

Chapter 9. Conclusions and Recommendations

In accordance with SB 1563, this report makes recommendations on ways to eliminate barriers to deployment of broadband services in California. Nothing in this Chapter is intended to prejudge matters pending in a current CPUC proceeding.

9.1 Make Broadband Deployment and Access a Priority

California should establish a statewide policy identifying broadband deployment and accessibility as a priority. Such a policy could take the form of an Executive Order or a statute. The purpose of an explicitly stated policy objective is to direct state agencies, boards and commissions to weigh the impact of all existing and proposed regulations on the accessibility and deployment of broadband infrastructure and advanced telecommunications services and to eliminate barriers to deployment wherever possible.

9.2 Develop a California Broadband Task Force

California should develop a statewide Broadband Task Force charged with the ongoing task of identifying barriers to deployment of broadband infrastructure and access to advanced telecommunications services, and making recommendations to eliminate such barriers. The Broadband Task Force should be comprised of senior representatives from state agencies, boards and commissions having a role in infrastructure development, information technology and economic development, representatives of California's private sector technology and investment industries, and representatives of community based organizations and lower-use communities.

The first task of the Broadband Task Force, working in conjunction with the CPUC, should be to produce a more accurate and complete assessment of what broadband technologies are deployed in the state, and where they are deployed. Information should also be collected concerning the location of broadband infrastructure in the state. This information must be detailed, with the information on broadband technology availability mapped by census block, or with even greater granularity.

9.3 State Government Should Lead by Example

California state government should be the undisputed leader in the use and availability of broadband and advanced telecommunications services for both government operations and public access. California's Web portal, "MyCalifornia.com" has been recognized nationally as a model of accessibility. By using and offering advanced telecommunications services and digital content, state government will in turn promote greater deployment of broadband networks. In addition to promoting the use and deployment of broadband, these initiatives have the benefit of making state government more efficient, more effective, and more accessible.

The state should develop multi-agency internet kiosks, so that Californians without broadband in their homes can nevertheless access the increasing number of state services available on the internet. These kiosks should be placed at public libraries, state government buildings, and other locations that are easily accessible by the disabled.

California, and its agencies, departments, boards and commissions should be required to:

- Maintain websites by a date certain that enables Californians to obtain basic information, apply for permits, schedule appointments and file comments and applications electronically. State government Web sites should be accessible to persons with disabilities and those not proficient in English.
- Provide Webcasting of all public meetings.²²²
- Utilize videoconferencing as a means of increasing public access to agencies. For example, the CPUC sets aside time at each public Commission meeting for public comment.²²³ Members of the public often must travel hundreds of miles and sometimes stay overnight in order to participate in Commission meetings, which are held in San Francisco. The public should be able to speak from the Los Angeles or Sacramento CPUC offices via videoconferencing instead of having to appear in person.
- Ensure that the CalNet system takes advantage of the significant technological and market-based developments in the telecommunications industry, including an examination of the cost-effectiveness of using VoIP telephony and other IP-based services as part of the CalNet system.

9.4 Assist Lower Use Communities

The Broadband Task Force or CPUC should develop a baseline and metrics for measuring broadband usage in specific geographic areas and among demographic groups in the state. Each year penetration rates should be measured using those metrics, and efforts should focus on increasing broadband deployment and/or usage in communities with use rates 10% or more below specific geographic or demographic averages. All programs aimed at encouraging broadband in lower use areas should be measured by their contribution to improvements in the use rate above the baseline.

Specific Programs to Encourage Broadband in Lower Use Areas and Communities:

- Provide time-limited tax incentives to providers deploying broadband facilities in geographic areas and communities with lower use rates.²²⁴
- Establish a state Software Development Fund to stimulate the development of educational software applications to be made available to individual students and classrooms over broadband.
- Provide infrastructure grants and low-interest loan guarantees for construction of broadband facilities to serve low penetration areas and communities.
- Expand the CPUC Deaf and Disabled Telecommunications Program to provide subsidized customer premises equipment for VoIP, broadband and assisted services for people with disabilities, including JAWS screen-reading and voice recognition software.

²²² The CPUC currently offers webcasting of its Commission meetings.

²²³ Only members of the public who are not parties to any proceeding can use the time set aside for comments from the public.

²²⁴ The term "lower use" should be defined as suggested above (e.g., at least 10% below baseline) and not left open to interpretation and endless subsidies.

- Provide state funds (general fund, Public Goods Charge or Universal Service Fund) for a matching grant program to encourage public/private partnerships for the deployment of broadband in lower use areas and communities (one-third state, one-third local government or CBO, one-third private funds or in-kind contribution). For example, Microsoft awarded grants to San Francisco low-income housing agencies to develop community-based technology learning centers.²²⁵ Hewlett Packard donated computers and equipment to build a wireless broadband Internet backbone for the Tribal Digital Village project near San Diego.
- Assist lower use communities with demand aggregation strategies and programs, so that communities currently without access to broadband services are able to negotiate effectively with providers for the deployment of those services.
- Establish a special tax deduction for donation of used laptop and desktop computers to CBO projects that facilitate broadband access in lower use areas and communities.
- Provide state funds for computer literacy programs at CBOs that serve lower use areas and communities. These programs should include a focus on educating members of lower use communities on the benefits of broadband and the applications available over broadband.

9.5 Reform Rights of Way

Legislation should be enacted to reform the process for obtaining Rights of Way (ROW) permits from state agencies and local governments for construction of broadband infrastructure in California. The ROW permit process is cited as one of the most significant barriers to deployment.

There are three recommendations on ROW:

- Standardize the ROW Process. California should enact legislation requiring local governments to use a standard ROW application, to make decisions concerning the grant of a ROW using standard criteria, and to make that decision within an established period of time. The state should require all state agencies granting ROW to adhere to the same process requirements imposed on local jurisdictions.²²⁶
- Limit ROW Fees. California should aggressively pursue enforcement of the limitation on ROW fees assessed by local governments that has been established by the Mitigation Fee Act and the *Williams* case. The state should impose the same restriction on all state agencies granting ROW. As a means of encouraging compliance, legislation and CPUC regulations should condition eligibility for state and federal programs that encourage broadband access to adoption of “best practices” for ROW permitting, including adherence to limitations on the fees and charges assessed. Programs that should be linked to ROW compliance include: the California Rural Infrastructure Grant Program, the federal Rural Utilities Service (RUS) programs, the California Teleconnect Fund, the Digital Divide Account, Universal Service Fund programs, the CA High Cost Fund A and B, and any other program designed to promote broadband and Internet access.

²²⁵ <http://www.microsoft.com> Citizens Housing Corporation project

²²⁶ AB 1874 would have required state agencies to act within 45 days of the application.

- Provide Effective Dispute Resolution. California should establish a ROW dispute resolution process that is either binding upon local governments, state agencies, and providers, or part of a “best practices” guide that must be adopted and implemented by local and state agencies in order for them to be eligible for state and federal grant programs.

9.6 Streamline CEQA Process for Broadband

Legislation and/or regulations should be enacted that streamline and eliminate inconsistencies in the CEQA review process for broadband projects. Specifically:

- Provide a categorical exemption from CEQA for certain broadband projects. Broadband projects that do not require a change in the functionality of existing infrastructure, such as stringing fiber optic cable on existing utility poles, should be granted a categorical exemption from CEQA.
- Change CPUC policy to ensure that the CEQA requirements are consistent for all providers. Providers applying for CEQA review for broadband projects should not be subject to different application processes or regulations based on whether they are an Incumbent or Competitive carrier, or whether they are a common carrier or non-regulated entity.

9.7 Streamline Certification Process for New Carriers Deploying Broadband Facilities

The CPUC should streamline the certification process for new carriers deploying broadband facilities. CPUC rules should allow new carriers deploying their own facilities to obtain a CPCN before applying for environmental review, consistent with the CPUC process for carriers who lease facilities.

Specifically, the CPUC must develop a process for timely granting of those CPCNs that require CPUC approval and hence require a review of the environmental impacts, if any, of the deployment of the network. The CPUC should return to the process it utilized prior to 1999 to approve such requests until such time as it develops a better means of addressing the issue.

9.8 Reform Public Utilities Code Section 851

Legislation should be enacted to amend Public Utilities Code Section 851 to categorically exempt broadband deployment projects from CPUC approval.²²⁷

Specifically, legislation and regulations should be enacted to:

- Exempt Broadband Projects from Section 851. California should amend Section 851 to categorically exempt broadband deployment projects from CPUC approval. This can be done through legislation, or by the CPUC adopting a categorical exemption for such projects under Section 853(b).²²⁸
- Reform Section 851 Policies to Encourage Utility Investment in Broadband. The CPUC should adopt a policy regarding Section 851 and the ratemaking treatment of revenues that accrue to utilities for leasing their facilities for broadband deployment projects in such a way that incentives are created for utilities to allow use of their structures and Rights of Way.

9.9 Change Cable Franchise Law

Legislation should be enacted to make California Cable Franchise Law consistent with the federal Open Video System designation, and require local governments to permit competitive entry into a franchise area without requirements to serve the entire franchise area.

²²⁷ Section 851 states:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49 U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line plant, system or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrance dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

²²⁸ P.U. Section 853(b) authorizes the CPUC to exempt a public utility from Section 851 review when it finds that such review "is not necessary in the public interest."

9.10 Encourage Broadband Over Powerlines

California should encourage deployment of BPL by its electric utilities by providing regulatory certainty in the areas of its affiliate transaction rules, in the treatment of BPL program expenses and revenues, and exemption from Section 851 requirements for the use of utility assets. The CPUC is currently planning to open a Rulemaking to develop this policy framework proactively, without waiting for an application to be filed by an electric utility for a BPL project, in order to provide the regulatory certainty necessary for California's utilities to move forward with BPL deployment projects.

9.11 Keep VoIP and Other New Technologies Free from Unnecessary Regulation

Regulatory certainty and forbearance from unnecessary regulation are key to the development of VoIP and other new technologies. The FCC's recent decision that VoIP is inherently interstate and thus subject to exclusive federal jurisdiction attempts to provide clarity and regulatory certainty to VoIP providers. In explicit recognition and support of this policy, the CPUC has recently withdrawn an appeal challenging this FCC decision. California should continue to advance statutory and regulatory policies that protect VoIP and other new technologies from unnecessary regulation and taxation.

There are two recommendations for embracing VoIP.

- Recognize that VoIP is Interstate Information Service. California should continue to support the FCC's determination that VoIP is inherently interstate and therefore subject to federal regulation except as designated by the FCC or Congress.
- Reform Universal Service. California should reform its methods of funding Universal Service, both to high cost areas and to low income consumers, to ensure continued funding as VoIP gains market share. In addition to ensuring that California develops new ways to ensure continued funding of Universal Service programs, state legislation should make providers of IP-based voice services eligible to draw from Universal Service funds when they are serving a low-income customer or customer in a high-cost area.

9.12 Remove Barriers to Bundling of Services

Laws and regulations that discourage bundling of services impede the competitive pressures that result in lower prices for consumers. The CPUC should reform its affiliate transaction and Implementation Rate Design rules to eliminate barriers that make pricing and marketing of products and services in a bundled package by regulated and non-regulated entities difficult.

Specifically, the CPUC should modify or eliminate regulations that require carriers to file individual tariffs for products such as call waiting, caller ID, call forwarding, voice mail, three-way dialing, and call return to allow telecommunications carriers to offer any product the customer chooses as part of a bundled package. CPUC rules should allow carriers to include those products as part of a single-priced package along with high-speed Internet, video and other services, without maintaining a price floor or manipulating the tariffed price of each product, in order to allow carriers to lower the package price in response to competition.

9.13 Aggressively Seek Federal Funds

Billions of dollars in federal grants, loans and other incentives are available every year for state broadband deployment and development projects. Many of these funding programs are focused on facilitating broadband deployment in lower-use communities. The Broadband Task Force should be charged with coordinating efforts among state agencies, community based organizations and local governments for obtaining and maximizing such grants, and providing assistance to local governments and community-based organizations in applying for assistance.