

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 13, 2010

SENATE BILL

No. 1040

Introduced by Senator Padilla

February 12, 2010

An act to amend Section 281 of the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Padilla. Telecommunications universal service programs: California Advanced Services Fund.

The existing federal Telecommunications Act of 1996 establishes a program for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as

defined. Existing law, until January 1, 2013, establishes the California Advanced Services Fund (CASF) in the State Treasury, and requires a surcharge, which is imposed by the commission and collected through retail telecommunications customers' bills, to be deposited in that fund. Existing law prohibits the commission from collecting more than \$100,000,000 through the surcharge. Existing law requires the commission to develop, implement, and administer the CASF to provide for transfer payments 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 a specified decision of the commission. Existing law requires the commission to conduct both a financial audit and a performance audit on the implementation and effectiveness of CASF and to report its findings to the Legislature by December 31, 2010.

This bill would extend the operation of these provisions indefinitely, and would prohibit the commission from collecting more than \$225,000,000 through the CASF surcharge. ~~The bill would require that not more than \$25,000,000 of the funds in CASF be encumbered during a fiscal year, beginning with the fiscal year beginning July 1, 2010, and continuing through the 2015–16 fiscal year.~~ The bill would require the commission to conduct an interim and final financial audit and interim and final performance audit on the implementation and effectiveness of CASF and, to report to the Legislature its interim findings by December 31, 2010, and its final findings by April 1, 2017.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 281 of the Public Utilities Code is
- 2 amended to read:
- 3 281. (a) The commission shall develop, implement, and
- 4 administer the California Advanced Services Fund to encourage
- 5 deployment of high-quality advanced communications services to
- 6 all Californians that will promote economic growth, job creation,
- 7 and the substantial social benefits of advanced information and
- 8 communications technologies, as provided in Decision 07-12-054

1 and Decision 09-07-020 and this section. The commission shall
2 establish the following accounts within the fund:

3 (1) The Broadband Infrastructure Grant Account.

4 (2) The Rural and Urban Regional Broadband Consortia Grant
5 Account.

6 (3) The Broadband Infrastructure Revolving Loan Account.

7 (b) (1) All moneys collected by the surcharge authorized by
8 the commission pursuant to Decision 07-12-054, whether collected
9 before or after January 1, 2009, shall be transmitted to the
10 commission pursuant to a schedule established by the commission.

11 The commission shall transfer the moneys received to the
12 Controller for deposit in the California Advanced Services Fund.
13 *Moneys collected after January 1, 2011, shall be deposited in the*
14 *following amounts in the following accounts:*

15 (A) *One hundred million dollars (\$100,000,000) into the*
16 *Broadband Infrastructure Grant Account.*

17 (B) *Ten million dollars (\$10,000,000) into the Rural and Urban*
18 *Regional Broadband Consortia Grant Account.*

19 (C) *Fifteen million dollars (\$15,000,000) into the Broadband*
20 *Infrastructure Revolving Loan Account.*

21 (2) All interest earned on moneys in the fund shall be deposited
22 in the fund.

23 (3) The commission shall not collect moneys, by imposing the
24 surcharge described in paragraph (1) for deposit in the fund, in an
25 amount that exceeds a total amount of two hundred twenty-five
26 million dollars (\$225,000,000). ~~Not more than twenty-five million~~
27 ~~dollars (\$25,000,000) may be encumbered, per fiscal year, from~~
28 ~~the fund, beginning with the fiscal year that begins July 1, 2010,~~
29 ~~and continuing through the 2015–16 fiscal year.~~

30 ~~(4) The funds shall be deposited in the following amounts in~~
31 ~~the following accounts for each fiscal year:~~

32 ~~(A) Twenty million dollars (\$20,000,000) into the Broadband~~
33 ~~Infrastructure Grant Account.~~

34 ~~(B) Two million dollars (\$2,000,000) into the Rural and Urban~~
35 ~~Regional Broadband Consortia Grant Account.~~

36 ~~(C) Three million dollars (\$3,000,000) into the Broadband~~
37 ~~Infrastructure Revolving Loan Account.~~

38 (c) (1) All moneys in the California Advanced Services Fund
39 shall be available, upon appropriation by the Legislature, to the
40 commission for the program administered by the commission

1 pursuant to this section, including the costs incurred by the
2 commission in developing, implementing, and administering the
3 program and the fund.

4 (2) Notwithstanding any other law and for the sole purpose of
5 providing matching funds pursuant to the federal American
6 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any
7 entity eligible for funding pursuant to that act shall be eligible to
8 apply to participate in the program administered by the commission
9 pursuant to this section, if that entity otherwise satisfies the
10 eligibility requirements under that program. Nothing in this section
11 shall impede the ability of an incumbent local exchange carrier,
12 as defined by subsection (h) of Section 251 of Title 47 of the
13 United States Code, that is regulated under a rate of return
14 regulatory structure, to recover, in rate base, California
15 infrastructure investment not provided through federal or state
16 grant funds for facilities that provide broadband service and
17 California intrastate voice service.

18 (d) Moneys in the Rural and Urban Regional Broadband
19 Consortia Grant Account shall be available for grants to eligible
20 consortia to fund the cost of broadband deployment activities other
21 than the capital cost of facilities, *as specified by the commission*.
22 An eligible consortium may include, *as specified by the*
23 *commission*, representatives of organizations, including, but not
24 limited to, local and regional government, public safety, K-12
25 education, health care, libraries, higher education,
26 community-based organizations, tourism, parks and recreation,
27 agricultural, and business, and is not required to have as its lead
28 fiscal agent an entity with a certificate of public convenience and
29 necessity.

30 (e) Moneys in the Broadband Infrastructure Revolving Loan
31 Account shall be available to finance capital costs of broadband
32 facilities not funded by a grant from the Broadband Infrastructure
33 Grant Account. The commission shall periodically set interest rates
34 on the loans based on surveys of existing financial markets.

35 (f) (1) The commission shall conduct an interim and final
36 financial audit and an interim and final performance audit of the
37 implementation and effectiveness of the California Advanced
38 Services Fund to ensure that funds have been expended in
39 accordance with the approved terms of the grant awards and loan
40 agreements and this section. The commission shall report its interim

1 findings to the Legislature by December 31, 2010. The commission
2 shall report its final findings to the Legislature by April 1, 2017.
3 The reports shall also include an update to the maps in the final
4 report of the California Broadband Task Force and data on the
5 types and numbers of jobs created as a result of the program
6 administered by the commission pursuant to this section.

7 *(2) (A) The requirement for submitting a report imposed under*
8 *paragraph (1) is inoperative on January 1, 2018, pursuant to*
9 *Section 10231.5 of the Government Code.*

10 *(B) A report to be submitted pursuant to paragraph (1) shall*
11 *be submitted in compliance with Section 9795 of the Government*
12 *Code.*

13 SEC. 2. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety within
15 the meaning of Article IV of the Constitution and shall go into
16 immediate effect. The facts constituting the necessity are:

17 Numerous grant applications with merit have been filed seeking
18 funding through the California Advanced Services Fund, many of
19 these applications also seeking funding through the federal
20 American Recovery and Reinvestment Act of 2009 (Public Law
21 111-5), and these grant applications threaten to exceed the existing
22 financial limits of the fund. In order to relieve financial pressure
23 on the fund, enable meritorious projects to go forward, and to
24 prevent a potential disruptive effect on the grant process, it is
25 necessary that this act take effect immediately.