

Date of Hearing: August 25, 2022

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Sharon Quirk-Silva, Chair

AB 2752 (Wood) – As Amended August 1, 2022

SUBJECT: Broadband infrastructure: mapping

SUMMARY: This bill clarifies the data that the California Public Utilities Commission (CPUC) must collect for mapping broadband access. Specifically, **this bill:**

- 1) Specifies that the CPUC may collect information from broadband service providers at the address level for the purposes of existing broadband mapping requirements.
- 2) Prohibits the CPUC from disclosing personal consumer information protected by existing customer right of privacy law.
- 3) Clarifies that “actual locations” for which cable franchises must report service data includes addresses.

EXISTING LAW:

- 1) Requires the CPUC to maintain and update a statewide, publicly accessible, interactive map showing the accessibility of broadband service in the state, including, but not limited to, information identifying the percentage of each census block that has broadband service meeting federal and state standards. [Public Utilities Code § 281.6(a)]
- 2) Authorizes the CPUC to collect information from broadband providers to establish and update the statewide interactive map. [Public Utilities Code § 281.6(b)]
- 3) Requires the CPUC to include a feature in the broadband map that enables a person to sign up for notifications about updates to the map. [Public Utilities Code § 281.6(c)]
- 4) Requires the CPUC to collect granular information on the actual locations served by cable franchises and establish customer service requirements for those franchises. (Public Utilities Code § 5895)
- 5) Establishes a customer right to privacy for telecommunications services. Existing law prohibits telephone and telegraph corporations from sharing certain personal consumer information with any person or corporation without first obtaining the consumer’s consent. Existing law specifies the types of information that may not be shared without a customer’s consent, including the services purchased by a residential subscriber from the telephone corporation or independent information services that use the telephone corporation’s facilities to serve the customers. (Public Utilities Code § 2891)
- 6) Limits cable television corporations, as defined, from sharing cable television service subscriber information with any person, including government agencies, except as provided. (Penal Code § 637.5)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) *Senate Amendments.* This bill was substantively changed in the Senate from the version previously considered by this committee. Prior versions of this bill would have required the CPUC to include last-mile broadband service connections from the MMBI network as part of the interactive broadband map. Those provisions have since been removed, and currently the bill clarifies what data that the California Public Utilities Commission (CPUC) must collect for mapping broadband access.
- 2) *Author's Statement.* "Today, the maps that define broadband availability in California overstate access and minimize the experience of those struggling behind the digital divide. This bill simply clarifies that the CPUC's authority to collect location data, regarding broadband access, includes addresses. Data reported to the CPUC must reflect the reality of broadband access at the household-level. Reporting granular data to the CPUC is a crucial first step in supporting California's investment in the open-access middle mile network, and competing for the federal funding that will help us close the digital divide."
- 3) *California's Interactive Broadband Map.* The CPUC maintains a publicly accessible interactive broadband map, known as Interactive Broadband Map¹ ("broadband map"). The broadband map includes a variety of information about broadband projects and service availability in California. For example, the broadband map includes information at the census block and address level pertaining to broadband service availability. The CPUC has maintained the broadband map for various years as part of administering the California Advanced Services Fund (CASF) program, by displaying areas that are unserved by broadband service and therefore eligible for program grant funds. Pursuant to Assembly Bill 41 (Wood, Chapter 659, Statutes of 2021) the CPUC was required to update the map with additional information, such as a notification feature to track updates to the map.
- 4) *Address level data collection.* The CPUC is authorized to collect from providers of broadband services the information necessary to establish and update the broadband map. Existing law also provides that the CPUC should collect information from broadband services providers at a granular level, and more specifically the level of a serviceable location such as a household or business address. To that end, in March 2022 the CPUC submitted data requests to all broadband service providers and State Video Franchise holders requesting address level deployment and subscriber information. The CPUC requested broadband deployment data in order to map the accessibility of broadband service across the state, as clearly required by AB 41 (Wood, Chapter 659, Statutes of 2021) and other legislation including SB 156 (Committee on Budget and Fiscal Review, Chapter 112, Statutes of 2021). Although not explicitly authorized in statute, the CPUC additionally requested broadband subscriber information because the agency determined that the data was necessary to validate the broadband speeds submitted by providers elsewhere in the deployment data. Opponents of this bill disagree with the CPUC's assessment that address level data, specifically broadband subscriber data, is necessary for the CPUC to fulfil its obligations under existing law. The California Cable and Telecommunications Association asserts in their letter opposition:

¹ California Interactive Broadband Map. <https://www.broadbandmap.ca.gov/>

“[address level data] is not ‘necessary’ for the CPUC to establish or update the state broadband map to depict ‘accessibility of broadband service’, which refers to whether infrastructure exists and service is already available.”

In June 2022, following the failure of various broadband services providers to provide the necessary broadband data to the CPUC, the CPUC sent follow-up letters to the non-compliant providers clarifying the previous request. Despite concerns about address level data generally, the CPUC reports that the non-compliant providers have since provided the address-level deployment data. However, a resolution has not been reached on submission of the subscriber data. This bill would clarify broadly that the CPUC may collect address level broadband data, thus providing more regulatory clarity to providers about the information they may be required to share with the CPUC to meet the requirements of existing law.

- 5) *Address level data will help the CPUC create more accurate maps.* Historically, broadband maps produced by the CPUC and the federal government have not been produced at a level of granularity needed to effectively target funding and understand deployment patterns. For example, prior to the passage of SB 28 (Caballero, Chapter 673, Statutes of 2021) State Video Franchise holders provided deployment data to the CPUC at the census block level, which had the effect of over counting areas that were considered to be served by broadband service at minimum speed requirements. With the passage of SB 28, SB 156 (Committee on Budget and Fiscal Review, Chapter 112, Statutes of 2021), and other federal legislation regulators have begun to collect more granular information with the goal of producing more accurate maps. For example, the CPUC has stated specifically that broadband subscriber data is necessary to validate the broadband speeds submitted by providers elsewhere in their deployment data. Without both types of information – subscriber and deployment data – the CPUC will likely produce less accurate maps.

In addition to meeting the statutory requirement to map broadband accessibility, having an accurate broadband map will also help the state’s efforts to award funding to unserved areas through the California Advanced Services Fund, and it could also assist the state with challenging maps created by the Federal Communications Commission (FCC). The maps produced by the FCC will be used to award billions in funding to states that was appropriated in the Infrastructure Investment and Jobs Act (IIJA), and therefore it is the state’s interest to ensure the FCC’s maps are as accurate as possible to put California in the best position to receive maximum federal funding.

- 6) *Data privacy and confidentiality considerations.* This bill has been double referred to the Assembly Committee on Privacy and Consumer Protection, pending action by this committee. The following provides an overview of the CPUC’s request of broadband data in the context of the Cable Act and Penal Code, statutes applicable to State Video Franchise holders, which fall squarely in the jurisdiction of this committee.

First, it should be noted that although most broadband service providers operating in the state have provided both address level broadband deployment and subscriber information to the CPUC, some broadband service providers have raised both customer privacy and business confidentiality concerns with the CPUC’s original data request through the regulatory process. Cable internet service providers in particular have argued that their unique position as State Video Franchise Holders, cable companies that are licensed by the state to provide video programming service, affords their subscriber data special protections that are not

applicable to other types of broadband providers. In their letter of opposition to this bill the California Cable and Telecommunications Association asserts that both state law in the California Penal Code and the federal Cable Act prohibit cable companies from disclosing customer personally identifiable information (PII) without customer's written consent or appropriate legal process.

It is not the proper jurisdiction of this committee to opine as to whether address information on its own would be considered PII; the issue will be reviewed in the Privacy and Consumer Protection Committee. In any case, it is nonetheless questionable whether the statutes in the Penal Code and federal Cable Act cited by the opposition are applicable to broadband data. The particular statutes cited were seemingly intended to cover cable television service, not broadband; and broadband is clearly a different type of service than cable video programming, although both services may be provided by the same companies over the same wires. For example, California Penal Code Section 637.5, which notably was added to the code in 1967 before broadband was invented, specifically says the provisions of that section are intended to protect subscribers to cable television services. The same could be argued about the privacy protections in the federal Cable Act, which similarly pertain to cable television service. Beyond those two statutes, more recent legislation, specifically SB 28 (Caballero, Chapter 673, Statutes of 2021), which is specifically applicable to State Video Franchise holders gives the CPUC explicit direction to collect "granular data on the actual locations served by a state video franchise holder." To the extent that there are questions about the CPUC's existing authority to collect granular level information of serviceable locations, this bill would clarify that the CPUC is authorized to collect address level broadband data broadly. Further, in the data requests initially sent to broadband services providers in March 2022 the CPUC assured providers that the subscriber information would be kept confidential pursuant to existing law and CPUC regulations.

7) *Related/prior legislation.*

- a. SB 28 (Caballero, Chapter 673, Statutes of 2021) requires the CPUC to collect granular data from cable franchises on the actual locations they serve and adopt customer service requirements for cable franchises.
- b. AB 41 (Wood, Chapter 659, Statutes of 2021) requires the CPUC to update an existing broadband map to include specified information about local broadband service and it requires the California Department of Transportation (Caltrans) to install conduit for fiber communications as part of its construction of a state-owned middle-mile broadband network.
- c. SB 156 (Committee on Budget and Fiscal Review, Chapter 112, Statutes of 2021) made various changes necessary to implement the Budget Act of 2021. The bill provided federal funding for the construction of state-owned middle mile broadband infrastructure and allocated \$2 billion of federal funds to the California Advanced Services Fund for the purpose of funding projects that deploy last-mile broadband infrastructure.

REGISTERED SUPPORT / OPPOSITION:

Support

Active San Gabriel Valley
Alliance for A Better Community
California Alliance for Digital Equity
California Community Foundation Digital Equity Initiative
California Native Vote Project
Center for Powerful Public Schools
Common Sense
Common Sense Media
Communities in Schools of Los Angeles (CISLA)
Community Coalition of The Antelope Valley
Destination Crenshaw
Electronic Frontier Foundation
Great Public Schools Now
Institute for Local Self-reliance
La-tech.org
League of California Cities
Media Alliance
Monterey Bay Economic Partnership
Nextgen California
Pacoima Beautiful
Para Los Ninos
Shared Harvest
Southeast Community Development Corporation
The People's Resource Center

Opposition

California Cable & Telecommunications Association

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