

AMENDED IN ASSEMBLY JUNE 26, 2013

AMENDED IN SENATE MAY 7, 2013

**SENATE BILL**

**No. 740**

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**Introduced by Senator Padilla**

February 22, 2013

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An act to amend Section 281 of the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 740, as amended, Padilla. Telecommunications: universal service programs: California Advanced Services Fund.

Existing law, the federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. The act authorizes each state to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the state, only to the extent that they adopt additional specific, predictable, and sufficient mechanisms

that do not rely on or burden federal universal service support mechanisms.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined. Existing law establishes the California High-Cost Fund-A Administrative Committee Fund, the California High-Cost Fund-B Administrative Committee Fund, the Universal Lifeline Telephone Service Trust Administrative Committee Fund, the Deaf and Disabled Telecommunications Program Administrative Committee Fund, the Payphone Service Providers Committee Fund, the California Teleconnect Fund Administrative Committee Fund, and the California Advanced Services Fund, referred to as the CASF, in the State Treasury and requires that moneys in the funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service and may be expended only to accomplish specified telecommunications universal service programs, upon appropriation in the annual Budget Act or upon supplemental appropriation. Existing law requires the commission to develop, implement, and administer the CASF to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in specified decisions of the commission and in the CASF statute.

Existing law requires that moneys, collected by the surcharge, authorized by the commission, after January 1, 2011, are to be deposited into 3 separate accounts within the CASF. Existing law authorizes the commission to collect ~~an additional~~ a sum not to exceed \$125,000,000, after January 1, 2011, ~~for a sum total of moneys collected through the surcharge not to exceed \$225,000,000 and requires that \$100,000,000 of that amount be deposited into the Broadband Infrastructure Grant Account.~~ Existing law authorizes the commission to collect the ~~additional~~ sum through the 2015 calendar year.

*This bill would increase the amount the commission is authorized to collect to a sum not to exceed \$215,000,000, after January 1, 2011, and instead would require that \$190,000,000 be deposited into the Broadband Infrastructure Grant Account.* The bill would authorize the commission to collect ~~the additional money that amount~~ until 2020.

**This**

~~The bill would provide that the goal of the CASF program is, no later than December 31, 2015, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households and would provide that it is the intent of the Legislature to authorize collection of additional surcharge amounts necessary to achieve this program goal households. In awarding approving infrastructure grants projects, this the bill would require that the commission to give priority be given to projects that provide last-mile broadband connection access to households that are unserved by an existing facilities-based broadband provider. This bill would provide that a middle-mile broadband project is eligible for an infrastructure grant even if it passes through an area served by an existing facilities-based broadband provider, as long as the project applicant can demonstrate that the project provides last-mile broadband connection to households that are unserved by any existing facilities-based broadband provider. The bill would require the commission to provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, as prescribed.~~

~~This~~

~~The bill would provide that, notwithstanding the requirement that moneys in the funds are to be used to compensate telephone corporations for their costs of providing universal service, an entity that is not a telephone corporation is eligible to apply to participate in the CASF program if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission. This bill would provide that a local governmental agency may be eligible for an infrastructure grant only if the infrastructure project is for an unserved area, the commission has conducted an open application process and no other eligible entity applied, and the commission determines that within the region of the local agency's jurisdiction there is less than 98% broadband deployment.~~

~~Existing law requires the commission to conduct an interim and final financial audit and an interim and final performance audit of the implementation and effectiveness of the CASF and to report its interim findings to the Legislature by April 1, 2011, and its final findings to the Legislature by April 1, 2017.~~

~~This bill would require the commission to conduct an additional interim financial audit and interim performance audit and to report these findings to the Legislature by April 1, 2017. The bill would instead~~

require the commission to report its final findings to the Legislature by April 1, 2021.

Existing law requires the commission, until January 1, 2016, to provide an annual report to the Legislature that includes specified information.

This bill would extend this reporting requirement until January 1, 2021, and would require the report to include information regarding the status of the CASF balance and the projected amount to be collected in each year through 2020 in order to fund approved projects.

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

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 281 of the Public Utilities Code is  
2 amended to read:

3 281. (a) The commission shall develop, implement, and  
4 administer the California Advanced Services Fund program to  
5 encourage deployment of high-quality advanced communications  
6 services to all Californians that will promote economic growth,  
7 job creation, and the substantial social benefits of advanced  
8 information and communications technologies, as provided in  
9 Decision 07-12-054 and ~~Decision 09-07-020~~ subsequent decisions  
10 and this section.

11 (b) (1) The goal of the program is, no later than December 31,  
12 2015, to approve funding for infrastructure projects that will  
13 provide broadband access to no less than 98 percent of California  
14 households. ~~In awarding~~

15 (2) ~~In approving infrastructure grants projects, the commission~~  
16 ~~shall give priority shall be given to projects that provide last-mile~~  
17 ~~broadband-connection access to households that are unserved by~~  
18 ~~an existing facilities-based broadband provider. However, a~~  
19 ~~middle-mile broadband project is eligible for an infrastructure~~  
20 ~~grant even if it passes through an area served by an existing~~  
21 ~~facilities-based broadband provider, as long as the project applicant~~  
22 ~~can demonstrate that the project provides last-mile broadband~~  
23 ~~connection to households that are unserved by any existing~~  
24 ~~facilities-based broadband provider. The commission shall provide~~

1 *each applicant, and any party challenging an application, the*  
2 *opportunity to demonstrate actual levels of broadband service in*  
3 *the project area, which the commission shall consider in reviewing*  
4 *the application.*

5 (c) The commission shall establish the following accounts within  
6 the fund:

7 (1) The Broadband Infrastructure Grant Account.

8 (2) The Rural and Urban Regional Broadband Consortia Grant  
9 Account.

10 (3) The Broadband Infrastructure Revolving Loan Account.

11 (d) (1) All moneys collected by the surcharge authorized by  
12 the commission pursuant to Decision ~~07-12-054~~, ~~whether collected~~  
13 ~~before or after January 1, 2009~~, ~~07-12-054~~ shall be transmitted to  
14 the commission pursuant to a schedule established by the  
15 commission. The commission shall transfer the moneys received  
16 to the Controller for deposit in the California Advanced Services  
17 Fund. Moneys collected after January 1, 2011, shall be deposited  
18 in the following amounts in the following accounts:

19 (A) One hundred *ninety* million dollars—~~(\$100,000,000)~~  
20 ~~(\$190,000,000)~~ into the Broadband Infrastructure Grant Account.

21 (B) Ten million dollars (\$10,000,000) into the Rural and Urban  
22 Regional Broadband Consortia Grant Account.

23 (C) Fifteen million dollars (\$15,000,000) into the Broadband  
24 Infrastructure Revolving Loan Account.

25 (2) All interest earned on moneys in the fund shall be deposited  
26 in the fund.

27 (3) The commission shall not collect moneys, by imposing the  
28 surcharge described in paragraph (1) for deposit in the fund, in an  
29 amount that exceeds one hundred million dollars (\$100,000,000)  
30 before January 1, 2011. After January 1, 2011, the commission  
31 may collect an additional sum not to exceed ~~one two~~ hundred  
32 ~~twenty-five~~ *fifteen* million dollars—~~(\$125,000,000)~~ ~~(\$215,000,000)~~,  
33 for a sum total of moneys collected by imposing the surcharge  
34 described in paragraph (1) not to exceed ~~two three~~ hundred  
35 ~~twenty-five~~ *fifteen* million dollars—~~(\$225,000,000)~~ ~~(\$315,000,000)~~.  
36 The commission may collect the additional sum beginning with  
37 the calendar year starting on January 1, 2011, and continuing  
38 through the 2020 calendar year, in an amount not to exceed  
39 twenty-five million dollars (\$25,000,000) per year, unless the  
40 commission determines that collecting a higher amount in any year

1 will not result in an increase in the total amount of all surcharges  
2 collected from telephone customers that year.

3 ~~(4) It is the intent of the Legislature to authorize collection of~~  
4 ~~additional surcharge amounts necessary to achieve the program~~  
5 ~~goal described in subdivision (b).~~

6 (e) (1) All moneys in the California Advanced Services Fund  
7 shall be available, upon appropriation by the Legislature, to the  
8 commission for the program administered by the commission  
9 pursuant to this section, including the costs incurred by the  
10 commission in developing, implementing, and administering the  
11 program and the fund.

12 (2) Notwithstanding any other law and for the sole purpose of  
13 providing matching funds pursuant to the federal American  
14 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any  
15 entity eligible for funding pursuant to that act shall be eligible to  
16 apply to participate in the program administered by the commission  
17 pursuant to this section, if that entity otherwise satisfies the  
18 eligibility requirements under that program. Nothing in this section  
19 shall impede the ability of an incumbent local exchange carrier,  
20 as defined by subsection (h) of Section 251 of Title 47 of the  
21 United States Code, that is regulated under a rate of return  
22 regulatory structure, to recover, in rate base, California  
23 infrastructure investment not provided through federal or state  
24 grant funds for facilities that provide broadband service and  
25 California intrastate voice service.

26 (3) Notwithstanding subdivision (b) of Section 270, an entity  
27 that is not a telephone corporation shall be eligible to apply to  
28 participate in the program administered by the commission pursuant  
29 to this section if the entity otherwise meets the eligibility  
30 requirements and complies with program requirements established  
31 by the commission. ~~A local governmental agency may be eligible~~  
32 ~~for an infrastructure grant only if the infrastructure project is for~~  
33 ~~an unserved area, the commission has conducted an open~~  
34 ~~application process and no other eligible entity applied, and the~~  
35 ~~commission determines that within the region of the local agency's~~  
36 ~~jurisdiction there is less than 98 percent broadband deployment.~~  
37 *These requirements shall include that projects under this*  
38 *paragraph primarily provide last-mile broadband access to*  
39 *households that are unserved by an existing facilities-based*  
40 *broadband provider. The commission shall provide each applicant,*

1 *and any party challenging an application, the opportunity to*  
2 *demonstrate actual levels of broadband service in the project area,*  
3 *which the commission shall consider in reviewing the application.*

4 (f) Moneys in the Rural and Urban Regional Broadband  
5 Consortia Grant Account shall be available for grants to eligible  
6 consortia to fund the cost of broadband deployment activities other  
7 than the capital cost of facilities, as specified by the commission.  
8 An eligible consortium may include, as specified by the  
9 commission, representatives of organizations, including, but not  
10 limited to, local and regional government, public safety, K-12  
11 education, health care, libraries, higher education,  
12 community-based organizations, tourism, parks and recreation,  
13 agricultural, and business, and is not required to have as its lead  
14 fiscal agent an entity with a certificate of public convenience and  
15 necessity.

16 (g) Moneys in the Broadband Infrastructure Revolving Loan  
17 Account shall be available to finance capital costs of broadband  
18 facilities not funded by a grant from the Broadband Infrastructure  
19 Grant Account. The commission shall periodically set interest rates  
20 on the loans based on surveys of existing financial markets.

21 (h) (1) The commission shall conduct ~~an~~ *two* interim *financial*  
22 *audits* and a final financial audit and ~~an~~ *two* interim *performance*  
23 *audits* and a final performance audit of the implementation and  
24 effectiveness of the California Advanced Services Fund to ensure  
25 that funds have been expended in accordance with the approved  
26 terms of the grant awards and loan agreements and this section.  
27 The commission shall report its interim findings to the Legislature  
28 by April 1, 2011, *and April 1, 2017*. The commission shall report  
29 its final findings to the Legislature by April 1, ~~2017~~ *2021*. The  
30 reports shall also include an update to the maps in the final report  
31 of the California Broadband Task Force and data on the types and  
32 numbers of jobs created as a result of the program administered  
33 by the commission pursuant to this section.

34 (2) (A) The requirement for submitting a report imposed under  
35 paragraph (1) is inoperative on January 1, ~~2018~~ *2022*, pursuant to  
36 Section 10231.5 of the Government Code.

37 (B) A report to be submitted pursuant to paragraph (1) shall be  
38 submitted in compliance with Section 9795 of the Government  
39 Code.

1 (i) (1) Beginning on January 1, 2012, and annually thereafter,  
2 the commission shall provide a report to the Legislature that  
3 includes all of the following information:

4 (A) The amount of funds expended from the California  
5 Advanced Services Fund in the prior year.

6 (B) The recipients of funds expended from the California  
7 Advanced Services Fund in the prior year.

8 (C) The geographic regions of the state affected by funds  
9 expended from the California Advanced Services Fund in the prior  
10 year.

11 (D) The expected benefits to be derived from the funds expended  
12 from the California Advanced Services Fund in the prior year.

13 (E) Actual broadband adoption levels from the funds expended  
14 from the California Advanced Services Fund in the prior year.

15 (F) The amount of funds expended from the California  
16 Advanced Services Fund used to match federal funds.

17 (G) An update on the expenditures from California Advanced  
18 Services Fund and broadband adoption levels, and an accounting  
19 of remaining unserved and underserved areas of the state.

20 (H) *The status of the California Advanced Service Fund balance*  
21 *and the projected amount to be collected in each year through*  
22 *2020 in order to fund approved projects.*

23 (2) (A) The requirement for submitting a report imposed under  
24 paragraph (1) is inoperative on January 1, ~~2016~~ 2021, pursuant to  
25 Section 10231.5 of the Government Code.

26 (B) A report to be submitted pursuant to paragraph (1) shall be  
27 submitted in compliance with Section 9795 of the Government  
28 Code.

29 SEC. 2. This act is an urgency statute necessary for the  
30 immediate preservation of the public peace, health, or safety within  
31 the meaning of Article IV of the Constitution and shall go into  
32 immediate effect. The facts constituting the necessity are:

33 In order to authorize the award of funds for the expansion of  
34 broadband deployment to unserved and underserved areas of  
35 California, to stimulate investments in infrastructure critical to  
36 increasing the state's productivity, and to improve the quality of  
37 information available to all of the state's citizens, as needed for



- 1 the health and safety of those citizens, it is necessary that this act
- 2 take effect immediately.

O