

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner Horvath, Chair

AB 1065 (Jim Patterson) – As Amended March 2, 2023

**SUBJECT:** Communications: California Advanced Services Fund

**SUMMARY:** This bill would expressly authorize an otherwise eligible wireless broadband service provider to apply for and receive funding from two accounts of the California Advanced Services Fund (CASF) program. Specifically, **this bill:**

- 1) Expressly provides that an otherwise eligible wireless broadband service provider may, but is not required to, apply for and receive funding from the Broadband Infrastructure Grant Account (IGA) and Federal Funding Account (FFA). The IGA and FFA are two separate subaccounts of the CASF program.

**EXISTING LAW:**

- 1) Establishes the CASF in the State Treasury; requires that the moneys are held in trust and may only be expended pursuant to existing law and upon appropriation in the annual Budget Act or upon supplemental appropriation. (Public Utilities Code § 270)
- 2) Authorizes the CPUC to fund the CASF by imposing a surcharge on telecommunications users in an amount not to exceed one hundred fifty million dollars (\$150,000,000) per year. (Public Utilities Code § 281 (d)(4))
- 3) Requires the CPUC to develop, implement, and administer the 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(a))
- 4) Requires the commission to establish specified accounts within the CASF (Public Utilities Code § 281(c)):
  - a. The Broadband Infrastructure Grant Account (IGA)
  - b. The Rural and Urban Regional Consortia Grant Account (Consortia Account)
  - c. The Broadband Public Housing Account (PHA)
  - d. The Broadband Adoption Account (Adoption Account)
  - e. The Federal Funding Account (FFA)
- 5) Establishes the goal of the IGA to, no later than December 31, 2032, approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the commission. (Public Utilities Code §281(b)(1)(A))
  - a. Defines an “unserved area” eligible for IGA funds as one for which there is no broadband provider offering service at a speed of at least 25 megabits per second (mbps) downstream and 3 mbps upstream. (Public Utilities Code §281(b)(1)(B))

- 6) Requires that eligible projects for grant awards from the IGA shall deploy infrastructure capable of providing broadband access at speeds of a minimum of 100 mbps downstream and 20 mbps upstream, or the most current broadband definition standard set by the Federal Communications Commission. (Public Utilities Code §281(f))
- 7) Appropriates two billion (\$2,000,000,000) to the CASF Federal Funding Account (FFA).
- 8) Requires the CPUC to implement the FFA account to expeditiously connect unserved and underserved communities by applicable federal deadlines. (Public Utilities Code § 281 (n))
- 9) Provides that projects funded pursuant to the FFA shall be implemented consistent with applicable federal regulations and any condition or guidelines applicable to the one-time federal infrastructure moneys. (Public Utilities Code § 281 (n))

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) *Background on CASF Program.* The CASF program was first established in 2008 pursuant to SB 1193 (Padilla. Chapter 393, Statutes of 2008). That legislation authorized the CPUC to develop, implement, and administer the CASF program to encourage the deployment of high-quality advanced services to all Californians in order to promote economic growth, job creation, and societal benefits. Notably, the CASF program consists of several accounts, some of which are described below, focused on different aspects of broadband including broadband infrastructure and broadband adoption.

Since 2008, the CASF program has been revised via multiple bills and CPUC decisions. For example, prior to 2017 prior to AB 1665 (E. Garcia et al. Chapter 851, Statutes of 2017) the CPUC had a statutory \$315 million cap. Pursuant to that legislation, the CPUC had authority to collect an additional amount up to \$330 million for CASF, in an amount not to exceed \$66 million per year, beginning with calendar year 2018 through CY 2022. Due to challenges with properly estimating the size of the billing base, the CPUC has yet to collect the full \$330 million authorized in AB 1665. To address the issue the CPUC increased the surcharge rate from 0.56% to 1.019% effective December 1, 2020 to December 31, 2022. Additionally, pursuant to AB 14 (Aguiar-Curry. Chapter 658, Statutes of 2021) and SB 4 (Gonzalez. Chapter 671, Statutes of 2021) the CPUC's surcharge collection authority and the CASF program goal was extended to December 31, 2022. The annual surcharge collection cap was also increased to \$150 million per year.

- 2) *CASF has two accounts focused on broadband infrastructure.* The CASF Broadband Infrastructure Grant Account (IGA) and the Federal Funding Account (FFA) both provide grants to fund broadband infrastructure. However, the IGA and FFA are distinct funds with different funding sources, statutory requirements and program goals as summarized below.

The IGA, which existed since the inception of the CASF, is funded through state surcharges collected by the CPUC on telephone bills. The goal of the IGA is to provide broadband access to 98 of households in each consortia region by December 31, 2032. In the 2022-2023 budget year the CPUC allocated about \$25-million for the IGA.

The FFA, on the other hand, is a recently created account. The FFA was established in 2021 pursuant to SB 156 (Committee on Budget and Fiscal Review, Chapter 112 of 2021). Pursuant to that legislation and the companion budget agreement, the FFA received \$2 billion over three fiscal years, starting in 2021-22, to fund grants for last-mile broadband infrastructure projects. Pursuant to state law under SB 156, the FFA must be spent corresponding with federal rules and requirements. For example, federal guidelines require FFA funds to be encumbered by December 31, 2024 and spent by December 31, 2026. Notably, SB 156 set a state requirement to encumber the funds by June 30, 2023 to ensure the funds are used by the final federal deadline. Besides a strict spending timeline, the federal government also provides guidance on use of the funds regarding eligible projects and affordability requirements.

- 3) *Hundreds of thousands of households are unserved and underserved by broadband service.* Unserved households can be defined as areas that do not offer at least one tier of service at 25 mbps downstream and 3 mbps upstream with sufficient low latency to allow real-time interactive applications (such as video conferencing). This definition is consistent with the current federal definition of broadband Internet service set by the FCC. Definitions for underserved households vary, but typically means households that do not have access to service at 100 mbps downstream and at least 20 mbps upstream. The 100/20 threshold is consistent with guidance from the U.S. Department of the Treasury on the use of ARP fiscal relief funds for broadband infrastructure projects

According to recent analysis by the Legislative Analyst Office (LAO), based on data provided by the CPUC, there are 353,494 unserved households in California. This figure represents approximately 3% of the state's households. Unserved households are located in every county in the state, although most unserved households are located in urban counties. As a percentage of total households though, rural counties have the highest rates of unserved households with the percentage of unserved households being significantly higher too. For example, there are 14 counties where 10% or more of the population are unserved and all are rural counties. The numbers are even worse if the standard is raised to underserved. According to the same LAO report, nearly 750,000 households in California are underserved by broadband service. That figure represents about 6% of the state's households.

- 4) *CPUC Has Adopted Inconsistent CASF Rules for Wireless Projects.* The CPUC has adopted different program rules to govern both the IGA and the FFA, although at their essence both programs have the same purpose of encouraging the deployment of broadband infrastructure in unserved areas of the state. For example, under IGA rules a wireless project would be eligible for funding provided that the proposed system otherwise meets the performance standards adopted by the commission. However, under the FFA rules wireless projects are categorically ineligible to be considered for funding, regardless if that projects otherwise meets the performance criteria adopted in the rules. Notably the funding differential between both programs is also stark – the IGA has budgeted about \$25-million for projects but the FFA has budgeted \$2-billion.

In public statements made to this committee, the CPUC has defended their reasoning for excluding wireless projects from the FFA. The CPUC's rationale is that most funding should be reserved for superior technologies, such as projects using fiber optic cables, which reliably provide greater speed capabilities and are much more likely to meet a user's technological needs in the long run. On the other hand, wireless technologies are the quickest projects to

deploy and are much less expensive to build than projects that require direct physical connections to a premises. Indeed there are tradeoffs among different types of technologies: capabilities, time to deployment, cost - and the CPUC ought to exercise discretion when evaluating potential applicants. However, because the CPUC's rules for the FFA categorically exclude wireless technology, potentially worthy projects using wireless technologies cannot be considered. Ultimately, a technology-inclusive approach that allows any technology that is otherwise capable of meeting the CPUC's performance criteria to compete for funding is most likely to meet the state's broadband goals. Towards that end, this bill would make it explicitly clear that those types of projects are eligible for IGA and FFA funds.

- 5) *Arguments in opposition.* The Utility Reform Network (TURN), a consumer advocacy organization, opposes the bill because they claim it seeks to expand eligibility to projects that deploy unreliable and inadequate broadband service. They claim that fixed wireless projects suffer from established engineering-capacity limits and are unreliable because they are easily impaired by weather. TURN argues that public investments in subpar technologies will only further exacerbate unequal access to broadband.
- 6) *Related/prior legislation.*
  - a. AB 1461 (Patterson) strikes existing law requiring the CPUC to initially allocate specified funding levels to rural and urban counties through June 30, 2023 for purposes of administering the CASF FFA. This bill is also under consideration in this committee.
  - b. SB 156 (Committee on Budget and Fiscal Review. Chapter 112 of 2021) established the Federal Funding Account and required the CPUC to allocate \$1 billion in funding each for rural and urban counties.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

The Utility Reform Network (TURN)  
Media Alliance

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