

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 22, 2010

To: The Commission
(Meeting of June 24, 2010)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1462 (Padilla) - Telecommunications: California
Broadband Council.
As Amended: June 7, 2010**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would establish a California Broadband Council (Council) for the purpose of promoting broadband deployment and adoption throughout the state.

The President of the California Public Utilities Commission (CPUC) or his designee would sit on the Council, as would representatives of the state California Information Office, California Emergency Management (CalEMA), Superintendent of Public Instruction, Department of General Services, Department of Business, Transportation and Housing, a Member of the Assembly and a Member of the Senate. The only non-governmental entity on the Council would be the non-profit California Emerging Technology Fund (CETF).

The Council would meet no less than 3 times annually – the Chair would decide when to meet.

The President of the CPUC would be the Chairman for the first Council meeting, to be held no later than March 1, 2011, at which meeting the Council would choose a chair for subsequent meetings.

Duties of the California Broadband Council would include, but not be limited to, all of the following:

- (a) Ensuring communication among state agencies regarding California's participation in proceedings related to the National

Broadband Plan adopted by the Federal Communications Commission.

(b) Ensuring that state agencies share all relevant information in order to maximize California's opportunities for federal and private funding for broadband deployment and adoption.

(c) Ensuring that all relevant state agencies are made aware of actions necessary to fully implement recommendations in the 2008 Broadband Task Force Report.

(d) Identifying opportunities for state agencies and state broadband networks to share facilities, rights-of-way, or other resources related to broadband deployment and adoption.

(e) Taking any other actions to ensure that state agencies are coordinating efforts and resources to promote broadband deployment and adoption.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

In order to effectively promote deployment and adoption of broadband in California, state government should work in a unified fashion towards common goals. The Council which would be created by this bill would help to ensure that the key government entities are working toward the same goals. It would coordinate California policymaker's responses to federal broadband proposals and would help to ensure that California optimizes its ability to take advantage of any funding for broadband programs available from federal and private sources. However we suggest amendments described below.

SUMMARY OF SUGGESTED AMENDMENTS:

- 1) On page 3, line 29, technical amendment -- change "adopted" to "released" or "issued". The FCC did not "adopt" the National Broadband Plan.
- 2) On page 4, delete lines 7 through 11 and add in lieu there of:

"Utilities Commission shall service as chair and lead state entity of the council.

(b) At the first meeting, the members of the council may choose a vice chair to act as chair when the chair is unavailable."

This amendment would make the CPUC the lead agency and permanent chair of the Council. There is a good argument for the CPUC to be the lead agency given its expertise related to broadband development and policy, and the CPUC is the agency that can apply to the NTIA for grant monies to fund a staff person to

assist with the Council. (See Other Pertinent Information below). The legislation may need to address in-kind state contribution as required by the Recovery Act for this staff person. The four year commitment is \$60,000 per year for four years.

DIVISION ANALYSIS:

The bill would require the CPUC President or his/her designee to sit on the Council. It is unclear how much time and effort this new duty would require of the CPUC President and staff, so it is unclear if the CPUC would need a new staff person to carry out this function.

One of the duties of the Council is to “*Ensure communication among state agencies regarding California’s participation in proceedings related to the National Broadband Plan adopted by the Federal Communications Commission.*”

Per this provision, the Council could help inform the CPUC as it develops and adopts responses to FCC proceedings to implement the National Broadband Plan. However, the Council could harm the CPUC if the Council is used to undermine the Commission’s independent status. This would be especially true if non-state agency representatives – such as non-profit and industry representatives are permitted to sit on the Council.

The Council could have a positive impact on the ability of California to take advantage of any federal and private subsidies for broadband deployment and adoption, as well as help ensure that the key state agencies are aware of, and effectively implementing, a unified broadband policy regarding promotion of deployment and adoption of broadband statewide.

As the state government representatives change with time, the Council could ensure consistency in state broadband policy that might not otherwise exist.

PROGRAM BACKGROUND:

As written, the bill would not change any program, practice or policy of the CPUC, but it has the potential to impact our California Advanced Services Fund program, our function as the designated entity to collect broadband data and map broadband facilities in California per the NTIA mapping grant, and how we respond to FCC other federal proposals pertaining to broadband policy

LEGISLATIVE HISTORY:

The California Broadband Task Force, created in 2006, released its report in January 2008.

STATUS:

SB 1462 is awaiting hearing in the Assembly Appropriations Committee.

SUPPORT/OPPOSITION:

Support: California Association of Competitive Telecommunications
Companies (CALTEL)
California Center for Rural Policy (CCRP)
California Library Association (CLA) (if amended)
California Resources and Training (CARAT)
California's Independent Telephone Companies (CITC)
County of lake
IP Networks, Inc.
Los Angeles Unified School District Office of Curriculum,
Instruction, School Support (OCISS)
One Economy Corporation
San Diego Futures Foundation (SDFF)

Opposition: None on file.

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BILL LANGUAGE:

BILL NUMBER: SB 1462 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 7, 2010

INTRODUCED BY Senator Padilla

FEBRUARY 19, 2010

An act to ~~amend Sections 2889.4, 2889.5, and 2894 of the Public Utilities~~ add Chapter 13 (commencing with Section 8885) to Division 1 of Title 2 of the Government Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1462, as amended, Padilla. ~~Public utilities: local exchange carriers.~~ Telecommunications: California Broadband Council.

The existing federal Telecommunications Act of 1996 establishes a program 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 (including broadband) 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. That act additionally requires the Federal Communications Commission and each state commission with regulatory jurisdiction over telecommunications services, in California the Public Utilities Commission, to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. The act defines "advanced telecommunications capability," without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

This bill would establish the California Broadband Council composed of specified members. The bill would impose specified duties on the council relating to the promotion of broadband deployment and

adoption throughout the state.

~~Existing law regulating the provision of telecommunications services requires a local exchange service provider to provide prescribed consumer protections relating to pay per use telephone service features and verification of changes in service providers.~~

~~This bill would revise those provisions to refer to local exchange carriers instead of local exchange service providers.~~

~~Under existing law, the disclosure of any information by an interexchange telephone corporation, a local exchange telephone corporation, or a provider of commercial mobile radio service, as defined, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request of a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes, is a complete defense against specified civil actions for the wrongful disclosure of that information.~~

~~This bill would revise that reference to a local exchange telephone corporation to, instead, refer to a local exchange carrier.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~
yes . State-mandated local program: no.

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

SECTION 1. Chapter 13 (commencing with Section 8885) is added to Division 1 of Title 2 of the Government Code , to read:

CHAPTER 13. CALIFORNIA BROADBAND COUNCIL

8885. The California Broadband Council is established in state government for the purpose of promoting broadband deployment and adoption throughout the state for the benefit of all Californians.

8886. The membership of the California Broadband Council shall include all of the following:

- (a) The State Chief Information Officer, or his or her designee.
- (b) The President of the Public Utilities Commission, or his or her designee.
- (c) The Secretary of California Emergency Management, or his or her designee.
- (d) The Superintendent of Public Instruction, or his or her designee.
- (e) The Director of General Services, or his or her designee.
- (f) The Secretary of Business, Transportation and Housing, or his or her designee.
- (g) The President of the California Emerging Technology Fund, or his or her designee.
- (h) A member of the Senate, appointed by the Senate Committee on Rules.
- (i) A member of the Assembly, appointed by the Speaker of the Assembly.

8887. Duties of the California Broadband Council shall include, but not be limited to, all of the following:

- (a) Ensuring communication among state agencies regarding

California's participation in proceedings related to the National Broadband Plan adopted by the Federal Communications Commission.

(b) Ensuring that state agencies share all relevant information in order to maximize California's opportunities for federal and private funding for broadband deployment and adoption.

(c) Ensuring that all relevant state agencies are made aware of actions necessary to fully implement recommendations in the 2008 Broadband Task Force Report.

(d) Identifying opportunities for state agencies and state broadband networks to share facilities, rights-of-way, or other resources related to broadband deployment and adoption.

(e) Taking any other actions to ensure that state agencies are coordinating efforts and resources to promote broadband deployment and adoption.

8888. (a) The President of the Public Utilities Commission shall call the first meeting of the California Broadband Council, to be held not later than March 1, 2011. The President of the Public Utilities Commission shall serve as chair of the council for the first meeting.

(b) At the first meeting, the members of the council shall choose a chair for subsequent meetings, and may choose a vice chair to act as chair when the chair is unavailable.

(c) Subsequent meetings of the council shall be convened as determined by the chair of the council, but in no event shall the meetings be convened less than three times annually.

~~SECTION 1. Section 2889.4 of the Public Utilities Code is amended to read:~~

~~2889.4. (a) A local exchange carrier that offers and charges for pay per use features that do not require an access code to be dialed to activate the service shall provide a new residential subscriber, including an existing residential customer ordering an additional line, during the verbal service order process, with information about those features. The representatives of a carrier shall offer that subscriber blocking options for those features.~~

~~(b) (1) A local exchange carrier that offers the features described in subdivision (a) shall advise an existing residential subscriber who inquires about the features, or who seeks a bill adjustment for the inadvertent or unauthorized use of those per use custom calling features, that the features can be blocked and shall inquire as to whether the subscriber would like to block any or all of the features.~~

~~(2) (A) A local exchange carrier that offers the features described in subdivision (a) shall provide notice to all existing residential subscribers not later than May 1, 2000, describing all features provided on a per use basis, the charge for each activation, any additional usage or other charges, and detailed information about the ability to block these features.~~

~~(B) The notice shall contain a toll free number for further information and shall contain a noticeable postcard size bill insert that may be returned in the subscriber's bill envelope if they wish to block any or all of the per use features described in subdivision (a).~~

~~(c) A local exchange service subscriber that has not blocked per use features in accordance with this section is entitled to a one time bill adjustment that shall equal the sum of the charges for every incident that occurred during the first billing cycle pursuant to which the subscriber notifies the local exchange carrier that~~

~~inadvertent or unauthorized activation occurred with regard to those per use services that do not require coded dialing to activate. The one time bill adjustment shall include an adjustment for any additional usage charges occurring as a result of inadvertent or unauthorized activation. The adjustment shall take the form of a credit to the subscriber's account if the existing technology or facilities of the local exchange carrier measure usage and permit a usage credit to be determined and provided.~~

~~—(d) Nothing in this section prohibits a local exchange carrier from providing additional bill adjustments at its discretion in connection with charges imposed for features described in subdivision (a).~~

~~—SEC. 2.— Section 2889.5 of the Public Utilities Code is amended to read:~~

~~—2889.5. (a) A telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall not make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber until all of the following steps have been completed:~~

~~—(1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.~~

~~—(2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.~~

~~—(3) For sales of residential service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third party verification company, or as provided in paragraph (5). For purposes of this provision, the confirmation by a third party verification company shall be made as follows:~~

~~—(A) The third party verification company shall meet each of the following criteria:~~

~~—(i) Be independent from the telephone corporation that seeks to provide the subscriber's new service.~~

~~—(ii) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by the telephone corporation that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the telephone corporation.~~

~~—(iii) Operate from facilities physically separate from those of the telephone corporation that seeks to provide the subscriber's new service.~~

~~—(iv) Not derive commissions or compensation based upon the number of sales confirmed.~~

~~—(B) The telephone corporation seeking to verify the sale shall do so by connecting the subscriber by telephone to the third party verification company or by arranging for the third party verification company to call the subscriber to confirm the sale.~~

~~—(C) The third party verification company shall obtain the subscriber's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the subscriber upon request. Information obtained from the subscriber through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved subscriber against the~~

~~telephone corporation or its employees who are responsible for the violation.~~

~~—(D) Notwithstanding subparagraphs (A), (B), and (C), a service provider shall not be required to comply with these verification requirements when the customer directly calls the local service provider to make changes in service providers. However, a service provider shall not avoid the verification requirements by asking a subscribing customer to contact a local exchange carrier directly to make any change in the service provider. A local exchange carrier shall be required to comply with these verification requirements for its own competitive services. However, a local exchange carrier shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.~~

~~—(4) For a sale of residential service, the telephone corporation seeking to verify the change in service, in addition to the requirements of paragraph (3), shall notify the subscriber by United States Postal Service that the subscriber's telephone service provider has been changed. The service provider that initiated the change shall send that notice within 14 days of the date of the change. The notice shall provide the subscriber with clear, legible notice of the change in service provider, and shall include a customer service telephone number for the subscriber to call if the subscriber did not authorize the change in service.~~

~~—(5) Confirmation of a sale of residential service may be made using an electronic means that complies with Section 64.1120 of Title 47 of the Code of Federal Regulations in effect as of June 17, 2008.~~

~~—(6) For sales of all nonresidential services, the subscriber's decision to change his or her service provider shall be confirmed through any of the following means:~~

~~—(A) Independent third party verification, as set forth in paragraph (3).~~

~~—(B) The telephone corporation shall mail to the subscriber an information package seeking confirmation of his or her change in the telephone corporation. The information package shall describe the new service and shall include a postage prepaid postcard or mailer that the subscriber can use to deny, cancel, or confirm a service order, as soon as possible, and wait 14 days after the information package is mailed before making the change in the telephone corporation. The telephone corporation shall make the change only if the subscriber does not cancel the change in service order.~~

~~—(C) Verify the subscriber's change in his or her telephone service provider by obtaining the subscriber's signature on a document fully explaining the nature and extent of the action. The document shall be a separate document, the sole purpose of which is to explain the nature and extent of the action.~~

~~—(D) Obtain the subscriber's authorization through an electronic means that takes the information, including the calling number, and confirms the change to which the subscriber has given his or her consent.~~

~~—(7) Where the telephone corporation obtains a written order for service, the document shall thoroughly inform the subscriber of the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. If a written subscriber solicitation or other document contains a letter~~

~~of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document, the sole purpose of which is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.~~

~~—(8) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.~~

~~—(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.~~

~~—(c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.~~

~~—(d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:~~

~~"NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider)."~~

~~—Cost of change: \$ ____."~~

~~—(e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.~~

~~—(f) In addition to the liability described in subdivision (e), any telephone corporation that violates the verification procedures described in this section shall credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed. The commission shall adopt regulations to govern credits to subscribers pursuant to this subdivision.~~

~~—(g) The remedies provided by this section are in addition to any other remedies available by law.~~

~~—(h) As described in federal law, no telephone corporation, or any person, firm, or corporation representing a telephone corporation, shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition has been authorized of a telephone subscriber without having on file, or having instituted reasonable steps designed to obtain, signed, dated orders for service from the subscriber. All orders shall be in the form prescribed in federal law for letters of agency. As described in federal law, the telephone corporation is responsible for charges associated with disputed changes in telephone service for which it cannot produce a signed, dated order for service from the subscriber. This subdivision applies to all intrastate services for which competition has been authorized.~~

~~SEC. 3. Section 2894 of the Public Utilities Code is amended to read:~~

~~2894. (a) Notwithstanding subdivision (c) of Section 2891, the disclosure of any information by an interexchange telephone corporation, a local exchange carrier, or a provider of commercial mobile radio service, as defined in Section 216.8, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request of a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes, is a complete defense against any civil action brought under this chapter or any other law, including, but not limited to, Chapter 1.5 (commencing with Section 630) of Part 1 of Title 15 of Part 1 of the Penal Code, for the wrongful disclosure of that information.~~

~~(b) As used in this section the following terms have the following meanings:~~

~~(1) "Interexchange telephone corporation" means a telephone corporation that is a long distance carrier.~~

~~(2) "Local exchange carrier" means a telephone corporation that provides local exchange services.~~