

AMENDED IN ASSEMBLY FEBRUARY 24, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 238

Introduced by Assembly Member Mark Stone

February 5, 2015

An act to amend Section 281 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as amended, Mark Stone. Telecommunications: California Advanced Services Fund

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law establishes, among other funds related to telecommunications, the California Advanced Services Fund (CASF) in the State Treasury. 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.

~~This bill would make nonsubstantive changes to that provision.~~

This bill would define "broadband" for purposes of these provisions as advanced telecommunication services with specified advertised speeds.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

1 SECTION 1. (a) *The Legislature finds and declares all of the*
 2 *following:*

3 (1) *In the Broadband Availability in America report, released*
 4 *on January 30, 2015, the Federal Communications Commission*
 5 *(FCC) found that the rate of deployment of advanced*
 6 *telecommunications services is failing to keep up with today’s*
 7 *advanced, high-quality voice, data, graphics, and video offerings.*

8 (2) *After evaluating advances in technology, market offerings*
 9 *by broadband providers, and consumer demand, the FCC updated*
 10 *the definition of broadband to mean 25 megabits per second (Mbps)*
 11 *downstream and three Mbps upstream speed.*

12 (3) *In California, home to the development of much of the*
 13 *world’s most advanced telecommunications technology, 2.6 million*
 14 *people do not have access to any services offering wireline*
 15 *25Mbps/3Mbps broadband speeds. The lack of access especially*
 16 *affects people living in rural counties.*

17 (4) *In today’s digital landscape, access to proper broadband*
 18 *service is a necessity for the workplace, education, civic*
 19 *engagement, and economic competitiveness. California cannot*
 20 *fall behind in securing access to robust broadband for all of its*
 21 *residents, and it must continue to be a leader in developing*
 22 *advanced telecommunications infrastructure for all.*

23 (b) *It is the intent of the Legislature to enact legislation to pursue*
 24 *the deployment of advanced telecommunications services with*
 25 *broadband speeds of at least 25 Mbps downstream and 3 Mbps*
 26 *upstream in all areas of the state.*

27 SECTION 1.

28 SEC. 2. Section 281 of the Public Utilities Code is amended
 29 to read:

30 281. (a) The commission shall develop, implement, and
 31 administer the California Advanced Services Fund program to
 32 encourage deployment of high-quality advanced communications
 33 services to all Californians that will promote economic growth,
 34 job creation, and the substantial social benefits of advanced
 35 information and communications technologies, consistent with
 36 this section.

37 (b) (1) ~~The goal of the program is, no later than December 31,~~
 38 ~~2015,~~ *is to approve funding for infrastructure projects that will*

1 provide broadband access to no less than 98 percent of California
2 households.

3 (2) In approving infrastructure projects, the commission shall
4 give priority to projects that provide last-mile broadband access
5 to households that are unserved by an existing facilities-based
6 broadband provider. The commission shall provide each applicant,
7 and any party challenging an application, the opportunity to
8 demonstrate actual levels of broadband service in the project area,
9 which the commission shall consider in reviewing the application.

10 (3) *For purposes of this section, "broadband" means advanced*
11 *communication services at advertised speeds of at least 25*
12 *megabits per second (Mbps) downstream and three Mbps upstream.*

13 (c) The commission shall establish the following accounts within
14 the fund:

15 (1) The Broadband Infrastructure Grant Account.

16 (2) The Rural and Urban Regional Broadband Consortia Grant
17 Account.

18 (3) The Broadband Infrastructure Revolving Loan Account.

19 (4) The Broadband Public Housing Account.

20 (d) (1) All moneys collected by the surcharge authorized by
21 the commission pursuant to commission Decision 07-12-054 shall
22 be transmitted to the commission pursuant to a schedule established
23 by the commission. The commission shall transfer the moneys
24 received to the Controller for deposit in the California Advanced
25 Services Fund. Moneys collected on and after January 1, 2011,
26 shall be deposited in the following amounts in the following
27 accounts:

28 (A) One hundred ninety million dollars (\$190,000,000) into the
29 Broadband Infrastructure Grant Account.

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

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

34 (2) All interest earned on moneys in the fund shall be deposited
35 in the fund.

36 (3) The commission shall not collect moneys, by imposing the
37 surcharge described in paragraph (1) for deposit in the fund, in an
38 amount that exceeds one hundred million dollars (\$100,000,000)
39 before January 1, 2011. On and after January 1, 2011, the
40 commission may collect an additional sum not to exceed two

1 hundred fifteen million dollars (\$215,000,000), for a sum total of
2 moneys collected by imposing the surcharge described in paragraph
3 (1) not to exceed three hundred fifteen million dollars
4 (\$315,000,000). The commission may collect the additional sum
5 beginning with the calendar year starting on January 1, 2011, and
6 continuing through the 2020 calendar year, in an amount not to
7 exceed twenty-five million dollars (\$25,000,000) per year, unless
8 the commission determines that collecting a higher amount in any
9 year will not result in an increase in the total amount of all
10 surcharges collected from telephone customers that year.

11 (e) (1) All moneys in the California Advanced Services Fund
12 shall be available, upon appropriation by the Legislature, to the
13 commission for the program administered by the commission
14 pursuant to this section, including the costs incurred by the
15 commission in developing, implementing, and administering the
16 program and the fund.

17 (2) Notwithstanding any other law and for the sole purpose of
18 providing matching funds pursuant to the federal American
19 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any
20 entity eligible for funding pursuant to that act shall be eligible to
21 apply to participate in the program administered by the commission
22 pursuant to this section, if that entity otherwise satisfies the
23 eligibility requirements under that program. This section does not
24 impede the ability of an incumbent local exchange carrier, as
25 defined by subsection (h) of Section 251 of Title 47 of the United
26 States Code, that is regulated under a rate of return regulatory
27 structure, to recover, in rate base, California infrastructure
28 investment not provided through federal or state grant funds for
29 facilities that provide broadband service and California intrastate
30 voice service.

31 (3) Notwithstanding subdivision (b) of Section 270, an entity
32 that is not a telephone corporation shall be eligible to apply to
33 participate in the program administered by the commission pursuant
34 to this section to provide access to broadband to an unserved or
35 underserved household, as defined in commission Decision
36 12-02-015, if the entity otherwise meets the eligibility requirements
37 and complies with program requirements established by the
38 commission. These requirements shall include all of the following:

39 (A) That projects under this paragraph provide last-mile
40 broadband access to households that are unserved by an existing

1 facilities-based broadband provider and only receive funding to
2 provide broadband access to households that are unserved or
3 underserved, as defined in commission Decision 12-02-015.

4 (B) That funding for a project providing broadband access to
5 an underserved household shall not be approved until after any
6 existing facilities-based provider has an opportunity to demonstrate
7 to the commission that it will, within a reasonable timeframe,
8 upgrade existing service. An existing facilities-based provider
9 may, but is not required to, apply for funding under this section to
10 make that upgrade.

11 (C) That the commission shall provide each applicant, and any
12 party challenging an application, the opportunity to demonstrate
13 actual levels of broadband service in the project area, which the
14 commission shall consider in reviewing the application.

15 (D) That a local governmental agency may be eligible for an
16 infrastructure grant only if the infrastructure project is for an
17 unserved household or business, the commission has conducted
18 an open application process, and no other eligible entity applied.

19 (E) That the commission shall establish a service list of
20 interested parties to be notified of California Advanced Services
21 Fund applications.

22 (f) Moneys in the Rural and Urban Regional Broadband
23 Consortia Grant Account shall be available for grants to eligible
24 consortia to fund the cost of broadband deployment activities other
25 than the capital cost of facilities, as specified by the commission.
26 An eligible consortium may include, as specified by the
27 commission, representatives of organizations, including, but not
28 limited to, local and regional government, public safety, elementary
29 and secondary education, health care, libraries, postsecondary
30 education, community-based organizations, tourism, parks and
31 recreation, agricultural, and business, and is not required to have
32 as its lead fiscal agent an entity with a certificate of public
33 convenience and necessity.

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

39 (h) (1) For purposes of this subdivision, the following terms
40 have the following meanings:

1 (A) “Publicly subsidized” means either that the housing
2 development receives financial assistance from the United States
3 Department of Housing and Urban Development pursuant to an
4 annual contribution contract or is financed with low-income
5 housing tax credits, tax-exempt mortgage revenue bonds, general
6 obligation bonds, or local, state, or federal loans or grants and the
7 rents of the occupants, who are lower income households, do not
8 exceed those prescribed by deed restrictions or regulatory
9 agreements pursuant to the terms of the financing or financial
10 assistance.

11 (B) “Publicly supported community” means a publicly
12 subsidized multifamily housing development that is wholly owned
13 by either of the following:

14 (i) A public housing agency that has been chartered by the state,
15 or by any city or county in the state, and has been determined to
16 be an eligible public housing agency by the United States
17 Department of Housing and Urban Development.

18 (ii) An incorporated nonprofit organization as described in
19 Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec.
20 501(c)(3)) that is exempt from taxation under Section 501(a) of
21 that code (16 U.S.C. Sec. 501(a)), and that has received public
22 funding to subsidize the construction or maintenance of housing
23 occupied by residents whose annual income qualifies as “low” or
24 “very low” income according to federal poverty guidelines.

25 (2) Notwithstanding subdivision (b) of Section 270, moneys in
26 the Broadband Public Housing Account shall be available for the
27 commission to award grants and loans pursuant to this subdivision
28 to an eligible publicly supported community if that entity otherwise
29 meets eligibility requirements and complies with program
30 requirements established by the commission.

31 (3) Not more than twenty million dollars (\$20,000,000) shall
32 be available for grants and loans to a publicly supported community
33 to finance a project to connect a broadband network to that publicly
34 supported community. A publicly supported community may be
35 an eligible applicant only if the publicly supported community can
36 verify to the commission that the publicly supported community
37 has not denied a right of access to any broadband provider that is
38 willing to connect a broadband network to the facility for which
39 the grant or loan is sought.

1 (4) (A) Not more than five million dollars (\$5,000,000) shall
2 be available for grants and loans to a publicly supported community
3 to support programs designed to increase adoption rates for
4 broadband services for residents of that publicly supported
5 community. A publicly supported community may be eligible for
6 funding for a broadband adoption program only if the residential
7 units in the facility to be served have access to broadband services
8 or will have access to broadband services at the time the funding
9 for adoption is implemented.

10 (B) A publicly supported community may contract with other
11 nonprofit or public agencies to assist in implementation of a
12 broadband adoption program.

13 (5) To the extent feasible, the commission shall approve projects
14 for funding from the Broadband Public Housing Account in a
15 manner that reflects the statewide distribution of publicly supported
16 communities.

17 (6) In reviewing a project application under this subdivision,
18 the commission shall consider the availability of other funding
19 sources for that project, any financial contribution from the
20 broadband service provider to the project, the availability of any
21 other public or private broadband adoption or deployment program,
22 including tax credits and other incentives, and whether the applicant
23 has sought funding from, or participated in, any reasonably
24 available program. The commission may require an applicant to
25 provide match funding, and shall not deny funding for a project
26 solely because the applicant is receiving funding from another
27 source.

28 (7) (A) To provide funding for the purposes of this subdivision,
29 the commission shall transfer to the Broadband Public Housing
30 Account twenty million dollars (\$20,000,000) from the Broadband
31 Infrastructure Grant Account and five million dollars (\$5,000,000)
32 from the Broadband Revolving Loan Account. Any moneys in the
33 Broadband Public Housing Account that have not been awarded
34 pursuant to this subdivision by December 31, 2016, shall be
35 transferred back to the Broadband Infrastructure Grant Account
36 and Broadband Infrastructure Revolving Loan Account in
37 proportion to the amount transferred from the respective accounts.

38 (B) The commission shall transfer funds pursuant to
39 subparagraph (A) only if the commission is otherwise authorized

1 to collect funds for purposes of this section in excess of the total
 2 amount authorized pursuant to paragraph (3) of subdivision (d).
 3 (i) (1) The commission shall conduct two interim financial
 4 audits and a final financial audit and two interim performance
 5 audits and a final performance audit of the implementation and
 6 effectiveness of the California Advanced Services Fund to ensure
 7 that funds have been expended in accordance with the approved
 8 terms of the grant awards and loan agreements and this section.
 9 The commission shall report its interim findings to the Legislature
 10 by April 1, 2011, and April 1, 2017. The commission shall report
 11 its final findings to the Legislature by April 1, 2021. The reports
 12 shall also include an update to the maps in the final report of the
 13 California Broadband Task Force and data on the types and
 14 numbers of jobs created as a result of the program administered
 15 by the commission pursuant to this section.
 16 (2) (A) The requirement for submitting a report imposed under
 17 paragraph (1) is inoperative on January 1, 2022, pursuant to Section
 18 10231.5 of the Government Code.
 19 (B) A report to be submitted pursuant to paragraph (1) shall be
 20 submitted in compliance with Section 9795 of the Government
 21 Code.
 22 (j) (1) Beginning on January 1, 2012, and annually thereafter,
 23 the commission shall provide a report to the Legislature that
 24 includes all of the following information:
 25 (A) The amount of funds expended from the California
 26 Advanced Services Fund in the prior year.
 27 (B) The recipients of funds expended from the California
 28 Advanced Services Fund in the prior year.
 29 (C) The geographic regions of the state affected by funds
 30 expended from the California Advanced Services Fund in the prior
 31 year.
 32 (D) The expected benefits to be derived from the funds expended
 33 from the California Advanced Services Fund in the prior year.
 34 (E) Actual broadband adoption levels from the funds expended
 35 from the California Advanced Services Fund in the prior year.
 36 (F) The amount of funds expended from the California
 37 Advanced Services Fund used to match federal funds.
 38 (G) An update on the expenditures from California Advanced
 39 Services Fund and broadband adoption levels, and an accounting

1 of remaining unserved and underserved households and areas of
2 the state.

3 (H) The status of the California Advanced Services Fund balance
4 and the projected amount to be collected in each year through 2020
5 to fund approved projects.

6 (2) (A) The requirement for submitting a report imposed under
7 paragraph (1) is inoperative on January 1, 2021, pursuant to Section
8 10231.5 of the Government Code.

9 (B) A report to be submitted pursuant to paragraph (1) shall be
10 submitted in compliance with Section 9795 of the Government
11 Code.

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