Date of Hearing: April 9, 2025

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE
Tasha Boerner, Chair
AB 693 (Boerner) – As Introduced February 14, 2025

SUBJECT: Broadband: state oversight

SUMMARY: This bill would establish the Department of Broadband and Digital Equity (DBDE) within the Government Operations Agency (GovOps). This bill would also establish the Broadband and Digital Equity Commission (Commission) to advise and assist the department and Legislature in its broadband and digital equity activities.

Specifically, **this bill**:

1) Establishes the Department of Broadband and Digital Equity (DBDE) in the Government Operations Agency (GovOps) for the purpose of promoting ubiquitous and universal broadband deployment in unserved and underserved areas of the state and to increase broadband adoption throughout the state for the benefit of all Californians.

2) Provides that on and after July 1, 2027, the department is the centralized state department for broadband and digital equity activities within the state and, notwithstanding any other law, is the only state agency authorized to establish rules or regulations for broadband internet access service and internet service providers.

3) Establishes the Broadband and Digital Equity Commission (Commission) to advise and assist the department, the agency, and the Legislature in formulating and evaluating state policies and plans for broadband and digital equity programs in the state.

4) Establishes that the Commission shall consist of 11 voting members and 2 ex officio members with 7 members appointed by the Governor with the advice and consent of the Senate, two appointed by the Speaker of the Assembly, two appointed by the Senate Committee on Rules, and two ex officio members appointed by the Speaker of the Assembly and Senate Committee on Rules.

    a. This bill also requires the Governor to make every effort to ensure that there is geographic balance to the membership of the Commission, with some spots reserved for commissioners with specific backgrounds and experiences.

5) Authorizes the Commission to appoint an Executive Director for the Department, who shall serve at the pleasure of the Commission.

6) Authorizes the Commission to form committees. Provides that on July 1, 2027 the members of the California Broadband Council shall collectively become a committee under the administration of the commission.

7) Requires, beginning July 1, 2028, the Department to report to the Legislature on the activities of the department and actions taken by the commission.

8) Requires the department to establish a process to enable California residents, consumer advocates, and local governments to make complaints regarding any activity that may result in digital discrimination of access.

9) Recasts provisions of existing law, related to existing broadband and digital equity programs, to specify the Department as the responsible entity, including:

   a. The California Advanced Services Fund, currently administered by the California Public Utilities Commission.

   b. The Middle Mile Broadband Initiative, currently administered by the California Department of Technology.

10) Makes inoperative as of July 1, 2027, following the establishment of the Department and the Commission, and later repeals various sections of existing law that assign responsibility from the administration.

EXISTING LAW:

1) Establishes the California Public Utilities Commission (CPUC) and vests the agency with regulatory authority over public utilities, including telephone corporations. (Article 12 of the California Constitution)

2) Establishes the Public Utilities Act, which, in part, declares the finding of the Legislature that the public interest is best served by a CPUC that is appropriately funded and staffed, that can thoroughly examine the issues before it, and that can take timely and well-considered action on matters before it. Additionally, that funding the commission by means of a reasonable fee imposed upon regulated entities helps to achieve those goals and is, therefore, in the public interest. (Public Utilities Code § 401-410)

3) Requires the CPUC to require telephone corporations to provide customer service to telecommunication customers that includes, but is not limited to, all the following (Public Utilities Code § 2896):

   a. Sufficient information upon which to make informed choices among telecommunications services and providers.

   b. Reasonable statewide service quality standards, including, but not limited to, standards regarding network technical quality, customer service, installation, repair, and billing.

   c. Information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints.

4) Establishes the Video Infrastructure and Video Competition Act of 2006 (DIVCA), establishing the CPUC as the sole franchising authority in the state, and establishes the finding of the legislature that increasing competition for video and broadband services is a matter of statewide concern. (Public Utilities Code § 5800 et. seq.)

5) Requires the CPUC to adopt customer service requirements for a holder of a state franchise and adjudicate any customer complaints. (Public Utilities Code § 5800 et. seq.)

6) Requires the CPUC to develop, implement, and administer the California Advanced Services Fund (CASF) program 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 specific decisions of the CPUC and in the CASF statute. (Public Utilities Code § 281)

7) Establishes the Office of Broadband and Digital Literacy (OBDL) within the Department of Technology (CDT) to oversee the acquisition and management of contracts for the development and construction of a statewide open-access middle-mile broadband network, colloquially known as the middle-mile broadband initiative (MMBI). (Government Code § 11549.50)

8) Requires CDT to establish the Middle-Mile Advisory Committee (MMAC) to monitor the construction and establishment of the MMBI. (Government Code § 11549.58)

9) Establishes the California Broadband Council (CBC) in state government for the purpose of promoting broadband deployment in unserved and underserved areas of the state, as defined by the Public Utilities Commission, and broadband adoption throughout the state for the benefit of all Californians. (Government Code § 8885)

10) Establishes internet neutrality requirements for internet service providers (ISPs) providing broadband internet access service to customers in California. The requirements prohibit ISPs from taking certain actions that interfere with consumers' ability to lawfully access internet content. (Civil Code § 3100 et. seq.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) *Purpose of this bill.* The purpose of this bill is to establish the Department and the Commission within state government to serve as the centralized state office for broadband and digital equity activities within the state. According to the author, "Broadband policy in California is a complicated web of different policies and programs split between two agencies that are not meeting consumer needs and leaves broadband providers with different levels of regulatory oversight. The Department of Broadband and Digital Equity will bring ALL of the state's broadband initiatives – infrastructure grant making, consumer protection, and digital equity - under one structure of governance to achieve better outcomes for consumers. This Department will also be overseen and directed by a Commission with representatives from consumer advocacy, labor, and industry."

2) *Overview of California's Broadband Infrastructure Programs.* California has various programs and policies for broadband to address the various facets of connecting users to a high-speed internet connection. Generally speaking, the state's policies and programs are intended to address broadband in one of two ways: broadband as infrastructure and broadband as a service. This section will discuss infrastructure specifically.

To encourage the deployment of broadband infrastructure in areas of the state where it does not exist, the California Advanced Services Fund (CASF) program was established, under the administration of the California Public Utilities Commission (CPUC), to provide financial incentives to providers for constructing new infrastructure in unserved areas of the state. In 2021, the state furthered its commitment to addressing the broadband infrastructure problem with the passage of SB 156 (Committee on Budget and Fiscal Review. Chapter 112 of 2021). Pursuant to SB 156 the state invested billions into expanding broadband infrastructure, including $2-billion in additional funding for the CASF. Through SB 156, the state also took the novel step of entering the broadband marketplace with a commitment to build a state-owned middle-mile broadband network[i]; this project is known as the Middle-Mile Broadband Initiative (MMBI).

However, the state's two biggest broadband infrastructure initiatives– CASF and the MMBI - are currently administered by separate agencies, with the CPUC continuing to administer the CASF, while the California Department of Technology (CDT) oversees the construction and development of the MMBI. As a result, the implementation of both infrastructure investments has not been as coordinated as was intended, which potentially minimizes the impact of the state's investment in either program. Despite the disjointed bureaucratic structure created to address the broadband infrastructure problem, California continues to take a robust approach to expanding broadband infrastructure across the state. This bill would continue those efforts, while consolidating those efforts under the newly created Department.

3) *Overview of California's Other Broadband Programs.* Apart from programs to expand broadband infrastructure, California also has various programs to address digital equity, broadband affordability, and broadband consumer protection. For example, the CDT currently administers the State Digital Equity Plan (SDEP) and the State Digital Equity Plan Capacity Grant program.

   In 2022, the Legislature passed and the Governor signed into law AB 2750 (Bonta) which directed CDT along with other state partners to develop a state digital equity plan. Since then, CDT convened a series of statewide meetings with over 50,000 residents, partners, tribal communities, advocates, and local governments across the state to develop measurable strategies to close the digital divide that were to be included in the SDEP. The SDEP was finalized in early 2024. Following the publication of the SDEP, California was awarded $70.2 million in federal dollars under the State Digital Equity Capacity Grant Program which was established pursuant to the Infrastructure Investment and Jobs Act of 2021. The funding will assist the state further its digital equity goals and putting the SDEP into action. CDT continues to implement this program and is currently soliciting application from sub-grantees that will be awarded portions of the funding for their digital equity projects. Under this bill, both the SDEP and the Digital Equity Capacity Grant program would be moved to the administration of the Department.

   In addition to the state's digital equity program, California also has consumer protections for broadband service subscribers. Pursuant to the California Internet Consumer Protection and Net Neutrality Act of 2018 ("Net Neutrality Act") established under SB 822 (Wiener. Chapter 976, Statutes of 2018), ISPs in the state are prohibited from engaging in practices that violate net neutrality principles. For example, ISPs are prohibited from favoring certain types of internet traffic over others, or charging subscribers extra to access or prioritize certain types of data or content.

The California Internet Consumer Protection and Net Neutrality Act of 2018 was immediately challenged in court, but was upheld in 2022 by the United States Court of Appeals for the Ninth Circuit in *ACA Connects v. Bonta*[1]. This case, and other recent cases, find that federal preemption of broadband service regulation is not strictly preempted by federal law or policies, as was argued by the industry petitioners. If states are not preempted by federal law, this leaves open the possibility that California could move to adopt other consumer protections laws that cover additional aspects of broadband service. For example, the state could require the adoption of service quality standards that ensure consumers reliably receive the maximum broadband speeds they subscribe to, protect consumers from unreasonable overage charges if they exceed data caps, or prohibit digital discrimination. All of this work could potentially happen through the Department of Broadband and Digital Equity.

4) *Different internet service providers have different regulatory frameworks.* This bill, broadly, has the purpose of bringing the state's broadband programs under the administration of one government entity. While that could be beneficial, it would also introduce some complication because of the various laws governing different types of providers. For example, California consumers subscribe to broadband services from a variety of internet service providers (ISPs) utilizing various types of technologies. AT&T, a legacy telephone company, has the single largest broadband service area footprint in the state; although a significant number of the households in that territory may only have access to slowest speeds of service[2]. Many Californians also subscribe to broadband service from a legacy cable video company (ie; Comcast, Charter, or Cox). According to the California Broadband & Video Association, an industry trade association, cable broadband operators offer broadband service to 97% of California homes and business.[3] Some Californians have cut the cord all together and subscribe to fixed-wireless service at home from satellite companies, or purchased fixed-wireless service from mobile telephone companies that are beginning to compete in the fixed-broadband market. Interestingly, in recent years the growth of subscribers to fixed-wireless service has outpaced the growth of a traditional home wireline connection.

   For all the various different providers of broadband service there are different regulatory frameworks that govern those companies operations in California, which is based on their legacy business service (ie; landline telephone, mobile telephone, cable television). Take, for example, legacy telephone companies; for most of the 20th century, home telephone service operated as a monopoly and rates were strictly regulated by the CPUC. As a public utility, telephone companies were required to serve all households in their service territories. Additionally, pursuant to state law, telephone corporations are still required to maintain minimum service quality standards for their voice services. Over time, as the internet was invented, selling broadband service has become a core part of telephone company business models. Nonetheless, those companies and their voice service offerings would continue to be regulated as telephone companies.

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[1] *ACA Connects v. Bonta: 9th Circuit Upholds State Net Neutrality Laws*. Jolt Digest - Harvard Journal of Law and Technology. https://jolt.law.harvard.edu/digest/aca-connects-v-bonta-9th-circuit-upholds-state-net-neutrality-laws
[2] *AT&T's Digital Divide in California.* http://belonging.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf
[3] California Broadband & Video Association (CalBroadband). https://www.calbroadband.org/policies-and-initiatives

There are also legacy cable companies that historically provided video programing as their primary business service. Unlike telephone companies, cable system operators were never considered to be a public utility, and thus have not been subject to an obligation to serve all households or rate regulation. In California, cable system franchising, or licensing, has been most recently governed by the Digital Infrastructure and Video Competition Act of 2006. The law established a ministerial review process for the CPUC to approve state video franchises, and applies specifically to video service. Since the passage of DIVCA cable companies have become among the most prevalent providers of broadband service in the state, yet their regulatory framework is still based on the previous video franchises. This bill would not move cable franchising authority from the CPUC, although that could be proposed in subsequent legislation.

In some instances the different regulatory frameworks can put the different companies at a competitive disadvantage. For example, legacy telephone companies are considered carriers of last resort, and must maintain voice service for all households in their service territory. As a result, those companies must use resources to maintain a sometimes outdated network to meet those regulatory requirements. The same requirement does not exist for cable companies, or mobile providers. Although this bill does not specify the extent to which the Department of Broadband and Digital Equity would have the authority to adopt a regulatory framework for broadband specifically, giving the office that authority could level the playing field among providers and benefit consumers.

5) *There is precedent for legislation that consolidates or moves government functions into new or different agencies.* The California Constitution provides that authority may be granted, by statute, to the Governor to assign and reorganize functions among executive officers and agencies and their employees. Pursuant to Government Code Section 12080 et. seq. the Governor was delegated some specific authorities and procedures to reorganize state agencies. Nonetheless, the Legislature still retains the authority through legislation to transfer, abolish, consolidate, and coordinate the powers of state agencies. There is recent and historical precedent for the Legislature exercising such powers. For example, SB 156 created the Office of Broadband and Digital Literacy within the Department of Technology. AB 111 (Committee on Budget, 2019) created the Office of Energy Infrastructure Safety within the Natural Resources Agency, which transferred some existing work related to utility wildfire mitigation plans from the California Public Utilities Commission (CPUC). There was also legislation passed in 1975, the Warren-Alquist Act, that established the California Energy Commission (CEC). Similarly, this bill proposes to establish a new department within state government that would consolidate some existing functions into one agency to create efficiencies and better administration of the state's programs.

6) *Related/previous legislation.*

   a. AB 768 (Boerner, 2024) would have established within state government the Office of Broadband and Digital Equity, to serve as a centralized state office for broadband and digital activities within the state.

   b. AB 2750 (Bonta, 2022) required, by January 1, 2024, the California Department of Technology (CDT) in consultation with the California Public Utilities Commission

(CPUC) and the California Broadband Council to develop a state digital equity plan and seek all available federal funding to develop and implement a digital equity plan.

c. SB 156 (Committee on Budget and Fiscal Review, 2021) established the statutory framework to implement the broadband provisions contained in the 2021 Budget Package. Including in this legislation was the establishment of the Federal Funding Account (FFA) of the California Advanced Services Fund (CASF) and the Middle-Mile Broadband Initiative (MMBI).

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Office of Education

Opposition

None on file.

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