

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Miguel Santiago, Chair

AB 1999 (Chau) – As Amended April 17, 2018

**SUBJECT:** Local government: public broadband services

**SUMMARY:** Establishes net neutrality rules for local agencies that provide broadband services and expands the types of local agencies that may provide broadband infrastructure and/or services. Specifically, **this bill:**

- 1) Prohibits a local agency, except for reasonable network management, insofar as it is engaged in the provision of broadband Internet access service from doing any of the following:
  - a) Blocking lawful content, applications, services, or nonharmful devices;
  - b) Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device;
  - c) Engaging in paid prioritization; and,
  - d) Unreasonably interfering with, or unreasonably disadvantaging, either of the following:
    - i) An end user's ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end user's choice; and,
    - ii) An edge provider's ability to make lawful content, applications, services, or devices available to an end user.
- 2) Authorizes a county service area to provide any governmental service and facility within the county service area that the county is authorized to perform and that the county does not perform to the same extent on a countywide basis, including, but not limited to, services and facilities for the acquisition, construction, improvement, maintenance, or operation of broadband Internet access service, and requires that county service area when providing that service to comply with specified net neutrality requirements.
- 3) Authorizes an infrastructure financing district that finances public capital facilities or projects that include broadband to transfer the management and operation of any broadband facilities that were financed to a local agency that is authorized to provide broadband Internet access service, and requires that local agency when providing that service to comply with specified net neutrality requirements.
- 4) Authorizes an enhanced infrastructure financing district to finance the acquisition, construction, or improvement of broadband Internet access service. Authorizes the specified district that acquires, constructs, or improves broadband Internet access service to transfer the management and control of those facilities to a local agency that is authorized to provide

broadband Internet access service, and requires that local agency when providing that service to comply with specified net neutrality requirements.

- 5) Eliminates the following conditions that a community service district (CSD), within its boundaries, must meet before and after constructing, owning, improving, maintaining, and operating broadband facilities and providing broadband services:
  - a) The condition that a private person or entity is unable or unwilling to deploy broadband services before a CSD may do so;
  - b) The condition that the CSD must first make a reasonable effort to identify a private person or entity willing to deploy service before it does so; and,
  - c) The condition that the CSD must do one of the following, if it later determines that a private person or entity is ready, willing, and able to acquire, construct, improve, maintain, and operate broadband facilities and to provide broadband service, and to sell those service at a comparable cost and quality of services as provided by the CSD:
    - i) Diligently transfer its title, ownership, maintenance, control, and operation of those broadband facilities and services at a fair market value to that private person or entity; or,
    - ii) Lease the operation of those broadband facilities at a fair market value to that private person or entity.
- 6) Requires a municipal corporation that provides broadband Internet access service to comply with specified net neutrality requirements.
- 7) Requires a municipal utility district that provides broadband Internet access service to comply with specified net neutrality requirements.
- 8) Requires a public utility district that provides broadband Internet access service to comply with specified net neutrality requirements.
- 9) Specifies that it is the intent of the Legislature that this bill protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission, thereby encouraging the deployment of advanced telecommunications capability and remove barriers to infrastructure investment.
- 10) Defines “Broadband Internet access service” to mean a mass-market retail service provided by a local agency in California by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. “Broadband Internet access service” also encompasses any service provided by a local agency in California that provides a functional equivalent of that service or that is used to evade the protections set forth, as specified.

- 11) Defines “Edge provider” to mean any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet to an end user.
- 12) Defines “End user” to mean any individual or entity in California that uses a broadband Internet access service that is provided by a local agency.
- 13) Defines “Fixed broadband Internet access service” to mean any broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services, including fixed unlicensed wireless services, and fixed satellite services.
- 14) Defines “Local agency” to mean any agency of local government authorized by any other law to provide broadband Internet access service, including the following:
  - a) A city;
  - b) A county service area;
  - c) A community services district;
  - d) A public utility district; and,
  - e) A municipal utility district.
- 15) Defines “Mobile broadband Internet access service” to mean any broadband Internet access service that serves end users primarily using mobile stations.
- 16) Defines “Network management practice” to mean a practice that has a primarily technical network management justification, but does not include other business practices.
- 17) Defines “Paid prioritization” to mean the management of a broadband provider’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, that either:
  - a) Is in exchange for consideration, monetary or otherwise, from a third party; or,
  - b) Done to benefit an affiliated entity.
- 18) Defines “Reasonable network management” to mean a network management practice that is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

**EXISTING LAW:**

- 1) Authorizes a municipal corporation to establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of

communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent. (California Constitution, Article XI, Section 9)

- 2) Authorizes any municipal corporation to acquire, construct, own, operate, or lease any public utility. Defines “public utility” for the specified purposes to mean the supply of a municipal corporation alone or together with its inhabitants, or any portion thereof, with water, light, heat, power, sewage collection, treatment, or disposal for sanitary or drainage purposes, transportation of persons or property, means of communication, or means of promoting the public convenience. (Public Utilities Code (PUC) Section 10002 and 10001)
- 3) Authorizes a municipal utility district to acquire, construct, own, operate, control, or use, within or without, or partly within or partly without, the district, works or parts of works for supplying the inhabitants of the district and public agencies therein, or some of them, with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the collection, treatment, or disposition of garbage, sewage, or refuse matter, and may do all things necessary or convenient to the full exercise of the powers herein granted. The specified district may also purchase any of such commodities or services from any other utility district, public agency, person, or private company, and distribute them. (PUC Section 12801)
- 4) Authorizes a public utility district to acquire, construct, own, operate, control, or use, within or without or partly within and partly without the district, works for supplying its inhabitants with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the disposition of garbage, sewage, or refuse matter, and may do all things necessary or convenient to the full exercise of the powers granted, as specified. (PUC Section 16461)
- 5) Authorizes a county service area to provide any governmental services and facilities within the county service area that the county is authorized to perform and that the county does not perform to the same extent on a countywide basis, as specified. (Government Code (GOV) Section 25213)
- 6) Authorizes any infrastructure financing district to finance public capital facilities or projects that include broadband, as specified. (GOV Section 53395.3.2)
- 7) Authorizes an enhanced infrastructure financing district to finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community, as specified. (GOV Section 53398.52)
- 8) Authorizes a community service district, if a private person or entity is unable or unwilling to deploy broadband service, to construct, own, improve, maintain, and operate broadband facilities and to provide broadband services, as specified. Requires the specified district to first make a reasonable effort to identify a private person or entity willing to deploy service, as specified. (GOV Section 61100)
- 9) Specifies that the specified authority granted to a community service district, shall expire when a private person or entity is ready, willing, and able to acquire, construct, improve, maintain, and operate broadband facilities and to provide broadband services, and to sell

those services at a comparable cost and quality of service as provided by the specified district. At that time, the specified district shall do one of the following:

- a) Diligently transfer its title, ownership, maintenance, control, and operation of those broadband facilities and services at a fair market value to that private person or entity; or,
- b) Lease the operation of those broadband facilities at a fair market value to that private person or entity. (GOV Section 61100)

**FISCAL EFFECT:** Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Authors Statement:** According to the author, “The recent action by the Federal Communications Commission [FCC] has rekindled the idea that local governments ought to play a more active role in building out locally owned broadband networks [...] California law provides [certain] forms of independent local government limited or no authority to provide broadband service [...] This creates a disadvantage for rural areas that may want to establish their own broadband networks where only 43 percent of the population has access to broadband in their households. Additionally for the 3.5 million people in California without access or that only have access to one wired provider, allowing local government to offer broadband Internet service may not only provide them Internet access for the first time, but also provide them with a choice in their service provider [...] As locally owned broadband networks become an alternative for consumers, the State should uphold the tenets of an open Internet by requiring adherence to the core principles of net neutrality.”
- 2) **Background:** Broadband has become essential for jobs, economic growth, and democratic engagement. Access to broadband affords citizens with the opportunity to communicate with family and friends, conduct personal business activities, achieve academic success, research employment offerings, and access community resources. Yet a vast number of Californians still live in areas without broadband. Many of these residents are low-income or live in areas of the State that remain unserved due to the lack of investment. The “Digital Divide” refers to the gap that prevents access to the Internet by individuals, households, businesses, and geographical areas at different socio-economic levels. Over 24 million Americans still lack broadband access at specified speeds. Bridging the Digital Divide is essential to economic prosperity and quality of life for all Californians. To do so, the California Public Utilities Commission administers the California Advanced Services Fund, which provides grants to promote the deployment of broadband services in the State. But more needs to be done to spur investments and promote broadband adoption so that the benefits of broadband can be made available to everyone, regardless of their location or income.
- 3) **Community-Based Broadband:** Competition has helped drive the expansion of telecommunications services leading to stronger infrastructure investments, falling prices, and new products and services. Unfortunately, while the private sector has made investments to dramatically expand broadband access, challenges still remain. Competition is not extended into every market, such as rural areas that might not provide enough of a return on investment due to the high up-front capital costs of building a new network for providers in such areas; and its benefits are not evenly distributed, such as low-income and disadvantage communities where the demand for higher quality products and services might not exist to

promote greater investments. In areas where there is no or very little competition, prices rise, investments are delayed, and the quality of service becomes inadequate.

In cases where the economic model often cannot justify build-out by a private provider, municipal networks can serve as a critical tool for increasing access, encouraging competition, fostering consumer choice and driving local and regional economic development. As of January 2018, more than 750 communities across the country have developed their own community based broadband networks. In California, currently law authorizes certain local agencies to operate their own broadband networks. There are currently 20 municipal broadband networks in California, including, Anaheim Fiber, Digital Redwoods, Mendocino Community Network, SF Fiber, Santa Monica City Net, among others. This bill expands the types of local agencies that may provide broadband infrastructure and/or services.

- 4) **Net Neutrality:** Net neutrality is the principle that Internet service providers (ISPs) should not discriminate against legal content and applications by charging content providers different delivery speeds to deliver their content. Hence, ISPs should not block, throttle, or create special “fast lanes” for certain content. In February 2015, the FCC adopted the *Open Internet* order which established three “bright-line” rules banning certain practices that the FCC considers to harm open access to the Internet. The bright-line rules include:
- a) No Block: ISPs may not block access to legal content, applications, services, or non-harmful devices;
  - b) No Throttling: ISPs may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices; and
  - c) No Paid Prioritization: ISPs may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration of any kind.

The FCC’s 2015 *Open Internet* order came about beginning in 2005, when the FCC classified all ISP service as a Title I “information service” under the Telecommunications Act of 1996, instead of a “telecommunication service” under Title II. Under Title I, the FCC has only limited ancillary authority, whereas, under Title II; the authority in which the FCC regulates traditional phone services, the FCC has much more significant and specific authority to regulate certain services. After the courts overturned two efforts by the FCC to enforce net neutrality rules on ISPs under Title I, in 2015 under the *Open Internet* order, the FCC reclassified ISPs from Title I to Title II. Since the primary purpose of the order was to enforce net neutrality rules, the FCC did not apply many of the traditional telephone regulations on the ISPs.

In December 2017, before the 2015 order took effect, the FCC reversed course and approved the *Restoring Internet Freedom* order; reclassifying ISPs back under Title I. The FCC argued that specific net neutrality rules was unnecessary because the ISPs have publicly stated their opposition to violating net neutrality principles, and if a ISP were to engage in the activity, consumer expectations, market incentives, and the deterrent threat of enforcement actions by antitrust and consumer protection agencies will constrain such practices ex ante.

This bill establishes net neutrality rules for local agencies that provide broadband services. Arguably, local agencies that do decide to provide their residents with broadband services are

doing so without profit and for the benefit or well-being of the public. Although local agencies that provide broadband might be put at a competitive disadvantage compared to another provider that might engage in blocking, throttling, or paid prioritization; because of the fact that they would be providing a public good, local agencies should not be engaging in such activities.

5) **Arguments in Support:** According to the ACLU of California, “Broadband access is of vital importance to communities throughout the state, and local government are an important partner in ensuring that its benefits are made equally available to everyone [...] Across the nation publicly deployed infrastructure and public-private partnership have resulted in gigabit fiber-optic networks where residents now enjoy future-proof access to the Internet. Too often, if left solely to the large incumbent providers, communities that are not high priorities for the private sector to invest in are left with decades-old technology at unaffordable rates. Restricting local governments from building out their own high-speed networks is counterproductive to closing California’s digital divide, especially in rural areas where only 43 percent of the population has access to broadband in their households, or in areas that only have access to one provider, or where the return on investment may disincentive private industry from making substantial investments in broadband infrastructure.”

6) **Related Legislation:** SB 460 (De Leon) of 2018 adopts components of the net neutrality rules repealed by the FCC by prohibiting ISPs from taking specified actions to interfere with a customer’s ability to access content on the Internet. *Status: Pending at the Assembly Desk.*

SB 822 (Wiener) of 2018 establishes net neutrality requirements by prohibiting ISPs and cable franchise that provide broadband Internet service from taking specified actions that interfere with consumer’s ability to lawfully access Internet content. *Status: Pending in the Senate Appropriations Committee.*

7) **Previous Legislation:** AJR 7 (Mullin) of 2017 urged the President of the United States and Members of the United States Congress to continue to protect net neutrality, open Internet access, the federal Lifeline program, and the E-rate program. *Status: Chaptered by the Secretary of State, Resolution Chapter 151, Statutes of 2017.*

SB 1191 (Alquist) of 2008 allowed a community service district to construct, own, improve, maintain, and operate broadband facilities and provide broadband services, if a private person or entity is unable or unwilling to deploy broadband service. *Status: Chaptered by the Secretary of State, Chapter 70, Statutes of 2008.*

8) **Double-referral:** This bill is double referred, having been previously heard by the Assembly Committee on Local Government on April 25, 2018 and approved on a 7 to 1 vote.

## REGISTERED SUPPORT / OPPOSITION:

### Support

ACLU of California  
California Special Districts Association  
Electronic Frontier Foundation

**Opposition**

None on file.

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