

AMENDED IN ASSEMBLY AUGUST 7, 2013

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 a sum not to exceed \$125,000,000, after January 1, 2011, 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 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 that amount until 2020.

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. In approving infrastructure projects, the bill would require 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. 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.

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 *to provide access to broadband to an unserved or underserved household, as defined*, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission.

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 subsequent decisions and~~ *consistent with*  
10 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.

15 (2) In approving infrastructure projects, the commission shall  
16 give priority to projects that provide last-mile broadband access  
17 to households that are unserved by an existing facilities-based  
18 broadband provider. The commission shall provide each applicant,  
19 and any party challenging an application, the opportunity to  
20 demonstrate actual levels of broadband service in the project area,  
21 which the commission shall consider in reviewing the application.

22 (c) The commission shall establish the following accounts within  
23 the fund:

24 (1) The Broadband Infrastructure Grant Account.

25 (2) The Rural and Urban Regional Broadband Consortia Grant  
26 Account.

27 (3) The Broadband Infrastructure Revolving Loan Account.

28 (d) (1) All moneys collected by the surcharge authorized by  
29 the commission pursuant to Decision 07-12-054 shall be  
30 transmitted to the commission pursuant to a schedule established  
31 by the commission. The commission shall transfer the moneys  
32 received to the Controller for deposit in the California Advanced  
33 Services Fund. Moneys collected after January 1, 2011, shall be  
34 deposited in the following amounts in the following accounts:

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

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

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

3 (2) All interest earned on moneys in the fund shall be deposited  
4 in the fund.

5 (3) The commission shall not collect moneys, by imposing the  
6 surcharge described in paragraph (1) for deposit in the fund, in an  
7 amount that exceeds one hundred million dollars (\$100,000,000)  
8 before January 1, 2011. After January 1, 2011, the commission  
9 may collect an additional sum not to exceed two hundred fifteen  
10 million dollars (\$215,000,000), for a sum total of moneys collected  
11 by imposing the surcharge described in paragraph (1) not to exceed  
12 three hundred fifteen million dollars (\$315,000,000). The  
13 commission may collect the additional sum beginning with the  
14 calendar year starting on January 1, 2011, and continuing through  
15 the 2020 calendar year, in an amount not to exceed twenty-five  
16 million dollars (\$25,000,000) per year, unless the commission  
17 determines that collecting a higher amount in any year will not  
18 result in an increase in the total amount of all surcharges collected  
19 from telephone customers that year.

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

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

1 (3) Notwithstanding subdivision (b) of Section 270, an entity  
2 that is not a telephone corporation shall be eligible to apply to  
3 participate in the program administered by the commission pursuant  
4 to this section *to provide access to broadband to an unserved or*  
5 *underserved household, as defined in commission Decision*  
6 *12-02-015*, if the entity otherwise meets the eligibility requirements  
7 and complies with program requirements established by the  
8 commission. These requirements shall include ~~that~~ *all of the*  
9 *following*:

10 (A) *That* projects under this paragraph ~~primarily~~ provide  
11 last-mile broadband access to households that are unserved by an  
12 existing facilities-based broadband ~~provider~~. ~~The provider and~~  
13 *only receive funding to provide broadband access to households*  
14 *that are unserved or underserved, as defined in commission*  
15 *Decision 12-02-015.*

16 (B) *That funding for a project providing broadband access to*  
17 *an underserved household shall not be approved until after any*  
18 *existing facilities-based provider has an opportunity to demonstrate*  
19 *to the commission that it will, within a reasonable timeframe,*  
20 *upgrade existing service. An existing facilities-based provider*  
21 *may, but is not required to, apply for funding under this section*  
22 *to make that upgrade.*

23 (C) *That the* commission shall provide each applicant, and any  
24 party challenging an application, the opportunity to demonstrate  
25 actual levels of broadband service in the project area, which the  
26 commission shall consider in reviewing the application.

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

31 (E) *That the commission shall establish a service list of*  
32 *interested parties to be notified of California Advanced Services*  
33 *Fund applications.*

34 (f) Moneys in the Rural and Urban Regional Broadband  
35 Consortia Grant Account shall be available for grants to eligible  
36 consortia to fund the cost of broadband deployment activities other  
37 than the capital cost of facilities, as specified by the commission.  
38 An eligible consortium may include, as specified by the  
39 commission, representatives of organizations, including, but not  
40 limited to, local and regional government, public safety, K-12

1 education, health care, libraries, higher education,  
2 community-based organizations, tourism, parks and recreation,  
3 agricultural, and business, and is not required to have as its lead  
4 fiscal agent an entity with a certificate of public convenience and  
5 necessity.

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

11 (h) (1) The commission shall conduct two interim financial  
12 audits and a final financial audit and two interim performance  
13 audits and a final performance audit of the implementation and  
14 effectiveness of the California Advanced Services Fund to ensure  
15 that funds have been expended in accordance with the approved  
16 terms of the grant awards and loan agreements and this section.  
17 The commission shall report its interim findings to the Legislature  
18 by April 1, 2011, and April 1, 2017. The commission shall report  
19 its final findings to the Legislature by April 1, 2021. The reports  
20 shall also include an update to the maps in the final report of the  
21 California Broadband Task Force and data on the types and  
22 numbers of jobs created as a result of the program administered  
23 by the commission pursuant to this section.

24 (2) (A) The requirement for submitting a report imposed under  
25 paragraph (1) is inoperative on January 1, 2022, pursuant to Section  
26 10231.5 of the Government Code.

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

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

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

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

37 (C) The geographic regions of the state affected by funds  
38 expended from the California Advanced Services Fund in the prior  
39 year.

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

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

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

7 (G) An update on the expenditures from California Advanced  
8 Services Fund and broadband adoption levels, and an accounting  
9 of remaining unserved and underserved *households and* areas of  
10 the state.

11 (H) The status of the California Advanced ~~Service~~ *Services*  
12 Fund balance and the projected amount to be collected in each  
13 year through 2020 ~~in order~~ to fund approved projects.

14 (2) (A) The requirement for submitting a report imposed under  
15 paragraph (1) is inoperative on January 1, 2021, pursuant to Section  
16 10231.5 of the Government Code.

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

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

24 In order to authorize the award of funds for the expansion of  
25 broadband deployment to unserved and underserved *households*  
26 *and* areas of California, to stimulate investments in infrastructure  
27 critical to increasing the state’s productivity, and to improve the  
28 quality of information available to all of the state’s citizens, as  
29 needed for the health and safety of those citizens, it is necessary  
30 that this act take effect immediately.