
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Ben Hueso, Chair
2021 - 2022 Regular

Bill No: AB 14 **Hearing Date:** 7/5/2021
Author: Aguiar-Curry
Version: 6/17/2021 Amended
Urgency: Yes **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Communications: broadband services: California Advanced Services Fund

DIGEST: This bill extends and modifies the California Advanced Services Fund (CASF), including, but not limited to, increasing the program's minimum speed standard, expanding the areas eligible for funding, increasing the amount of funding for the CASF, and establishing an account for securitizing CASF revenues to support bonds deploying broadband infrastructure.

ANALYSIS:

Existing law:

- 1) Establishes the CASF, which is administered by the California Public Utilities Commission (CPUC) to fund broadband infrastructure deployment in unserved areas through December 31, 2022. (Public Utilities Code §281(a-b))
- 2) Defines an unserved household eligible for CASF funds as one for which there is no broadband provider offering service at a speed of at least six megabits per second (mbps) downstream and one mbps upstream. (Public Utilities Code §281(b))
- 3) Requires the CPUC to prioritize CASF grants for projects in areas with no internet connectivity or areas with only dial up service that have no wireline or wireless broadband service. (Public Utilities Code §281(b))
- 4) Requires the CASF to deploy infrastructure capable of speeds of at least 10 mbps downstream and one mbps upstream. (Public Utilities Code §281(f))
- 5) Allows the CPUC to collect a surcharge to fund the CASF and establishes accounts within the CASF. Existing law establishes specified minimum funding amounts for each account within the CASF. (Public Utilities Code §281(d))

- 6) Caps the amount of revenue the CPUC may collect for the CASF at no more than \$66 million per year or \$330 million total, unless the CPUC determines that collecting a higher amount in any year would not increase the total amount of total surcharges collected per year. (Public Utilities Code §281(d))
- 7) Defines Voice over Internet Protocol (VoIP) as a service enabling two-way voice communications, requires a broadband connection, and permits the user to receive calls originating over the publicly switched telephone network. (Public Utilities Code §285)
- 8) Requires the CPUC to direct interconnected VoIP providers to collect surcharges on California intrastate revenues and deposit those funds in the accounts for the state's telecommunications universal service programs, including the CASF. Existing law allows VoIP providers to use one of several specified methods to identify the appropriate surcharge amount or develop an alternative method for calculating their surcharge contributions. (Public Utilities Code §285(e))
- 9) Limits local government agencies' eligibility for CASF grants to only those projects where the infrastructure is for an unserved household or business, the CPUC has conducted an open application process, and no other eligible provider has applied. (Public Utilities Code §281(f))
- 10) Provides incumbent internet service providers (ISPs) with the ability to object to and block a CASF application on an annual basis if the ISP intends to upgrade or extend service to the project area within six months. If the ISP does not extend or upgrade the service within six months, the ISP must update the CPUC with information about its progress towards providing service. If the CPUC finds that the ISP is making progress towards providing or upgrading service, the CPUC must extend the ISP's six-month right of first refusal period. (Public Utilities Code §281(f))
- 11) Requires the CPUC to conduct an interim and final audit of the CASF, which the CPUC must submit to the Legislature by April 1, 2020, and April 1, 2023, respectively. (Public Utilities Code §912)
- 12) Defines an electrical cooperative as any private corporation or association organized for the purposes of transmitting or distributing electricity exclusively to its stockholders or members at cost. (Public Utilities Code §2776)
- 13) Establishes the Governor's Office of Business and Economic Development (GO-Biz) and specifies the Office's duties, including the coordination and

development of policies that advance the state's economic development goals.
(Government Code §12096.3)

This bill:

- 1) Authorizes local educational agencies (LEAs) to report specified information regarding students' computing and internet needs to the Department of Education and requires the Department of Education to post that information on its website.
- 2) Requires GO-Biz to coordinate with relevant local and state agencies and national organizations to identify opportunities to streamline permitting requirements for broadband infrastructure deployment.
- 3) Extends the CASF indefinitely and raises the annual amount of revenue the CPUC can collect for the CASF from \$66 million to \$150 million per year. This bill also eliminates the existing \$330 million cap on total CASF funding.
- 4) Expands the definition of an unserved area eligible for CASF grants from areas that lack service over 6/1 mbps to areas that lack service of at least 25/3 mbps and a latency sufficiently low to allow real-time interactive applications.
- 5) Increases the minimum speed of CASF-funded infrastructure from 10/1 mbps to 100/20 mbps, or a higher speed adopted by the Federal Communications Commission (FCC) decision.
- 6) Dedicates the first \$12 million in CASF revenue collected under this bill to the accounts funding rural and urban broadband consortia and broadband adoption. This bill allocates two-thirds of the moneys to the consortia and one-third of the moneys to adoption programs.
- 7) Continuously appropriates moneys in the Broadband Adoption Account and the Rural and Urban Regional Broadband Consortia Account to the CPUC.
- 8) Defines anchor institutions as schools maintaining kindergarten or any of grades 1 to 12, inclusive, institutions of higher learning, community colleges, fairgrounds, libraries, hospitals, health clinics, public safety entities, government buildings, and community facilities owned or operated by local governments or nonprofits.
- 9) Requires the CPUC to prioritize CASF grants that do the following:
 - a) Provide service to areas with broadband service at or below 10/1 mbps.

- b) Provide service to high poverty communities.
 - c) Deploy middle-mile infrastructure to provide anchor institutions with broadband at speeds of at least 100/20 mbps.
- 10) Expands the definition of a local agency in existing law pertaining to municipal broadband networks to include LEAs, tribal governments, and electrical cooperatives.
 - 11) Eliminates an incumbent broadband provider's right to challenge and block CASF projects to areas where the incumbent intends to extend or upgrade service within six months. This bill instead prohibits the CPUC from approving a CASF grant application unless it has made a finding that an incumbent broadband provider is unable or unwilling to extend or upgrade service in the project area.
 - 12) Deletes existing law allowing VoIP providers to establish alternative methods for calculating their contributions to the CASF.
 - 13) Deletes the criteria for identifying an "unserved" public housing community for the purposes of awarding grants from the CASF's Broadband Public Housing Account.
 - 14) Requires each internet service provider to report the following information regarding each free, low-cost, income-qualified, or affordable internet service plan offered by the provider:
 - a) The plan's cost, including taxes and fees.
 - b) Eligibility requirements.
 - c) Data limitations.
 - d) Number of California residents enrolled.
 - e) A description of the provider's outreach efforts to increase awareness about the plan.
 - 15) Authorizes the CPUC to require recipients of Broadband Adoption Account funding to submit certain data regarding outcomes from adoption programs funded by the CASF.
 - 16) Updates, extends and modifies the CPUC's existing audit and reporting requirements regarding the CASF.

Background

Increasing speed standards, expanding eligibility. This bill raises the minimum speed of CASF-funded infrastructure from 10/1 mbps to 100/20 mbps – or a greater standard adopted by the FCC and CPUC. This bill also expands the definition of an unserved area to include communities that lack broadband service providing speeds of at least 25/3 mbps. While this bill expands the communities eligible for CASF grants, it requires the CPUC to prioritize grants that provide service to areas that lack service above 10/1 mbps. Broadband speeds generally reflect the amount of fiber in the network. More fiber in a network increases the speed of data travelling through the network. In August 2020, the governor signed Executive Order N-73-20, which directed the California Broadband Council to create a new state Broadband Action Plan that incorporated a goal of deploying broadband capable of providing download speeds of at least 100 mbps. In December 2020, the California Broadband Council released its 2020 Broadband Action Plan. The plan recommends adopting a minimum speed standard for broadband of at least 25/3 mbps to match federal standards; however, the plan also recommended establishing a goal of building networks capable of delivering 100 mbps downstream and 10 mbps upstream. While the FCC has maintained the 25/3 mbps broadband speed standard for six years, the current FCC Chair, Jessica Rosenworcel, has indicated that the current FCC broadband standard is inadequate to meet current and future broadband needs.

This bill makes some of the changes needed to stabilize the CASF's funding. The CASF is one of several Universal Service Fund programs funded through a surcharge on consumers' intrastate telecommunications. Currently, the CASF surcharge is assessed at approximately one percent of a user's in-state telecommunications services. However, existing law allows IP-based telecommunications providers to establish their own alternative methods for calculating their contributions to the CASF. Generally, this authorization has led to proportionately lower CASF revenue collections from VoIP and wireless providers and cost-shifting of CASF revenue obligations to traditional telephone users. As more consumers shift to VoIP for telephone service, the projected total amount of revenue the CASF can collect has declined. Prior to December 2020 adjustments to the CASF surcharge rate, the CASF was on track to only collect \$187 million out of the \$330 million total funding authorized under existing law. Even with surcharge rate increases, the CASF may never collect its total authorized revenue if the revenues disproportionately rely on surcharges paid by traditional telephone users. On March 4, 2021, the CPUC opened a rulemaking (R. 21-03-002) to update the surcharge mechanism for the state's Universal Service Fund programs. The first phase of this proceeding is intended to consider shifting the

surcharge mechanism for all the Universal Service Fund public purpose programs to a flat surcharge assessed on access lines by January 1, 2022.

This bill increases the amount of revenue that the CPUC can collect for CASF and deletes existing law that authorizes IP-enabled telecommunications providers to establish their own methods for CASF contributions. However, this bill does not modify the surcharge provisions needed to allow the CPUC to shift the CASF and other Universal Service Funds to a flat fee through its ongoing proceeding. The CASF and the Deaf and Disabled Telephone Program (DDTP) are the two Universal Service Fund programs that include statutory language limiting the CPUC's ability to shift to a flat surcharge. This bill makes the necessary changes to CASF's surcharge laws, but it does not make similar changes to the DDTP's surcharge statute.

Is bond financing the best option for boosting broadband investment? This bill establishes an account to collect surcharges that must be used to finance bonds to make additional broadband deployment investments. Securing long-term debt against CASF revenues would require at least a certain portion of the revenues to remain in the securitization account until the interest and face value of the bond is repaid. However federal infrastructure stimulus moneys and other non-debt revenue sources may be available by 2022 for broadband investments. The American Rescue Plan Act of 2021 makes broadband infrastructure an eligible use of federal infrastructure moneys appropriated by the relief plan. Since these federal stimulus funds must be spent by 2025, they cannot provide long-term funding; but federal stimulus funds may be used to fund broadband projects that are ready for deployment.

What are local agencies and can they get CASF grants? This bill includes multiple provisions aimed at clarifying that local agencies and certain utilities are eligible for CASF grants. While existing law limits the extent to which local agencies can obtain CASF grants if a private broadband provider wishes to extend or upgrade service to the government's jurisdiction, local governments are not necessarily prohibited from applying for CASF grants. This bill specifies multiple forms of governmental bodies that are eligible for CASF grants. In addition to adding this specification, this bill also expands existing law pertaining to municipal broadband net neutrality requirements to include local education agencies, tribal governments, and electrical cooperatives as local broadband agencies. While electrical cooperatives may operate using a nonprofit business model, existing law defines electrical cooperatives as private corporations and utilities. Tribal governments and local education agencies may be governmental bodies; however, they may not operate broadband networks in the same manner as municipal broadband agencies

The right of first refusal. Existing law provides an incumbent broadband provider with the ability to challenge any proposed CASF grant if the provider intends to provide service to the project's area within six months. This rebuttal process is referred to as the "right of first refusal." While the right of first refusal may be intended to ensure that CASF grants are provided only to areas that otherwise would not receive infrastructure through private investment, the process has been used to challenge the majority of proposed CASF grants in recent years. The six-month rebuttal process can significantly delay a CASF project, increasing project costs and limiting grant recipients' ability to leverage multiple funding sources. While this bill deletes the existing right of first refusal process, this bill also establishes a new requirement that prohibits the CPUC from approving a CASF grant before making a commission finding that an incumbent is unwilling to upgrade or extend service to the grant area. It is not clear that requiring a CPUC finding for each proposed project would provide greater efficiency over the existing right of first refusal process.

Bill's provisions on middle mile funding are unclear. Middle-mile infrastructure is generally a portion of broadband networks comprised of larger lines capable of carrying large amounts of data at high-speeds to last-mile lines. Last-mile infrastructure is the portion of the network that carries data to the customer's premise. This bill requires the CPUC to prioritize open-access middle-mile infrastructure projects that enable anchor institutions to access broadband at speeds of at least 100/20 mbps. However, existing law prohibits the CASF from funding projects that only deploy middle-mile infrastructure. Under existing law, a proposed CASF project that deploys middle-mile infrastructure is only eligible for funding if the CPUC verifies that the middle-mile infrastructure is essential to providing last-mile service. This bill retains existing law's limitations on funding middle-mile projects while requiring the CPUC to prioritize funding for middle-mile infrastructure that serves anchor institutions. Middle-mile infrastructure alone does not provide broadband service; however, high-capacity middle-mile infrastructure is generally considered essential for higher speed broadband services.

Need for amendments. As currently drafted, this bill defines an unserved area as one in which 90 percent of the households lack broadband service at speeds of 25/3 mbps; however, this bill does not include a requirement that ISPs report the level of speed and service on a household level. As a result, identifying percentages of service meeting the threshold may not be feasible under this bill. *The author and the committee may wish to amend this bill to modify the definition of an "unserved area" to remove the reference to 90 percent of households in the area.*

This bill replaces the existing right of first refusal with a process by which the CPUC is prohibited from providing a CASF grant without first making a finding that an incumbent broadband provider is unwilling to extend or upgrade service to the area. However, the process of making a commission finding for each CASF grant may slow the grant process and limit some projects' ability to secure funding. *As a result, the author and committee may wish to amend this bill to remove the requirement that the CPUC make these findings prior to authorizing a CASF grant.*

As currently drafted, this bill requires the CPUC to prioritize projects that include open-access middle-mile infrastructure and the ability for anchor institutions to connect to the middle-mile. However, middle-mile infrastructure is generally used for high-capacity data transmission to last-mile lines. Existing law prohibits the CASF from funding projects that only build middle-mile lines, and this bill retains that prohibition. *The author and the committee may wish to amend this bill to delete the provisions requiring the CPUC to prioritize CASF grants to middle-mile projects.*

This bill expands the definition of a "local agency" to include entities that are utilities. This bill also clarifies that other additional local government entities are eligible for CASF funding. It is not clear that local government agencies are ineligible for CASF funding under existing law. This bill requires local governments applying for funds to consult with broadband consortia about their applications, project plans, and use of grant moneys. While consortia can be helpful for some local governments, requiring consultation could slow applications and project completion. *As a result, the author and the committee may wish to amend this bill to remove provisions expanding the definition of a local agency, eliminate the requirement that local agencies consult broadband consortia to apply for and use grant funds and instead clarify that local agencies, tribal governments, and electrical cooperatives are eligible for CASF funding.*

This bill also establishes an account for the purposes of issuing bonds backed by CASF revenues; however, it is not clear that debt is necessary to fund broadband infrastructure at this time. *As a result, the author and committee may wish to amend this bill to eliminate the securitization provisions of this bill and establish a sunset date of December 31, 2032, or the date on which the CASF reaches its service goal, whichever occurs first.*

This bill deletes criteria for identifying an "unserved" public housing community eligible for funding from the Broadband Public Housing Account; however, this bill does not eliminate existing law that reverts any money remaining in the Broadband Public Housing Account after December 31, 2020, to the main CASF

infrastructure account. *To the extent that the author and the committee wish to ensure that new moneys can be allocated to the Public Housing Account if the CASF is extended, the author and the committee may wish to amend this bill to strike the outdated reversion provisions.*

This bill authorizes the CASF to collect more revenue, and it removes a portion of existing law that limits the CPUC's ability to collect more CASF funds; however, it does not make changes to the DDTP that would enable the CPUC shift the Universal Service Funds to a flat surcharge. *To the extent that the author and committee wish to enable the CPUC to use its ongoing proceeding to administratively shift the CASF to a flat surcharge the author and the committee may wish to amend this bill to remove existing language regarding the DDTP that limits the CPUC's ability to shift the Universal Service Funds to a flat charge administratively and instead establish a cap on the total amount of revenues the DDTP can collect.*

This bill establishes specific allocations of funding for broadband adoption and for the various broadband consortia; however, it is unclear if these allocations are recurring or one-time and specifying allocations may limit budget flexibility. *The author and the committee may wish to amend this bill to remove language authorizing continuous appropriations and establishing specific budget allocations for the consortia and adoption accounts and instead enable the Legislature to appropriate moneys through the annual Budget process.*

This bill also specifically authorizes the CASF to fund infrastructure deployed to specific "anchor institutions;" however, the definition of an anchor institution under this bill is broad and potentially includes any public building or nonprofit, regardless of the extent to which the facility serves a substantial public purpose. *To the extent that the author and the committee wish to ensure that ratepayer money is expended for purposes that will provide a substantial public benefit, the author and the committee may wish to amend this bill to modify the definition of an anchor institution to only include those facilities that serve a substantial public purpose, as determined by the CPUC.*

Prior/Related Legislation

SB 4 (Gonzalez, 2021) extends the CASF and make various changes to the program, including increasing the minimum speed of CASF-funded infrastructure to 100/20 mbps, expanding the definition of an unserved area, updating the program's funding mechanism, and eliminating the right of first refusal. The bill is currently pending in the Assembly.

AB 1349 (Mathis, 2021) adds churches to the list of organizations eligible for grant funding from the CASF's broadband adoption account. The bill is currently pending in the Senate.

AB 1426 (Mathis, 2021) would delete the existing right of an incumbent ISP to block a CASF grant in an area that that incumbent ISP plans to deploy broadband. The bill is currently pending on the Senate Floor.

SB 1130 (Gonzalez, 2020) would have extended and modified the CASF, including increasing minimum speed standards for CASF-funded infrastructure, expanded the communities eligible for the CASF, and set open access requirements for certain infrastructure projects. The bill died in the Assembly.

AB 570 (Aguiar-Curry, 2020) would have extended and modified the CASF, including increasing the minimum speed standards for CASF-funded infrastructure, expanding the communities eligible for CASF moneys, allowing the CPUC to collect additional CASF revenue, and authorizing the issuance of up to \$1 billion in bonds secured by the CASF. The bill died in the Senate.

AB 82 (Committee on Budget, Chapter 14, Statutes of 2020) made various changes to implement the 2020 State Budget, including deleting restrictions that prevented the CPUC from leveraging CASF grants with federal funding.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

SUPPORT:

California State Insurance Commissioner Ricardo Lara
California State Superintendent of Public Instruction Tony Thurmond
AARP
Association of California School Administrators
California Cable and Telecommunications Association, if amended
California County Superintendents Educational Services Association
California Latino Legislative Caucus
California Legislative Women's Caucus
California Pan-Ethnic Health Network
California State Student Association
California Telehealth Policy Coalition
City of Alameda
City of Los Angeles
City of Thousand Oaks
City of Torrance

Community Clinic Association of Los Angeles County
County of Butte
County of Napa
County of Tulare
County of Yuba
Eden Housing
League of California Cities
Local Government Commission
Los Angeles Community College District
Los Angeles County Business Federation (BizFed)
National Association of Social Workers, California Chapter
OCHIN
Sacramento Area Council of Governments
San Diego Association of Governments
South Bay Cities Council of Governments
The Rural Caucus of the California Democratic Party
The Utility Reform Network, if amended
Writers Guild of America West

OPPOSITION:

California Taxpayers Association

ARGUMENTS IN SUPPORT: According to the author:

The heartbreaking reality is that 1 in 8 California homes do not have internet access and communities of color face even higher numbers of students and families who remain disconnected. Only miles from our State Capitol there are areas of our state where Californians have no access to broadband connectivity. In partnership with Sen. Gonzalez and nearly two dozen of our Legislative colleagues, we seek to modernize and sufficiently fund the California Advanced Services Fund to provide sufficient service to meet the current and future internet needs of all Californians.

ARGUMENTS IN OPPOSITION: The California Taxpayers Association (CalTax) opposes this bill because it opposes the extension of a surcharge to fund broadband infrastructure. In opposition, CalTax states:

Given that California will be receiving \$27 billion in federal funds and additional broadband projects will be completed with these funds, the Legislature should delay action on AB 14 until it is clear what broadband infrastructure needs remain once federal funds have been exhausted.

Additionally, the enacted 2021-22 budget anticipates investing \$1 billion in 2021-22 and \$7 billion over seven years to fund broadband infrastructure projects.

-- END --