
THIRD READING

Bill No: SB 1130
Author: Lena Gonzalez (D), et al.
Amended: 6/19/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 11-2, 5/26/20
AYES: Hill, Bradford, Chang, Dodd, Hertzberg, McGuire, Pan, Rubio, Skinner,
Stern, Wiener
NOES: Moorlach, Dahle

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Levya, Wieckowski
NOES: Bates, Jones

SUBJECT: Telecommunications: California Advanced Services Fund

SOURCE: Author

DIGEST: This bill makes various changes to the California Advanced Services Fund (CASF), including modifying the definition of an “unserved” area eligible for CASF broadband infrastructure funding, restricting projects to only those that build broadband internet, and requiring any project receiving funding for “middle mile” broadband infrastructure to offer “open access” to multiple broadband re-sellers.

ANALYSIS:

Existing law:

- 1) Requires the California Public Utilities Commission (CPUC) to administer the CASF program to deploy high-quality, advanced communications services that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies. (Public Utilities Code §281(a))

- 2) Specifies that the goal of the CASF program is to approve funding no later than December 31, 2022, for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each broadband consortia region in the state. The CPUC is responsible for achieving this goal. (Public Utilities Code §281(b)(1)(A))
- 3) Defines an “unserved household” for the purposes of the CASF as a household for which no facility-based broadband provider offers broadband service at speeds of at least 6 megabits per second (Mbps) downstream and 1 Mbps upstream. (Public Utilities Code §281(b)(1)(B))
- 4) Requires the CPUC to do the following when prioritizing CASF grants to eligible projects:
 - a) Approve projects that provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider.
 - b) Give preference to projects in areas where Internet connectivity is only available through dial-up service, unserved by any form of wireline or wireless facilities-based broadband service or areas with no Internet connectivity.
 - c) After providing funding to supply broadband access to no less than 98 percent of households in each broadband consortia region, use a maximum of \$30 million remaining in the Broadband Infrastructure Grant Account for projects providing last mile broadband access to households where there is no provider offering speeds of at least 10 Mbps downstream and 1 Mbps upstream. (Public Utilities Code §281(b)(2))
- 5) Requires the CPUC to give an incumbent facilities-based broadband provider 180 days to demonstrate that it intends to install or upgrade infrastructure to expand access to an area proposed for CASF project funding. These incumbent providers may apply for CASF monies to fund broadband expansion projects. (Public Utilities Code §281(f)(4))
- 6) Authorizes the CPUC to collect a surcharge on consumers’ telecommunications bill to fund the CASF. Under existing law, the CPUC may collect a total of \$330 million. Between January 1, 2018, and December 31, 2022, the CPUC may not collect more than \$66 million in surcharges annually unless it determines that doing so would not result in an increase in the total amount of surcharges collected that year. (Public Utilities Code §281(d-e))

- 7) Specifies the criteria a project must meet to obtain funds from the CASF's Broadband Infrastructure Grant Account, including the following requirements:
 - a) The project deploys infrastructure capable of providing broadband speeds of a minimum of 10 mbps downstream and 1 mbps upstream to unserved households in census blocks where no provider offers access at speeds of at least 6 mbps downstream and 1 mbps upstream.
 - b) All or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households. Projects that only deploy middle mile infrastructure are not eligible for grant funding. For a project that includes funding for middle-mile infrastructure, the CPUC shall verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure.
 - c) The project is not located in a census block for which an existing provider has accepted federal Connect America Fund (CAF) monies, unless certain conditions are met. (Public Utilities Code §281(f)(5))
- 8) Authorizes an aggregate of \$5 million for the deployment of line extensions to individual houses or properties where an owner cannot otherwise afford a line extension. Any infrastructure built to make a line extension to a facilities-based broadband provider's network shall become the property of the provider to which it is connected. (Public Utilities Code §281(f)(6))
- 9) Specifies that local governments are eligible for grants if the agency's project is for an unserved household or business, the CPUC has conducted an open application process, and no other eligible entity applied for the project. (Public Utilities Code §281(f)(9))
- 10) Specifies that the following are eligible uses of grant funds:
 - a) Costs directly related to deploying infrastructure.
 - b) Costs to lease access to property or for internet backhaul services for a maximum of five years.
 - c) Costs incurred by an existing facilities-based broadband provider to upgrade its existing facilities to provide broadband interconnection. (Public Utilities Code §281(f)(11))
- 11) Requires the CPUC to conduct interim and final audits of the CASF program. Under existing law, the CPUC must submit a report on the interim audit to the

Legislature by April 1, 2020, and must submit a report on its final audit findings by April 1, 2023. (Public Utilities Code §912.2)

This bill:

- 1) Modifies the goal of the CASF program to specify that the program is intended to approve funding for broadband infrastructure projects that will supply “high-capacity, future-proof” infrastructure to no less than 98 percent of households in each broadband consortia region based on current engineering and scientific information available at the time of a CASF application.
- 2) Modifies the definition of “unserved” for the purposes of determining areas that are eligible for CASF project funding. Under this bill, an “unserved area” is one in which 90 percent of the population has no facility-based broadband provider offering service at speeds of at least 25 mbps downstream and 25 mbps upstream, and a latency sufficiently low to allow real-time interactive applications.
- 3) Prohibits the CPUC from collecting any additional surcharge revenue for this bill’s implementation and caps the annual program funding for the CASF program at \$66 million per year.
- 4) Adds new definitions for the purpose of identifying areas and projects eligible for CASF grants, including the following definitions:
 - a) “Unserved high-poverty area” means an unserved census tract with a poverty rate of at least 20 percent, as measured by the most recent five-year data series available from the American Community Survey of the United States Census Bureau.
 - b) “Future-proof infrastructure” means data networks that once built do not require new construction that involve significant public works in order to deliver higher speeds that mirror advancements in network equipment. Only infrastructure capable of delivering broadband speeds of 100 mbps downstream and 100 mbps upstream with a sufficiently low latency for interactive, real-time applications shall meet the definition of future-proof infrastructure.
 - c) “Open access project” means a wholesale network operation that supplies wholesale broadband access services to multiple service providers that re-sell broadband. An open access project is prohibited from selling its own broadband service.

- 5) Shortens the time frame from 180 days to 90 days during which an incumbent broadband provider has an opportunity to demonstrate that it intends to expand broadband access to an area proposed for CASF funding. These incumbent broadband providers would not be eligible for CASF funding for broadband expansions unless they demonstrate that they are financially incapable of self-financing necessary upgrades.
- 6) Requires the CPUC to only approve CASF projects that meet the following criteria:
 - a) Projects that provide broadband access at speeds of at least 25 mbps downstream and 3 mbps upstream with a sufficiently low latency in unserved areas where no provider offers 25 mbps downstream and 25 mbps upstream with sufficiently low latency.
 - b) All or a significant part of a project deploys last-mile infrastructure to unserved and unserved high-poverty areas. Projects that deploy middle-mile infrastructure are only eligible for grants if they are open access projects. To grant CASF monies to projects that include middle-mile infrastructure, the CPUC must verify that the middle-mile infrastructure is indispensable for accessing the last mile infrastructure.
- 7) Requires the CPUC to prioritize CASF funds to projects in unserved areas and unserved high-poverty areas where no internet exists or where internet is only offered at speeds at or below 6 mbps downstream and 1 mbps upstream.
- 8) Deletes existing prohibitions on projects receiving both CASF and CAF funding and requires the CPUC to ensure that no CASF grant recipient receives CASF monies for infrastructure that has already been fully funded by a federal grant.
- 9) Requires the CPUC to consider whether a provider must provide wholesale wireless or wireline services to other providers when determining whether wholesale services are necessary for providing affordable services under the CASF program.
- 10) Specifies that local government agencies are only eligible for CASF grants if the project serves unserved or high-poverty unserved areas.

Background

Purpose of the CASF. The CPUC established the CASF program in 2006 through Decision 07-12-054. Under the CPUC's decision, CASF provided funding as an incentive to encourage broadband providers to deploy broadband infrastructure to unserved and underserved communities. CASF funding is collected through a surcharge on end users' intrastate telecommunications bills. The CPUC established a priority of providing grants to areas completely unserved by broadband providers. Under the CPUC decision, any remaining funds would be provided to "underserved" communities. The Legislature codified the CPUC's decision establishing the CASF by passing SB 1193 (Padilla, Chapter 383, Statutes of 2008). Since its establishment, the CASF has been modified multiple times. Despite the possibility of having project costs fully covered by the CASF, few large internet service providers (ISPs) participate in the program. The CPUC's authority to collect funds for the CASF is scheduled to sunset on December 31, 2022. This bill does not extend the CPUC's funding authority for the CASF and it requires the CPUC to administer the program within existing resources by strictly limiting the CPUC's authority to collect revenues to fund the CASF to \$66 million per year.

Who is unserved? This bill modifies the areas that would be considered "unserved" for the purpose of CASF grant eligibility. Under existing law, an unserved community is one in which no broadband exists or no broadband provider offers speeds of at least 6 mbps downstream and 1 mbps upstream. This bill would specify that communities without speeds of 25 mbps downstream and 25 mbps upstream are considered "unserved." This modification would significantly expand the number and types of communities that are considered unserved by broadband, including communities where households have internet service that meets the federal definition of broadband of 25 mbps downstream and 3 mbps upstream.

Generally, CASF funded broadband infrastructure in rural areas where the lack of economies of scale and challenging terrain makes expansion of broadband in private markets unprofitable. In these areas, broadband largely does not exist. Even in communities that have some form of internet service, the service is delivered over a network that does not have a sufficient amount of fiber to reach broadband internet speeds. This bill's modification to the definition of an "unserved area" could enable broadband providers to propose CASF projects that upgrade internet speeds for communities that have basic broadband services. To the extent that these communities are in urban and suburban areas, providers may have a greater incentive to propose projects that improve broadband in urban and

suburban areas than propose new broadband projects in rural areas because urban and suburban projects would likely capture more customers per mile of infrastructure than those in less densely populated regions.

Urban, suburban, and rural communities face different underlying causes for a persistent lack of broadband access. Rural, suburban, and urban communities each face obstacles to broadband access; however, a lack of infrastructure disproportionately impacts rural Californians. While only five percent of Californians are unable to access broadband due to a lack of access to broadband infrastructure, most of these Californians are in rural areas of the state. Urban communities' lack of access is less likely to be driven by an absence of infrastructure and more likely to be driven by affordability concerns. According to the CPUC's annual CASF report, the digital divide between urban and rural households is worsening as more urban households gain access to higher speed internet while rural communities remain left behind. The CPUC's report shows that approximately 98 percent of urban households have access to infrastructure providing speeds of at least 25 mbps downstream and 3 mbps upstream while only 67 percent of all rural households had access to those speeds. This bill also creates a new designation within the definition of unserved areas for "unserved high-poverty areas." Under this bill, "unserved high-poverty areas" are unserved census tracts that have a poverty rate of at least 20 percent based on data from the Census Bureau's American Community Survey. This bill requires the CPUC to prioritize CASF grants for infrastructure projects in unserved areas and unserved high-poverty areas.

Speed limits on the digital highway. Differing types of internet-capable telecommunications deliver different speeds, and most consumers receive internet services through networks that are a hybrid of different types of wires and cables. Existing law requires the CASF to fund infrastructure projects capable of delivering speeds of at least 10 mbps downstream and 1 mbps upstream. While this speed is faster than older legacy dial-up infrastructure, it is not sufficient for most streaming video applications, which are an increasingly large portion of consumers' internet use. These applications include both streaming video entertainment applications as well as telehealth, distance learning, and business applications. Most streaming video applications require a minimum speed of 25 mbps downstream and 3 mbps upstream. This bill establishes a goal for the CASF program to build broadband infrastructure capable of delivering speeds of at least 100 mbps downstream and upstream and requires all CASF infrastructure projects to be capable of delivering speeds of at least 25 mbps downstream and 3 mbps upstream. This requirement would codify the goal of reaching speeds of 100 mbps up and down and permit CASF awardees can use a variety of technology for

broadband projects while still ensuring that CASF builds to a speed that facilitates streaming video applications.

Open Access Middle Miles. Under existing law, the CPUC is required to focus CASF broadband infrastructure grants on “last mile” infrastructure, and it prohibits the use of CASF grants for projects that are solely “middle mile.” Existing law permits the CPUC to fund projects that contain middle mile infrastructure only if the middle mile infrastructure is necessary to ensure access for the last mile infrastructure. While this bill retains existing requirements to ensure that CASF funds are targeted to last mile infrastructure, it also prohibits projects containing middle mile infrastructure from obtaining CASF monies unless the project is an “open access” project. This bill defines an open access project as one in which the provider only sells wholesale broadband services to over-the-top resellers and does not sell broadband to consumers as an ISP.

Middle mile infrastructure is comprised of the lines linking an ISP backbone core network to the local offices from which last mile services are delivered. Middle mile infrastructure is typically the portion of the network where incumbent ISPs have the greatest opportunity to obtain revenue from potential competitors by selling access to competitors. By establishing open access requirements as a prerequisite for obtaining CASF monies for a project containing middle-mile infrastructure, this bill could lower market barriers for competitive ISPs to obtain access to middle-mile infrastructure. This bill would exempt tribal governments and nonprofits from the middle-mile open access requirements, enabling them to obtain funding for projects that contain middle mile infrastructure with the goal of offering broadband directly to consumers. All other entities, including local governments and private companies, could only obtain a CASF grant to build a project containing middle-mile infrastructure if they do not sell broadband to consumers and instead sold access to the infrastructure to competitive ISPs.

This bill restricts incumbent ISP advantages in the CASF program. In addition to adding “open access” requirements for projects containing middle-mile infrastructure, this bill shortens from 180 days to 90 days the time-frame during which an incumbent ISP can block a CASF project by demonstrating that the ISP intends to expand its service to an area targeted for CASF grants. This bill also restricts the use of CASF infrastructure grants for incumbent ISP network upgrades to only those circumstances when an ISP can demonstrate that it cannot financially make the upgrades without a CASF grant.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, this bill could result in unknown cost pressures, likely in the millions of dollars (special fund), due to an expansion of the number of unserved households/areas that would be eligible for funding from the CASF program.

SUPPORT: (Verified 6/18/20)

AARP

Access Humboldt

Access Now

ADT Security Services

Aspiration Tech

California Broadband Cooperative

California Center for Rural Policy

California County Superintendents Educational Services Association

California IT in Education

Central Coast Broadband Consortium

City of Long Beach

City of San Carlos

Common Networks

Common Sense

Communications Workers of America, District 9

Contextly

CreaTV

DragonFly Group

Electronic Frontier Foundation

Engine Advocacy

HiGeorge

Indivisible Sacramento

Initialized

Institute for Local Self-Reliance

Kubera Venture Capital

Laytonville Area Municipal Advisory Council

League of California Cities

Long Beach Community College District

Long Beach Gray Panthers

Long Beach Unified School District

Los Angeles County Office of Education

Los Angeles Unified School District

Lynwood Unified School District
Manchester Community Technologies
Media Alliance
Media Justice
MinOps
Monkeybrains
National Association of Social Workers, California Chapter
Onfleet
Pitch Deck
Press Friendly
ProtocolLabs
Public Knowledge
Reddit
Rural County Representatives of California
Santa Cruz County 2nd District Supervisor Zach Friend
SiFi Networks
Small School Districts' Association
Superintendent Ruth Pérez, Paramount Unified School District
TechEquity Collaborative
The Education Trust-West
The Greenlining Institute
The Utility Reform Network
Tom Wheeler, former chair of the FCC
Tostie Productions, LLC
Tucows
Ubuntu Ventures
Unwired
Writers Guild of American West

OPPOSITION: (Verified 6/18/20)

California Cable and Telecommunications Association
Charter Communications
Frontier Communications
San Gabriel Valley Economic Partnership

ARGUMENTS IN SUPPORT: According to the author:

I am authoring SB 1130 because we must urgently close the digital divide in California. One of the first steps to closing the digital divide is by fostering high-speed broadband internet for all Californians. We

will be able to deploy infrastructure for 21st Century Ready Communications by reforming the way the California Advanced Service Fund operates. This legislation is meant to build off of previous legislative efforts related to the CASF. Currently, the CASF has roughly \$300 million available and it is not being accessed by the communities that need it the most or accessed at all. SB 1130 will make it easier for local governments and internet service providers of all sizes to access this fund to carry out high-speed broadband projects in the state unserved and unserved high-poverty areas. I truly believe that SB 1130 will be the next step towards Broadband for all Californians.

ARGUMENTS IN OPPOSITION: Opponents argue that this bill would divert resources from communities without any broadband to communities that already have basic broadband services. Opponents also claim that this diversion would worsen the digital divide in rural communities. In opposition, the California Cable and Telecommunications Association states the following:

SB 1130 would completely upend the Legislature's direction that the CASF program fund infrastructure in areas that still lack any Internet connectivity, which is almost entirely in remote rural California. It would change the definition of "unserved" to allow CASF grants for upgrading existing networks unless the service available is provided at speeds of at least 25/25 mbps, even though many parts of rural California still have no service. Classifying an area as unserved unless broadband service is available at symmetrical speeds of 25/25 mbps would potentially deem all areas of California as unserved since few, if any, ISP's currently provide service with symmetrical speeds.

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