

ASSEMBLY BILL

No. 1262

Introduced by Assembly Member Wood

February 27, 2015

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

AB 1262, as introduced, Wood. Telecommunications: universal service: California Advanced Services Fund.

Existing law, the federal Telecommunications Act of 1996, establishes a program of cooperative federalism 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. The act authorizes each state to adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the state, only to the extent that they adopt additional specific, predictable, and sufficient mechanisms

that do not rely on or burden federal universal service support mechanisms.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined. Existing law establishes the California Advanced Services Fund, referred to as the CASF, in the State Treasury. Existing law requires the commission 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 specified decisions of the commission and in the CASF statute. Existing law establishes 4 accounts, the Broadband Infrastructure Grant Account, the Rural and Urban Regional Broadband Consortia Grant Account, the Broadband Infrastructure Revolving Loan Account, and the Broadband Public Housing Account within the CASF. Existing law requires that of the moneys collected for CASF on and after January 1, 2011, \$10,000,000 is to be deposited into the Rural and Urban Regional Broadband Consortia Grant Account and used for specified purposes, and \$15,000,000 is to be deposited into the Broadband Infrastructure Revolving Loan Account and used for specified purposes.

This bill would require that of the moneys collected for CASF on and after January 1, 2011, \$15,000,000 is to be deposited into the Rural and Urban Regional Broadband Consortia Grant Account and used for specified purposes, and \$10,000,000 is to be deposited into the Broadband Infrastructure Revolving Loan Account and used for specified purposes.

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 program to
- 5 encourage deployment of high-quality advanced communications
- 6 services to all Californians that will promote economic growth,

1 job creation, and the substantial social benefits of advanced
2 information and communications technologies, consistent with
3 this section.

4 (b) (1) The goal of the program is, no later than December 31,
5 2015, to approve funding for infrastructure projects that will
6 provide broadband access to no less than 98 percent of California
7 households.

8 (2) In approving infrastructure projects, the commission shall
9 give priority to projects that provide last-mile broadband access
10 to households that are unserved by an existing facilities-based
11 broadband provider. The commission shall provide each applicant,
12 and any party challenging an application, the opportunity to
13 demonstrate actual levels of broadband service in the project area,
14 which the commission shall consider in reviewing the application.

15 (c) The commission shall establish the following accounts within
16 the fund:

17 (1) The Broadband Infrastructure Grant Account.

18 (2) The Rural and Urban Regional Broadband Consortia Grant
19 Account.

20 (3) The Broadband Infrastructure Revolving Loan Account.

21 (4) The Broadband Public Housing Account.

22 (d) (1) All moneys collected by the surcharge authorized by
23 the commission pursuant to Decision 07-12-054 shall be
24 transmitted to the commission pursuant to a schedule established
25 by the commission. The commission shall transfer the moneys
26 received to the Controller for deposit in the California Advanced
27 Services Fund. Moneys collected on and after January 1, 2011,
28 shall be deposited in the following amounts in the following
29 accounts:

30 (A) One hundred ninety million dollars (\$190,000,000) into the
31 Broadband Infrastructure Grant Account.

32 (B) ~~Ten million dollars (\$10,000,000)~~ *Fifteen million dollars*
33 *(\$15,000,000)* into the Rural and Urban Regional Broadband
34 Consortia Grant Account.

35 (C) ~~Fifteen million dollars (\$15,000,000)~~ *Ten million dollars*
36 *(\$10,000,000)* into the Broadband Infrastructure Revolving Loan
37 Account.

38 (2) All interest earned on moneys in the fund shall be deposited
39 in the fund.

1 (3) The commission shall not collect moneys, by imposing the
2 surcharge described in paragraph (1) for deposit in the fund, in an
3 amount that exceeds one hundred million dollars (\$100,000,000)
4 before January 1, 2011. On and after January 1, 2011, the
5 commission may collect an additional sum not to exceed two
6 hundred fifteen million dollars (\$215,000,000), for a sum total of
7 moneys collected by imposing the surcharge described in paragraph
8 (1) not to exceed three hundred fifteen million dollars
9 (\$315,000,000). The commission may collect the additional sum
10 beginning with the calendar year starting on January 1, 2011, and
11 continuing through the 2020 calendar year, in an amount not to
12 exceed twenty-five million dollars (\$25,000,000) per year, unless
13 the commission determines that collecting a higher amount in any
14 year will not result in an increase in the total amount of all
15 surcharges collected from telephone customers that year.

16 (e) (1) All moneys in the California Advanced Services Fund
17 shall be available, upon appropriation by the Legislature, to the
18 commission for the program administered by the commission
19 pursuant to this section, including the costs incurred by the
20 commission in developing, implementing, and administering the
21 program and the fund.

22 (2) Notwithstanding any other law and for the sole purpose of
23 providing matching funds pursuant to the federal American
24 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any
25 entity eligible for funding pursuant to that act shall be eligible to
26 apply to participate in the program administered by the commission
27 pursuant to this section, if that entity otherwise satisfies the
28 eligibility requirements under that program. Nothing in this section
29 shall impede the ability of an incumbent local exchange carrier,
30 as defined by subsection (h) of Section 251 of Title 47 of the
31 United States Code, that is regulated under a rate of return
32 regulatory structure, to recover, in rate base, California
33 infrastructure investment not provided through federal or state
34 grant funds for facilities that provide broadband service and
35 California intrastate voice service.

36 (3) Notwithstanding subdivision (b) of Section 270, an entity
37 that is not a telephone corporation shall be eligible to apply to
38 participate in the program administered by the commission pursuant
39 to this section to provide access to broadband to an unserved or
40 underserved household, as defined in commission Decision

1 12-02-015, if the entity otherwise meets the eligibility requirements
2 and complies with program requirements established by the
3 commission. These requirements shall include all of the following:

4 (A) That projects under this paragraph provide last-mile
5 broadband access to households that are unserved by an existing
6 facilities-based broadband provider and only receive funding to
7 provide broadband access to households that are unserved or
8 underserved, as defined in commission Decision 12-02-015.

9 (B) That funding for a project providing broadband access to
10 an underserved household shall not be approved until after any
11 existing facilities-based provider has an opportunity to demonstrate
12 to the commission that it will, within a reasonable timeframe,
13 upgrade existing service. An existing facilities-based provider
14 may, but is not required to, apply for funding under this section to
15 make that upgrade.

16 (C) That the commission shall provide each applicant, and any
17 party challenging an application, the opportunity to demonstrate
18 actual levels of broadband service in the project area, which the
19 commission shall consider in reviewing the application.

20 (D) That a local governmental agency may be eligible for an
21 infrastructure grant only if the infrastructure project is for an
22 unserved household or business, the commission has conducted
23 an open application process, and no other eligible entity applied.

24 (E) That the commission shall establish a service list of
25 interested parties to be notified of California Advanced Services
26 Fund applications.

27 (f) Moneys in the Rural and Urban Regional Broadband
28 Consortia Grant Account shall be available for grants to eligible
29 consortia to fund the cost of broadband deployment activities other
30 than the capital cost of facilities, as specified by the commission.
31 An eligible consortium may include, as specified by the
32 commission, representatives of organizations, including, but not
33 limited to, local and regional government, public safety, elementary
34 and secondary education, health care, libraries, postsecondary
35 education, community-based organizations, tourism, parks and
36 recreation, agricultural, and business, and is not required to have
37 as its lead fiscal agent an entity with a certificate of public
38 convenience and necessity.

39 (g) Moneys in the Broadband Infrastructure Revolving Loan
40 Account shall be available to finance capital costs of broadband

1 facilities not funded by a grant from the Broadband Infrastructure
2 Grant Account. The commission shall periodically set interest rates
3 on the loans based on surveys of existing financial markets.

4 (h) (1) For purposes of this subdivision, the following terms
5 have the following meanings:

6 (A) “Publicly subsidized” means either that the housing
7 development receives financial assistance from the United States
8 Department of Housing and Urban Development pursuant to an
9 annual contribution contract or is financed with low-income
10 housing tax credits, tax-exempt mortgage revenue bonds, general
11 obligation bonds, or local, state, or federal loans or grants and the
12 rents of the occupants, who are lower income households, do not
13 exceed those prescribed by deed restrictions or regulatory
14 agreements pursuant to the terms of the financing or financial
15 assistance.

16 (B) “Publicly supported community” means a publicly
17 subsidized multifamily housing development that is wholly owned
18 by either of the following:

19 (i) A public housing agency that has been chartered by the state,
20 or by any city or county in the state, and has been determined to
21 be an eligible public housing agency by the United States
22 Department of Housing and Urban Development.

23 (ii) An incorporated nonprofit organization as described in
24 Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec.
25 501(c)(3)) that is exempt from taxation under Section 501(a) of
26 that code (16 U.S.C. Sec. 501(a)), and that has received public
27 funding to subsidize the construction or maintenance of housing
28 occupied by residents whose annual income qualifies as “low” or
29 “very low” income according to federal poverty guidelines.

30 (2) Notwithstanding subdivision (b) of Section 270, moneys in
31 the Broadband Public Housing Account shall be available for the
32 commission to award grants and loans pursuant to this subdivision
33 to an eligible publicly supported community if that entity otherwise
34 meets eligibility requirements and complies with program
35 requirements established by the commission.

36 (3) Not more than twenty million dollars (\$20,000,000) shall
37 be available for grants and loans to a publicly supported community
38 to finance a project to connect a broadband network to that publicly
39 supported community. A publicly supported community may be
40 an eligible applicant only if the publicly supported community can

1 verify to the commission that the publicly supported community
2 has not denied a right of access to any broadband provider that is
3 willing to connect a broadband network to the facility for which
4 the grant or loan is sought.

5 (4) (A) Not more than five million dollars (\$5,000,000) shall
6 be available for grants and loans to a publicly supported community
7 to support programs designed to increase adoption rates for
8 broadband services for residents of that publicly supported
9 community. A publicly supported community may be eligible for
10 funding for a broadband adoption program only if the residential
11 units in the facility to be served have access to broadband services
12 or will have access to broadband services at the time the funding
13 for adoption is implemented.

14 (B) A publicly supported community may contract with other
15 nonprofit or public agencies to assist in implementation of a
16 broadband adoption program.

17 (5) To the extent feasible, the commission shall approve projects
18 for funding from the Broadband Public Housing Account in a
19 manner that reflects the statewide distribution of publicly supported
20 communities.

21 (6) In reviewing a project application under this subdivision,
22 the commission shall consider the availability of other funding
23 sources for that project, any financial contribution from the
24 broadband service provider to the project, the availability of any
25 other public or private broadband adoption or deployment program,
26 including tax credits and other incentives, and whether the applicant
27 has sought funding from, or participated in, any reasonably
28 available program. The commission may require an applicant to
29 provide match funding, and shall not deny funding for a project
30 solely because the applicant is receiving funding from another
31 source.

32 (7) (A) To provide funding for the purposes of this subdivision,
33 the commission shall transfer to the Broadband Public Housing
34 Account twenty million dollars (\$20,000,000) from the Broadband
35 Infrastructure Grant Account and five million dollars (\$5,000,000)
36 from the Broadband Revolving Loan Account. Any moneys in the
37 Broadband Public Housing Account that have not been awarded
38 pursuant to this subdivision by December 31, 2016, shall be
39 transferred back to the Broadband Infrastructure Grant Account

1 and Broadband Infrastructure Revolving Loan Account in
2 proportion to the amount transferred from the respective accounts.

3 (B) The commission shall transfer funds pursuant to
4 subparagraph (A) only if the commission is otherwise authorized
5 to collect funds for purposes of this section in excess of the total
6 amount authorized pursuant to paragraph (3) of subdivision (d).

7 (i) (1) The commission shall conduct two interim financial
8 audits and a final financial audit and two interim performance
9 audits and a final performance audit of the implementation and
10 effectiveness of the California Advanced Services Fund to ensure
11 that funds have been expended in accordance with the approved
12 terms of the grant awards and loan agreements and this section.
13 The commission shall report its interim findings to the Legislature
14 by April 1, 2011, and April 1, 2017. The commission shall report
15 its final findings to the Legislature by April 1, 2021. The reports
16 shall also include an update to the maps in the final report of the
17 California Broadband Task Force and data on the types and
18 numbers of jobs created as a result of the program administered
19 by the commission pursuant to this section.

20 (2) (A) The requirement for submitting a report imposed under
21 paragraph (1) is inoperative on January 1, 2022, pursuant to Section
22 10231.5 of the Government Code.

23 (B) A report to be submitted pursuant to paragraph (1) shall be
24 submitted in compliance with Section 9795 of the Government
25 Code.

26 (j) (1) Beginning on January 1, 2012, and annually thereafter,
27 the commission shall provide a report to the Legislature that
28 includes all of the following information:

29 (A) The amount of funds expended from the California
30 Advanced Services Fund in the prior year.

31 (B) The recipients of funds expended from the California
32 Advanced Services Fund in the prior year.

33 (C) The geographic regions of the state affected by funds
34 expended from the California Advanced Services Fund in the prior
35 year.

36 (D) The expected benefits to be derived from the funds expended
37 from the California Advanced Services Fund in the prior year.

38 (E) Actual broadband adoption levels from the funds expended
39 from the California Advanced Services Fund in the prior year.

1 (F) The amount of funds expended from the California
2 Advanced Services Fund used to match federal funds.

3 (G) An update on the expenditures from California Advanced
4 Services Fund and broadband adoption levels, and an accounting
5 of remaining unserved and underserved households and areas of
6 the state.

7 (H) The status of the California Advanced Services Fund balance
8 and the projected amount to be collected in each year through 2020
9 to fund approved projects.

10 (2) (A) The requirement for submitting a report imposed under
11 paragraph (1) is inoperative on January 1, 2021, pursuant to Section
12 10231.5 of the Government Code.

13 (B) A report to be submitted pursuant to paragraph (1) shall be
14 submitted in compliance with Section 9795 of the Government
15 Code.

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

20 The immediate continuation of assistance with broadband
21 deployment is a primary purpose of the Rural and Urban Regional
22 Broadband Consortia Grant Account. In order to ensure funding
23 for regular broadband consortia activities, adequate funding must
24 be made available. The Rural and Urban Regional Broadband
25 Consortia Grant Account has been exhausted and unless moneys
26 are made available immediately, deployment activities could cease.