

Date of Hearing: August 19, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
SB 28 (Caballero) – As Amended July 5, 2021

Policy Committee:	Communications and Conveyance	Vote:	9 - 0
	Privacy and Consumer Protection		11 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill, the Rural Broadband and Digital Infrastructure Video Competition Reform Act of 2021, seeks to help rural, unserved and underserved communities build advanced digital infrastructure primarily by expanding the regulatory authority of the California Public Utilities Commission (CPUC) over holders of state video franchises and by requiring the Department of Technology (CDT) to compile an inventory of state-owned resources that may be available for use in the deployment of broadband networks.

Specifically, this bill:

- 1) Deletes a provisions of existing law that limits the authority of the CPUC to regulate video services and, instead, empowers the CPUC to exercise all authority, jurisdiction and powers authorized by a franchise authority pursuant to federal cable laws.
- 2) Deletes provisions of existing law that provide the specific conditions by which to determine whether different classes of state video franchise holders have discriminated against or denied service to potential residential subscribers because of the income of the residents in the local area and, instead, states only that a state video franchise holders shall not discriminate or deny access to potential residential subscribers because of the income of the residents in the local area.
- 3) Expands CPU regulatory actions over state video franchise holders by requiring the CPUC to do the following: (a) collect “granular” data on the actual locations served by the holder of a state video franchise; (b) adopt customer services requirements applicable to the holder of state video franchise and to adjudicate customer complaints; and (c) assess the buildout obligations of a holder of a state franchise to further competition and expansion of video service.
- 4) Requires a holder of a state video franchise to report annually to the CPUC regarding video service locations, speeds and prices.
- 5) Requires CDT to: (a) compile an inventory of state-owned resources that may be available for use in the deployment of broadband networks in rural, unserved and underserved communities; and (b) develop standardized agreement provisions to enable state-owned resources to be leased or licensed to further deployment of broadband networks in rural, unserved and underserved communities.

- 6) Requires CDT to place on its website both the inventory and the standardized agreement provisions.

FISCAL EFFECT:

This bill creates significant new workload, and associated costs, to the CPUC, to conduct rulemaking; adjudicate customer complaints; assess video franchise holders buildout obligations; consult with local governments regarding violations of customer service requirements and buildout obligations; collect, map and analyze granular service data and gather and analyze pricing; and enforce requirements, including suspension or revocation of video franchises.

The CPUC estimates workload will entail ongoing annual costs of roughly \$1.5 million, mainly to cover salaries for seven positions (including two regulatory analysts, a data specialist, a telecommunications engineer, a supervisor, an attorney and an administrative law judge), as well as equipment and travel cost. The CPUC also anticipates information technology cost of an unknown, but likely significant amount (Public Utilities Commission Utilities Reimbursement Account).

COMMENTS:

- 1) **Purpose.** The author intends this bill to ensure holders of state video franchises—many of which provide broadband internet services—fulfill their franchise obligations, thereby expanding access to broadband services. According to the author: Over 2 million Californians struggle to participate in the 21st Century way of life – children required to learn remotely, employees required to work from home, and businesses forced to conduct online sales and services – because of inferior or non-existent broadband. Rural communities with low population density and low-income residents still lack broadband, as do urban low-income communities. SB 28 provides a solution, without new fees or taxes, by ensuring that digital video franchise license holders meet their license obligations in a non-discriminatory manner.
- 2) **Background.** The federal government, through the Federal Communications Commission (FCC), regulates cable operators and requires a cable operator to receive a cable franchise before offering cable service. FCC regulations allow state and local governments to act as local franchise authorities (LFAs) that issue franchises to cable operators and that regulate cable operators and cable television services. FCC regulations circumscribe the regulatory authority of LFAs, specifically by capping the fees such an authority may charge a cable operator and restricting an LFA from regulating the provision of most non-cable services, including broadband internet access service, offered over a cable system by an incumbent cable operator. However, FCC regulations assert that build-out requirements and customer service requirements are lawful and separate from the franchise fees that are restricted by FCC order.

In California, prior to 2006, local governments acted as the LFAs for cable operators and other providers of video service. In 2006, state law, known as the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), designated the CPUC as the sole LFA in the state, thereby displacing the role of cities and counties as LFAs. (See [AB 2987](#) (Nunez), Chapter 700, Statutes of 2006.) The DIVCA limited the CPUC's authority to regulate providers of

video service by explicitly stating that it shall not be construed as granting authority to the CPUC to regulate the rates, terms and conditions of video services, except as explicitly set forth DIVCA.

In addition, DIVCA prohibited a franchise holder from discriminating against or denying access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides. And DIVCA laid out specific criteria—such as that, within three years of beginning to provide services, at least 25 percent of households with access to the holder’s video service are low-income households—completion of which satisfy a franchisee’s obligation to not discriminate on the basis of income.

DIVCA franchise holders provide more than just video services. For example, many also provide broadband service through use of the same infrastructure used to provide video service. According to the CPUC, based on third-party data (MediaCensus, a subsidiary of S&P Global Market Intelligence), 97% of broadband subscribers in California receive service from one of only five companies— AT&T, Charter, Comcast, Cox and Frontier —all of which hold DIVCA franchises.

SB 1193 (Padilla), Chapter 393, Statutes of 2008, established the California Advanced Services Fund (CASF) and gave the CPUC authority to assess a surcharge on communication service ratepayers (wireline, wireless and voice over internet protocol customers) receiving intrastate telecommunication services. The statutory goal of the program is to provide broadband access to no less than 98% of California households in each “consortium” (regional umbrella organizations made up of public, private and community-based organizations that coordinate efforts to promote deployment, access and adoption of broadband technology).

The CASF program has existed for more than a decade, and the state has collected, and disbursed, hundreds of millions of dollars in surcharge revenue. Still, many areas of the state, and many households within the state, lack broadband services that would allow them high-speed connection to the internet, as shown in the following table taken directly from the CPUC’s CASF program page:

Wireline and Fixed Wireless Broadband Availability as of December 31, 2019							Extension Account.	
Speed Benchmarks (Mbps)	Percentage of Total Households with Broadband Availability			Unserved Households				
				Number of Unserved Households			Percentage of Unserved Households	
	Urban	Rural	Statewide	Urban	Rural	Statewide	Urban	Rural
>=6/1	98.0%	82.7%	97.2%	252,604	119,143	371, 747	2.0%	17.3%
>=25/3	97.8%	73.8%	96.5%	281,507	180,922	462,4 29	2.2%	26.2%
>=100 down	97.5%	48.7%	94.9%	320,504	354,226	674,7 30	2.5%	51.3%

In December of last year, the California Broadband Council released the final draft of its *Broadband for All Action Plan*. The plan identified five roadblocks preventing Californians from accessing or adopting broadband: (a) availability; (b) affordability; (c) accessibility to devices; (d) digital skills (or lack of them); and (e) data. (The California Broadband Council was created by order of the Governor (Executive Order N-73-20) with the purpose of

developing the plan, which is to incorporate a goal of 100 megabits per second download speed to guide infrastructure investment and program implementation to benefit all Californians.)

The Legislature is considering several bills this session to expand broadband access throughout the state, mainly through continuation of, and increased funding for, the CASF program. And, just recently, the Legislature passed a budget bill to create an expansive new program for the development and construction of a statewide open-access “middle-mile” broadband network. (See SB 156 (Committee on Budget and Fiscal Review), Chapter 112, Statutes of 2021.) This bill takes a different tack from those bills in that it seeks to increase access and connection to broadband indirectly, by expanding the CPUC’s authority to regulate the buildout and customer-service requirements applicable to video service providers that hold a state franchise. As described above, the FCC does not allow state or local governments to regulate broadband service; but the FCC does allow state and local governments, as LFAs, to regulate buildout and customer-service requirements applicable to video franchise holders. Because franchise holders often use their video infrastructure to also provide broadband service, this bill, the author and proponents contend, will lead to greater access and connection to broadband services.

Industry representatives, such as the California Cable and Telecommunications Association (CCTA) and others, object that, among other things, the bill: (a) authorizes data collection that does not align with FCC data collection requirements, (b) requires data collection of only one type of entity that provides broadband service—namely, video service providers—and (c) the bill authorizes the CPUC to evaluate and regulate a video franchise’s buildout obligations without providing criteria against which CPUC is to assess that obligation. The author and others counter: (a) the bill empowers the CPUC to regulate the buildout and customer-service requirements of video service providers, consistent with FCC regulations, not providers of broadband service, (though, admittedly and not-too coincidentally, those video service providers also provide broadband service); and (b) by removing specific buildout criteria from statute, the CPUC can, through its participatory rulemaking process, and with the “granular” data this bill allows the CPUC to collect, assess buildout—and accusations of discriminatory “redlining”—on a case by case basis.

- 3) **Related Legislation.** As mentioned above, the Legislature is considering several bills that seek to expand access and connection to broadband service.
 - a) AB 14 (Aguiar-Curry) extends the CASF program—the state’s program to expand broadband service—and related surcharge and makes significant modifications to the CASF program. The bill is pending in Senate Appropriations.
 - b) AB 1425 (Gipson) re-establishes the Broadband Public Housing Account within the CASF to fund broadband connectivity for publicly subsidized housing communities. The bill is pending in Senate Appropriations.
 - c) SB 4 (Gonzalez) extends and makes various modifications to the CASF program. The bill is pending in this committee.