the control and direction of the Committee, but if any disagreement arises between the CPUC and the Committee concerning the Trust, the Trustee shall act in accordance with the written direction given by the CPUC.

1.4 Beneficiaries. The Trust is ultimately for the benefit of qualifying schools, libraries, hospitals, health clinics, and community based organizations. Such benefit shall be accomplished by means of transfer payments from ~~out of~~ the Trust to telecommunications service providers who provide discounted rates to the above named beneficiaries.

1.5 Effective Date. This agreement shall be effective immediately upon execution by all ~~both parties and subsequent approval by the CPUC or its Executive Director.~~

ARTICLE TWO

Establishment of Trust

2.1 Trust Assets. At the direction of the CPUC, the Committee hereby establishes a trust for: (a) ~~The CPUC has established the CTF as a fund for the receipt of any and all monies collected and remitted to the CTF which are from time to time remitted by California telecommunications service providers as a result of CTF surcharges~~ authorized set by the CPUC pursuant to Decision 96-10-066, as amended;

~~and collected and remitted to the CTF by such providers, for (b) the receipt of any other money or property remitted to the this CTF as ordered by the CPUC, and (c) for the receipt of any income earned attributable to the CTF thereto.~~ Such receipts of principal and income earned thereon shall comprise the assets of the Trust. The Trustee shall hold, administer and distribute the Trust assets as provided in this Trust Agreement.

2.2 Acceptance of Trust. The Trustee hereby accepts the Trust subject to all of the terms and conditions of this Trust Agreement.

2.3 Remittances to the Trust. Remittances to the Trust shall be made to the Trustee by service providers at such times and in such amounts as the CPUC shall from time to time determine. The Trustee shall be responsible only for sums actually received by it as Trustee under this Trust Agreement and shall not have any duty or right to dispute any amount it pays to be paid pursuant to this Trust Agreement or to collect any sums from CTF providers.

ARTICLE THREE

Distributions

3.1 Purpose of Distributions. At the written direction of the Committee and subject to Section 3.3 herein, the Trustee shall make distributions from the Trust for the following purposes:

- (a) Payments as authorized by the CPUC, or the Committee as authorized by the CPUC, to telecommunications providers serving beneficiaries that qualify for CTF support.
- (b) Payment of reasonable administrative costs incurred by or on behalf of the Committee in the performance of its duties.
- (c) Reimbursement or direct payment of reasonable expenses incurred by the Committee or any other party as ordered by the CPUC for administration of the Fund.

3.2 Time of Distributions. Distributions from the Trust shall be made not more often than once per month unless the Committee or the CPUC specifically directs otherwise. After CPUC approval of the Committee's budget, rReimbursement from the

Trust to Committee members, and to consultants and support service providers under contract with the Committee, from the Trust shall be made on a monthly basis unless a longer time frame (e.g., quarterly) is specified in contracts with consultants and service providers. In the event of a delay in the CPUC's approval of a new annual budget for the Committee, reimbursements should continue to be made in accordance with the most recent CPUC-approved budget.

3.3 Non-liability of Trustee. The Trustee shall incur no liability for the acts, omissions, or defaults of any of its agents (other than its officers or employees) or depository selected with reasonable care. The Trustee shall incur no liability for any distribution it makes according to the written directions of the Committee or CPUC, nor for action upon any written direction or document it believes in good faith to be genuine. The Trustee shall not be responsible for the adequacy of the Trust assets to discharge any and all of its obligations. Any payment by the Trustee may be made by mailing its check to the address furnished by the Committee by electronically transferring funds to the payee.

ARTICLE FOUR

Amendment, Revocation, and Termination:

Distribution Upon Termination

4.1 This Trust Agreement may be terminated, revoked, or amended at any time pursuant to the CPUC's written direction.

4.2 Upon any revocation or termination pursuant to the CPUC's a written direction ~~of the CPUC~~, the assets of the Trust shall be distributed by the Trustee as and when directed by the CPUC or the Committee in accordance with the CPUC's direction ~~of the CPUC~~. Until final distribution of the Trust assets, the Trustee shall continue to have all the powers provided under this Trust Agreement as are necessary and expedient for the orderly liquidation and distribution of the assets of the Trust.

ARTICLE FIVE

Powers and Duties of the Committee

5.1 Administrative Powers and Duties of the Committee. The Committee shall address and resolve any questions regarding receipt or collection of remittances by the CTF or payment of amounts by the CTF. In administering the CTF, ~~(The~~ Committee shall act exclusively in accordance with its Charter and for the benefit of the Beneficiaries, the set of which may change from time to time as directed by the CPUC. For example, ~~a~~ Actions of the Committee shall be taken by majority vote and shall be recorded in minutes, copies of which shall be provided to the CPUC and to the Trustee upon their ~~its~~ request. In performing their duties under this Trust Agreement, the members of the Committee shall at all times be subject to the CPUC's direction, control, and approval ~~of the CPUC~~. The CPUC shall have the power to conclusively decide any question involving the Trust.

ARTICLE SIX

Provisions Regarding Trustee

6.1 The CPUC shall approve the Trustee appointed by the Committee. The Trustee shall hold all assets of the Trust and receive all income of the Trust as directed by the Committee. The Trustee shall maintain or cause to be maintained the records of Trust activity. After the end of each month and each fiscal year of the Trust (as established by the Committee), the Trustee shall prepare reports as provided in Article Nine showing how the Trust funds are invested ~~property of the Trust is invested~~ and the receipts and disbursements of the Trust for the preceding period, and shall furnish copies of such reports ~~statements~~ to the Committee and the CPUC.

6.2 Resignation or Removal of Trustee. Subject to Paragraph 6.3, the Trustee may resign at any time upon the giving of one hundred and twenty (120) ~~sixty (60)~~ days written notice to the Committee. The Committee may remove the Trustee at any time upon the giving of sixty (60) days written notice to the Trustee.

6.3 Successor Trustee. Upon the resignation or removal of the Trustee, the Committee shall appoint a successor Trustee or Trustees, subject to CPUC approval. The resignation or removal shall become effective upon acceptance of the appointment by a successor Trustee unless otherwise agreed between the Committee and the Trustee. Any successor Trustee shall have the same rights, powers, and duties as it would have had as an original Trustee.

6.4 Own Acts and Omissions. All rights, powers, authority, immunity and discretion herein granted or conferred upon the original Trustee shall survive to and may be exercised or applied in the same manner and to the same extent by or for any successor Trustee that may at any time be acting hereunder. Each Trustee shall be responsible only for its own acts or omissions. A successor Trustee shall not be required to audit or investigate the acts or administration of any predecessor unless otherwise directed by the Committee or by the CPUC.

6.5 Successor to Corporate Business. Reference herein to the Trustee shall include any corporation or association that may become a successor Trustee or any successor corporation which may succeed to a corporate Trustee's business.

ARTICLE SEVEN

Trustee's Powers

7.1 General Powers. Subject to the investment policy described in Section 7.2, in administering the Trust, the Trustee shall have all of the powers and discretion conferred upon Trustees by California law.

7.2. Investment Policy. In accordance with its Charter, and subject to approval by the CPUC, the Committee, with the possible assistance of an appropriate financial consultant, shall determine from time to time an investment policy and method consistent with the objectives of the Fund, implement the investment policy for the fund as determined by the CPUC taking into consideration the Fund's short-term and long-term financial needs. The Committee shall advise the Trustee of this investment policy

and method, which shall be implemented by the Trustee in conformity with the Committee's instructions. ~~banking procedures that shall be disclosed to the Committee.~~

7.3 Standard of Care. In carrying out each of its responsibilities under this Trust Agreement, the Trustee shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use.

7.4. Limitation on Trustee's Power. The Trustee shall be subject to the control and direction of the Committee, but if any disagreement arises between the CPUC and the Committee concerning the Trust, the Trustee shall act in accordance with the CPUC's written direction ~~given by the CPUC~~.

ARTICLE EIGHT

Compensation of Trustee and Expenses

8.1 Compensation of Trustee. The Trustee and any agents it reasonably employs shall be entitled to reasonable compensation for services under this Trust Agreement and for any extraordinary services at a rate to be agreed upon from time to time between the Trustee and Committee.

8.2 Expenses. The Trustee shall be reimbursed for reasonable expenses incurred on 8.3 Limitations on Fees and Costs. The amount of fees and costs to be paid to or at the request of the Trustee for services under this Trust Agreement shall be limited to that fixed amount contained in a written ~~letter~~ agreement between the Trustee and the Committee.

8.4 Allocation of Expense to Principal or Income. The Trustee shall charge its compensation and expenses to the Trust's principal or income as agreed upon from time to time between the Trustee and the Committee.

ARTICLE NINE

Books, Records, and Reports, and Audits

9.1 Books and Records. The Trustee shall keep accurate books and records reflecting investments, receipts, and disbursements of the Trust. The books and records shall be open to inspection at all reasonable times by the CPUC, ~~and the Committee,~~ or by their designated representatives of the CPUC and/or the Committee.

9.2 Daily Reports. The Trustee shall submit daily receipt activity reports to the designated representative of the Committee.

9.3 Monthly Reports. Not more than ten (10) business days after the end of each month, the Trustee shall submit to the designated representative of the CPUC and to the designated representative of the Committee (for distribution to each Committee member) reports for such month setting forth the following information:

- (a) Monthly bank statements;
- (b) The amount of funds disbursed ~~Disbursement of funds to each carrier beneficiary;~~
- (c) Purchases, sales, redemptions, or exchanges of all securities and other financial instruments;
- (d) Receipt of all interest or other income on invested assets;
- (e) Other disbursements;
- (f) Asset list showing market values, cost and approximate annual income of all holdings;
- (g) Such other information as the Committee or the CPUC may require from time to time.

9.4 Annual Reports. ~~The Trustee shall provide, Within sixty (60) (10)-days~~ after the close of each fiscal year, the Trustee shall provide to the CPUC and the Committee detailed financial statements that show all of the Trust's revenues, disbursements to beneficiaries, administrative and other expenses, assets, and liabilities, an annual reconciliation statement summarizing Trust activity;

9.5. Annual Audit. ~~The Trustee shall disburse sufficient funds to pay for The~~ Committee shall arrange for an annual audit of the financial statements and transactions of the Trust and its distributions. The Committee shall contract with an independent auditor to carry out the annual audit. The scope of the annual audit shall

include: (a) whether amounts paid to Committee members for expense reimbursements and per diem were made in accordance with CPUC policies and supported with adequate documentation; (b) whether goods and services paid for with monies from the CTF were actually provided, and whether payments for goods and services were made in accordance with contractual terms and conditions; (c) on a triennial basis, examine whether the entities receiving monies from the CTF have full, complete, and valid support for their claims submitted to the Fund; and (d) The audit shall contain such other detail as may be requested by the CPUC or the Committee. The Trustee shall assist and cooperate in any reasonable manner to achieve the timely completion of the annual audit. The Committee shall provide the CPUC and the Trustee with copies of the annual audit report.

ARTICLE TEN

Amendment, Revocation and Termination

10.1 This Trust Agreement may be terminated, revoked or amended at any time pursuant to a written direction of the CPUC.

ARTICLE TEN ELEVEN

Miscellaneous

10.1 Accounting Method.

- (a) The Committee shall designate the Trust's fiscal year.
- (b) The accounting for annual reports shall use generally accepted accounting principles.

10.2 Request for Instructions. The Trustee may at any time seek written instructions from the Committee or the CPUC on any matter.

10.3. Indemnification. The Trust shall indemnify and hold harmless the members of the Committee and their successors, against all liabilities, demands, claims, actions, losses, taxes, and expenses (including reasonable attorney's fees) arising out of

the Committee members' acts or omissions in the administration of the Trust, except in the case of Committee member's willful misconduct, gross negligence, fraud, or illegal acts.

10.4 Diversion of Assets Prohibited. Except as may be required by order of the CPUC, the Committee is responsible for directing the Trustee in a manner so that no portion of the assets or income of the Trust shall be diverted to purposes other than to provide for the purposes described in Article 3.1, or for reasonable expenses of administering the Trust, and to provide CPUC authorized funds to the Beneficiaries of the Trust.

10.5 Applicable Law. All questions concerning the validity, interpretation, and administration of this Trust Agreement shall be governed by the laws of the State of California, regardless of the domicile of any Trustee or Beneficiary.

10.6 Severability Clause. If any provision of this Trust Agreement is invalid, that provision shall be disregarded, and the remainder of this Trust Agreement shall be construed as if the invalid provision had not been included.

10.7 Counterparts. This document may be executed in counterparts.

IN WITNESS WHEREOF, the Trustor and Trustee hereby execute this Agreement on
_____, 1998.

TRUSTOR:

The Members of the Administrative
Committee for the California Teleconnect Fund

Committee Member Richard A. Bilas, President

Committee Member P. Gregory Conlon,
Commissioner

Committee Member Jessie J. Knight, Jr.,
Commissioner

Committee Member Henry M. Duque,
Commissioner

Committee Member Josiah L. Neeper,
Commissioner

TRUSTEE:

By: _____

Its: _____

By: _____

Its: _____