

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner Horvath, Chair

AB 414 (Reyes) – As Amended March 9, 2023

SUBJECT: Communications: Digital Equity Bill of Rights

SUMMARY: This bill establishes the Digital Equity Bill of Rights, which provides that it is the policy of the state to ensure digital equity for all residents of the state, that residents have the right to broadband in various forms and functions, and that broadband internet subscribers benefit from equal access to service. Specifically, **this bill:**

- 1) Makes findings and declarations regarding digital equity, including that digital equity requires the deployment and adoption of information technologies enabled by high-speed internet infrastructure.
- 2) Establishes that California residents have a right to broadband in various specified forms and functions to ensure digital equity for all residents of the state.
- 3) Establishes the policy of the state that broadband internet subscribers benefit from equal access to broadband internet service.
 - a. Defines “equal access” to mean the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality-of-life metrics in a given geographical area, for comparable terms and conditions.

EXISTING LAW:

- 1) Establishes the policy of the United States that, insofar as technically and economically feasible, broadband internet subscribers should benefit from equal access to broadband internet service. (Infrastructure Investment and Jobs Act § 60506 – Public Law 117-58)
- 2) Declares that the offering of high-quality basic telephone service at affordable rates to the greatest number of citizens has been a longstanding goal of the state. (Public Utilities Code § 871.5)
- 3) Requires the CPUC to require telephone corporations to provide customer service to telecommunications customers that includes reasonable statewide service quality standards. (Public Utilities Code § 2896)
- 4) Directs the CPUC to adopt customer service requirements for a holder of a state franchise and adjudicate any customer complaints. (Public Utilities Code § 5895(b))
- 5) Establishes the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. (Water Code § 106.3(a))

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Establishing a right to broadband would complement and is consistent with existing state law.* This bill declares the policy of the state that all residents have the right to broadband, specifically in the various forms and functions enumerated in the bill. For example, a right to broadband that is reliable, affordable, ubiquitous, ensures public safety, and supports economic prosperity. No other state in the United State has adopted such a policy, especially with such specificity as to what the broadband should enable; however, California has been at the forefront of civil rights before. For example, in 2012 California was the first state in the nation to legislatively recognize the human right to water. Although the language in this bill concerning broadband is much more prescriptive than the statute establishing the right to water, both recognize accessibility and affordability as key tenets.

Further, pursuant to the Moore Universal Telephone Service Act, it has long been the goal of the state that high-quality basic telephone service at affordable rates are offered to the greatest number of citizens. At the time this legislation was passed in 1983 broadband did not yet exist; however, the Legislature acknowledged that universal access to telecommunications services had social benefits such as improving the quality of life of residents, expanding access to education, training and commerce, and assisting in bridging the digital divide. To that end, portions of this bill establishing a right to broadband would complement and are consistent with existing law regarding water and other telecommunications services.

- 2) *A right to broadband poses legal liability to the state.* Establishing a right to broadband as provided in this bill would pose a large legal liability to the state if the state failed to meet its obligation under this bill. For example, there are hundreds of thousands of households that are unserved by any broadband service provider. Considering the potential liability, two points bear mentioning.

The first point, some of the rights established by this bill are concrete and verifiable (e.g., “Broadband that is affordable by ensuring that internet service plans are affordable for all residents of the state, regardless of their geographic location or household income.”), while others are set forth in a manner susceptible to varied subjective interpretations (e.g., “Broadband that improves quality of life by advancing economic status with access to educational opportunities, new job opportunities, and health care.”). It would be difficult for a court to determine whether a violation of the latter has been properly pled, much less proven.

Second, the bill does not define or enumerate tangible examples of relief that an individual may receive. Without clear guidance to the court about appropriate remedies, relief may take many forms, some of which may not necessarily result in broadband access and could have unintended consequences. For example, if the court found that the state failed to act in good faith to effectuate the Digital Equity Bill of Rights because it did not provide adequate access to a rural county, it may order the state to rewrite the Broadband for All Action Plan to more reasonably provide for rural county access, or else exempt rural counties altogether. Alternatively (and more closely aligned with the bill’s intent), the court could direct state funding to be used or prioritized in the rural county immediately, though this may divert funding streams from other important projects. The court might also direct a provider that

contracts with the State to prioritize building broadband infrastructure in that rural county. Due to the range of possibilities, the author may wish to consider defining the forms of relief that may be sought in a civil action against the State to ensure that relief appropriately addresses the bill's intent and the author's goals. Despite the potential liability to the state, this bill has been keyed non-fiscal by the Legislative Counsel.

- 3) *The federal Infrastructure Investment and Jobs Act established a right to equal access to broadband service.* In November 2021, Congress passed and President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA). The IIJA is a sweeping piece of legislation broadly focused on improving the nation's infrastructure through billions of dollars of funding to state and federal agencies for various infrastructure projects, including broadband infrastructure. In addition to infrastructure funding, the IIJA also included novel policies regarding digital discrimination and funding specifically for digital equity purposes. Portions of this bill regarding digital discrimination borrow directly from the text of the IIJA, particularly the definition of equal access in the context of broadband service. Further, the IIJA also directed the Federal Communications Commission (FCC) to adopt rules to prevent digital discrimination, including model policies for local governments. This bill would direct the CPUC to do something similar.
- 4) *Requirements of this bill could complement federal efforts.* This bill would require the CPUC to adopt rules that facilitate equal access to broadband service by January 2025, something the FCC has already begun working on. In March 2022, the FCC opened a new proceeding on how to prevent and eliminate digital discrimination to ensure that all Americans have equal access to broadband internet access service¹. As part of that process, the FCC is fielding comments from the public on how to promote equal access to broadband regardless of income level, ethnicity, race, religion, or national origin. In addition to the proceeding, the FCC Chairwoman formed a cross-agency task force that will oversee the development of model policies and best practices that states and local governments can adopt to ensure ISPs do not engage in digital discrimination. In accordance with the IIJA, both initiatives must be completed by November 2023.
- 5) *Arguments in support.* Various organizations expressing support for this legislation view the need for this bill through the experience of too many Californians during the COVID-19 pandemic. Households and individuals that did not have reliable and affordable access to broadband service may have experienced a loss of education and economic opportunities as the world transitioned to digital work and school to accommodate social distancing. Additionally, the California Emerging Technology Fund, in their letter of support note that more than 5,000 individuals have signed a petition to support the enactment of their similar Digital Equity Bill of Rights, which this bill is modeled from.
- 6) *Arguments in opposition.* The California Video & Broadband Association (CalBroadband) argues that creating a right to broadband that a state agency is required to guarantee can give rise to lawsuits against the state. CalBroadband notes that subjecting the state to lawsuits would only delay important work the state and federal government have started to close the digital divide.

¹FCC-22-21. *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*. <https://www.fcc.gov/document/fcc-initiates-inquiry-preventing-digital-discrimination>

7) *Related/similar legislation.*

- a. AB 41 (Holden, 2023) proposes various comprehensive reforms to Digital Infrastructure and Video Competition Act, including strengthening existing anti-discrimination standards and expanding the role of the CPUC in reviewing cable franchise applications. Coincidentally, cable companies are among the largest broadband service providers in the state. This bill is pending in this committee.
- b. AB 1588 (Wilson, 2023) would establish the Affordable Internet and Net Equality Act of 2022. The bill would require the state to only do business with internet service providers offering affordable home internet service, as provided. This bill is pending in this committee.
- c. AB 2750 (Bonta, 2022) directed the California Department of Technology, in consultation with the California Public Utilities Commission, to develop a statewide digital equity plan for purposes of leveraging federal digital equity funding established through the IJA.

8) *Committee amendments.* The Chair recommends the following amendments:

- a. To protect the state from potential liability arising from creating a civil right to broadband, the Chair recommends changing the objective of the bill to establish the “goal”, not “policy”, of the state that residents have “access” to broadband, not a “right” to broadband.
- b. The Chair recommends adding a definition of “broadband”, as defined in subdivision (b) of Section 3100 of the Civil Code.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Gi Forum Education Foundation of Santa Maria, CA
 Beehive Technology Solutions
 Bizfed Institute
 California Child Care Resource and Referral Network
 California Emerging Technology Fund
 California Human Development
 Center for Employment Training
 Central Valley Opportunity Center (CVOC)
 Children's Council of San Francisco
 Community Living Campaign
 Corporation for Education Network Initiatives in California
 County of Sonoma Area Agency on Aging
 Farmworker Institute of Education & Leadership Development
 First Day Foundation
 Fresno State Connect Initiative
 Independent Living Center of Southern California
 Inland Coalition for Immigrant Justice
 Inland Empire Regional Broadband Consortium

LA Cooperativa Campesina De California
Leadingage California
Los Amigos De LA Comunidad, Imperial Valley
Lucile Packard Children's Hospital_stanford Children's Health
Media Alliance
Newstart Housing Corporation
North Bay North Coast Broadband Consortium
Office of Supervisor Nora Vargas, County of San Diego
Partners in Care Foundation (UNREG)
Proteus, INC.
Sacramento Native American Health Center
San Francisco Tech Council
Senior Coastsiders
Southern Border Broadband Consortium
Valley Vision

Opposition

California Broadband & Video Association
California Chamber of Commerce
United States Telecom Association DbA Ustelecom - the Broadband Association

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