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Decision 98-06-065 June 18, 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.

Rulemaking 95-01-020
(Filed January 24, 1995)

Investigation on the Commission's Own Motion
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Investigation 95-01-021
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INTERIM OPINION

This decision takes the following steps related to the governance and operations of the California High Cost Fund-A ("CHCF-A"), the California High Cost Fund-B ("CHCF-B"), and the California Teleconnect Fund ("CTF"). First, this decision adopts charters for the CHCF-A Administrative Committee, the CHCF-B Administrative Committee, and the CTF Administrative Committee ("the Committees").¹ Second, this decision identifies rules the Committees must adhere to in their role as advisory bodies to the Commission, including rules pertaining to expense reimbursement, procurement of services, indemnification of Committee members, conflicts of interest, and compliance with the Bagley-Keene Open Meeting Act. Third, this decision provides guidance to the Committees regarding the preparation and submittal of proposed budgets and annual reports to the Commission. Finally, this decision appoints the current members of the Interim Administrative Committee, all of whom are Commission staff, to serve as the members of the Committees until further notice.

Because the members appointed to the Committees by today's decision are Commission employees, the charters and rules adopted by this decision are tailored to fit Committees whose members are comprised entirely of Commission staff. Once persons who are not Commission employees are appointed to the Committees, we shall revise the charters and rules adopted herein, as necessary.²

¹ The adopted charters are contained in Attachments A, B, and C to this decision.

² Decision (D.) 97-01-020 stated that the voting members of the Committee would ultimately consist of persons who are not Commission employees. The rules governing Committee members who are not Commission employees may differ from the rules applicable to members who are Commission employees.

I. Background

The CHCF-A, CHCF-B, and CTF ("the ABC Funds") are key components in the Commission's strategy for providing universal telephone service to the people of California. The ABC Funds advance the Commission's goal of universal service by financing the provision of the following services: (1) affordable basic exchange service for customers of small local exchange carriers (LECs) with funds from the CHCF-A; (2) affordable basic exchange service for residential customers located in high-cost areas served by the five largest LECs with funds from the CHCF-B; and (3) the deployment of advanced telecommunications services to schools, libraries, and other designated organizations with funds from the CTF.³ The ABC Funds are each financed by their own Commission-determined surcharge levied on customers of intrastate telecommunications services.

In D.97-01-020, the Commission ordered the formation of two administrative committees to oversee the ABC Funds: (1) the CHCF Administrative Committee ("CHCF Committee") to oversee the CHCF-A and CHCF-B; and (2) the CTF Administrative Committee ("CTF Committee") to oversee the CTF.⁴ On February 24, 1997, the Executive Director approved a staff request to form just one interim committee comprised of Commission employees to oversee all three ABC Funds ("the Interim Committee") until permanent members could be appointed to the CHCF and CTF Committees.⁵ The Executive

³ The CHCF-A was established in D.86-06-115, while the CHCF-B and CTF were established in D.96-10-066.

⁴ D.97-01-020, mimeo., p. 5.

⁵ D.97-01-020 stated that the CHCF and CTF Committees should initially be comprised of Commission employees who would ultimately be replaced by persons representing consumers and various segments of the telecommunications industry.

Director appointed three staff members to serve on the Interim Committee on the same date.

In the remainder of this decision, we shall first address the Interim Committee's proposal to form two administrative committees to oversee the CHCF-A and CHCF-B instead of just one committee as was contemplated in D.97-01-020. Next, we shall identify and describe the rules governing the administrative committees overseeing the ABC Funds in their role as advisory bodies to the Commission. Finally, we shall adopt charters for the CHCF-A Administrative Committee ("the A-Charter"), the CHCF-B Administrative Committee ("the B-Charter"), and the CTF Committee ("the C-Charter"). The A-Charter adopted by this decision is based on the proposed charter submitted by the Interim Committee in a compliance filing on April 1, 1998.⁶ The B-Charter and the C-Charter adopted by this decision are based on proposed charters submitted by the Interim Committee in a motion filed on October 29, 1997.⁷ There was no opposition to the proposed charters.

II. Separate Administrative Committees for the CHCF-A and CHCF-B

In D.97-01-020, the Commission ordered the formation of the CHCF Committee to oversee both the CHCF-A and CHCF-B. However, in a motion filed on October 29, 1997, the Interim Committee proposed that the CHCF-A and CHCF-B each have a separate administrative committee. According to the Interim Committee, separate administrative committees are warranted due to the

⁶ In Resolution T-16092, issued on December 3, 1997, the Interim Committee was ordered to submit an amended A-Charter for the Commission's review and approval. The Interim Committee submitted the amended A-Charter in a compliance filing on April 1, 1998.

⁷ In D.97-01-020, the Interim Committee was ordered to develop and submit committee charters to the Commission for approval. The Interim Committee complied in a motion filed on October 29, 1997.

different tax-exempt status of each Fund. Currently, the CHCF-A has tax-exempt status,⁸ while a request for tax-exempt status for the CHCF-B is pending before the Internal Revenue Service (IRS).⁹ The Interim Committee is concerned that if the IRS rejects the pending request for tax-exempt status for the CHCF-B, the existing tax-exempt status for the CHCF-A may be jeopardized if the two Funds were linked by having the same administrative committee.¹⁰ There was no opposition to the Interim Committee's proposal to form separate administrative committees for the CHCF-A and CHCF-B.

We agree with the Interim Committee that it would be prudent for the CHCF-A and the CHCF-B to each be overseen by a separate administrative committee. Accordingly, we shall dissolve the CHCF Committee and replace it with the CHCF-A Administrative Committee ("the CHCF-A Committee") and the CHCF-B Administrative Committee ("the CHCF-B Committee"). Each of these Committees shall have its own charter. In addition, the two Committees shall have the same duties and responsibilities relative to their particular Funds as were given in D.97-01-020. The membership of each Committee shall initially consist of the existing members of the Interim Committee, all of whom are Commission staff. Ultimately, the membership of the two Committees shall be

⁸ The IRS granted tax-exempt status to CHCF-A on February 28, 1997.

⁹ D.98-01-023 authorized the Interim Committee to seek tax-exempt status for the CHCF-B.

¹⁰ Parties were given notice of the Interim Committee's reason for recommending separate administrative committees for the CHCF-A and CHCF-B in a ruling issued by assigned Administrative Law Judge Kenney on April 8, 1998. This same ruling provided parties an opportunity to submit comments and/or request hearings on the formation of separate administrative committees. There was no response to the ruling.

the same as the permanent membership for the CHCF Committee that was specified in D.97-01-020.¹¹

III. Duties and Responsibilities of the Committees

In D.97-01-020, the Commission specified the duties and responsibilities of the administrative committees overseeing the ABC Funds.¹² In D.98-01-023, the duties of the CHCF-B Committee and the CTF Committee were expanded to include the collection of interest on surcharge revenues that telecommunications carriers are late in remitting to the CHCF-B and CTF.¹³ Although the CHCF-A surcharge is currently set at zero percent, the CHCF-A Committee should likewise be responsible for collecting interest on surcharge revenues that carriers are late in remitting to the CHCF-A if and when the CHCF-A surcharge is reactivated.¹⁴

In general, the proposed Committee charters accurately reflect the Committees' duties as set forth in prior Commission decisions. However, the proposed charters include provisions which allow the Committees to make decisions affecting program policies and budgets. We shall delete these provisions since making these types of decisions is beyond the scope of the duties we delegated to the Committees in D.97-01-020. In place of these provisions, we shall add language throughout the Charters to clarify that (1) the Committees act in an advisory capacity to the Commission; (2) the Committees operate at all

¹¹ The CHCF-A Committee and the CHCF-B Committee may have different individuals serving as permanent members, but each committee should have the same groups represented on the committee as was specified for the CHCF Committee in D.97-01-020.

¹² D.97-01-020, mimeo., pp. 4-7.

¹³ D.98-01-023, mimeo., p. 7 and Ordering Paragraph No. 11.

¹⁴ The interest paid by carriers that are late in remitting the CHCF-A surcharge shall be the same as the interest paid by carriers that are late in remitting CHCF-B and CTF surcharges, i.e., a 10% annual rate applied from the date that the remittances are due.

times under the direction, control, and approval of the Commission; and (3) the Commission retains all policy and program decision-making authority.

Although we delete provisions from the proposed Charters which allow the Committees to make decisions affecting program policies and budgets, we would welcome proposals from the Committees on how the administration of their respective Funds can be made more efficient and effective. Any such proposals should be included in their annual reports to the Commission which are discussed later in this decision. Proposals made by the Committees in their annual reports should not be acted upon without our authorization. Such authorization, if any, will be forthcoming in our annual resolutions adopting Committee budgets discussed later in this decision.

IV. Per Diem and Expense Reimbursement

In previous decisions, we established rules to govern the payment of per diem and expense reimbursement to members of the California Board for Energy Efficiency (CBEE), the Low Income Governing Board (LIGB), the Payphone Service Providers Committee (PSPC), and the Universal Lifeline Telephone Service Marketing Board (ULTSMB).¹⁵ Consistent with these rules, Commission employees serving on the Committees shall not receive per diem or expense reimbursement from the ABC Funds. Commission employees may submit their claims for expense reimbursement associated with serving on the Committees to the Commission in accordance with the CPUC's procedures and policies.¹⁶

¹⁵ D.98-02-040, D.97-12-105, and D.97-12-104.

¹⁶ State employee claims for expense reimbursement are governed by California Government Code § 19820.

V. Contracting for Services

We expect the Committees to rely on Commission resources to provide the support necessary for the Committees to fulfill their duties and responsibilities. If the Committees cannot fulfill their duties with the support available from the Commission, the Committees should submit to the Executive Director a "letter request" for authorization to contract for the necessary support services. The request should identify the specific services needed and indicate that the needed services cannot be provided by the Commission. We will consider letter requests on a case-by-case basis, and then issue a decision granting or denying the request. If the request is approved, the Committees must follow State rules and procedures in procuring and contracting for the support. Any other applicable rules and conditions will be included in the decision granting the request.

The cost of authorized outside support services may be reimbursed with monies from the ABC Funds.¹⁷ To initiate a payment from a particular Fund, the Committee overseeing the Fund shall prepare a payment voucher that provides the custodian of Fund monies with sufficient information to make the payment.¹⁸ All vouchers must be signed by a majority of the Committee's members. The Committee shall transmit the voucher to the custodian who will then take the necessary steps to ensure that a check is issued to the payee designated on the voucher.¹⁹ The Committees should retain a copy of all their vouchers and related

¹⁷ D.97-01-020, mimeo., pp. 6-7, states that costs for administering the CHCF-B and CTF may be recovered from the CHCF-B and CTF surcharges. D.94-09-065, 56 CPUC 2d 117, at 266, states that costs for administering the CHCF-A may be recovered from the CHCF-A surcharge.

¹⁸ The voucher should identify the payee, the amount owed, the services rendered in return for the payment, and the contract under which the services were rendered.

¹⁹ Every three years the scope of the annual audits required by Section 4.1(k) of the Committees' Charters should include an examination of whether payments to contractors from the ABC Funds during the prior three years were made in accordance with contractual terms and conditions; and whether the contractual services paid for were actually provided.

information; and the custodian of monies for each Fund should keep a record of all payments made pursuant to the vouchers.

VI. Indemnification

Committee members who are Commission employees are compensated servants of the State of California within the meaning of Government Code § 810.2. Therefore, the State will indemnify them and provide them with representation for their acts and omissions occurring within the course and scope of the services they perform for the Committees, as provided in Government Code §§ 825-825.6 and 995-996.6.

VII. Disclosing Conflicts of Interest

Members of the Committees may have a financial interest in matters before the Committees. To ensure that such conflicts of interest are disclosed, we shall require Commission employees serving in the Committees to comply with the Political Reform Act, the regulations of the Fair Political Practices Commission (FPPC), the related provisions of the Government Code, the Commission's Conflict of Interest Code, and the Commission's Statement of Incompatible Activities. Consistent with Government Code § 18730(b)(7), statements of economic interests should be reported on forms prescribed by the FPPC. All Committee members shall complete and submit these statements in conformance with the requirements applicable to Commission employees.²⁰ In addition, for purposes of submitting statements of economic interests, all voting members of the Committees shall be defined as "designated employees" required to disclose the following "economic interests":

²⁰ Commission employees are required to submit annual reporting statements (Form 700) consistent with the designated reporting requirements (disclosure categories) for their

Footnote continued on next page

1. Any investment or business position in, or income from, any of the following:
 - A. Any entity or organization which is a recipient of monies from the Fund administered by the Committee or has requested monies from the Fund administered by the Committee.
 - B. A parent, subsidiary, or affiliate of an entity described in subsection 1.A.
2. Any investment or business position in, or income from, any of the following:
 - A. Any entity seeking to provide any product or service related to the Committee's function or that has plans to come before the Committee to seek funds from the Committee.
 - B. A parent, subsidiary, or affiliate of an entity described in subsection 2.A.

Any conflicts of interest that arise shall be dealt with on a case-by-case basis. If Committee members have questions or concerns regarding a particular conflict of interest, they should seek advice from the Commission's legal staff.

The conflict-of-interest rules adopted by this decision may be subject to change as conditions warrant. If the Committees or the Telecommunications Division believe a change in the conflict-of-interest rules or their application is warranted, they should first consult with the Legal Division and then advise the Commission by submitting a letter request to the Executive Director.²¹ If the letter request convinces us that the conflict-of-interest rules may need to be revised, we shall initiate the appropriate procedural steps (e.g., notice and an opportunity to be heard) to consider the proposed revision(s).

respective classification level and particular Division. The Committee members should continue to follow the annual reporting requirements specified for Commission employees.

²¹ Notice of letter requests recommending revisions to the conflict of interest rules adopted herein should appear in the Commission's Daily Calendar along with instructions on how to submit written comments to the Director of the Telecommunications Division within 30 days.

VII. Compliance with the Bagley-Keene Open Meeting Act

The Committees are "state bodies" as defined by Government Code § 11121.8. As state bodies, the Committees are subject to the Bagley-Keene Open Meeting Act set forth in Government Code §§ 11120, et seq. ("the Act"). The Act requires, among other things, that Committee meetings be open to the public, that notice of Committee meetings be mailed ten days in advance to any person who requests such notice in writing, and that the public notice include a description of the business to be transacted or discussed. We shall also require that public notice of Committee meetings be provided through the Commission's Daily Calendar.

Committee members should review the guidance we provided in D.97-09-117 regarding compliance with the Act.²² Among the issues addressed were teleconferencing, voting by proxy, public participation, and the distribution of public records. For additional guidance on compliance with the Act, Committee members should obtain from the Director of the Telecommunications Division a publication by the State Attorney General's Office regarding the Act, along with the 1997 and 1998 supplements to this publication. In addition, Committee members should review D.98-04-067, issued in R.94-04-031/ I.94-04-032, which initiated a process that may result in revisions to our rules governing meetings of Commission advisory bodies conducted via teleconferencing. Committee members shall comply with the teleconferencing rules prescribed in D.98-04-067 and any revised rules promulgated in that proceeding.

²² The guidance contained in D.97-09-117 was also adopted in D.97-12-105 and D.97-12-104.

IX. Budget and Program Expenditures

Decision 97-01-020 required the Committees to develop budgets for their administrative costs and to recommend adjustments to the surcharges, if necessary, to fund these costs.²³ To implement this requirement, each Committee should submit to the Executive Director on October 1st of each year a package containing the Committee's proposed budget and Fund surcharge for the following calendar year. Each Committee's package should also be provided to the Commissioners and the Director of the Telecommunications Division.

To help us better monitor and control the Committees, we believe each Committee's annual report (discussed later in this decision) should be submitted with its proposed budget. Notice of the proposed budget and annual report should appear in the Commission's Daily Calendar along with instructions on how to obtain these documents, and how to submit timely comments on these documents to the Director of the Telecommunications Division. We will then issue a resolution adopting Committee budgets and Fund surcharges in December of each year.²⁴ If we do not adopt budgets for the Committees by January 1st, then the Committees should act in accordance with their authorized budgets for the preceding year until the Commission issues a decision approving new budgets.

To further assist us in overseeing the Committees, each Committee shall prepare quarterly and annual financial statements. The financial statements should include the administrative and operational costs incurred by the Committee, as well as all revenues and disbursements from the Fund overseen by the Committee. The scope of the annual audit performed in accordance with

²³ D.97-01-020, mimeo., p. 7 and Appendix B, Ordering Paragraph 13.h.

Section 4.(k) of each Committee's charter should include the Committee's annual financial statements.²⁵ A copy of the audit should be provided to the Director of the Telecommunications Division and each Commissioner.

X. Annual Report of the Committees

To help us monitor Committee activities, we shall require each Committee to submit an annual report to the Commission by October 1st of each year. Each annual report shall contain the following information:

- ◆ Audited financial statements for the prior calendar year and unaudited quarterly financial statements through June 30th of the current year.
- ◆ An explanation of the variance between budgeted and actual disbursements from the Fund overseen by the Committee for the first six months of the current year.
- ◆ The amount of money received by each carrier from the Fund overseen by the Committee for the prior calendar year and through June 30th of the current year.
- ◆ A review of past and current program activities.
- ◆ A preview of activities and expenditures in the year ahead.

Each Committee's annual report should be signed by all of its members.²⁶

Any Committee member may include a statement in the annual report expressing his or her disagreement with any of the information contained in the report. A copy of the annual report should be provided to each Commissioner and the Director of the Telecommunications Division.

²⁴ The resolution adopting the Committees' annual budgets should be prepared by the Telecommunications Division.

²⁵ Costs incurred to contract with external, private-sector auditors should be included in each Committee's budget.

²⁶ The first annual report shall be due on October 1, 1999. However, the first annual report does not need to include audited financial statements for the prior calendar year.

XI. Modifications to the Proposed Committee Charters

We have reviewed the proposed Committee Charters and find these documents generally conform to our requirements for charters of Commission advisory bodies. For example, the proposed Charters state that the Committees shall act in an advisory capacity to the Commission, and that the Commission retains ultimate authority and control over the Committees, the Committees' members, and the Funds administered by the Committees. In addition, the proposed Charters accurately describe the purpose of each Fund and the duties of each Committee as set forth in Sections I and III of today's decision.

Although the proposed Charters conform to our general requirements, there are still several modifications that need to be made to each of the Charters. First, the proposed Charters should be revised to incorporate the rules that the Committees must adhere to in their role as advisory bodies to the Commission to the extent that such rules are not already reflected in the proposed Charters. These rules were identified and described previously in this decision. Second, the proposed Charters should be revised to remove provisions that apply to Committee members who are not Commission employees. The removal of these provisions is necessary since the Committees will consist exclusively of Commission employees until further notice. Third, the Charters should be revised to make them uniform with each other and, to the extent practical, with the charters we adopted in D.98-02-040 for the CBEE and LIGB. These revisions reflect our preference that Commission-approved charters use common, uniform provisions whenever possible.

The final modification to the proposed Charters is to change the signatories from the five Commissioners to the Committee members. We believe that signing charters is an administrative function that should be carried out by Committee members, not the Commissioners. In directing the Committee

members to sign the Charters, it is our understanding that the Commission retains sufficient control over the Committees to receive federal tax-exempt status for the ABC Funds. If the Committees have information that designating Committee members as the signatories on the Charters will not satisfy IRS requirements for tax-exempt status, the Committees should bring this issue to us for further consideration.

With the forgoing modifications, we shall approve the proposed Committee Charters. The approved Charters are contained in Attachments A, B, and C to this decision.

XII. Future Amendments to Committee Charters

The Charters adopted by this decision may occasionally need to be amended. When an amendment becomes necessary, the Committees should submit the amendment to the Commission for approval in the form of a letter request to the Executive Director with a copy to each Commissioner and the Director of the Telecommunications Division. Each letter request should describe the proposed amendment and explain the need for the amendment. The Committees should cause notice of their letter requests to appear in the Commission's Daily Calendar.²⁷

Proposed amendments that are ministerial in nature should be granted or denied by the Executive Director via a written response to the Committee(s).²⁸ If the proposed amendment is substantive in nature, the Director of the

²⁷ If the proposed amendment is substantive in nature, the notice in the Daily Calendar should provide instructions on how to submit written comments to the Director of the Telecommunications Division within 30 days. There is no need to solicit comments for ministerial amendments. Further, there is no need to post notice in Daily Calendar of typographical and other changes to the Charters that are clearly nonsubstantive in nature.

Telecommunications Division shall prepare for our consideration a resolution that grants or denies the proposed amendment. Any approved changes to the Committee Charters, whether ministerial or substantive, shall be executed by the Committees on behalf of the Commission.

XIII. Assembly Bill 2461

The State Legislature currently has pending before it Assembly Bill (AB) 2461, which, if enacted, would establish funds in the State Treasury for the purpose of receiving and disbursing CHCF-A, CHCF-B and CTF surcharge monies under the auspices of the State Controller. If AB 2461 is enacted, the Charters and rules adopted herein will have to be modified to reflect the requirements of this legislation.²⁹ For example, the Charters adopted by this decision reflect the direction given in D.96-10-066 and D.97-01-020 that trusts should be formed for the purpose of receiving, holding, and disbursing surcharge monies remitted by carriers to the ABC Funds.³⁰ The enactment of AB2461 would supercede the need to establish trusts as previously contemplated. The passage of AB 2461 would also affect the rules, procedures, and direction promulgated in this decision regarding the Committees' responsibilities pertaining to contracting for services, financial reporting, auditing, and other matters. Therefore, should AB 2461 become law, the Commission will provide

²⁸ The Executive Director should consult with the Legal Division, as necessary, when acting on ministerial amendments. The Executive Director shall have the discretion to direct the Committees to treat proposed ministerial changes as substantive changes.

²⁹ Among other things, AB 2461 creates separate administrative committees for the CHCF-A, CHCF-B, and CTF.

³⁰ Currently, only the CHCF-A has established a trust; no trusts have been formed for the CHCF-B and CTF.

guidance to the Committees on the appropriate procedures for implementing the legislation.³¹

XIV. Conclusion.

Within 45 days from the effective date of this decision, the Committees shall file at the Commission's Docket Office signed copies of the Charters attached to this decision.³² We intend to issue a subsequent decision in this proceeding to appoint permanent members to each of the Committees. Until then, the current members of the Interim Committee, all of whom are Commission employees, shall serve as the members of the CHCF-A Committee, CHCF-B Committee, and CTF-Committee. The Executive Director may replace any of the Commission employees serving on the three Committees by sending a written notice to the parties on the service list of this proceeding. Once persons who are not Commission employees are appointed to the Committees, we shall revise the charters and rules adopted today, as necessary.

Findings of Fact

1. The CHCF-A has federal tax-exempt status. A request for tax-exempt status for the CHCF-B is pending before the IRS.
2. If the IRS rejects the pending request for tax-exempt status for the CHCF-B, the existing tax-exempt status for the CHCF-A could be jeopardized if the Funds are linked by a single administrative committee for both Funds.
3. D.97-01-020 ordered the formation of one administrative committee to oversee both the CHCF-A and CHCF-B.

³¹ Until directed otherwise by the Commission, the Committees should continue to carry out all duties and responsibilities specified herein that have not been assumed by other State agencies or bodies as a result of the enactment of AB 2461.

³² The Charters submitted by the Committees should not contain the revision markings shown in the documents attached to this decision.

4. There was no opposition to the Interim Committee's proposal for the CHCF-A and CHCF-B to each have a separate administrative committee with a separate charter.

5. There was no opposition to the Interim Committee's proposed Charters for the CHCF-A Committee, CHCF-B Committee, and CTF-Committee.

6. Pursuant to D.98-01-023, the CHCF-B Committee and the CTF-Committee are responsible for the collection of interest on surcharge revenues that telecommunications carriers are late in remitting to the CHCF-B and CTF.

7. D.98-01-023 requires carriers that are late in remitting CHCF-B and CTF surcharge revenues to pay interest equal to a 10% annual rate applied from the date that the remittances are due.

8. Making policy and budget decisions is beyond the scope of the duties assigned to the Committees in D.97-01-020.

9. Rules governing per diem and expense reimbursement for members of the CBEE, LIGB, PSPC, and ULTSMB were adopted in D.98-02-040, D.97-12-105, and D.97-12-104.

10. The conflict of interest rules applicable to Commission employees are the Political Reform Act, the regulations of the FPPC, the related provisions of the Government Code, the Commission's Conflict of Interest Code, and the Commission's Statement of Incompatible Activities.

11. Government Code § 18730(b)(7) mandates that statements of economic interests be reported on forms prescribed by the FPPC.

12. The Committees are "state bodies" under Government Code § 11121.8.

13. As state bodies, the Committees are subject to the Bagley-Keene Open Meeting Act set forth in Government Code §§ 11120, et seq.

14. Decisions 98-04-067 and 97-09-117 provided guidance on several issues related to compliance with the Bagley-Keene Open Meeting Act.

15. The Committees are required by D.97-01-020 to submit proposed budgets for their administrative costs and to recommend adjustments to the existing surcharges, if necessary, to recover their administrative costs.

16. The Commission's ability to monitor and control the Committees would be enhanced if each Committee submitted an annual report to the Commission containing the information described in the body of this decision.

17. Section 4.1(k) of each Committee's Charter requires an annual audit of the Fund overseen by the Committee.

18. Signing charters is an administrative function.

19. The Charters adopted by this decision may occasionally need to be amended.

20. The Charters adopted by this decision are for the administrative convenience of the Commission. The Commission has complete control over the Committees, the Committees' members, and the Funds administered by the Committees.

21. Assembly Bill 2461, if enacted, would establish Funds in the State Treasury for the purpose of receiving and disbursing ABC Fund monies under the auspices of the State Controller.

22. The passage of AB 2461 would affect the rules, procedures, and direction promulgated in this decision regarding the Committees' responsibilities pertaining to contracting for services, financial reporting, auditing, and other matters.

Conclusions of Law

1. The CHCF-A and CHCF-B should have separate administrative committees with separate charters.

2. The CHCF-A Committee and the CHCF-B Committee should have the same duties and responsibilities relative to their particular Funds as were given

in D.97-01-020. The permanent membership of these two Committees should be the same as was specified in D.97-01-020 for the CHCF Administrative Committee.

3. The CHCF-A Committee should collect interest on CHCF-A surcharge revenues due after the effective date of this decision that carriers are late in remitting to the CHCF-A. The amount of interest collected should be equal to a 10% annual rate applied from the date that the remittances are due.

4. The Committees should not make decisions affecting program policies and budgets associated with the ABC Funds.

5. Pursuant to the rules established in D.98-02-040, D.97-12-105, and D.97-12-104, Commission employees serving in the Committees should not receive per diem or expense reimbursement from program funds.

6. Committee members should receive expense reimbursement in accordance with California Government Code § 19820 and the rules established in D.98-02-040, D.97-12-105, and D.97-12-104.

7. The scope of the annual audits performed in accordance with Section 4.1(k) of each Committee's Charter should include an examination of: (a) the Committee's annual financial statements; (b) whether payments to contractors from the ABC Funds were made in accordance with contractual terms and conditions; and (c) whether the contractual services paid for were actually provided. A copy of each audit should be provided to the Commissioners and the Director of the Telecommunications Division.

8. The Committees should rely on Commission staff to provide the support necessary for the Committees to fulfill their duties and responsibilities.

9. The Committees should submit a written request for authorization to contract for support services that cannot be provided by the Commission. Any

such request should indicate that the needed support is unavailable from the Commission.

10. The Committees should follow State contracting and procurement rules and procedures when obtaining external (i.e., non-Commission) support services.

11. The Committees should comply with the Bagley-Keene Open Meeting Act set forth in Government Code §§ 11120, et seq.

12. To initiate a payment by the custodian of Fund monies, the Committee overseeing that Fund should provide the custodian with a payment voucher. All payment vouchers should be signed by a majority of the Committee's members.

13. Each Committee should retain a copy of all of its payment vouchers and related information; and each Fund custodian should keep a record of all payments made pursuant to the vouchers.

14. Committee members who are Commission employees are compensated servants of the State within the meaning of Government Code § 810.2. The State should indemnify them, and provide them with representation for their acts done within the course and scope of the services they perform for the Committees pursuant to Government Code §§ 825-825.6 and 995-996.6.

15. Commission employees serving as members of the Committees should comply with (a) the Political Reform Act, (b) the regulations of the FPPC, (c) the related provisions of the Government Code, (d) the Commission's Conflict of Interest Code, and (e) the Commission's Statement of Incompatible Activities.

16. To fulfill the mandate in Government Code § 18730(b)(7) that statements of economic interests be reported on forms prescribed by the FPPC, Committee members should complete and submit these statements consistent with their annual reporting requirements as Commission employees. Committee members should also comply with the additional conflict of interest reporting requirements set forth in this decision. For purposes of applying these rules, "designated

employees" should be defined as all voting members of the Committees; and Committee members should use the "disclosure categories" described in the body of this decision.

17. The Telecommunications Division, in consultation with the Legal Division, should advise the Commission if changes are needed to the conflict of interest rules applicable to the Committees.

18. Beginning on October 1, 1999, and on October 1 of every year thereafter, each Committee should submit to the Commissioners, the Executive Director, and the Director of the Telecommunications Division a package that contains: (a) the Committee's proposed budget for the following calendar year; (b) any adjustment to the surcharge overseen by the Committee; and (c) the Committee's annual report. Beginning on October 1, 2000, the package should also include audited financial statements for the prior calendar year.

19. Each Committee should provide notice in the Commission's Daily Calendar of the documents and proposed adjustments described in Conclusions of Law No. 18. The notice should provide information on: (a) how to obtain any of the documents submitted with the package, and (b) how to submit written comments on the contents of the package to the Director of the Telecommunications Division within 30 days.

20. In December of each year, the Telecommunications Division should prepare for the Commission's consideration one or more resolutions that: (a) authorizes each Committee's budget for the following calendar year, and (b) adjusts ABC Fund surcharges, as necessary.

21. Each Committee should prepare quarterly and annual financial statements to help the Commission monitor and control the Committee and the Fund overseen by the Committee.

22. Each Committee should submit an annual report containing the information specified in the body of this decision. Each Committee's annual report should be signed by all of its members.

23. The charters of Commission-approved advisory bodies should use common, uniform provisions whenever feasible.

24. The proposed Committee Charters should be modified to: (a) remove provisions applicable to Committee members who are not Commission employees; (b) make the Charters uniform with each other and, to the extent practical, with the charters approved for the CBEE and LIGB in D.98-02-040; (c) incorporate the rules that the Committees must adhere to in their role as advisory bodies to the Commission; (d) change the signatories on the Charters from the five Commissioners to the Committee members; and (e) incorporate the minor and/or nonsubstantive modifications shown in Attachments, A, B, and C of this decision.

25. The Executive Director should have authority to approve ministerial changes to the Committee Charters. The Commission should approve all substantive changes to the Committee Charters.

26. Amendments to the Charters that have been approved by the Executive Director or the Commission should be executed by the appropriate Committee on behalf of the Commission.

27. The Committee should submit signed copies of the Charters approved herein.

28. Pending the appointment of permanent Committee members, the membership of the Committees should consist of the existing members of the Interim Committee.

29. The Executive Director should have authority to remove and replace Commission employees serving in the Committees by sending written notice to the parties on the service list of this proceeding.

30. If Assembly Bill 2461 is enacted, the Committees should continue to carry out the duties and responsibilities specified in this decision to the extent that these duties and responsibilities have not assumed by other State agencies or bodies.

31. The following order should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The California High Cost Fund Administrative Committee (CHCF Committee) created by Decision (D.) 97-01-020 is dissolved.
2. The California High Cost Fund-A (CHCF-A) Administrative Committee shall be formed to oversee the CHCF-A. The CHCF-A Administrative Committee (CHCF-A Committee) shall operate at all times under the direction and control of the California Public Utilities Commission (Commission).
3. The California High Cost Fund-B (CHCF-B) Administrative Committee shall be formed to oversee the CHCF-B. The CHCF-B Administrative Committee (CHCF-B Committee) shall operate at all times under the direction and control of the Commission.
4. The duties and responsibilities of the CHCF Committee relative to the CHCF-A as set forth in D.97-01-020 shall be assumed by the CHCF-A Committee.
5. The duties and responsibilities of the CHCF Committee relative to the CHCF-B as set forth in D.97-01-020 shall be assumed by the CHCF-B Committee.
6. Pending the appointment of permanent members, the existing members of the Interim Committee shall serve as the members of the CHCF-A Committee,

the CHCF-B Committee, and the California Teleconnect Fund (CTF) Administrative Committee (CTF-Committee).

7. The Executive Director may remove and replace Commission employees serving as a member of the CHCF-A Committee, the CHCF-B Committee, and/or the CTF-Committee (the Committees) by sending a written notice to the service list of this proceeding.

8. The Charters for the CHCF-A Committee, the CHCF-B Committee, and the CTF-Committee, as set forth in Attachments A, B, and C to this order, are adopted.

9. Within 45 days from the effective date of this order, each Committee shall file at the Docket Office a signed copy of its Charter adopted by this order.

10. Telecommunications carriers that are late in remitting CHCF-A surcharge revenues due after the effective date of this decision shall pay interest on the overdue amounts equal to a 10% annual rate applied from the date that the remittances are due.

11. The CHCF-A Committee shall be responsible for collecting interest from carriers that are late in remitting CHCF-A surcharge revenues.

12. The Committees are advisory bodies to the Commission and shall not make decisions affecting program policies and budgets. Such decisions shall be made exclusively by the Commission.

13. Commission staff serving on the Committee shall receive expense reimbursement in accordance with the rules set forth in the body of this order.

14. The Committees may submit to the Executive Director written requests for authorization to contract for services that cannot be provided by the Commission. Any such request shall indicate that the needed service is unavailable from the Commission.

15. The Committees shall follow State rules and procedures when procuring and contracting for external support services approved by the Commission.

16. To initiate a payment by the custodian of Fund monies, the Committee overseeing that Fund shall provide the custodian with a payment voucher that contains sufficient information for the custodian to make the payment. All payment vouchers shall be signed by a majority of the Committee's members.

17. Each Committee shall retain a copy of all of its payment vouchers and related information; and the custodian of monies for each Fund shall keep a record of all payments made pursuant to the vouchers.

18. Members of the Committees shall be indemnified and provided with representation for their acts done within the course and scope of the services they perform for the Committees pursuant to Government Code §§ 810.2, 825-825.6 and 995-996.6.

19. The Committee members shall comply with the (a) Political Reform Act, (b) the regulations of the Fair Political Practices Commission, (c) the related provisions of the Government Code, (d) the Commission's Conflict of interest Code, and (e) the Commission's Statement of Incompatible Activities.

20. Committee members shall report statements of economic interests consistent with the annual reporting requirements applicable to Commission employees. Committee members shall also comply with the additional conflict of interest reporting requirements set forth in the body of this decision. For purposes of applying these rules, "designated employees" shall be defined as all voting members of the Committees; and Committee members should use the "disclosure categories" described in the body of this decision.

21. The Committees or the Telecommunications Division, after consulting with the Legal Division, shall advise the Commission if the conflict of interest rules applicable to the Committees need to be revised.

22. The Committees shall comply with the Bagley-Keene Open Meeting Act set forth in Government Code, §§11120, et seq.

23. Each Committee shall submit an annual report to the Commission that includes the information specified in the body of this decision. The annual report shall be signed by all of the Committee's members. Each Committee shall provide a copy of its annual report to each Commissioner and the Director of the Telecommunications Division.

24. Beginning on October 1, 1999, and on October 1 of every year thereafter, each Committee shall submit to the Commissioners, the Executive Director, and the Director of the Telecommunications Division a package that contains: (a) the Committee's proposed budget for the following calendar year; (b) any adjustment to the surcharge overseen by the Committee; and (c) the Committee's annual report. Beginning on October 1, 2000, the package shall also include audited financial statements for the prior calendar year.

25. Each Committee shall cause notice of its package described in Ordering Paragraph No. 24 to appear in the Commissions Daily Calendar along with instructions on: (a) how to obtain any of the documents submitted with the packages, and (b) how to submit written comments on the contents of the packages to the Director of the Telecommunications Division by no later than 30 days from the date the notice appears in the Daily Calendar.

26. Beginning in December 1999 and for every December thereafter, the Director of the Telecommunications Division shall prepare a resolution for the Commission consideration that: (a) authorizes each Committee's budget for the following calendar year, and (b) adjusts the CHCF-A, CHCF-B, and/or CTF surcharges, as necessary, to fund each Committee's budget.

27. Each Committee shall prepare quarterly and annual financial statements. The financial statements shall include the administrative and operational costs

incurred by the Committee, as well as all revenues, disbursements, assets, and liabilities associated with the Fund overseen by the Committee.

28. The scope of the annual audits of the CHCF-A, CHCF-B, and the CTF performed in accordance with Section 4.1(k) of each Committee's Charter shall include an examination of: (a) the annual financial statements of each Committee; (b) whether payments to Committee contractors were made in accordance with contractual terms and conditions; and (c) whether the contractual services paid for were actually provided. A copy of the audits shall be provided to the Commissioners and the Director of the Telecommunications Division.

29. The Committees shall seek approval for ministerial and substantive amendments to the Charters adopted herein by submitting letter requests to the Executive Director. Each request shall describe the proposed amendment and explain the need for the amendment. The Committees shall provide a copy of their letter requests to each Commissioner and the Director of the Telecommunications Division.

30. The Committees shall cause notice of proposed amendments to their Charters to appear in the Commission's Daily Calendar. In the case of substantive amendments, the notice shall also provide instructions on how to submit written comments to the Director of the Commission's Telecommunications Division within 30 days.

31. The Executive Director may approve ministerial amendments to the Charters adopted by this order. In the case of proposed substantive amendments, the Director of the Telecommunications Division shall prepare for the Commission's consideration a resolution on whether to adopt the substantive amendment(s).

32. All ministerial and substantive amendments to the Charters which have been approved by the Executive Director or the Commission, as appropriate, shall be executed by the Committees on behalf of the Commission.

33. If Assembly Bill (AB) 2461 is enacted, the Committees shall continue to carry out the duties and responsibilities specified in this decision to the extent that these duties and responsibilities have not assumed by other State agencies as the result of the enactment of AB 2461.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

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

R.95-01-020, I.95-01-021 ALJ/TIM/jva

Attachment A

Charter for the California High Cost Fund-A
Administrative Committee

CHARTER OF THE CALIFORNIA HIGH COST FUND-A
ADMINISTRATIVE COMMITTEE¹

ARTICLE ONE

NAME

- 1.1. Name. The name of the Committee shall be the CHCF-A Administrative Committee ("the Committee").

ARTICLE TWO

PURPOSE OF COMMITTEE

- 2.1. Purpose of Committee. The California Public Utilities Commission ("CPUC") in 1985 issued Decision (D.) No. 85-06-115 which established ordering the creation of the California High Cost Fund-A ("the CHCF-A") as the a means for of funding the provision of affordable a fair basic exchange service for rate to benefit customers of small independent telephone companies serving rural and small metropolitan areas ~~that concur with statewide average toll, private line and access rates.~~ The CHCF-A is funded by a surcharge, as determined by the CPUC, on end users' bills for intrastate telecommunications services. Pursuant to D.94-09-065, D.96-10-066, and D.97-01-020, the purpose of the Committee is to serve as a CPUC advisory body with the responsibility for implementing and administering a program to receive, invest, account for, and disburse the surcharge monies remitted to the CHCF-A. ~~In 1994, the CPUC issued D.94-08-065 altering the mechanism by which the CHCF would take place by creating a surcharge on the end users of service provided by certificated telecommunications corporations, beginning as of January 1, 1995. In that same decision, the CPUC has ordered the certificated telecommunications corporations to collect the surcharges from their customers and has ordered Pacific Bell to serve as administrative agent to implement the appropriate mechanism to receive, invest, account for and disburse~~

¹ Additions to the Administrative Committee's proposed charter are indicated by double underline. Deletions are indicated by strike-outs.

~~the surcharges paid over to the CHCF by the certificated telecommunications companies. As agent, Pacific Bell has established the CHCF Trust Administrative Committee composed of current employees of Pacific Bell and its parent company, Pacific Telesis, whose purpose is to fulfill and oversee the obligations of the CHCF under CPUC Decision No. 94-09-065. This includes the Committee's functions in connection with the California High Cost Fund Trust ("the CHCF Trust) which it will establish in performance of its duties under California Public Utilities Code 739.3 and CPUC Decision No. 94-09-065. By Decision 96-10-066, as amended, the CPUC provided for certain changes in membership and responsibility of the Committee.~~

ARTICLE THREE

MEMBERSHIP

- 3.1. Members. ~~The interim Administrative Committee shall consist of three CPUC staff members appointed by the Executive Director of the CPUC ("the Executive Director") plus one non-voting liaison appointed by the Director of the Commission's Telecommunications Division. The permanent Committee shall be composed of up to six (6) members. The composition of the Committee's membership may be altered by an order of the CPUC, drawn from different classes of the telecommunications industry or as otherwise determined by the CPUC.~~
- 3.2. Selection. Voting Members shall be appointed by the Executive Director.
- 3.3. Term of Appointment. A member shall hold office until a successor has been ~~elected~~ appointed and has assumed office or until such member has been removed in accordance with Paragraph 3.4 or has resigned in accordance with Paragraph 3.5. If, for any reason, a member ceases to be an employee or officer of the respective class upon which his or her membership is based, the member's appointment will terminate as of the date the member ceases to be an employee or officer.

- 3.4. Removal. Any member may be removed at any time by the Executive Director of or the CPUC. Voting members who are CPUC employees shall serve until replaced by the Executive Director. The non-voting liaison who is a CPUC employee shall serve until replaced by the Director of the Telecommunications Division.
- 3.5. Resignation. Any member may resign upon giving thirty (30) days written notice to the then acting Chairperson of the Committee. The member's appointment shall terminate upon the expiration of the thirty (30) day notification period.
- ~~3.6. Vacancies. If a seat is vacated, the Committee shall initiate a search for a person who is currently a member of the class, according to Paragraph 3.1, from which the vacancy occurs. Appointment of the person to fill the vacancy will be made by the Executive Director of the CPUC. If the Committee is unable to identify a suitable candidate to fill the vacancy for any reason, the Executive Director of the CPUC shall appoint a member of the class from which the vacancy occurs.~~
- 3.67. Notification. Any changes in the membership of the Committee shall be communicated by the Committee in writing to the CPUC ~~and the Trustee of the financial institution(s) or other custodian(s) selected to hold and disburse the monies of the CHCF-A Trust.~~
- 3.78. Indemnification. Members of the Committee who are ~~not members of the CPUC staff are uncompensated employees servants of the State CPUC~~ within the meaning of Government Code Section 810.2 ~~of the Government Code~~. Accordingly, the State will indemnify them as it indemnifies its compensated employees, and will provide such persons and will provide them legal representation for their acts or omissions occurring within the course and scope of the services they perform for the Committee, as provided in it indemnifies and provides representation for its compensated employees pursuant to Government Code Sections 825 et seq. and Sections 995 et seq. ~~The Committee may, in addition, use CHCF-A funds to purchase liability insurance for indemnification and legal representation of the Trust, the Committee, the Committee members,~~

~~and the Committee employees for each person's acts or omissions occurring within the course and scope of services they perform for the Committee, to the extent that such activities are held not to be indemnified by the State and/or defense is not provided by the State pursuant to Government Code Sections 810.2, 825 et seq. and/or 995 et seq.~~

- 3.89. Expenses and Per Diem. ~~Receipt of both expense reimbursement and per diem for members of the Committee are subject to determination by the CPUC. Committee members who are Employees CPUC employees of state governmental agencies are not entitled to per diem or expense reimbursement from the CHCF-A trust.~~

ARTICLE FOUR

DUTIES AND RESPONSIBILITIES

- 4.1. Duties. The Committee shall have the following duties and responsibilities.

While performing these duties and responsibilities, the Committee members are at all times subject to the direction, control, and approval of the CPUC. The CPUC has all policy and program decision making authority. The Committee shall act in an advisory capacity to the CPUC.

- (a) With respect to the receipt of surcharges for the CHCF-A: from certificated telecommunication companies: (1) maintain records, or cause records to be maintained, on a monthly basis, of the amount of surcharges transmitted by all certificated telecommunications carriers companies; (2) determine interest on delinquent amounts owed by carriers in accordance with CPUC policy and direction, and notify delinquent carriers of the amount of interest so owed; (3) notify the CPUC of any carrier certificated telecommunication company which fails to remit past due surcharge amounts and/or interest on past due amounts. is delinquent. ~~All other duties in connection with the receipt of surcharges are the responsibility of the CPUC.~~
- (b) With respect to disbursement of monies from the the payment of the CHCF-A: claims submitted by local exchange telephone companies: (1) review pay, or cause to be paid, company claims for CHCF-A monies submitted by telecommunications carriers in accordance with procedures authorized by the CPUC; (2) pay, or cause to be paid, claims by

telecommunications carriers which are approved in accordance with procedures authorized by the CPUC; (32) approve administrative expenses of the Committee and provide written instructions to direct the custodian of Trustee of the CHCF-A Fund monies Trust in writing to pay such expenses; (43) maintain, or cause to be maintained, records of all payments and disbursements made from the CHCF-A; and (5) provide, or cause to be provided, monthly receipts and expenditures reports to the CPUC. All other duties in connection with the approval and payment of claims are the responsibility of the CPUC.

- (c) To the extent not performed by other State agencies or bodies, implement Determine an investment policy for the assets of the CHCF-A Trust, taking into account the CHCF-A Trust's Fund's short-term and long-term financial needs and review the investment performance of the CHCF-A Trust.
- (d) Recommend surcharge rate changes to the CPUC.
- (e) Investigate and evaluate ~~policy and~~ operational issues pertaining to the administration of the CHCF-A Trust.
- (f) Initiate recommendations to the CPUC on ways and means to make for changes in the operations and administration of the CHCF-A more effective and efficient.
- ~~(g) Make decisions with respect to program changes that do not have significant policy or budgetary implications unless the majority of the Committee decides to refer such proposed changes to the CPUC for decision. The Committee shall maintain a record of any program changes that it initiates, and it shall notify the CPUC of such changes.~~
- (g) Perform the functions set forth in the CHCF-A Trust.
- (h) ~~Hire or contract~~ If approved by the Commission, procure services from with persons or firms to provide the support necessary to enable the Committee to adequately fulfill its duties and responsibilities in accordance with the rules, procedures, and record keeping requirements prescribed by the Commission. -
- (i) Prepare and submit to the CPUC an annual budget for the Committee; ~~during~~ During the time that the CPUC is considering approval of the proposed budget, the Committee shall act in accordance with its existing budget as though it had been extended for another year. Prepare and submit supplemental budget requests to the CPUC if such requests are necessary to adequately fulfill the duties of the Committee.
- (j) To the extent not performed by other State agencies or bodies, prepare detailed quarterly and annual financial statements. The financial statements shall include the costs incurred by the Committee to administer the CHCF-A, as well as the revenues and disbursements from the CHCF-A.

- (k) To the extent not performed by other State agencies or bodies, obtain an annual financial audit and an administrative audit at least triennially of the CHCF-A. The aforementioned audits may be performed by State auditors and/or a firm of independent certified public accountants. The scope of the annual audit shall include an examination of (i) the annual financial statements and (ii) such other matters determined by the CPUC and/or the Committee. The Committee shall submit a copy of the annual audit report and the triennial administrative audit report to the Commissioners, the Executive Director, and the Director of the Telecommunications Division.
- ~~(l) Obtain an annual audit of the CHCF Trust by a firm of independent certified public accountants.~~
- (l) Maintain up-to-date electronic and paper copies of the Committee's Charter and the CHCF-A trust agreement(s).
- (m) File an annual report with the CPUC with such content as specified by the CPUC.
- (n) Perform such other duties as may from time to time be imposed on it by the CPUC in connection with the administration of the CHCF-A Trust.

4.2. Conflict of Interest Rules. The Committee shall comply with the Political Reform Act, the regulations of the Fair Political Practices Commission, the related provisions of the Government Code, the CPUC's Conflict of Interest Code, and the CPUC's Statement of Incompatible Activities.

- (a) Committee members shall report statements of economic interests consistent with the obligations of CPUC employees.

ARTICLE FIVE

MEETINGS & RECORDS

5.1. General. The Committee shall act only in the course of a duly noticed meeting. The Committee shall hold meetings at least quarterly. Notification of the date, place, and time of each meeting shall be given to each member and shall be published as required by the Bagley-Keene Open Meeting Act (Gov. Code § 11125(a)) and in the CPUC's Daily Calendar at least ten (10) days in advance of the meeting. Notice will include the name, address, and telephone number of a person who can provide additional information prior to the meeting, as well as a brief, general description of the business to be transacted by the Committee. No

item will be added to the agenda after notice is published. The notice will highlight important pending decisions, including those to be sent to the CPUC for approval.

- 5.2. Open Meetings. Meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act in Government Code §§ 11120 et seq. A copy of that Act shall be given to every existing and new member of the Committee.
- 5.3. Quorum and Teleconferencing. A majority of the members of the Committee in office shall constitute a quorum for the transaction of business. The members may be present in person or by conference telephone, to the extent consistent with state law regarding open meetings, so long as the place of the meeting is open to attendance by the public, and so long as the following requirements are met in way that is consistent with Government Code § 11123:-
- (a) All meetings of the Committee shall be open to the public and all persons shall be permitted to attend any meeting by the Committee except as otherwise provided by Part 1, Chapter 1, Article 9 of the Government Code.
 - (b) Nothing in Part 1, Chapter 1, Article 9 of the Government Code shall be construed to prohibit the Committee from holding an open or closed meeting by teleconferencing if the convening at one location of a quorum of the Committee is difficult or impossible, subject to all of the following:
 - (A) The teleconferencing meeting shall comply with all requirements of Part 1, Chapter 1, Article 9 of the Government Code applicable to other meetings.
 - (B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.
 - (C) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.
 - (D) All votes taken during a teleconferenced meeting shall be by rollcall.
 - (E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Government Code § 11125.5.
 - (F) At least one member of the state body shall be present at the location specified in the notice of meeting.

5.4. Committee Decisions. Each voting member present shall have one vote.

Decisions shall be made by majority vote of those voting members present as long as a quorum is present at the time of the vote.

5.54. No Proxies. Only individuals duly appointed as members by the Executive Director or the CPUC, as specified herein, may serve as Committee members of the Committee. No alternate, substitute, or proxy representation of Committee members may occur.

5.65. Records. ~~Actions of the Committee shall be recorded in minutes, copies of which shall be provided to the CPUC and to any interested person upon request.~~ The Committee will record and prepare written minutes of Committee meetings. A tape recording of the meetings may be made. Minutes of a Committee meeting shall be submitted at the next Committee meeting for review and approval. Written minutes will (a) identify the date, time, and place of the meeting, (b) identify the Committee members in attendance, and (c) contain a summary of Committee actions and consensus agreements. Copies of minutes shall be provided to the CPUC or any interested party upon request. The Committee will place copies of all documents distributed at the meeting with the official record of the Committee. The Committee will maintain records of all decisions made by the Committee, and all contracts entered into by the Committee.

5.7. Public Participation. The Committee will provide an opportunity for members of the public to address the Committee directly on each agenda item before or during the Committee's discussion or consideration of the item. The Committee will provide a sign-up sheet for members of the public who wish to address the Committee. Copies of the Committee's public documents that are subject to the Public Records Act may be requested from the Committee. The sign-up sheet will be available prior to the commencement of the public meeting and will provide space for the name of the member of the public wishing to address the Committee, whom the individual represents, and the agenda item to be addressed. The Committee shall make its best efforts to recognize the public

members during the appropriate comment periods at each meeting, consistent with the Committee's obligation to conduct business in an orderly manner.

ARTICLE SIX

OFFICERS

- 6.1. Two Officers. The Committee shall have two officers, a Chairperson and a Vice-Chairperson, both of whom shall be elected by the members. The officers shall be elected to serve a term of one year, and they may be re-elected. An officer shall continue to hold office until a successor has been elected and assumed office. However, if an officer ceases employment as described in Paragraph 3.3, the officer's appointment shall terminate upon the date that the officer ceases employment.
- 6.2. Duties. The Chairperson shall be the executive officer of the Committee and shall have the general supervision and direction of the affairs of the Committee. The Chairperson shall preside at all meetings of the Committee. In the absence of the Chairperson, the Vice-Chairperson shall perform the duties of that office. ~~If the Chairperson and Vice-Chairperson are unavailable for a meeting where a quorum nevertheless exists, the Chairperson may appoint a temporary Chairperson for that meeting.~~ The officers shall perform such other duties as from time to time may be prescribed by the Committee.

ARTICLE SEVEN

EFFECTIVE DATE and AMENDMENTS

- 7.1. Effective Date. This Charter shall become effective on the date it is approved by the Committee.

7.2. Amendments. This Charter may be amended by vote of the majority of the members of the Committee, and said amendment shall be submitted to the CPUC for approval. No amendment shall be effective unless and until the amendment has been approved by the CPUC. The CPUC shall be notified immediately when an amendment is made to the Charter by the Committee and will receive a copy of such amendment. This Charter is subject to amendment, termination or revocation at any time by order of the CPUC.

ARTICLE EIGHT

LIMITATION ON POWER AND AUTHORITY

- 8.1. Advisory Capacity. Under the direction, control, and approval of the CPUC, the Committee shall have the power to carry out its duties and responsibilities as specified in Article Four of this Charter. The Committee acts in a purely advisory capacity and has no decision making authority over policy or program issues.
- 8.2. Authority over Utilities. While the Committee shall have the power and authority to carry out the foregoing duties, it shall not have the authority to direct utilities to act or refrain from acting. Such authority shall remain solely with the CPUC.
- 8.3. CPUC Review and Approval. The members of the Committee in the performance of their duties and in the actions taken by the Committee shall at all times be subject to the direction, control and approval of the CPUC. The circumstances under which the Committee shall seek CPUC review and approval before moving forward with its duties shall include the following:
- (a) Approval of official Committee documents (e.g., charter, bylaws, and trust agreements) and amendments thereto.
 - (b) Approval of Committee operating budgets.
 - (c) Approval of RFPs and contracts related to the procurement of services associated with the operation and administration of the CHCF-A.

This Charter is executed on _____, 1998.

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

(END OF ATTACHMENT A)

R.95-01-020, I.95-01-021 ALJ/TIM/jva

Attachment B

Charter for the California High Cost Fund-B
Administrative Committee

CHARTER OF THE CALIFORNIA HIGH COST FUND-B
ADMINISTRATIVE COMMITTEE¹

ARTICLE ONE

NAME

- 1.1. Name. The name of the Committee shall be the California High Cost Fund-B Administrative Committee ("the Committee").

ARTICLE TWO

PURPOSE OF COMMITTEE

- 2.1. Purpose of Committee. The California Public Utilities Commission ("CPUC") in 1996 issued Decision No. 96-10-066, as amended, which established ordering the creation of the California High Cost Fund-B ("the CHCF-B") for the purpose as a means of subsidizing carriers who provide service in high cost areas, as determined by the CPUC. The CHCF-B is funded by a surcharge, as determined by the CPUC, on the end user's users' bills for intrastate telecommunications services beginning as of February 1, 1997. Pursuant to D.97-01-020, the purpose of the Committee is to serve as a CPUC advisory body with the responsibility for implementing and administering a ~~The CPUC has ordered providers to collect the surcharges from their customers and has ordered the Committee governed by this instrument to serve as administrative agent to implement the appropriate mechanism program to receive, invest, account for, and disburse the surcharges remitted paid over to the CHCF-B. The interim Administrative Committee, pursuant to the appointment of the Executive Director of the CPUC, as of the date of execution of this Charter, consists of the following members: Michael C. Amato, Rufus G. Thayer, Jr. and David M. Shantz. The purpose of the interim Committee is (1) to develop the charter consistent with the decisions by the CPUC and other documents necessary to expeditiously form a Trust for the~~

¹ Additions to the Administrative Committee's proposed charter are indicated by double underline. Deletions are indicated by strike-outs.

~~CHCF-B; (2) to secure the services of a qualified financial institution or institutions to handle the deposit and disbursement of the monies associated with the CHCF-B and to enter into agreements with such financial institution or institutions; (3) to establish the procedures for administration of the Trust; (4) to administer or cause to be administered the day-to-day operation of the Trust; until such time as the permanent Committee is appointed, and qualified persons or entities can be hired to take over these administrative tasks; and (5) to authorize the financial institution or institutions to disburse the monies. The interim Committee shall work with the permanent Committee to develop a smooth transition to administer the CHCF-B on a day-to-day basis.~~

ARTICLE THREE

MEMBERSHIP

- 3.1. Members. The permanent Committee shall consist of three CPUC staff members appointed by the Executive Director of the CPUC ("the Executive Director") plus one non-voting liaison appointed by the Director of the Commission's Telecommunications Division. ~~be composed of up to six (6) members consisting of the following: one member from a local exchange carrier; one member from a competitive local carrier; one member from a wireless provider; one member from a consumer group; one other member from a carrier representative; and the head of the Telecommunications Division or his designee (a non-voting member) or as otherwise ordered by the CPUC.~~ The composition of the Committee's membership may be altered by an order of the CPUC.
- 3.2. Selection. Voting M~~m~~embers shall be appointed by the Executive Director.
- 3.3. Term of Appointment. A member shall hold office until a successor has been ~~elected~~ appointed and has assumed office or until such member has been removed in accordance with Paragraph 3.4 or has resigned in accordance with Paragraph 3.5. If for any reason a member ceases to be an employee of the respective class upon which his or her membership is based, the member's

appointment will terminate as of the date the member ceases to be such an employee.

- 3.4. Removal. Any member may be removed at any time by the Executive Director ~~of~~ or the CPUC. Voting members who are CPUC employees shall serve until replaced by the Executive Director. The non-voting liaison who is a CPUC employee shall serve until replaced by the Director of the Telecommunications Division.
- 3.5. Resignation. Any member may resign upon giving thirty (30) days written notice to the then acting Chairperson of the Committee. The member's appointment shall terminate upon the expiration of the thirty (30) day notification period.
- ~~3.6. Vacancies. If a seat is vacated, the Committee shall initiate a search for a person who is currently a member of the class, according to Paragraph 3.1, from which the vacancy occurs. Appointment of the person to fill the vacancy will be made by the Executive Director of the CPUC. If the Committee is unable to identify a suitable candidate to fill the vacancy for any reason, the Executive Director of the CPUC shall appoint a member of the class from which the vacancy occurs.~~
- 3.67. Notification. Any changes in the membership of the Committee shall be communicated by the Committee in writing to the financial institution(s) or other custodian(s) selected to hold and disburse the monies of the CHCF-B.
- 3.78. Indemnification. Members of the Committee who are ~~not members of the CPUC~~ staff are ~~uncompensated~~ employees ~~servants~~ of the State CPUC within the meaning of Government Code Section 810.2 of the Government Code. Accordingly, the State will indemnify them as it indemnifies its compensated employees, and will provide such persons and will provide them legal representation for their acts or omissions occurring within the course and scope of the services they perform for the Committee, as provided in it indemnifies and provides representation for its compensated employees pursuant to Government Code Sections 825 et seq. and Sections 995 et seq. The Committee may, in addition, use CHCF-B funds to purchase liability insurance for indemnification

~~and legal representation of the trust, the Committee, the Committee members and the Committee employees for acts or omissions occurring within the course and scope of services performed for the CHCF-B or the Committee, to the extent that such activities are held not to be indemnified by the State and/or defense is not provided by the State pursuant to Government Code Sections 810.2, 825 et seq. and/or 995 et seq.~~

- 3.89. Expenses and Per Diem. Committee members who are CPUC employees are not entitled to per diem and expense reimbursement from the CHCF-B trust. ~~Members of the Committee shall be entitled to reimbursement of reasonable expenses incurred in connection with their service on the Committee and may be entitled to per diem allowances as determined by the CPUC.~~

ARTICLE FOUR

DUTIES AND RESPONSIBILITIES

- 4.1. Duties. The Committee shall have the following duties and responsibilities. While in the performance of these duties and responsibilities, the Committee members are at all times subject to the direction, control and approval of the CPUC. The CPUC has all policy and program decision making authority. The Committee shall act in an advisory capacity to the CPUC.
- (a) With respect to the receipt of surcharges for the CHCF-B: (1) maintain records, or cause records to be maintained, on a monthly basis, of the amount of surcharges transmitted by all telecommunications carriers; (2) determine interest on delinquent amounts owed by carriers in accordance with CPUC policy and direction, and notify delinquent carriers of the amount of interest so owed; ~~(3) notify the CPUC of any carrier which fails to remit past due surcharge amounts and/or interest on past due amounts. are delinquent. All other duties in connection with the receipt of surcharges are the responsibility of the CPUC.~~
- (b) With respect to the disbursement of monies from the CHCF-B ~~payment of claims submitted by the telecommunications carriers:~~ (1) review claims for CHCF-B monies submitted by telecommunications carriers in accordance with procedures authorized by the CPUC; (2) pay, or cause to be paid, claims by telecommunications carriers which are approved in accordance

with procedures authorized by the CPUC; (32) approve administrative expenses of the Committee and provide written instructions to the custodian direct the financial institution of the CHCF-B Fund monies in writing to pay such expenses; (43) maintain, or cause to be maintained, records of all payments and disbursements made from the CHCF-B; and (5) provide, or cause to be provided, monthly receipts and expenditures reports to the CPUC. All other duties in connection with the claims process are the responsibility of the CPUC.

- (c) To the extent not performed by other State agencies or bodies, implement the an investment policy for the CHCF-B, pursuant to CPUC direction, taking into account the CHCF-B Fund's short-term and long-term financial needs, and review the investment performance of the CHCF-B.
- (d) Recommend surcharge rate changes to the CPUC.
- (e) Investigate and evaluate ~~policy and~~ operational issues pertaining to the administration of the CHCF-B.
- (f) Initiate recommendations to the CPUC on ways and means to make for changes in the administration of the CHCF-B more effective and efficient.
- ~~(g) Make decisions that do not have significant policy or budgetary implications unless the majority of the Committee decides to refer such proposed changes to the CPUC for decision. The Committee shall maintain a record of any program changes that it initiates, and it shall notify the CPUC of such changes:~~
- (g) Perform the functions set forth in the CHCF-B Trust Agreement.
- (h) ~~Hire or contract~~ If approved by the Commission, procure services from with persons or firms to provide the support necessary to enable the Committee to adequately fulfill its duties and responsibilities in accordance with the rules, procedures, and record keeping requirements prescribed by the Commission. State contracting rules should be followed in the hiring of support staff.
- (i) Prepare and submit to the CPUC an annual budget for the Committee; ~~during~~ During the time that the CPUC is considering approval of the proposed budget, the Committee shall act in accordance with its existing budget as though it had been extended for another year. Prepare and submit supplemental budget requests to the CPUC if such requests are necessary to adequately fulfill the duties of the Committee.
- (j) To the extent not performed by other State agencies or bodies, prepare detailed quarterly and annual financial statements. The financial statements shall include the costs incurred by the Committee to administer the CHCF-A, as well as the revenues and disbursements from the CHCF-B.
- (k) To the extent not performed by other State agencies or bodies, oObtain an annual financial audit and an administrative audit at least triennially of the

CHCF-B. The aforementioned audits may be performed by State auditors and/or by a firm of independent certified public accountants. The scope of the annual audit shall include an examination of (i) the annual financial statements, and (ii) such other matters determined by the CPUC and/or the Committee. The Committee shall submit a copy of the annual audit report and the triennial administrative audit to the Commissioners, the Executive Director, and the Director of the Telecommunications Division.

- (l) Maintain up-to-date electronic and paper copies of the Committee's Charter and the CHCF-B trust agreement(s).
- (m) File an annual report with the CPUC with such content as specified by the CPUC.
- (n) Perform such other duties as may from time to time be imposed on it by the CPUC in connection with the administration of the CHCF-B.

4.2. Conflict of Interest Rules. The Committee shall comply with the Political Reform Act, the regulations of the Fair Political Practices Commission, the related provisions of the Government Code, the CPUC's Conflict of Interest Code, and the CPUC's Statement of Incompatible Activities.

- (a) Committee members shall report statements of economic interests consistent with the obligations of CPUC employees.

ARTICLE FIVE

MEETINGS & RECORDS

5.1. General. The Committee shall act only in the course of a duly noticed meeting. The Committee shall hold monthly meetings. Notification of the date, place, and time of each meeting shall be given to each member and shall be published as required by the Bagley-Keene Open Meeting Act (Gov. Code § 11125(a)) and in the CPUC's Daily Calendar at least ten (10) days in advance of the meeting. Notice will include the name, address, and telephone number of a person who can provide additional information prior to the meeting, as well as a brief, general description of the business to be transacted by the Committee. No item will be added to the agenda after notice is published. The notice will highlight

important pending decisions, including those to be sent to the CPUC for approval.

- 5.2. Open Meetings. Meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act in Government Code Sections 11120 et seq. A copy of that Act shall be given to every existing and new member of the Committee.
- 5.3. Quorum and Teleconferencing. A majority of the members of the Committee in office shall constitute a quorum for the transaction of business. The members may be present in person or by conference telephone, to the extent consistent with state law regarding open meetings, so long as the place of the meeting is open to attendance by the public, and so long as the following requirements are in a way that is consistent with Government Code § 11123:-
- (a) All meetings of the Committee shall be open to the public and all persons shall be permitted to attend any meeting by the Committee except as otherwise provided by Part 1, Chapter 1, Article 9 of the Government Code.
 - (b) Nothing in Part 1, Chapter 1, Article 9 of the Government Code shall be construed to prohibit the Committee from holding an open or closed meeting by teleconferencing if the convening at one location of a quorum of the Committee is difficult or impossible, subject to all of the following:
 - (A) The teleconferencing meeting shall comply with all requirements of Part 1, Chapter 1, Article 9 of the Government Code applicable to other meetings.
 - (B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.
 - (C) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.
 - (D) All votes taken during a teleconferenced meeting shall be by rollcall.
 - (E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Government Code § 11125.5.
 - (F) At least one member of the state body shall be present at the location specified in the notice of meeting.
- ~~5.4. Committee Decisions.~~ Each voting member present ~~or his or her representative pursuant to Paragraph 5.4 below~~ shall have one vote. Decisions shall be made by majority vote of those voting members present ~~or the member's representative~~ as

long as a quorum is present at the time of the vote. A meeting at which a quorum is initially present may transact business notwithstanding the withdrawal of members, if any action taken is approved by at least a majority of the required quorum for the meeting.

5.54. No Proxies. Only individuals duly appointed by the Executive Director or the CPUC, as specified herein, may serve as Committee members. No alternate, substitute, or proxy representation of Committee members may occur. A member may be represented at any meeting by written authorization by that member to the Chairperson, naming a designated individual to represent that member at a specified, noticed meeting. Notification must be made to the Chairperson in advance of the meeting, and must be given in writing by the time set for the beginning of the meeting. Any proxy may be revoked at any time before the meeting begins by written notice to the Chairperson by the member who gave the proxy.

5.65. Records. Actions of the Committee shall be recorded in minutes, copies of which shall be provided to the CPUC and to any interested person upon request. The Committee will record and prepare written minutes of Committee meetings. A tape recording of the meetings may be made. Written minutes of a Committee meeting shall be submitted at the next Committee meeting for review and approval. Written minutes will (a) identify the date, time, and place of the meeting, (b) identify the Committee members in attendance, and (c) contain a summary of Committee actions and consensus agreements. Copies of minutes shall be provided to the CPUC or any interested party upon request. The Committee will place copies of all documents distributed at the meeting with the official record of the Committee. The Committee will maintain records of all decisions made by the Committee, and all contracts entered into by the Committee.

5.7. Public Participation. The Committee will provide an opportunity for members of the public to address the Committee directly on each agenda item before or

during the Committee's discussion or consideration of the item. The Committee will provide a sign-up sheet for members of the public who wish to address the Committee. Copies of the Committee's public documents that are subject to the Public Records Act may be requested from the Committee. The sign-up sheet will be available prior to the commencement of the public meeting and will provide space for the name of the member of the public wishing to address the Committee, whom the individual represents, and the agenda item to be addressed. The Committee shall make its best efforts to recognize the public members during the appropriate comment periods at each meeting, consistent with the Committee's obligation to conduct business in an orderly manner.

ARTICLE SIX

OFFICERS

- 6.1. Two Officers. The Committee shall have two officers, a Chairperson and a Vice-Chairperson, both of whom shall be members of the Committee. The officers shall be elected by the members of the Committee to serve a term of one year, and they may be re-elected. An officer shall continue to hold office until a successor has been elected and assumed office. However, if an officer ceases employment as described in Paragraph 3.3, the officer's appointment shall terminate upon the date that the officer ceases employment.
- 6.2. Duties. The Chairperson shall be the executive officer of the Committee and shall be responsible for the general supervision and direction of the affairs of the Committee. The Chairperson shall preside at all meetings of the Committee. In the absence of the Chairperson, the Vice-Chairperson shall perform the duties of that office. ~~If the Chairperson and Vice-Chairperson are unavailable for a meeting where a quorum nevertheless exists, the Chairperson may appoint a temporary Chairperson for that meeting.~~ The officers shall perform such other duties as from time to time may be prescribed by the Committee.

ARTICLE SEVEN

EFFECTIVE DATE and AMENDMENTS

- 7.1. Effective Date. This Charter shall become effective on the date it is approved by the CPUC.
- 7.2. Amendments. This Charter may be amended by vote of the majority of the members of the Committee, and said amendment shall be submitted to the CPUC for approval ~~by the CPUC.~~ No amendment shall be effective unless and until the amendment has been approved by the CPUC. This Charter is subject to amendment, termination or revocation at any time by order of the CPUC.

ARTICLE EIGHT

LIMITATION ON POWER AND AUTHORITY

- 8.1. Advisory Capacity. Under the direction, control, and approval of the CPUC, the Committee shall have the power to carry out its duties and responsibilities as specified in Article Four of this Charter. The Committee acts in a purely advisory capacity and has no decision making authority over policy or program issues.
- 8.2. Authority over Utilities. While the Committee shall have the power and authority to carry out the foregoing duties, it shall not have the authority to direct telecommunications carriers to act or refrain from acting. Such authority shall remain solely with the CPUC.
- 8.3. CPUC Review and Approval. The members of the Committee in the performance of their duties and in the actions taken by the Committee shall at all times be subject to the direction, control and approval of the CPUC. The circumstances under which the Committee shall seek CPUC review and approval before moving forward with its duties shall include the following:
- (a) Approval of official Committee documents (e.g., charter, bylaws, and trust agreements) and amendments thereto.
 - (b) Approval of Committee operating budgets.
 - (c) Approval of RFPs and contracts related to the procurement of services associated with the operation and administration of the CHCF-B.

This Charter is executed on _____, 1997.

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

(END OF ATTACHMENT B)

R.95-01-020, I.95-01-021 ALJ/TIM/jva

Attachment C

Charter for the California Teleconnect Fund
Administrative Committee

CHARTER OF THE CALIFORNIA TELECONNECT FUND
ADMINISTRATIVE COMMITTEE¹

ARTICLE ONE

NAME

- 1.1. Name. The name of the Committee shall be the California Teleconnect Fund Administrative Committee ("the Committee").

ARTICLE TWO

PURPOSE OF COMMITTEE

- 2.1. Purpose of Committee. The California Public Utilities Commission ("CPUC") in 1996 issued Decision No. 96-10-066, as amended, which established ordering the creation of the California Teleconnect Fund ("the CTF") for the purpose as a means of reimbursing carriers who 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 the end user's users' bills for intrastate telecommunications services beginning as of February 1, 1997. Pursuant to D.97-01-020, the purpose of the Committee is to serve as a CPUC advisory body with the responsibility for implementing and administering a ~~The CPUC has ordered providers to collect the surcharges from their customers and has ordered the Committee governed by this instrument to serve as administrative agent to implement the appropriate mechanism program to receive, invest, account for, and disburse the surcharges remitted paid over to the CTF. The interim Administrative Committee, pursuant to the appointment of the Executive Director of the CPUC, as of the date of execution of this Charter, consists of the following members: Michael C. Amato, Rufus G. Thayer, Jr. and David M. Shantz. The purpose of the interim Committee is (1) to develop the charter consistent with the decisions by the~~

¹ Additions to the Administrative Committee's proposed charter are indicated by double underline. Deletions are indicated by strike-outs.

~~CPUC and other documents necessary to expeditiously form a Trust for the CTF; (2) to secure the services of a qualified financial institution or institutions to handle the deposit and disbursement of the monies associated with the CTF and to enter into agreements with such financial institution or institutions; (3) to establish the procedures for administration of the Trust; (4) to administer or cause to be administered the day-to-day operation of the Trust, until such time as the permanent Committee is appointed, and qualified persons or entities can be hired to take over these administrative tasks; and (5) to authorize the financial institution or institutions to disburse the monies. The interim Committee shall work with the permanent Committee to develop a smooth transition to administer the CTF on a day-to-day basis.~~

ARTICLE THREE

MEMBERSHIP

- 3.1. Members. The permanent Committee shall consist of three CPUC staff members appointed by the Executive Director of the CPUC ("the Executive Director") plus one non-voting liaison appointed by the Director of the Commission's Telecommunications Division. ~~be composed of up to six (6) members consisting of the following: one member from a local exchange carrier; one member from a competitive local carrier; one member from a wireless provider; one member from a consumer group; one other member from a carrier representative; and the head of the Telecommunications Division or his designee (a non-voting member) or as otherwise ordered by the CPUC.~~ The composition of the Committee may be altered by an order of the CPUC.
- 3.2. Selection. Voting Mmembers shall be appointed by the Executive Director.
- 3.3. Term of Appointment. A member shall hold office until a successor has been ~~elected~~ appointed and has assumed office or until such member has been removed in accordance with Paragraph 3.4 or has resigned in accordance with Paragraph 3.5. If for any reason a member ceases to be an employee of the

respective class upon which his or her membership is based, the member's appointment will terminate as of the date the member ceases to be such an employee.

- 3.4. Removal. Any member may be removed at any time by the Executive Director ~~of~~ or the CPUC. Voting members who are CPUC employees shall serve until replaced by the Executive Director. The non-voting liaison who is a CPUC employee shall serve until replaced by the Director of the Telecommunications Division.
- 3.5. Resignation. Any member may resign upon giving thirty (30) days written notice to the then acting Chairperson of the Committee. The member's appointment shall terminate upon the expiration of the thirty (30) day notification period.
- 3.6. ~~Vacancies. If a seat is vacated, the Committee shall initiate a search for a person who is currently a member of the class, according to Paragraph 3.1, from which the vacancy occurs. Appointment of the person to fill the vacancy will be made by the Executive Director of the CPUC. If the Committee is unable to identify a suitable candidate to fill the vacancy for any reason, the Executive Director of the CPUC shall do so.~~
- 3.67. Notification. Any changes in the membership of the Committee shall be communicated by the Committee in writing to the financial institution(s) or other custodian(s) selected to hold and disburse the monies of the CTF.
- 3.78. Indemnification. Members of the Committee who are ~~not members of the CPUC~~ staff are ~~uncompensated~~ employees servants of the State CPUC within the meaning of Government Code Section 810.2 ~~of the Government Code~~. Accordingly, the State will indemnify them as it indemnifies its compensated employees, and will provide such persons and will provide them legal representation for their acts or omissions occurring within the course and scope of the services they perform for the Committee, as provided in it indemnifies and provides representation for its compensated employees pursuant to Government Code Sections 825 et seq. and Sections 995 et seq. ~~The Committee may, in~~

~~addition, use CTF funds to purchase liability insurance for indemnification and legal representation of the trust, the Committee, the Committee members and the Committee employees for acts or omissions occurring within the course and scope of services performed for the CTF or the Committee, to the extent that such activities are held not to be indemnified by the State and/or defense is not provided by the State pursuant to Government Code Sections 810.2, 825 et seq. and/or 995 et seq.~~

- 3.89. Expenses and Per Diem. Committee members who are CPUC employees are not entitled to per diem and expense reimbursement from the CTF trust. Members of the Committee shall be entitled to reimbursement of reasonable expenses incurred in connection with their service on the Committee and may be entitled to per diem allowances as determined by the CPUC.

ARTICLE FOUR

DUTIES AND RESPONSIBILITIES

- 4.1. Duties. The Committee shall have the following duties and responsibilities. While in the performance of these duties and responsibilities, the Committee members are at all times subject to the direction, control and approval of the CPUC. The CPUC has all policy and program decision making authority. The Committee shall act in an advisory capacity to the CPUC.
- (a) With respect to the receipt of surcharges for the CTF: (1) maintain records, or cause records to be maintained, on a monthly basis, of the amount of surcharges transmitted by all telecommunications carriers; (2) determine interest on delinquent amounts owed by carriers in accordance with CPUC policy and direction, and notify delinquent carriers of the amount of interest so owed; (3) notify the CPUC of any carrier which fails to remit past due surcharge amounts and/or interest on past due amounts are delinquent. All other duties in connection with the receipt of surcharges are the responsibility of the CPUC.
- (b) With respect to the disbursement of monies from the CTF ~~payment of claims submitted by the telecommunications carriers:~~ (1) review claims for CTF monies submitted by telecommunications carriers in accordance with procedures authorized by the CPUC; (2) pay, or cause to be paid, claims by

telecommunications carriers which are approved in accordance with procedures authorized by the CPUC; (32) approve administrative expenses of the Committee and provide written instructions to the custodian direct the financial institution of the CTF Fund monies in writing to pay such expenses; (43) maintain, or cause to be maintained, records of all payments and disbursements made from the CTF; and (5) provide, or cause to be provided, monthly receipts and expenditures reports to the CPUC. All other duties in connection with the claims process are the responsibility of the CPUC.

- (c) To the extent not performed by other State agencies or bodies, implement the an investment policy for the CTF, pursuant to CPUC direction, taking into account the CTF Fund's short-term and long-term financial needs, and review the investment performance of the CTF.
- (d) Recommend surcharge rate changes to the CPUC.
- (e) Investigate and evaluate policy and operational issues pertaining to the administration of the CTF.
- (f) Initiate recommendations to the CPUC on ways and means to make for changes in the administration of the CTF more effective and efficient.
- ~~(g) Make decisions that do not have significant policy or budgetary implications unless the majority of the Committee decides to refer such proposed changes to the CPUC for decision. The Committee shall maintain a record of any program changes that it initiates, and it shall notify the CPUC of such changes.~~
- (g) Perform the functions set forth in the CTF Trust Agreement.
- (h) ~~Hire or contract~~ If approved by the Commission, procure services from with persons or firms to provide the support necessary to enable the Committee to adequately fulfill its duties and responsibilities in accordance with the rules, procedures, and record keeping requirements prescribed by the Commission. State contracting rules should be followed in the hiring of support staff.
- (i) Prepare and submit to the CPUC an annual budget for the Committee; ~~during~~ During the time that the CPUC is considering approval of the proposed budget, the Committee shall act in accordance with its existing budget as though it had been extended for another year. Prepare and submit supplemental budget requests to the CPUC if such requests are necessary to adequately fulfill the duties of the Committee.
- (j) To the extent not performed by other State agencies or bodies, prepare detailed quarterly and annual financial statements. The financial statements shall include the costs incurred by the Committee to administer the CTF, as well as the revenues and disbursements from the CTF.

- (k) To the extent not performed by other State agencies or bodies, obtain an annual financial audit and an administrative audit at least triennially of the CTF. The aforementioned audits may be performed by State auditors and/or by a firm of independent certified public accountants. The scope of the annual audit shall include an examination of (i) the annual financial statements and (ii) such other matters determined by the CPUC and/or the Committee. The Committee shall submit a copy of the annual audit report and the triennial administrative audit report to the Commissioners, the Executive Director, and the Director of the Telecommunications Division.
- (l) Maintain up-to-date electronic and paper copies of the Committee's Charter and the CTF trust agreement(s).
- (m) File an annual report with the CPUC with such content as specified by the CPUC.
- (n) Perform such other duties as may from time to time be imposed on it by the CPUC in connection with the administration of the CTF.

4.2. Conflict of Interest Rules. The Committee shall comply with the Political Reform Act, the regulations of the Fair Political Practices Commission, the related provisions of the Government Code, the CPUC's Conflict of Interest Code, and the CPUC's Statement of Incompatible Activities.

- (a) Committee members shall report statements of economic interests consistent with the obligations of CPUC employees.

ARTICLE FIVE

MEETINGS & RECORDS

- 5.1. General. The Committee shall act only in the course of a duly noticed meeting. The Committee shall hold monthly meetings. Notification of the date, place, and time of each meeting shall be given to each member and shall be published as required by the Bagley-Keene Open Meeting Act (Gov. Code § 11125(a)) and in the CPUC's Daily Calendar at least ten (10) days in advance of the meeting. Notice will include the name, address, and telephone number of a person who can provide additional information prior to the meeting, as well as a brief, general description of the business to be transacted by the Committee. No item will be added to the agenda after notice is published. The notice will highlight

important pending decisions, including those to be sent to the CPUC for approval.

- 5.2. Open Meetings. Meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act in Government Code Sections 11120 et seq. A copy of that Act shall be given to every existing and new member of the Committee.
- 5.2. Open Meetings. Meetings shall be open to the public and shall be held in accordance with the provisions of the Bagley-Keene Open Meeting Act in Government Code Sections 11120 et seq. A copy of that Act shall be given to every existing and new member of the Committee.
- 5.3. Quorum and Teleconferencing. A majority of the members of the Committee in office shall constitute a quorum for the transaction of business. The members may be present in person or by conference telephone, to the extent consistent with state law regarding open meetings, so long as the place of the meeting is open to attendance by the public, and so long as the following requirements are met in a way that is consistent with Government Code § 11123:-
- (a) All meetings of the Committee shall be open to the public and all persons shall be permitted to attend any meeting by the Committee except as otherwise provided by Part 1, Chapter 1, Article 9 of the Government Code.
 - (b) Nothing in Part 1, Chapter 1, Article 9 of the Government Code shall be construed to prohibit the Committee from holding an open or closed meeting by teleconferencing if the convening at one location of a quorum of the Committee is difficult or impossible, subject to all of the following:
 - (A) The teleconferencing meeting shall comply with all requirements of Part 1, Chapter 1, Article 9 of the Government Code applicable to other meetings.
 - (B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.
 - (C) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.
 - (D) All votes taken during a teleconferenced meeting shall be by rollcall.
 - (E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Government Code § 11125.5.

- (F) At least one member of the state body shall be present at the location specified in the notice of meeting.

5.4. Committee Decisions. Each voting member present ~~or his or her representative pursuant to Paragraph 5.4 below~~ shall have one vote. Decisions shall be made by majority vote of those voting members present ~~or the member's representative~~ as long as a quorum is present at the time of the vote. ~~A meeting at which a quorum is initially present may transact business notwithstanding the withdrawal of members, if any action taken is approved by at least a majority of the required quorum for the meeting.~~

5.54. No Proxies. Only individuals duly appointed by the Executive Director or the CPUC, as specified herein, may serve as Committee members. No alternate, substitute, or proxy representation of Committee members may occur. ~~A member may be represented at any meeting by written authorization by that member to the Chairperson, naming a designated individual to represent that member at a specified, noticed meeting. Notification must be made to the Chairperson in advance of the meeting, and must be given in writing by the time set for the beginning of the meeting. Any proxy may be revoked at any time before the meeting begins by written notice to the Chairperson by the member who gave the proxy.~~

5.65. Records. ~~Actions of the Committee shall be recorded in minutes, copies of which shall be provided to the CPUC and to any interested person upon request.~~ The Committee will record and prepare written minutes of Committee meetings. A tape recording of the meetings may be made. The written minutes of a Committee meeting shall be submitted at the next Committee meeting for review and approval. Written minutes will (a) identify the date, time, and place of the meeting, (b) identify the Committee members in attendance, and (c) contain a summary of Committee actions and consensus agreements. Copies of minutes shall be provided to the CPUC or any interested party upon request. The Committee will place copies of all documents distributed at the meeting with the official record of the Committee. The Committee will maintain records of all

decisions made by the Committee, and all contracts entered into by the Committee.

5.7. Public Participation. The Committee will provide an opportunity for members of the public to address the Committee directly on each agenda item before or during the Committee's discussion or consideration of the item. The Committee will provide a sign-up sheet for members of the public who wish to address the Committee. Copies of the Committee's public documents that are subject to the Public Records Act may be requested from the Committee. The sign-up sheet will be available prior to the commencement of the public meeting and will provide space for the name of the member of the public wishing to address the Committee, whom the individual represents, and the agenda item to be addressed. The Committee shall make its best efforts to recognize the public members during the appropriate comment periods at each meeting, consistent with the Committee's obligation to conduct business in an orderly manner.

ARTICLE SIX

OFFICERS

- 6.1. Two Officers. The Committee shall have two officers, a Chairperson and a Vice-Chairperson, both of whom shall be members of the Committee. The officers shall be elected by the members of the Committee to serve a term of one year, and they may be re-elected. An officer shall continue to hold office until a successor has been elected and assumed office. However, if an officer ceases employment as described in Paragraph 3.3, the officer's appointment shall terminate upon the date that the officer ceases employment.
- 6.2. Duties. The Chairperson shall be the executive officer of the Committee and shall be responsible for the general supervision and direction of the affairs of the Committee. The Chairperson shall preside at all meetings of the Committee. In the absence of the Chairperson, the Vice-Chairperson shall perform the duties of

that office. ~~If the Chairperson and Vice Chairperson are unavailable for a meeting where a quorum nevertheless exists, the Chairperson may appoint a temporary Chairperson for that meeting.~~ The officers shall perform such other duties as from time to time may be prescribed by the Committee.

ARTICLE SEVEN

EFFECTIVE DATE and AMENDMENTS

- 7.1. Effective Date. This Charter shall become effective on the date it is approved by the CPUC.
- 7.2. Amendments. This Charter may be amended by vote of the majority of the members of the Committee, and said amendment shall be submitted to the CPUC for approval ~~by the CPUC.~~ No amendment shall be effective unless and until the amendment has been approved by the CPUC. This Charter is subject to amendment, termination or revocation at any time by order of the CPUC.

ARTICLE EIGHT

LIMITATION ON POWER AND AUTHORITY

- 8.1. Advisory Capacity. Under the direction, control, and approval of the CPUC, the Committee shall have the power to carry out its duties and responsibilities as specified in Article Four of this Charter. The Committee acts in a purely advisory capacity and has no decision making authority over policy or program issues.
- 8.2. Authority over Utilities. While the Committee shall have the power and authority to carry out the foregoing duties, it shall not have the authority to direct telecommunications carriers to act or refrain from acting. Such authority shall remain solely with the CPUC.
- 8.3. CPUC Review and Approval. The members of the Committee in the performance of their duties and in the actions taken by the Committee shall at all times be subject to the direction, control and approval of the CPUC. The circumstances under which the Committee shall seek CPUC review and approval before moving forward with its duties shall include the following:
- (a) Approval of official Committee documents (e.g., charter, bylaws, and trust agreements) and amendments thereto.
 - (b) Approval of Committee operating budgets.
 - (c) Approval of RFPs and contracts related to the procurement of services associated with the operation and administration of the CTF.

This Charter is executed on _____, 1997.

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

(END OF ATTACHMENT C)