

Date of Hearing: January 10, 2024

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

AB 1588 (Wilson) – As Amended April 11, 2023

SUBJECT: Affordable Internet and Net Equality Act of 2023

SUMMARY: This bill requires the California Department of Technology (CDT) to develop and establish the Net Equality Program to ensure the state and state agencies shall only enter into a procurement contract with a qualified internet service provider (ISP) that offers affordable home internet service, as specified. Specifically, **this bill:**

- 1) Requires CDT to establish the Net Equity Program in consultation with the California Public Utilities Commission (CPUC) and the Department of General Services (DGS).
- 2) Defines “eligible household” to mean a resident in a group home or congregate care facility within the qualified internet service provider’s California service territory participating in a qualified public assistance program, or a household within the qualified internet service provider’s California service territory with at least one resident of the household participating in a qualified public assistance program.
- 3) Defines “affordable home internet service” to mean internet service costing no more than forty dollars (\$40) per month and that meets the minimum speed requirements.
 - a. “Internet service” exempts commercial mobile service and private mobile service.
- 4) Defines “minimum speed requirements” to mean at 25 megabits per second downstream and 3 megabits per second upstream (25/3 mbps) with sufficient speed and latency to support distance learning and telehealth services
 - a. Authorizes CDT to increase the minimum speed requirements for purposes of aligning the minimum service requirements with updated state or federal policies.
- 5) Defines a “qualified internet service provider” to mean an ISP doing with the state or state agency.
- 6) Requires CDT to ensure that the “overall goals for adoption” are met.
 - a. Defines “overall goals for adoption” to mean that at least 90 percent of eligible households receive affordable home internet service by January 1, 2025, and at least 95 percent of eligible households receive affordable home internet service by January 1, 2028.
- 7) Provides that all eligible households shall be allowed to convert to affordable home internet service within the month they are eligible, and requires an internet service provider to sign up an eligible household in no more than 30 minutes by phone with trained personnel.
- 8) Requires qualified internet service providers to advertise the availability of affordable home internet and the federal Affordable Connectivity Program (ACP), including by placing various print and online advertisements in multiple languages.

- a. Provides that advertising may stop when there is documented awareness of the availability of affordable home internet service by at least 80 percent of all eligible households according to a reputable statewide survey.
- 9) Provides that the program does not apply to the Department of Forestry and Fire Protection, to the Office of Emergency Services or political subdivisions of the state, including, but not limited to, cities and counties
- 10) Requires that a qualified internet service provider shall meet annually with CDT and the California Broadband Council in an open workshop with key stakeholders to confer on how to achieve the overall goals for adoption and other specified topics.
- 11) Provides an exceptions for procurements contracts entered into before January 1, 2025 and in geographic areas where there is only one internet service provider.
- 12) Provides that provisions of the bill are severable.

EXISTING LAW:*State Law*

- 1) Establishes, within the Government Operations Agency, the Department of Technology (CDT), and generally tasks the department with the approval and oversight of information technology (IT) projects, and with improving the governance and implementation of IT by standardizing reporting relationships, roles, and responsibilities for setting IT priorities. (Gov. Code § 11545, et seq.)
- 2) Finds that the unique aspects of IT goods and services and their importance to state programs warrant a separate body of governing statutes that should enable the timely acquisition of IT goods and services to meet the state's needs in the most value effective manner. (Pub. Con. Code § 12100(a).)
- 3) Provides that all contracts for the acquisition of IT goods and services related to IT projects, as defined, shall be made by or under the supervision of CDT as provided, and endows CDT with the final authority for all of the following: the acquisition of IT goods and services related to IT projects; the determination of IT procurement policy; the determination of IT procurement procedures applicable to IT acquisitions and telecommunications procurements; and the determination of procurement policy in telecommunications procurements. (Pub. Con. Code § 12100(b)-(e).)

Federal Law

- 1) Establishes the Affordable Connectivity Program, under the administration of the Federal Communications, which provides a \$30 broadband subsidy to eligible households and a \$75 broadband subsidy to eligible tribal households. (Infrastructure Investment and Jobs Act. Public Law 117-58)

- 2) Provides that no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service. (Section 332 of Title 47 of the United States Code)

FISCAL EFFECT: Unknown. This bill has been keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Purpose of the bill.* This bill seeks to maintain the availability of low-cost broadband options for Californians by leveraging the state’s business and procurements contracts with internet service providers, specifically by requiring those ISPs to offer affordable plans as specified.
- 2) *Author’s statement.* According to the author:
“The Affordable Internet and Net Equality Act of 2023 is a landmark piece of legislation to ensure California continues to be a national leader in broadband affordability. Internet access should be correctly recognized and treated as a necessity and not as a luxury. It is a basic necessity to access education, health care, economic opportunity, and other necessary services. This bill will ensure vulnerable communities across the state are not left behind in the 21st century and have an affordable option before them.”
- 3) *The digital divide is an infrastructure problem and an adoption problem, and this bill is targeted at broadband adoption.* In broadband terminology, when we speak of unserved households, it generally means a household for which no facility-based broadband provider offers broadband service at minimum speeds. In other words, there is no infrastructure. However, there are also households for which broadband infrastructure is available but it is not accessible – this is a broadband adoption problem. According to the *Broadband for All Action Plan*¹ completed by the California Broadband Council in December of 2020, broadband affordability and adoption remains a large challenge to achieving broadband for all in the state. According to the report, 23 percent of California housing units—home to 8.4 million residents—do not have broadband subscriptions. To put that in context, broadband infrastructure is available to an upwards 95 percent of California households. According to *CETF-USC Statewide Broadband Adoption Survey*² over two-thirds of respondents cited affordability as the reason they chose not to subscribe to broadband, with the lack of an appropriate computing device also being relevant factors. In summary, where broadband service is available but not purchased, the price of the service is one of the leading reasons potential subscribers remain without access.
- 4) *Federal and state policies have favored subsidies to achieve affordability.* To overcome the affordability challenges for low-income households, there are primarily two ways to achieve affordability: price controls or subsidies. This is true not just for broadband, but also housing, healthcare, and electricity. For example, the Housing Choice Voucher Program (“Section 8”) offers subsidies for low-income households to afford housing costs, and the Affordable Care Act provides subsidies to afford the cost of healthcare. While price controls and subsidies are not strictly mutually exclusive, policymakers have tended to favor subsidies over price

¹ *Broadband for All Action Plan.* California Broadband Council. <https://broadbandcouncil.ca.gov/wp-content/uploads/sites/68/2020/12/BB4All-Action-Plan-Final.pdf>

² *CETF-USC Statewide Broadband Adoption Survey.* California Emerging Technology Fund. <https://www.cetfund.org/wp-content/uploads/2021/03/Statewide-Survey-on-Broadband-Adoption-CETF-Report.pdf>

control to achieve affordability for telecommunications services. For example, both the federal Lifeline and California Lifeline programs provide a flat-rate subsidy for eligible households to afford the cost of basic telephone and/or broadband service. Notably, to be eligible for reimbursement for California Lifeline participating providers must agree to the program's minimum service standards, which include price controls on the plans that are offered. In that way, subsidies and price controls can sometimes work together.

Recently, under the Infrastructure Investment and Jobs Act (IIJA) Congress established the Affordable Connectivity Program, or ACP. The ACP is an FCC subsidy program that helps ensure that households can afford the broadband they need for work, school, healthcare and more. The generous subsidy provides a discount of up to \$30 per month toward internet service for eligible households and up to \$75 per month for households on qualifying Tribal lands. Similar to the Lifeline programs, ACP is limited to one monthly service discount per household. A household is eligible for the ACP if the household income is at or below 200% of the Federal Poverty Guidelines or if a member of the household participates in various other federal assistance programs such as Lifeline, Medicaid, or housing assistance. The bill's definition of an eligible household for purposes of the Net Equity Program are very similar to the ACP, except the Net Equity Programs ties eligibility to state public assistance programs such as CalFresh and Covered California.

Notably, the ACP does not currently have an ongoing appropriation from the federal government to continue to program past its initial allocation. While reports vary on when the fund will be exhausted, there is agreement among different sources that it will happen sometime in 2024 unless Congress appropriates more funding. If the program were to run out of funds the subsidies would stop, and low-income households would be responsible for their entire bills. While there is no indication that internet service providers would pull their existing low-cost plans from the market if ACP ended, the author of this bill purports that the affordable plans established under this bill would be a backstop to that potential action.

- 5) *This bill would utilize price caps and establish minimum speed requirements for internet services providers that wish to contract with the state.* This bill proposes to establish a program that would require an internet service provider to offer affordable home internet, as defined, in order to be eligible to enter into a procurement contract with the state. This bill defines affordable home internet, for purposes of the program, to mean broadband service costing no more than \$40 per month and that meets the minimum speed requirements of 25/3 mbps. To put those numbers into context, the \$40 threshold in the bill is actually more expensive than the low-cost plans currently available from major internet service providers. For example, in 2022 the Biden-Harris Administration secured commitments from 20 leading internet service providers to offer ACP-eligible households a high speed internet plan for now more than \$30 month.

Regarding the minimum speed thresholds for the affordable plan established by this bill, the speeds are significantly lower than the low-cost options already offered on the market. For example, most leading providers are offering speeds of at least 100mpbs for their lowest cost plans. Additionally, a 25/3 threshold is the slowest qualifying speed a household may receive under existing law to be considered served, and in fact a household receiving speeds below 100/20mbps would be considered to be underserved. Therefore, compared to existing offers on the market, this bill establishes a thresholds for affordable home internet that are potentially more expensive and provide lower speeds. While the intent of the author is clearly

not to make broadband internet service more expensive, it is true that if internet service providers updated their existing lowest-cost offerings to match the thresholds set in this bill then low-income consumers would likely be paying more money for much lower speeds. To avoid that unintended consequence, the author may wish in the future to consider updating the thresholds established by this bill to at least match the quality of plans already existing in the market for low-income consumers.

- 6) *While there is precedent for utilizing state procurement to extract public benefits from vendor, this bill pushes the envelope.* Public agencies use public funds when procuring goods, works and services. Therefore, California's contracting and procurement policies generally have created a well-regulated public procurement process that reflects principles of transparency, equality and open competition to ensure that public funds are not misspent and that contracts are fair. This bill aims to go one step further and to address the social impacts beyond a particular contract when procurement decisions are made by the state, particularly to encourage broadband affordability benefits to the general public. Maximizing public benefit from government procurement, by setting minimum standards for potential vendors, is not an uncommon approach. For example, labor standards such as prevailing wage requirements are typical of government contracts. In the healthcare space, regulators also regularly utilize price caps to determine eligibility for certain programs. In this regard, the state is acting as a market participant that sets minimum standards for where the public's dollars should go.

However, under typical contracting agreements, the qualifying terms and conditions placed on a potential vendor are project specific. For example, while a construction contractor is required to pay state prevailing wage when constructing a public works project, that same contractor is not necessarily required by law to pay the same prevailing wage on non-public works projects. By requiring a potential vendor to offer particular services at a specified price to some members of the general public, particularly services that are outside the scope of the specific public contract, this bill would seem to propose a novel approach that ties general public benefits to specific state contracts for services. In other words, there is not a nexus between the public benefit, in this case affordable plans, and the service being rendered, which could be any service procured by the state from an internet service provider. The approach of this bill would be akin to the state withholding a public works contract to build a road from a construction firm that did not agree to build a certain number of affordable housing units; or the Department of General Services disqualifying potential vendors to fulfill an order for landscaping plants if those nurseries also did not commit to planting a certain number of trees in low-income neighborhoods.

While the approach could work to the state's and public's benefit if the potential vendors agree to the terms, there is no guarantee of that outcome. Service providers and vendors are not required to enter into contracts with the state, but rather they make an economic assessment on the value of the potential income to their business. According to the California Department of Technology, there are about \$29.5 million dollars' worth of internet contracts that would likely be covered by this program. This is likely a lower-end estimate, as CDT's estimates only covers internet expenditures, but the state also enters into contracts with internet service providers for other educations and information technology needs. Opponents of the bill argue that bargaining with the state's procurement process puts the state's operations at risk, particularly when no other service provider is available or there is an emergency situation. However, this bill provides specific exemptions for the Office of

Emergency Services and the Department of Forestry and Fire. Additionally, it allows procurement contracts to be entered into when only one internet service provider is available.

- 7) *Greater enrollment in existing broadband affordability programs could also help affordability.* This bill establishes specific enrollment goals of up to 95% of eligible households in affordable home internet, as defined. Despite broadband affordability being such a pressing need for so many California households, many have not taken advantage of existing programs like the ACP or other affordability programs like California Lifeline. For example, the California Department of Technology estimates that about 5.8 million California households are eligible for federally funded digital access assistance. However, recent numbers show that as of January 2024, only 48% of eligible households in California participated in the ACP. According to analysis from the Public Policy Institute of California³, several factors have contributed to the low take-up rates. First, awareness is very low: nationwide, only 23 percent of adults have heard “a lot” or “some” about the Emergency Broadband Benefit (the ACP Predecessor) Second, many households may be discouraged by the multi-step application process, which requires them to first apply for funding and then arrange for a participating internet service provider to apply the subsidy. Third, some internet service providers initially required enrollees to upgrade their existing data plans to more expensive plans, so some households may have decided not to apply for fear of higher bills if they lose eligibility or the program ends. Given the low-enrollment in the ACP program, which is the result of various factors, it’s likely the Net Equality Program would face similar challenges and fall short of the proposed goal.

To encourage enrollment in existing programs, ISPs participating in ACP are already required to promote that program to eligible households through various means. Non-profits and other organizations are also stepping in with strategies to increase participation. For example, the California Emergency Technology Fund partnered with Los Angeles County to invest money in a culturally and linguistically competent advertising pilot campaign and 24/7 call center that resulted in outstanding growth in enrollments in those areas. According to CETF’s reporting of their efforts, prior to the pilot the call center had received an average of 1,400 calls/month and by the end it had received 5,013. Examples like this point to the opportunity ACP presents for low-income California households, and the benefit of a focused response to enrolling more households.

This bill borrows some of the tactics of the California Emerging Technology Fund’s outreach, such as requiring ISPs to advertise the availability of affordable home internet by placing various print and online advertisements in multiple languages and requirements for expeditious phone sign-ups. However, the bill ties that outreach to a threshold that would require awareness by 80% of eligible households before a participating ISP could cease advertising. Instead of directly leveraging existing efforts to programs by expanding on promising strategies to increase enrollment, the bill instead proposes to establish a state contracting process that may not result in more California households accessing affordable home internet. To avoid confusion with existing programs, duplication of existing efforts, and to fully leverage existing state and federal programs the committee may wish to amend the specific outreach and advertising requirements.

³ *Commentary: Narrowing the Digital Divide with Pandemic Benefits.* Public Policy Institute of California. <https://calmatters.org/commentary/2022/01/narrowing-the-digital-divide-with-pandemic-benefits/>

- 8) *Two-Year Bill*. This bill was first introduced about one year ago in February 2023. Since that time, the date referenced in the title of the bill and other specific timelines in the bill have not been updated. For example, the overall goals for adoption set out a first date of January 1, 2025 by which 95% of eligible households should be enrolled in an affordable plan. Given the impracticality of that goal, the committee may wish to remove the overall goals for adoption from the bill. Further, the author may wish to reconsider some of the other dates in the bill moving forward.
- 9) *Related/prior legislation*.
- a. AB 2751 (E. Garcia) of the 2022 legislative session was functionally identical to this bill. That bill failed passage in the Senate Governmental Organization Committee.
- 10) *Committee Amendments*. The Chair recommends the following amendments:
- a. Clarify that an internet service provider that participates in the federal Affordable Connectivity Program or any other state or federal program that offers broadband affordability assistance for qualifying households, and that meets the price and minimum speed requirements established by the bill, shall be considered a qualified internet provider and shall be authorized to enter into a procurement contract with the state.
 - b. Strike the “overall goal for adoption” and provisions requiring the CDT to monitor the progress towards achieving the overall goal for adoption.
 - c. Strike clauses (e) through (h) inclusive, pertaining to specific outreach and advertisement procedures.

REGISTERED SUPPORT / OPPOSITION:

Support

#oaklandundivided
#oaklandundivided Coalition
Active San Gabriel Valley
Alliance for A Better Community
Altamed Health Services
Arts for La
Ayuda Al Nino, INC
California Community Foundation Digital Equity Initiative
California Emerging Technology Fund
California Family Resource Association
California Human Development
California Reinvestment Coalition
California Rural Legal Assistance Foundation, INC.
Casa Del Diabetico Gualan
Center for Powerful Public Schools
Central Valley Opportunity Center (CVOC)
Child Abuse Prevention Center

Coalicion De LA Buena Salud Y Bienestar
Coalition for Humane Immigrant Rights (CHIRLA)
Common Sense Media
Communities in Schools of Los Angeles (CISLA)
Community Clinic Association of Los Angeles County (CCALAC)
Community Tech Network
County Welfare Directors Association of California (CWDA)
Destination Crenshaw
Everyoneon
Farmworkers Institute of Education & Leadership Development
First Day Foundation
Fresno State Connect Initiative
Greater Sacramento Urban League
Healing and Justice Center
Inland Coalition for Immigrant Justice
LA Cooperativa Campesina De California
Leadingage California
Los Amigos De LA Comunidad, Imperial Valley
Lynwood Unified School District
National Association of Social Workers, California Chapter
Nextgen California
Para Los Ninos
Proteus, INC.
San Joaquin Valley Regional Broadband Consortium
Southern Border Broadband Consortium
The Children's Partnership
Union De Guatemaltecos Emigrantes
Unite-la
United Parents and Students
Valley Vision

Opposition

Calchamber
California Broadband & Video Association
California Chamber of Commerce
CTIA
United States Telecom Association DbA Ustelecom - the Broadband Association
Wireless Infrastructure Association

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