

AMENDED IN SENATE MAY 7, 2013

SENATE BILL

No. 740

Introduced by Senator Padilla

February 22, 2013

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 (~~CASF~~), *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 ~~\$100,000,000~~ moneys, collected by the surcharge, authorized by the commission, after January 1, 2011, ~~is~~ *are* to be deposited into ~~the Broadband Infrastructure Account~~ *3 separate accounts within the CASF*. Existing law authorizes the commission to collect an additional 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. Existing law authorizes the commission to collect the additional sum through the 2015 calendar year.

~~This bill would instead require that \$200,000,000 be deposited into the Broadband Infrastructure account. The bill would increase the amount of additional money the commission is authorized to collect to \$225,000,000, with a sum total not to exceed \$325,000,000. The bill would authorize the commission to collect the additional money until 2020.~~

This 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. In awarding infrastructure grants, this bill would require that priority be given to projects that provide last-mile broadband connection 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.

This 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.*

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 and this section. ~~The~~

1 (b) The goal of the program is, no later than December 31,
 2 2015, to approve funding for infrastructure projects that will
 3 provide broadband access to no less than 98 percent of California
 4 households. In awarding infrastructure grants, priority shall be
 5 given to projects that provide last-mile broadband connection to
 6 households that are unserved by an existing facilities-based
 7 broadband provider. However, a middle-mile broadband project
 8 is eligible for an infrastructure grant even if it passes through an
 9 area served by an existing facilities-based broadband provider,
 10 as long as the project applicant can demonstrate that the project
 11 provides last-mile broadband connection to households that are
 12 unserved by any existing facilities-based broadband provider.

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 ~~(b)~~

20 (d) (1) All moneys collected by the surcharge authorized by
 21 the commission pursuant to Decision 07-12-054, whether collected
 22 before or after January 1, 2009, shall be transmitted to the
 23 commission pursuant to a schedule established by the commission.
 24 The commission shall transfer the moneys received to the
 25 Controller for deposit in the California Advanced Services Fund.
 26 Moneys collected after January 1, 2011, shall be deposited in the
 27 following amounts in the following accounts:

28 (A) ~~Two~~ *One* hundred million dollars ~~—(\$200,000,000)~~
 29 *(\$100,000,000)* into the 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. After January 1, 2011, the commission
 40 may collect an additional sum not to exceed ~~two~~ *one* hundred

1 twenty-five million dollars ~~(\$225,000,000)~~ (\$125,000,000), for a
2 sum total of moneys collected by imposing the surcharge described
3 in paragraph (1) not to exceed ~~three~~ two hundred twenty-five
4 million dollars ~~(\$325,000,000)~~ (\$225,000,000). The commission
5 may collect the additional sum beginning with the calendar year
6 starting on January 1, 2011, and continuing through the 2020
7 calendar year, in an amount not to exceed twenty-five million
8 dollars (\$25,000,000) per year, unless the commission determines
9 that collecting a higher amount in any year will not result in an
10 increase in the total amount of all surcharges collected from
11 telephone customers that year.

12 (4) *It is the intent of the Legislature to authorize collection of*
13 *additional surcharge amounts necessary to achieve the program*
14 *goal described in subdivision (b).*

15 (e)

16 (e) (1) All moneys in the California Advanced Services Fund
17 shall be available, upon appropriation by the Legislature, to the
18 commission for the program administered by the commission
19 pursuant to this section, including the costs incurred by the
20 commission in developing, implementing, and administering the
21 program and the fund.

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

36 (3) Notwithstanding subdivision (b) of Section 270, an entity
37 that is not a telephone corporation shall be eligible to apply to
38 participate in the program administered by the commission pursuant
39 to this section if the entity otherwise meets the eligibility
40 requirements and complies with program requirements established

1 by the commission. *A local governmental agency may be eligible*
2 *for an infrastructure grant only if the infrastructure project is for*
3 *an unserved area, the commission has conducted an open*
4 *application process and no other eligible entity applied, and the*
5 *commission determines that within the region of the local agency's*
6 *jurisdiction there is less than 98 percent broadband deployment.*

7 ~~(d)~~

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

20 ~~(e)~~

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

26 ~~(f)~~

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

1 (2) (A) The requirement for submitting a report imposed under
2 paragraph (1) is inoperative on January 1, 2018, pursuant to Section
3 10231.5 of the Government Code.

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

7 ~~(g)~~

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

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

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

15 (C) The geographic regions of the state affected by funds
16 expended from the California Advanced Services Fund in the prior
17 year.

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

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

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

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

27 (2) (A) The requirement for submitting a report imposed under
28 paragraph (1) is inoperative on January 1, 2016, pursuant to Section
29 10231.5 of the Government Code.

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

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

37 In order to authorize the award of funds for the expansion of
38 broadband deployment to unserved and underserved areas of
39 California, to stimulate investments in infrastructure critical to
40 increasing the state's productivity, and to improve the quality of

- 1 information available to all of the state's citizens, as needed for
- 2 the health and safety of those citizens, it is necessary that this act
- 3 take effect immediately.

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