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

Bill No: AB 2749 **Hearing Date:** 6/27/2022
Author: Quirk-Silva
Version: 6/15/2022 Amended
Urgency: Yes **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Communications: California Advanced Services Fund

DIGEST: This bill establishes streamlining requirements for the federal funding account (FFA) within the California Advanced Services Fund (CASF).

ANALYSIS:

Existing law:

- 1) Establishes the Office of Broadband and Digital Literacy within the California Department of Technology (CDT) and requires the office to oversee contracts to construct a state-owned, open-access middle mile broadband network. (Government Code §11549.50 et seq.)
- 2) Establishes the CASF, which the California Public Utilities Commission (CPUC) administers to fund broadband infrastructure and adoption in unserved and underserved communities. Existing law establishes various accounts within the CASF to fund broadband projects, sets eligibility criteria for grants, sets speed requirements for CASF-funded infrastructure, and authorizes the collection of a surcharge to fund the CASF until 2032. (Public Utilities Code §281 and §281.1)
- 3) Establishes the FFA within the CASF to fund last-mile broadband infrastructure projects in rural and urban counties using federal funds allocated for broadband projects in California through the federal American Rescue Plan Act (ARPA). Existing law allocates \$2 billion to the FFA with \$1 billion provided for urban counties and \$1 billion provided to rural counties for broadband infrastructure projects serving unserved and underserved households. (Public Utilities Code §281(n)(1-3))
- 4) Specifies that until June 30, 2023, each county shall have a designated allocation of funds based on their proportionate share of households without access to broadband at download speeds of at least 100 Mbps. Any funds

unencumbered by June 30, 2023, can be redistributed by the CPUC for broadband projects regardless of county. (Public Utilities Code §281(n)(4))

- 5) Requires ARPA funds to be encumbered before 2025 and expended before 2027. Unencumbered funds may be reclaimed by the federal government. (Section 602 of the American Rescue Plan Act, Public Law 117-2)

This bill:

- 1) Revises FFA application processing by requiring the CPUC to do all of the following:
 - a) Review each application and notify the applicant of its decision on or before 180 days from the date that the application was submitted. Upon mutual agreement, the CPUC and the applicant may extend this 180-day deadline.
 - b) Document the basis for its denial of an application when the CPUC denies an application.
 - c) Allow an applicant to resubmit an application that was previously denied.
- 2) Establishes a “deemed approved” standard for an application if the CPUC does not deny the application within 180-days or extend the 180-day deadline.
- 3) Clarifies that wireless broadband providers are eligible for funding from the CASF’s Broadband Infrastructure Grant Account.
- 4) States that it is not the intent of this bill to require revisions to the CPUC’s existing regulations for unless those rules conflict with this bill.

Background

Establishment of the CASF Federal Funding Account. As part of the 2021 State Budget, the Legislature approved approximately \$6 billion for broadband infrastructure over three fiscal years. The Legislature passed SB 156 (Committee on Budget, Chapter 112, Statutes of 2021) to establish a framework for allocating and implementing this broadband funding. Of the \$6 billion total, SB 156 allocated \$3.25 billion for the construction of a state-owned, middle mile broadband network, \$2 billion for last-mile broadband infrastructure grants from the CASF FFA, and \$750 million to create a loan-loss reserve account at the CPUC to help local governments and nonprofits finance additional broadband infrastructure at the local level.

Bill only impacts applications for broadband infrastructure funds from the FFA.

While both the Broadband Infrastructure Grant Account and the FFA are accounts within the CASF that provide funding for broadband infrastructure deployment, this bill only establishes application review and approval deadlines for the federal funding account. This bill does not modify deadlines for the CASF broadband infrastructure grant account. The FFA is funded by American Rescue Plan Act (ARPA) moneys, which are federal funds provided to states for economic recovery and infrastructure investments. Under federal rules, these ARPA funds must be encumbered by Dec. 31, 2024, and spent by Dec. 31, 2026. Since states have limited time to use ARPA funds, ensuring swift review of FFA applications may help ensure that California maximizes its use of federal funding.

Bills deemed approved standard may encourage the CPUC to deny incomplete applications. This bill requires the CPUC to approve or deny an application within approximately six months of an application's submission. While six months may provide the CPUC with ample time to review and score a completed application, not all applications submitted to the CPUC are complete upon submission. A number of applications may not include all the information required by the CPUC to complete the scoring and award process. Since this bill specifies that an application that the CPUC has not denied or approved within 180 days may be considered "deemed approved," this bill may encourage the CPUC to deny applications for which an applicant has not submitted sufficient information to complete scoring and approvals.

Bill's wireless eligibility requirement may be unnecessary. This bill specifies that wireless internet service providers (ISP) are eligible for funding from the CASF Broadband Infrastructure Grant Account. While the existing law does not prohibit wireless providers from obtaining grants from the CASF, some wireless services may not be eligible for grants due to the speed and reliability standards established for CASF-funded broadband services. While an earlier version of this bill also specified that wireless providers were also eligible for funds from the FFA, the current version of this bill only explicitly clarifies that wireless providers are eligible for CASF Broadband Infrastructure Grant Account funds. FFA statutes also do not prohibit wireless providers from obtaining grants. It is unclear how a provider could meet the speed and service standards of the CASF Broadband Infrastructure Grant Account and fail to meet those requirements for the FFA since both the FFA and Broadband Infrastructure Account require infrastructure to reliably provide broadband at speeds of 100 Mbps downstream and 20 Mbps upstream.

Need for amendments. As currently drafted, this bill clarifies that wireless providers are eligible for the Broadband Infrastructure Grant Account without similarly clarifying that these providers are eligible for the FFA. Additionally, this

bill specifies that wireless ISP are eligible for funding without clarifying that these providers must meet all other program requirements applied to other broadband providers. This bill also establishes a 180-day deadline for reviewing and approving FFA applications; however, it is unclear if this deadline and the “deemed approved” in this bill would apply to incomplete applications that applicants fail to complete. *For these reasons, the author and committee may wish to amend this bill to do the following:*

- *Clarify that wireless broadband providers must be otherwise eligible for CASF infrastructure funding to obtain funds from the Broadband Infrastructure Grant Account.*
- *Also clarify that otherwise eligible wireless broadband providers are eligible for FFA funds.*
- *Specify that the 180-day application review and deemed approved deadlines apply to “completed” applications.*

Prior/Related Legislation

SB 4 (Gonzalez, Chapter 671, Statutes of 2021) and AB 14 (Aguilar-Curry, Chapter 658, Statutes of 2021) revised and extended the CASF by increasing speed standards for CASF-funded infrastructure to 100/20 Mbps, expanded eligibility to communities that lack broadband service meeting federal standards, expanded local governments’ eligibility for CASF grants, and extended CASF’s operation and funding until 2032.

SB 156 (Committee on Budget, Chapter 112, Statutes of 2021) implemented broadband infrastructure spending approved in the 2021 Budget Act. The bill established the FFA within CASF, set forth funding allocations for the FFA, and created technical assistance and additional broadband funding opportunities for local governments. The bill also established the Office of Broadband and Digital Literacy and required the office to oversee the construction of a state-owned, open-access middle mile broadband network.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

AT&T

Cal.net, if amended

California Independent Telephone Companies

California Police Chiefs Association

Community Clinic Association of Los Angeles County

Consolidated Communications
USTelecom, The Broadband Association

OPPOSITION:

American Civil Liberties Union California Action, unless amended
California State Association of Counties, unless amended
Electronic Frontier Foundation, unless amended
Rural County Representatives of California, unless amended
The Utility Reform Network

ARGUMENTS IN SUPPORT: According to the author:

AB 2749 will ensure that the CPUC is working efficiently and expeditiously to award grants to build broadband in unserved areas of the state. In last year's budget, this Legislature and Governor invested \$2-billion dollars to address last-mile broadband needs. A significant portion of that is federal funding, which must be spent by 2026 or returned back to the federal government. Looking back at the CPUC's past performance and trends awarding grants, the CPUC will need to significantly increase the amount of applications received and amounts awarded to be sure money is not left on the table. This bill will ensure we avoid the worst-case scenario of returning money to the federal government, while also preserving the flexibility of the CPUC to review applications in a reasonable time period.

ARGUMENTS IN OPPOSITION: Opponents argue that this bill conflicts with the CPUC's existing rules for the CASF federal funding account, creates inconsistency between the FFA and pending federal funding opportunities, and limits benefits for lower income Californians. In opposition, the Electronic Frontier Foundation states:

The bill as currently drafted raises several concerns on affordability, future proofing grants, and the state's ability to coordinate its infrastructure efforts with the new Biden Administration's Notice of Funding Opportunity. Without remedying these issues, A.B. 2749 will also undermine the Newsom administration's long-standing effort to lower the cost of broadband access and keep it down in unserved communities.

The Rural County Representatives of California (RCRC) and the California State Association of Counties (CSAC) are opposed to this bill unless it is amended to eliminate the deemed approved standard or clarify that the bill's 180-day shot

clock doesn't start until all applications are submitted for each round of funding that may occur. RCRC and CSAC state:

...we are concerned that provisions of AB 2749 will gravely disadvantage some applicants, especially local governments, that are ready to step-up and provide service in these communities which have long been abandoned by traditional internet service providers. To provide for unbiased evaluation and application of the CPUC scoring rubric, we suggest that the 'deemed approved' provision be removed from the bill entirely. However, if the "deemed approved" remedy remains in the bill, we suggest that the 180-day shot clock for application review and approval begin at the same time for all applications submitted in the individual funding round.

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