

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Sharon Quirk-Silva, Chair

AB 2749 (Quirk-Silva) – As Introduced February 18, 2022

SUBJECT: Communications: California Advanced Services Fund

SUMMARY: This bill would require the California Public Utilities Commission (CPUC) to review California Advanced Services Fund (CASF) grant applications within 120 days, and provides that applications are deemed approved if the commission does not deny the application or meet the 120 day deadline. The bill also requires the CPUC to allow a streamlined reimbursement process for some grant recipients. Specifically, **this bill:**

1. Requires the CPUC to review each application and notify the application of its decision on or before 120 days from the date the application was submitted. Authorizes the CPUC, upon mutual agreement with the application, to extend the deadline.
2. Requires the CPUC, when it denies an application, to document the basis for the denial.
3. Requires the CPUC to allow applicants whose applications were denied to amend and resubmit their applications.
4. Provides that applications will be deemed approved if the commission does not deny the application or extend the 120-day deadline.
5. Requires that the CPUC's ministerial review process shall include a streamline reimbursed process for grant recipients, as provided.
6. States the intent of the Legislature that this bill would not require to modify its rules to the extent those rules are consistent with this bill's provisions.

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) Requires the CPUC to develop, implement, and administer the CASF 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))
- 3) 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)
- 4) Defines an “unserved area” eligible for CASF 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))
 - 5) Requires the CPUC to prioritize CASF grants in areas for projects in areas where internet connectivity is available only at speeds at or below 10 mbps downstream and 1 mbps upstream. (Public Utilities Code §281(b))
 - 6) Requires that eligible projects for grant awards 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) Authorizes the commission to collect surcharges from telecommunications users in an amount not to exceed one hundred fifty million dollars (\$150,000,000) per year. (Public Utilities Code § 281 (d)(4))
 - 8) Appropriates two billion (\$2,000,000,000) to the CASF Federal Funding Account (FFA).
 - 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 percent to 1.019 percent 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. Authorized use of IGA funds has its basis in existing state law. The goal of the IGA is to provide broadband access to 98 percent of households in each consortia region by December 31, 2032.

The FFA, on the other hand, is a new 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 will receive \$2 billion (\$1.072 billion American Rescue Plan Act (ARP) fiscal relief funds and \$928 million General Fund) 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. *The CPUC has no explicit obligations to review applications in a timely manner.* There are certain dates, both in state law and federal regulations, by which the CPUC is to meet certain goals or expend broadband funds. For example, the CPUC must encumber FFA funds by the end of 2024 to meet federal requirements. Additionally, the statutory goal of the CASF is to provide service to unserved households by a date certain. Nonetheless, the CPUC is under no

explicit statutory or regulatory obligation to review broadband infrastructure grant applications in a timely manner or within reasonable period of time. Given this dynamic and past experience, there are valid concerns from former and potential new applicants about unnecessary delays in the CPUC's review of applications. Further, given the strict timelines set by the federal government, the Legislature must be mindful of the CPUC's progress towards awarding the \$2 billion in FFA funds to avoid a situation where federal funds are returned unspent. By implementing a deadline by which the CPUC must review CASF applications, this bill ensures the CPUC will be on track to meet existing requirements and avoids a repeat of past issues administering the CASF program.

For example, prior to the passage of SB 156 the CPUC took over 18 months to award some grants from the IGA that were submitted in May 2020. During that application window the CPUC was dealing with a record 57 grant applications and a limited budget that could not fund all the submitted projects. Instead of making the difficult decision of allocating scarce resources to worthy projects, most of which eventually were funded, the CPUC delayed decisions on awarding funds until after the passage of SB 156 in July 2021. Yet even then, the CPUC denied several applications with little explanation to the applicant and required additional review by the California Department of Technology (CDT) on several others. In the midst of all the regulatory delay, perhaps for a logical reason from the CPUC's perspective, unserved communities waited and continue to wait for broadband service.

5. *The CPUC must great increase the pace of awarding grants to meet state goals.* According to LAO analysis of CPUC data, since the CASF program's inception in 2008 the agency has awarded about \$348 million in grant funding from the Infrastructure Grant Account. On a per year basis, that is only about \$25 million per year 14 years. In recent years, the CPUC has significantly increased the level of grant funding awarded. For example, according to the most recent CASF Program Annual Report the CPUC approved 21 new infrastructure grants in 2021 totaling \$93 million. Although that increase is laudable, and corresponds with the increased interest in the program, the CPUC still must rapidly increase the pace of awarding grants if they are to meet the program goal and timelines for federal funding.

At the current pace of \$93 million per year, the CPUC would award only a fraction of the total funding available in the FFA. If the CPUC is going to meet federal deadlines, they will need to award an average of about \$400 million per year through 2026. That figure is roughly a 400% increase of the most recent year's awards, and a 1600% increase from the yearly average of all infrastructure awards to date.

6. *CPUC Decision of Federal Funding Account Program Rules.* On April 21, 2022 the CPUC adopted the final program rules for administering the FFA. Now that the rules are adopted the CPUC may begin accepting grant applications, and they have represented they plan to open an application window in the second quarter of 2022. In that decision, the CPUC adopted several program rules for the FFA that would be impacted by this bill.

Most pertinent to the intention of this bill, the CPUC adopted a guideline of applications being due every six months and set a target of reviewing applications in no more than six months. Not surprisingly, the CPUC stopped short of making either item a firm requirement of the agency's own operations. Given the CPUC's lack of commitment to reviewing applications in a timely manner, this bill proposes to impose a deadline for reviewing applications. The proposed 120 days deadline in this bill is about 60 days less than the

guidelines adopted by the CPUC. Additionally, this bill takes the deadline a step further by providing that any application that is not denied within that timeline is deemed approved. The additional requirement proposed by this bill preserves the CPUC's ability to deny projects for any reason, but balances that authority with an incentive to review applications efficiently. Moving forward, the author may wish to continue engaging with the CPUC to ensure the deadline is both attainable and motivating.

Beyond the time to review applications, the CPUC's decision also covered other topics such as affordability. For example, consistent with federal guidelines, the FFA rules require a recipient of a grant to participate in the Affordable Connectivity Program (ACP) and commit maintaining prices for their service for a period of 5 years. These requirements reflect guidance from federal agencies on use of federal funds, and current law requires the CPUC to implement the FFA consistent with federal rules. However, current state law governing the FFA and IGA do not explicitly mention affordability requirements for grant recipients. To ensure consistency between the IGA and the FFA, which provides more certainty to applicants, the author may wish to consider adding affordability requirements to this bill.

7. *Arguments in support.* Various organizations representing potential CASF applicants and individual internet service providers support this bill. For example, Frontier Communications writes in support that this bill will make specific changes to CASF to increase participation, maximize funding, and more quickly deliver broadband to the state's last-remaining unserved communities
8. *Arguments in opposition.* The Electronic Frontier Foundation (EFF), a nonprofit organization that claims to be the "leading nonprofit organization defending civil liberties in the digital world", opposes the deadline driven, or "shot-clock", approach to reviewing CASF applications. EFF argues that the state benefits from a thorough review of applications to assess grant applications for their economic and technical feasibility.
9. Related/similar legislation.
 - a. 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.
 - b. AB 14 (Aguiar-Curry. Chapter 658, Statutes of 2021) extended the goal of the CASF program from 2026 to 2032, and authorized the CPUC to continue imposing a surcharge to fund the program through December 31, 2032.
 - c. SB 4 (Gonzalez. Chapter 671, Statutes of 2021) increased the annual funding cap for the CASF to \$150 million and expanded projects eligible for CASF grants by revising the definition of an unserved household.
 - d. AB 1665 (E. Garcia et al. Chapter 851, Statutes of 2017) extended the CASF program to 2026, and authorized the CPUC to collect up to \$330 million to fund the program through December 31, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

At&t

California Police Chiefs Association

City of Thousand Oaks

Community Clinic Association of Los Angeles County (CCALAC)

Consolidated Communications

CTIA

Frontier Communications Corporation

New Livable California DbA Livable California

United States Telecom Association DbA Ustelecom - the Broadband Association

Opposition

Electronic Frontier Foundation

Rural County Representatives of California (RCRC)\

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