

AMENDED IN ASSEMBLY APRIL 6, 2015
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. *Existing law requires the commission to give priority to projects that provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider.*

This bill would define “broadband” for purposes of these provisions as advanced telecommunication services with specified advertised ~~speeds~~. *speeds and would authorize the commission to revise the*

definition, as specified. The bill would state the intent of the Legislature that the commission give additional priority to projects providing broadband access to unserved or underserved households.

Existing law provides that entities that are not telephone corporations are eligible to apply for funding from the CASF for projects to provide last-mile broadband access to households that are unserved. Existing law provides that local government entities may be eligible for infrastructure grants only if the infrastructure projects are for unserved households or businesses.

This bill would make projects that provide last-mile broadband access solely to households that are underserved also eligible for funding. For entities that are local governments, the bill would eliminate the requirement that the infrastructure projects be for unserved households or businesses.

Vote: majority. Appropriation: no. Fiscal committee: 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~~ 25 Mbps/3 Mbps broadband speeds. The lack of
- 16 access especially 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 fall
- 20 behind in securing access to robust broadband for all of its

1 residents, and it must continue to be a leader in developing
2 advanced telecommunications infrastructure for all.

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

7 (c) *It is the intent of the Legislature that the Public Utilities*
8 *Commission encourage the deployment of broadband access*
9 *pursuant to Section 706(a) of the Telecommunications Act of 1996*
10 *(47 U.S.C. Sec. 1302(a)).*

11 SEC. 2. Section 281 of the Public Utilities Code is amended
12 to read:

13 281. (a) The commission shall develop, implement, and
14 administer the California Advanced Services Fund program to
15 encourage deployment of high-quality advanced communications
16 services to all Californians that will promote economic growth,
17 job creation, and the substantial social benefits of advanced
18 information and communications technologies, consistent with
19 this section.

20 (b) (1) The goal of the program is to approve funding for
21 infrastructure projects that will provide broadband access to no
22 less than 98 percent of California households.

23 (2) (A) In approving infrastructure projects, the commission
24 shall give priority to projects that provide last-mile broadband
25 access to households that are unserved by an existing
26 facilities-based broadband provider. The commission shall provide
27 each applicant, and any party challenging an application, the
28 opportunity to demonstrate actual levels of broadband service in
29 the project area, which the commission shall consider in reviewing
30 the application.

31 (B) *It is the intent of the Legislature that the commission give*
32 *additional priority to projects providing broadband access to*
33 *unserved or underserved households, as defined in commission*
34 *Decision 12-02-015.*

35 (3) (A) For purposes of this section, “broadband” means
36 advanced communication services at advertised speeds of at least
37 25 megabits per second (Mbps) downstream and three Mbps
38 upstream.

39 (B) *If the Federal Communications Commission adopts a*
40 *definition for “advanced telecommunication capability” that*

1 *provides for a faster speed than that specified in subparagraph*
2 *(A), the commission may revise the definition of “broadband” to*
3 *be consistent with that federal definition.*

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

6 (1) The Broadband Infrastructure Grant Account.

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

9 (3) The Broadband Infrastructure Revolving Loan Account.

10 (4) The Broadband Public Housing Account.

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

19 (A) One hundred ninety million dollars (\$190,000,000) into the
20 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. On and after January 1, 2011, the
31 commission may collect an additional sum not to exceed two
32 hundred fifteen million dollars (\$215,000,000), for a sum total of
33 moneys collected by imposing the surcharge described in paragraph
34 (1) not to exceed three hundred fifteen million dollars
35 (\$315,000,000). The commission may collect the additional sum
36 beginning with the calendar year starting on January 1, 2011, and
37 continuing through the 2020 calendar year, in an amount not to
38 exceed twenty-five million dollars (\$25,000,000) per year, unless
39 the commission determines that collecting a higher amount in any

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

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

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

23 (3) Notwithstanding subdivision (b) of Section 270, an entity
24 that is not a telephone corporation shall be eligible to apply to
25 participate in the program administered by the commission pursuant
26 to this section to provide access to broadband to an unserved or
27 underserved ~~household, as defined in commission Decision~~
28 ~~12-02-015, household~~, if the entity otherwise meets the eligibility
29 requirements and complies with program requirements established
30 by the commission. These requirements shall include all of the
31 following:

32 (A) That projects under this paragraph provide last-mile
33 broadband access to households that are unserved *or underserved*
34 by an existing facilities-based broadband provider and only receive
35 funding to provide broadband access to ~~households that are~~
36 ~~unserved or underserved, as defined in commission Decision~~
37 ~~12-02-015, those households~~.

38 (B) That funding for a project providing broadband access to
39 an underserved household shall not be approved until after any
40 existing facilities-based provider has an opportunity to demonstrate

1 to the commission that it will, within a reasonable timeframe,
2 upgrade existing service. An existing facilities-based provider
3 may, but is not required to, apply for funding under this section to
4 make that upgrade.

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

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

13 (E) That the commission shall establish a service list of
14 interested parties to be notified of California Advanced Services
15 Fund applications.

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

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

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

35 (A) "Publicly subsidized" means either that the housing
36 development receives financial assistance from the United States
37 Department of Housing and Urban Development pursuant to an
38 annual contribution contract or is financed with low-income
39 housing tax credits, tax-exempt mortgage revenue bonds, general
40 obligation bonds, or local, state, or federal loans or grants and the

1 rents of the occupants, who are lower income households, do not
2 exceed those prescribed by deed restrictions or regulatory
3 agreements pursuant to the terms of the financing or financial
4 assistance.

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

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

12 (ii) An incorporated nonprofit organization as described in
13 Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec.
14 501(c)(3)) that is exempt from taxation under Section 501(a) of
15 that code (16 U.S.C. Sec. 501(a)), and that has received public
16 funding to subsidize the construction or maintenance of housing
17 occupied by residents whose annual income qualifies as “low” or
18 “very low” income according to federal poverty guidelines.

19 (2) Notwithstanding subdivision (b) of Section 270, moneys in
20 the Broadband Public Housing Account shall be available for the
21 commission to award grants and loans pursuant to this subdivision
22 to an eligible publicly supported community if that entity otherwise
23 meets eligibility requirements and complies with program
24 requirements established by the commission.

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

34 (4) (A) Not more than five million dollars (\$5,000,000) shall
35 be available for grants and loans to a publicly supported community
36 to support programs designed to increase adoption rates for
37 broadband services for residents of that publicly supported
38 community. A publicly supported community may be eligible for
39 funding for a broadband adoption program only if the residential
40 units in the facility to be served have access to broadband services

1 or will have access to broadband services at the time the funding
2 for adoption is implemented.

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

6 (5) To the extent feasible, the commission shall approve projects
7 for funding from the Broadband Public Housing Account in a
8 manner that reflects the statewide distribution of publicly supported
9 communities.

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

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

31 (B) The commission shall transfer funds pursuant to
32 subparagraph (A) only if the commission is otherwise authorized
33 to collect funds for purposes of this section in excess of the total
34 amount authorized pursuant to paragraph (3) of subdivision (d).

35 (i) (1) The commission shall conduct two interim financial
36 audits and a final financial audit and two interim performance
37 audits and a final performance audit of the implementation and
38 effectiveness of the California Advanced Services Fund to ensure
39 that funds have been expended in accordance with the approved
40 terms of the grant awards and loan agreements and this section.

1 The commission shall report its interim findings to the Legislature
2 by April 1, 2011, and April 1, 2017. The commission shall report
3 its final findings to the Legislature by April 1, 2021. The reports
4 shall also include an update to the maps in the final report of the
5 California Broadband Task Force and data on the types and
6 numbers of jobs created as a result of the program administered
7 by the commission pursuant to this section.

8 (2) (A) The requirement for submitting a report imposed under
9 paragraph (1) is inoperative on January 1, 2022, pursuant to Section
10 10231.5 of the Government Code.

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

14 (j) (1) Beginning on January 1, 2012, and annually thereafter,
15 the commission shall provide a report to the Legislature that
16 includes all of the following information:

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

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

21 (C) The geographic regions of the state affected by funds
22 expended from the California Advanced Services Fund in the prior
23 year.

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

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

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

30 (G) An update on the expenditures from California Advanced
31 Services Fund and broadband adoption levels, and an accounting
32 of remaining unserved and underserved households and areas of
33 the state.

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

37 (2) (A) The requirement for submitting a report imposed under
38 paragraph (1) is inoperative on January 1, 2021, pursuant to Section
39 10231.5 of the Government Code.

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

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