

Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 1426 (Mathis) – As Introduced February 19, 2021

**SUBJECT:** California Advanced Services Fund

**SUMMARY:** Eliminates what is commonly referred to as the “right of first refusal” (ROFR) requirement from the California Advanced Service Fund (CASF) program which gives internet service providers (ISPs) the opportunity to demonstrate that broadband will be deployed or existing facilities upgraded to a delineated unserved area within 180 days of the existing provider’s notice.

**EXISTING LAW:**

- 1) Requires the California Public Utilities Commission (CPUC) to develop and administer the CASF with the goal of the funding infrastructure projects to provide broadband access to no less than 98 percent of California households in each broadband consortia region in the state by 2022. (Public Utilities Code Section 281)
- 2) Requires the CPUC to give an incumbent facilities-based broadband provider 180 days to demonstrate that it intends to install or upgrade infrastructure to expand access to an area proposed for CASF project funding (aka ROFR). These incumbent providers may apply for CASF monies to fund broadband expansion projects. (PUC Section 281[f][4])

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

**COMMENTS:**

- 1) Author’s Statement. This bill is intended to encourage and enable greater broadband development and access by removing the 180 day ROFR and the CPUC’s ability to extend the time allotted to existing facility-based broadband providers to complete a project on the grounds that the provider is able to satisfactorily demonstrate what progress has been made or challenges faced. In doing so, AB 1426 allows for increased competition, makes it easier for nonprofits to receive CASF funds, and facilitates broadband investment by nonprofits in communities that are currently being underserved and do not have adequate broadband access.

In essence, the ROFR appears to be an annual opportunity for incumbent providers to claim unserved areas, in exchange for a promise to upgrade broadband service within six months. The providers are allowed to apply for CASF money in those areas, but no one else can. The bottom line is that few providers are using the ROFR.

- 2) Right of First Refusal. The Governor signed AB 1665 (E. Garcia) in 2017 to revise the CASF. Among other things, AB 1665 required the CPUC to annually offer an existing provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days of its demonstration. In addition, AB 1665 required that if the existing provider is unable to complete the deployment of broadband within the delineated unserved area within 180 days, the provider would

inform the CPUC about progress made or challenges faced in completing the deployment. The statute requires that, if the CPUC finds that the provider is making progress towards the completion of the deployment, the CPUC must extend the time to complete the project beyond the 180 days. If the existing provider demonstrates to the CPUC, in response to the annual ROFR, that it will deploy broadband or upgrade existing broadband service throughout the project area, the CPUC cannot approve funding to any other provider for a project to deploy broadband in the delineated area.

Carrier ROFR is used in other states as well as California. There are reports that it adds additional time and effort to the process and thus may delay the potential deployment or expansion of broadband systems without many results. In conversations with those who work with the CASF on a regular basis, there appears to be general agreement that the provision is not working as intended and should be repealed.

- 3) Prior Legislation. AB 1665 (Eduardo Garcia, Chapter 851, Statutes of 2017) revised the CASF.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

None on file.

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