

M e m o r a n d u m

Date: March 18, 2013

To: The Commission
(Meeting of March 21, 2013)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 740 (Padilla) – Telecommunications: universal service program**
As introduced: February 22, 2013

RECOMMENDED POSITION: SUPPORT

SUMMARY OF BILL

This bill would amend Public Utilities (PU) Code Sec. 281 to make any entity which is not a telephone corporation eligible to apply for California Advance Service Fund (CASF) grants and loans if that entity otherwise satisfies the CASF's eligibility requirements and any other requirements as defined by the California Public Utilities Commission (CPUC).

In addition, the bill would authorize the collection of an additional \$100 million dollars for CASF infrastructure grants by the end of 2020.

CURRENT LAW

Currently, PU Code 270(b) limits eligibility for CASF grants and loans to telephone corporations as defined by PU Code Sec. 234. PU Code Sec. 281 currently authorizes the CASF to provide to \$200 million in infrastructure grants.

AUTHOR'S PURPOSE

Consistent with the federal principals of universal service, all Californian's—including low-income consumers and those in rural, insular, and high-cost areas—should have access to telecommunications services such as broadband at reasonably comparable rates to those charged for similar service in urban areas. More than a quarter million California households have been identified as un- or underserved by broadband.

EXPLANATION OF BILL'S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY

This bill would eliminate the current restriction that limits participation in the CASF program to only telephone corporations. In addition, the bill would supplement the existing \$200 million authorized for CASF broadband infrastructure grants by an additional \$100 million.

The stated objective of the Legislature and the CPUC in establishing the CASF is to promote the ubiquitous availability of broadband services throughout the state. To achieve this objective, the CASF provides grants and loans for broadband deployment projects in unserved and underserved areas of the state. Such projects are for the construction of last mile and middle mile broadband facilities. Last mile facilities are necessary to connect individual households to Internet service providers (ISPs). Middle mile projects deploy the infrastructure necessary to connect a provider's last mile facilities to the Internet backbone.

Currently, the CASF is authorized to award \$200 million in grants for infrastructure projects. An additional \$15 million is allotted for revolving loan fund available to entities that received a CASF infrastructure grant. A further \$10 million was authorized to fund the activities of regional consortia which are aimed at promoting broadband deployment and adoption. Of the \$100 million initially authorized for CASF broadband infrastructure grants, approximately \$58 million is not yet awarded..

Approximately 75% of the CASF funds awarded to date have been for middle mile projects while the remaining 25% of funds were awarded for last mile projects. Middle mile projects are a critical component of broadband infrastructure and can attract last mile providers. However, middle mile projects by themselves do not guarantee that households will receive broadband service. Put another way, middle mile facilities are not a substitute for last mile facilities. To date, the CASF has approved grants for last mile projects that will provide Internet access to 3.5% of the identified 300,000 unserved and underserved households in California.

There exist many broadband providers that could advance the state's broadband goals with CASF funding, but are currently unable to do so because they are not telephone corporations subject to the CPUC's jurisdiction. This is either because these providers offer standalone Internet access, which is an information service, or construct only middle mile facilities which are mostly jurisdictionally interstate. The inclusion of these providers should expand the pool of applicants eligible for CASF support.

Additionally, since many of these providers use low cost technologies such as terrestrial fixed wireless using mostly unlicensed spectrum, they may be best suited to provide cost effective last mile facilities in unserved and underserved areas of the state. This is because most, if not all of these areas, are located in rural areas where the cost to deploy broadband facilities is high due to low population density and/or difficult terrain.

The provision of this bill that would eliminate the current restrictions on eligibility for CASF funds will increase the number of facilities-based broadband services providers

who are eligible to apply for CASF infrastructure grants and loans. Expanding eligibility may increase the number of applicants for last mile projects using technologies that are more cost effective than those used by wireline telephone corporations.

Currently, the CASF has approximately \$158 million in grant funds. On February 1, 2013, 28 applications were submitted to the CPUC for projects in underserved areas of the state seeking total CASF support in the amount of \$240.6 million. If all of these applications were granted, available CASF grants funds would be exhausted. Further, if the eligibility is opened to non-telephone corporations, the expectation is that new applicants will seek additional grants.

Staff recommends the CPUC support the provision of the bill changing the current eligibility requirements, assuming that funds remain after the review and approval of the applications is complete or the Legislature approves the additional \$100 million in infrastructure grants. This is because many of the current applications for last mile projects proposed by wireline providers are significantly more costly than comparable last mile facilities deployed by unregulated broadband service that use terrestrial fixed wireless technologies. By changing the current eligibility requirements, the CPUC will be in a better position going forward to select the most appropriate and cost effective last mile projects for CASF support.

The bill proposes to award CASF support to entities which the CPUC does not regulate. However, awarding CASF grants to non-certificated facilities-based entities is not without precedent. In fact, the bill is modeled on a similar amendment to the CASF statute, enacted by the Legislature in 2009 [AB 1555 (Perez); Stats. 2009, ch. 24], which permitted entities which were not telephone corporations but had been awarded federal American Investment and Recovery Act (ARRA) grants to obtain matching grants from the CASF. To implement AB 1555, the CPUC adopted a specific set of safeguards applicable to these entities to ensure that CASF funds would not be subject to waste, fraud, or abuse. See *Resolution T-17233*. Accordingly, the CPUC can adopt a similar set of safeguards for non-telephone companies to ensure that ratepayer funds are protected.

SAFETY IMPACT

As the Governor's Broadband Task Force stated in its 2007 report, ubiquitous broadband will play a key role in enhancing public safety operations and applications in law enforcement, disaster relief, traffic management, and virtually every other aspect of public safety. The CASF program is intended to promote such access.

Entities awarded grants under this program which attach to investor owned utility support structures or place facilities in utility conduits would be subject to the safety requirements in CPUC General Order 95 and GO 128.

RELIABILITY IMPACT

The CPUC's authority to impose reliability standards on Internet access service is in flux. Nonetheless, current CASF rules require that applicants for broadband project grants and loans demonstrate that they have the requisite technical and managerial expertise to build and operate any proposed broadband system. Furthermore, applicants are required to demonstrate that they are financially sound and that the proposed project is financially sustainable. Under the current CASF framework, much of this demonstration is accomplished through the process necessary to obtain a CPCN. If the proposed bill is enacted, the CPUC plans to require that non-certificated applicants make the same demonstration required of applicants seeking a CPCN as part of the CASF application process.

RATE IMPACT

Both the state and the CPUC are federally preempted from regulating the rates charged for Internet access service. However, as a condition of being awarded a grant, the current CASF program requires that the grantee commit to providing service at the rate it specifies in its application for a two-year period after the project becomes operational. The price proposed by the applicant is included in the scoring process used to rank grant applications against one another. Because the bill would add \$100 million for infrastructure grants to be collected through an end user surcharge by the end of 2020, staff estimates that current end user surcharge of 0.164% would remain in effect beyond its current expiration date at the end of 2015 through the end of 2020.

FISCAL IMPACT

The bill authorizes collection of the additional \$100 million through 2020 with no sunset for the program itself. With the additional \$100 million in funding and expanded eligibility to apply for the CASF grants/loans to facilities-based non-CPCN and WIR holders, the CPUC workload would be extended to accommodate:

- Development of more specific rules and requirements for CASF grant/loan applications from the expanded pool of applicants.
- Assisting the newly-eligible entities that are most likely not as familiar with CPUC processes.
- Processing a larger number of CASF applications and monitoring progress and processing of CASF payments to more CASF projects.
- Conducting necessary audits, verification, and discovery during project implementation.

Although the current staff is fully engaged handling the current CASF program, a program extension through 2020 would allow current staff to absorb the additional work over time.

ECONOMIC IMPACT

It is well documented that the Internet and Internet access have the capacity to make businesses more efficient and to stimulate business activity. Equally well known are the benefits that access to the Internet confers on local government, education, healthcare etc. To the extent that the change in the eligibility requirement will increase the deployment of Internet access facilities in unserved and underserved areas, then consumers, businesses, schools and local governments and the economy in these areas will benefit accordingly.

LEGAL IMPACT

At present, the CASF provides funding only to entities with a CPCN, or a partnership or coalition in which one party has a CPCN. Accordingly, the CPUC has independent legal authority over the entity with the CPCN and has many means at its disposal to ensure compliance with the provisions of the CASF grant.

This bill would allow the CPUC to provide grant funding to entities over which the CPUC has no independent legal authority. The CPUC could, by decision or resolution, make the award of grant monies contingent on the recipient agreeing to abide by relevant provisions of the PU Code, as well as CPUC rules and orders. At a minimum, the CPUC would need to develop an agreement which each non-CPCN holder grant recipient. Further, the CPUC could award a grant on condition that the entity secure a performance bond for the full amount of a project grant.

LEGISLATIVE HISTORY

- SB 1193, Padilla (2008)
Amended Pub. Util Code sec. 270 & added sec. 281
- AB 1555, Perez (2009)
Amended Pub. Util. Code sec. 281.
- SB 1040, Padilla (2010)
Amended Pub. Util. Code sec. 281

See section below on Background Information on Impacted Programs, Practice or Policy for a more detailed discussion of legislative history.

BACKGROUND INFO ON IMPACTED PROGRAMS, PRACTICE OR POLICY

The CPUC established the CASF in D.07-12-054 to provide \$100 million dollars in grants for the construction of broadband facilities in unserved and underserved areas of

the state. The decision required that the CPUC grant awards for infrastructure projects based on a competitive application and scoring process. The decision limited eligibility for project grants to “telephone corporations” as defined by PU Code Sec. 234, i.e., entities holding either a Certificate of Public Convenience and Necessity (CPCN) or a Wireless Identification Registration (WIR). In adopting this requirement the CPUC stated, “We consider the CPCN requirement necessary in order to ensure that the Commission [CPUC] has jurisdiction to control against waste, fraud, and abuse in the administration of our program.”

In Resolution T-17143, the CPUC adopted specific application requirements, timelines, and scoring criteria for parties seeking CASF grants. The resolution confirmed that eligibility for CASF grants was limited to entities holding either a CPCN or WIR, but did not rule out reconsidering the issue in the future if the CASF had a surplus or if other circumstances justified reconsideration of the issue.

The restriction on eligibility for CASF funding adopted in D. 07-12-054 was subsequently reflected in statute when the Legislature codified the CASF through amendments to PU Code Sec. 270 and the addition of Sec. 281 (SB 1193, Padilla). The amendment to Sec. 270 placed the CASF in the state treasury along with the CPUC’s other public purpose programs administered by the CPUC. Section 270(b) requires that moneys collected to support these programs be held for the benefit of ratepayers in order to compensate telephone corporations for the costs of providing universal service.

In February of 2009, the federal American Investment and Recovery Act (ARRA) was signed into law. ARRA appropriated funds to establish a federal grant program for the construction of broadband facilities administered by the National Telecommunications and Information Administration (NTIA) in the U.S. Dept. of Commerce.

In July of 2009, AB 1555 (Perez) was enacted. The bill amended PU Code Sec. 281 to give the CPUC the authority to provide CASF matching grants to ARRA entities that were not telephone corporations if those entities met the requirements of the CASF program.

Subsequently, the CPUC issued Resolution T-1723 in order to ensure the financial, technical and managerial competence of CASF/ARRA applicants which were not regulated by the CPUC, The Resolution imposed additional requirements on these entities, including, the submission of information sufficient to conduct a thorough background check; an affidavit agreeing to comply with specific CPUC rules; an agreement to allow the CPUC to inspect the applicant’s accounts, books, papers and documents related to the application and award of CASF funds; and a mandatory performance bond for the full amount of any CASF grant.

In February 2010, SB 1040 (Padilla) was enacted by the Legislature. SB 1040 amended PU Code Sec 281 to augment the CASF by an additional \$125 million. In addition, it created three sub accounts within the CASF. First, it created the Broadband Infrastructure Grant Account which made an additional \$100 available for infrastructure

grants. Second, it created the Broadband Infrastructure Revolving Loan Account which made available \$15 million in loans to CASF grant recipients. Third, it created the Urban Regional Broadband Consortia Grant Account which made \$10 million available to regional consortia to fund activities to facilitate broadband deployment other than the capital costs of broadband facilities not funded by a CASF grant.

In February 2012, the CPUC implemented the infrastructure grant and loan accounts created by SB 1040 through D.12-12-015. It also revised the application and scoring process adopted in Resolution T-17143 and addressed a number of policy issues related to the grant and loan programs. Among those issues was whether the CPUC should seek the legislative authority necessary to extend CASF grants and loans to entities other than those holding a CPCN or WIR given that ARRA funding for broadband projects had been exhausted. The decision rejected pursuing such authority for workload reasons. Further, the CPUC recognized that it might not have the regulatory tools to enforce the conditions attached to grants awards made to non-certificated entities.

In November 2012, the CPUC issued R. 10-12-012 to revisit the eligibility issue it had considered in D. 12-05-015. The rulemaking sought comment on the CPUC's proposal to change the CASF eligibility rules to permit any facilities based broadband service provider, including commercial and nonprofit entities, to apply for CASF grants and loans contingent upon obtaining the required legislative authority. The rulemaking is pending.

OTHER STATES' INFORMATION

None.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

- The bill may increase the pool of applicants for CASF grants stimulating deployment in unserved and underserved areas of the state.
- The bill may increase the number of grants for last mile deployment projects.
- The bill may result in promoting cost efficient last mile deployment in unserved and underserved areas.

SUMMARY OF SUGGESTED AMENDMENTS

- On page 5, line 27 the date that the CPUC shall report its final findings to the legislature should be amended from April 1, 2017 to April 1, 2022 to reflect the extension of the surcharge necessary to collect the additional \$100 million in grant funds until 2020.

- On page 5, line 33 the date on which the requirement for submitting a report under (f)(1) becomes inoperative should be amended from January 1, 2018 to January 1, 2023 to reflect the extension of the surcharge necessary to collect the additional \$100 million in grant funds until 2020.
- On page 6, line 18, the date on which the requirement for submitting a report under (g)(1) becomes inoperative should be amended from January 1, 2016 to January 1, 2021 to reflect the extension of surcharge necessary to collect the additional \$100 million in grant funds until 2020.

STATUS:

SB 740 is scheduled for hearing in the Senate Energy, Utility and Commerce Committee on April 2, 2013.

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BILL LANGUAGE:

BILL NUMBER: SB 740 INTRODUCED
BILL TEXT

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 introduced, 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) 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

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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, collected by the surcharge, authorized by the commission, after January 1, 2011, is to be deposited into the Broadband Infrastructure Account. 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, 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 declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in Decision 07-12-054 and Decision 09-07-020 and this section. The commission shall establish the following accounts within the fund:

(1) The Broadband Infrastructure Grant Account.

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

(3) The Broadband Infrastructure Revolving Loan Account.

(b) (1) All moneys collected by the surcharge authorized by the commission pursuant to Decision 07-12-054, whether collected before or after January 1, 2009, shall be transmitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California Advanced Services Fund. Moneys collected after January

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1, 2011, shall be deposited in the following amounts in the following accounts:

(A) ~~One~~ Two hundred million dollars ~~—(\$100,000,000)—~~ (\$200,000,000)

into the Broadband Infrastructure Grant Account.

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

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

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

(3) The commission shall not collect moneys, by imposing the surcharge described in paragraph (1) for deposit in the fund, in an amount that exceeds one hundred million dollars (\$100,000,000) before January 1, 2011. After January 1, 2011, the commission may collect an additional sum not to exceed ~~one~~ two hundred twenty-five million dollars ~~—(\$125,000,000)—~~

(\$225,000,000) , for a sum total of moneys collected by imposing the surcharge described in paragraph (1) not to exceed ~~two~~ three hundred twenty-five million dollars ~~—(\$225,000,000)—~~ (\$325,000,000)

. The commission may collect the additional sum beginning with the calendar year starting on January 1, 2011, and continuing through the ~~2015~~ 2020 calendar year, in an amount not to exceed twenty-five million dollars (\$25,000,000) per year, unless the commission determines that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year.

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

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

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

(d) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to

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fund the cost of broadband deployment activities other than the capital cost of facilities, as specified by the commission. An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, K-12 education, health care, libraries, higher education, community-based organizations, tourism, parks and recreation, agricultural, and business, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the

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meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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