

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** May 21, 2013

**To:** The Commission  
(Meeting of May 23, 2013)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) – Sacramento

**Subject:** **AB 1299 (Bradford) – Telecommunications: Universal Service Programs: California Advanced Services Fund. As amended: April 25, 2013**

**RECOMMENDED POSITION:** SUPPORT IF AMENDED

**SUMMARY OF BILL**

AB 1299 would require the California Public Utilities Commission (CPUC) to use up to \$20 million of the California Advanced Services Fund (CASF) Broadband Infrastructure Grant Account to connect broadband networks to publicly-subsidized multi-tenant housing communities and to use \$5 million from the account for programs to increase adoption rates for broadband service for residents of the housing communities.

To the extent feasible AB 1299 would require the CPUC allocation reflect the statewide distribution of those publicly supported housing communities.

Under the bill, grants could be awarded to the owners of publicly supported housing communities which are either governmental entities or non-profit entities. However, to be eligible a housing community would have to verify that it has not denied a right of access to any broadband provider that is willing to deploy broadband services in the facility for which the grant is sought.

**CURRENT LAW**

Public Utilities Code section 281 provides funding to telephone corporations for the capital costs of broadband infrastructure projects through the Broadband Infrastructure Grant Account (“Grant Account”) and the Broadband Infrastructure Revolving Loan Account (“Loan Account”). Public Utilities Code section 281 also provides grants to eligible consortia for broadband deployment activities other than the capital cost of facilities through the Rural and Urban Regional Broadband Grant Consortia Account (“Consortia Account”).

Public Utilities Code section 270(b) limits eligibility for CASF infrastructure grants and loans to telephone corporations as defined by Public Utilities Code section 234.

In establishing the CASF in Decision 07-12-054, the CPUC limited eligibility for CASF grants to a “telephone corporation” as defined under Public Utilities Code section 234. In Decision 12-02-015, the CPUC continued to limit CASF funding to telephone corporations with a Certificate of Public Convenience and Necessity (CPCN) or wireless carriers who are registered with the CPUC, i.e., carriers with a Wireless Identification Registration (WIR). An entity with a pending CPCN application to provide service as a telephone corporation may submit a request for CASF funding subject to approval of its CPCN. CASF funding is also available to a consortium as long as the lead financial agent for the consortium is an entity holding a CPCN or a wireless carrier registered with the CPUC.

### **AUTHOR’S PURPOSE**

The purpose of author is to help bridge the Digital Divide by encouraging investment in deployment and adoption of broadband technology in publicly subsidized affordable housing developments. Legislation is necessary to make owners of publicly supported housing communities eligible to apply for CASF grants because current Public Utilities Code section 270(b) restricts the current eligibility to telephone corporations. In addition, the three existing accounts under CASF are not now structured to provide funding solely for publicly supported housing communities as defined in the bill.

### **DIVISION ANALYSIS (Communications Division)**

The stated objective of the Legislature and CPUC in establishing the CASF program was to promote the ubiquitous availability of high-quality advanced communications services (broadband) throughout the state. To achieve this objective, the CASF provides grants and loans for broadband deployment projects in unserved and underserved areas of the state. Such projects are for the construction of last mile and middle mile broadband facilities. Last mile facilities are necessary to connect individual households to Internet service providers (ISPs). Middle mile projects deploy the infrastructure necessary to connect providers’ last mile facilities to the Internet backbone. Eligible infrastructure grant applicants must be telephone corporations that hold a CPCN or WIR.

Total CASF funding available as currently authorized by Public Utilities Code section 281 is \$225 million broken down into the three accounts as follows:

- \$200 million for the Broadband Infrastructure Grant Account;
- \$15 million for the Broadband Infrastructure Revolving Loan Account; and
- \$10 million for the Rural and Urban Regional Broadband Consortia Grant.

SB 740 (Padilla), proposed this session, would amend Public Utilities Code section 281 to permit non-CPCN holders—entities other than telephone corporations—to apply for CASF grants and loans if the applicant entity otherwise satisfies CASF’s eligibility

requirements and any other requirements set by the CPUC. The CPUC opened an Order Instituting Rulemaking (OIR) 12-10-012 proposing to extend CASF applicant eligibility to facility-based broadband service providers that hold neither a CPCN nor WIR. This aspect of the OIR cannot be accomplished without legislative action. To these ends, SB 740 is consistent with the efforts undertaken by the rulemaking.

### Infrastructure Grants

Of the \$100 million initially authorized for CASF broadband infrastructure grants, approximately \$41.08 million has been awarded as of December 2012; \$58 million has yet to be awarded. Combined with the additional \$100 million for infrastructure grants authorized by SB 1040 (Padilla) [Chapter 317, Statutes of 2010] there is approximately \$158 in available CASF funds in the Grant Account.

On February 1, 2013, 28 applications were submitted to the CPUC for projects in unserved and underserved areas of the state seeking a total of \$240.6 million in CASF support. If all of these applications were granted, available CASF Broadband Infrastructure grant funds would be exhausted. However, the review of these applications is in the preliminary stages and applications are subject to disqualification on a number of grounds. For these reasons, it is unknown whether funds will be available in the account for the purposes envisioned in the bill.

As the CPUC initially intended when it adopted the CASF program in Decision 07-12-054 and as subsequently codified by the Legislature by SB 1193 (Padilla) [Chapter 393, Statutes of 2008], CASF broadband infrastructure grants were targeted for projects in unserved and underserved geographic areas of California. Enactment of AB 1299 would essentially expand the scope of the CASF Broadband Infrastructure Grant Account to specifically target publicly supported housing communities throughout the state. The bill does not authorize new CASF funding to cover the proposed activities. Thus, the bill will in effect reduce the amount of funding available for other broadband infrastructure projects in unserved and underserved geographic areas of California that are not publicly subsidized multi-tenant housing communities.

AB 1299 would effectively create a program within CASF. The program would be funded through the existing Broadband Infrastructure Grant Account. Because the focus and eligibility for this new program would be distinct from the current focus and eligibility for the three existing accounts, the CPUC would need to consider in a proceeding the design of such a program, adopt specific requirements and other implementation details, and determine allocation of funds that reflects the statewide distribution of those publicly supported housing communities in California as the bill requires.

Modifications to the CASF program to implement AB 1299 would include:

- A. Funding of Inside wiring – Currently the infrastructure grant and loan accounts do not provide for funding wiring inside the perimeter walls of single family residences, multi-dwelling units, or apartment buildings. If the intent of the bill is

to provide grants to ensure that each individual apartment in a multi-tenant building has access to broadband facilities, then the inside wiring may need to be upgraded in some of the eligible buildings.

- B. Funding Municipalities, Non-Governmental Organizations or owners of MDUs – Currently only telephone corporations are eligible to receive grants from the CASF infrastructure grant and loan accounts. The intent of AB 1299 is to provide grants to owners of the housing communities. The CASF Program would need to be modified to allow owners of housing communities as envisioned by AB 1299 to receive grant funds.
- C. Infrastructure Deployment in Served Areas – Specified geographic areas (Census Blocks) in California where broadband service at speeds of 6.0 mbps upload and 1.5 mbps download are available from one or more wireline or wireless broadband providers are denoted as served and are not be eligible for CASF infrastructure grants or loans. Under the current program a housing community in a served geographic area would not be eligible for CASF grant monies even if the building itself is not connected to broadband facilities. AB 1299 would provide that publicly supported housing communities in which the apartment units are not served by broadband service, though broadband service may be available at the property line, are eligible for CASF grant monies.

### Adoption Grants

The Consortia Account is intended to fund the cost of broadband deployment activities other than the capital costs of facilities, as specified by the CPUC. Under Public Utilities Code section 281, entities eligible for the consortia grants are consortia groups that may include representatives of organizations such as local and regional government, public safety, K-12 education, health care, libraries, higher education, community-based organizations, tourism, parks and recreation, agricultural, business, etc. Funds in the Consortia Account can therefore be awarded to entities other than telephone corporations.

The CPUC has awarded \$8.5 million out of \$10 million of the Consortia Account to 14 Regional Consortia throughout the state of California over three years (2012-2014). These grant awards fund activities of the regional consortia, including activities that focus on broadband adoption, digital literacy, and training on how to use computers and the Internet. Thus, only approximately \$1.5 million is available in the Consortia Account.

AB 1299 would require the CPUC to allocate \$5 million in the Grant Account to support broadband adoption-related activities similar to those funded under the Consortia Account. AB 1299 states “if the units in the facility of the residents to be served have existing broadband services or will have broadband services at the time the grant for adoption is implemented.” The intent is to encourage and increase broadband usage and subscription among residents in the targeted housing communities. Monies in the Infrastructure Account are not currently awarded for adoption purposes.

## **SAFETY IMPACT**

AB 1299 has is no direct safety impact. However, as the Governor's Broadband Task Force stated in its 2007 report, ubiquitous broadband capability creates opportunities to enhance public safety operations in a variety of areas and cites as examples public safety applications in law enforcement, disaster relief, and traffic management. The utilization of the Internet to enhance public safety is rapidly evolving. Over time, the Internet and the associated broadband facilities necessary to access the Internet, will play a key role in virtually every aspect of public safety. The CASF program is intended to promote such access and the proposed bill is intended to make the CASF more successful at achieving this objective.

The deployment of broadband service may include the use of wireless routers. The FCC has recently opened a proceeding to revisit the current radio-frequency (RF) standards.

## **RELIABILITY IMPACT**

The current CASF rules require that applicants for broadband project grants and loans demonstrate the requisite technical and managerial expertise to build and operate any proposed broadband system. Furthermore, applicants are required to demonstrate financial soundness and that the proposed project is financially sustainable. Under the current CASF framework, much of this demonstration is accomplished through the process necessary to obtain a CPCN. The CPUC would need to insure that work expanding eligibility to non-CPCN holders—such as AB 1555 (Perez) [Chapter 393, Statutes 2008] and the CPUC's Order Instituting Rulemaking 12-10-012 discussed below—be applied to developing grant requirements for awards to publicly supported housing communities in accordance with AB 1299 that ensure reliable broadband service.

## **RATEPAYER IMPACT**

The CASF is funded by a percentage surcharge on the intrastate revenues of voice service subscribers' monthly bills. Any increase in the CASF surcharge increases costs to telephone ratepayers. Since the bill does not authorize new CASF funding to cover the proposed activities, there is no additional cost to voice ratepayers.

The FCC has asserted in two key cases, both of which have been upheld by the U.S. Supreme Court, that Internet access service is an "information service" subject to federal, not state, regulation. Accordingly, the CPUC cannot set rates for Internet access service, and thus cannot compel a broadband services provider to offer Internet access service at a particular rate. However, as a condition of being awarded a grant, the current CASF program requires that the grantee commit to providing service at the rate it specifies in its application for a two-year period after the project becomes operational. The price proposed by the applicant is included in the scoring process used to rank grant applications against one another. Lower prices are assigned a higher number of points, though price accounts for five percent of the overall score assigned to

each application. Therefore, AB 1299 could lower rates for residents of publicly-subsidized multi-tenant housing communities for at least two years.

## **FISCAL IMPACT**

The bill would increase the workload of the CPUC and thus will increase agency costs. The bill would require the CPUC to develop, implement, and administer another set of programmatic activities under CASF specifically targeting broadband deployment and adoption in publicly-subsidized multi-tenant attached housing communities in California.

The CPUC would have to promulgate rules and regulations for program implementation and allocation of the funds to the targeted housing communities, possibly including a public process to design the program. Once these rules and regulations are in place, the CPUC can then accept applications from eligible entities. CPUC staff would need to review these applications and recommend approval of grants for CPUC consideration, monitor projects that received grant funding, and process grant payments. All of these tasks constitute additional workload requiring additional staff resources if the CPUC is to effectively implement and oversee the program.

Specifically, the new workload includes:

### Program Development Tasks

- Staff support in the CPUC proceeding to develop specific rules and requirements for AB 1299 within the CASF program. This work could entail organizing meetings or workshops with interested parties and stakeholders, public participation hearings, and other procedural vehicles that the CPUC may decide to undertake. Planning, organizing, and facilitating such a public process could be a significant undertaking in and of itself given the expanded number of stakeholders involved—i.e., owners of publicly-supported housing as defined by the bill, in addition to broadband service providers and other related entities. For instance, there are approximately 113 public housing agencies scattered across various counties in California under the U.S. Department of Housing and Urban Development (HUD) public housing program.<sup>1</sup> In California, there are 3,294 active housing projects that receive low income housing tax credit as of 2011,<sup>2</sup> which gives a rough indication of the number of non-profit entities that potentially are interested in the process.

### On-going Program Implementation Tasks

- Responding to inquiries and assisting the newly-eligible entities in the preparation of their CASF applications. Given that these entities are most likely not as familiar with CPUC processes, CPUC staff could be devoting a significant amount of time in explaining to these entities the specific information that they need to submit in their CASF applications.

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<sup>1</sup> See list on the following website: <https://pic.hud.gov/pic/haprofiles/haprofilelist.asp>.

<sup>2</sup> California Tax Credit Allocation Committee 2011 Annual Report, Appendix 1, Table C-1, <http://www.treasurer.ca.gov/ctcac/2011/annualreport.pdf>.

- Processing a larger number of CASF applications than otherwise would be submitted under current CASF rules and preparing resolutions for CPUC approval of CASF funding to more CASF projects. Given that the focus of the new program is at the level of a publicly supported housing community, then it is conceivable to have as many discrete CASF grants as there are eligible publicly supported housing communities in the state.
- Monitoring progress and processing of CASF payments to more CASF projects as a consequence of having more CASF applications granted funding by the CPUC.
- Conducting necessary audits, verification, and discovery during project implementation or construction to ensure that CASF funds are spent in accordance with CPUC requirements on more CASF projects than otherwise would be funded under current rules and funding level.
- It is also our understanding that the author of AB 1299 intends to add language to the bill to require the CPUC to prepare a report beginning January 1, 2015 on the implementation status of the publicly supported housing communities' broadband deployment and adoption efforts.
- Legal counsel on all aspects of the program.

With the increased workload, to effectively oversee all CASF program areas (Infrastructure Account, Loan Account, Consortia Account, and the new program for publicly-supported housing), the Communications Division would need one new Public Utility Regulatory Analyst (PURA) II position (preferably with finance, auditing, and/or accounting experience). The current staff is fully engaged handling all the necessary tasks involved in the administration and implementation of the CASF program as it stands today. These tasks include oversight of 19 CASF broadband projects in various stages of construction and 14 CASF regional broadband consortia groups working across California on a variety of activities designed to increase broadband deployment, access, and adoption in the state. Even though the Consortia Account has the least amount of CASF funding per Public Utilities Code section 281, the Consortia Account demanded considerable staff resources and could not be effectively overseen by just one analyst.

The new PURA II can be dedicated to the publicly supported housing community program area. This staff will provide technical support in the initial development of program rules and requirements, and will be primarily involved in program implementation including reviewing applicant financial information, processing payment requests with the required supporting documentation, and conducting financial audits of the expanded number of CASF grantees and projects.

One new PURA II position will cost an estimated \$90,269 per year.

This bill would allow the CPUC to provide grant funding to owners of certain publicly-subsidized housing over which the CPUC has no independent legal authority. An additional complicating legal factor is that this bill would allow eligible applicants

receiving broadband adoption grants to contract with other nonprofit agencies to assist in implementation of the broadband adoption. The CPUC could, by decision or resolution, make the award of grant monies contingent on the recipient agreeing to abide by relevant provisions of the Public Utilities Code, as well as CPUC rules and orders. At a minimum, the CPUC would develop an agreement which each non-CPCN holder or public housing entity receiving a grant must sign.

Finally, the CPUC Legal Division provides legal services to the Commissioners and to the Administrative Law Judge Division, as well as to the Division of Ratepayer Advocates (DRA). The CPUC would implement changes to the CASF through a proceeding, as it has done with other expansions of this program. The process of replacing the CPUC's traditional authority embodied in the Public Utilities Code sections pertaining to licensing and oversight of public utilities with a different structure via agreements will demand significant Legal Division time and attention. In addition, an attorney in the Legal Division would need to represent DRA in any proceedings to implement the bill.

In order to handle this new workload, the Legal Division would need one new Public Utilities Counsel I dedicated half time to this program at a cost of \$59,178 per year.

The total estimated cost of AB 1299 implementation would be \$149,448 per year.

## **ECONOMIC IMPACT**

This bill will promote both access to, and adoption of, broadband services by residents of publicly supported housing communities, and consequently allow these residents to obtain the economic benefits such access confers. As of March 31, 2013, there are 37,853 public housing units in California that are owned by public housing agencies under the U.S. HUD program.<sup>3</sup> The California Tax Credit Allocation Committee estimates that the total number of units with low-income housing tax credits is 265,877 in 2011.<sup>4</sup> Thus, there are approximately 300,000 publicly-subsidized housing units in California, representing the universe of potential beneficiaries of the new program. The California Emerging Technology Fund (CETF) estimates that 200,000 to 250,000 of these publicly-subsidized housing units lack broadband connections.<sup>5</sup>

Residential access to broadband facilities will enhance educational opportunities necessary to prepare for today's job market. Also residents of public housing with access to the Internet and broadband facilities would be able to work from home thus increasing their chances of employment or creation of micro businesses. Such access would also enhance the residents' ability to find employment outside the home by

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<sup>3</sup> See Resident Characteristic Report for US HUD Public Housing Program at <https://hudapps.hud.gov/public/picj2ee/Mtcsrccr>.

<sup>4</sup> California Tax Credit Allocation Committee 2011 Annual Report, Appendix 1, Table C-1. <http://www.treasurer.ca.gov/ctcac/2011/annualreport.pdf>.

<sup>5</sup> See hearing before Assembly Utilities and Commerce Committee, "Bridging the Digital Divide in California: A Foundation for a Better Way of Life", March 11, 2013, testimony of Sunne McPeak. 65566560

enhancing their ability to search for job opportunities and network with others. These benefits of increased access to broadband are difficult to quantify.

## **LEGAL IMPACT**

Currently, the CASF provides funding only to entities with a CPCN or a partnership or coalition in which one party has a CPCN. Accordingly, the CPUC has independent legal authority over the entity with the CPCN and has many means at its disposal to ensure compliance with the provisions of the CASF grant.

AB 1299 would allow the CPUC to provide grant funding to owners of certain publicly supported housing communities over which the CPUC has no independent legal authority. In addition, the bill would permit applicants receiving broadband adoption grants to contract with other nonprofit agencies to assist in implementation of the broadband adoption.

The CPUC would, by decision or resolution, make the award of grant monies contingent on the recipient agreeing to abide by relevant provisions of the Public Utilities Code, CPUC rules, and CPUC orders. The CPUC decision or resolution would need to address enforcement mechanisms.

Furthermore, the CPUC could award a grant to an entity not holding a CPCN, including a public housing entity, on the condition that the entity secure a performance bond for the full amount of a project grant. The CPUC could structure the performance bond requirement so that it could call in the bond if the entity awarded the grant fails to complete the project or for fails to comply with other CASF program requirements or relevant CPUC rules. Whether, and the specifics addressing how, a publicly supported housing community would post a bond would be a matter for the CPUC to address and resolve through an appropriate process.

## **LEGISLATIVE HISTORY AND PROGRAM BACKGROUND**

The CPUC established the CASF in Decision 07-12-054 to provide \$100 million dollars in grants for the construction of broadband facilities in unserved and underserved areas of the state. The decision required that the CPUC grant awards for infrastructure projects based on a competitive application and scoring process. The decision limited eligibility for project grants to “telephone corporations” as defined by Public Utilities Code section 234 and required that these entities must hold either a Certificate of Public Convenience and Necessity (CPCN) or a Wireless Identification Registration (WIR). In adopting this requirement the CPUC stated that the CPCN requirement was a method of ensuring “Commission [] jurisdiction to control against waste, fraud, and abuse in the administration of our program.”

In Resolution T-17143, the CPUC adopted specific application requirements, timelines, and scoring criteria for parties seeking CASF grants. The resolution confirmed that eligibility for CASF grants was limited to entities holding either a CPCN or WIR, but did

not rule out reconsidering the issue in the future if the CASF had a surplus or if other circumstances justified reconsideration. This restriction on eligibility was subsequently reflected in statute when the Legislature codified the CASF program effective January 1, 2009. (SB 1193, (Padilla) [Chapter 393, Statutes 2008]).

In February of 2009, the federal American Investment and Recovery Act (ARRA) was signed into law. ARRA appropriated funds to establish a federal grant program administered by the National Telecommunications and Information Administration (NTIA) in the U.S. Department of Commerce, for the construction of broadband facilities. In July 2009, the Legislature enacted AB 1555 (Perez) [Chapter 24, Statutes 2009], which amended Public Utilities Code section 281 to give the CPUC the authority to provide CASF matching grants to ARRA entities that were not telephone corporations if those entities met the requirements of the CASF program.

Subsequently, the CPUC issued Resolution T-1723 in order to ensure the financial, technical and managerial competence of CASF/ARRA non-telco applicants. The Resolution imposed additional requirements on these entities, including the submission of information sufficient to conduct a thorough background check; an affidavit agreeing to comply with specific CPUC rules; an agreement to allow the CPUC to inspect the applicant's accounts, books, papers and documents related to the application and award of CASF funds; and a mandatory performance bond for the full amount of any CASF grant.

In 2010, the Legislature enacted SB 1040 (Padilla) [Chapter 317, Statutes 2010] which authorized an additional \$125 million for the CASF program, to be allocated to three subaccounts as follows:

\$100 Million available for infrastructure grants in the Broadband Infrastructure Grant Account;

\$15 million available for infrastructure loans in the Broadband Infrastructure Revolving Loan Account; and

\$10 Million available for grants to regional consortia to fund activities to facilitate broadband deployment other than the capital costs of broadband facilities in the Rural and Urban Regional Broadband Consortia Grant Account.

In June of 2011, the CPUC adopted Decision 11-06-038 to implement the provision of SB 1040 relating to the Consortia Grant program. In Resolution T-17349 (December 2, 2011), the CPUC approved Year 1 budgets and three-year budget allowances for seven regional consortia totaling \$1.7 million. Subsequently, the CPUC approved an additional seven grants in Resolution T-17355 (February 16, 2012) for \$1.05 million. Grant funds will be used to promote ubiquitous broadband deployment and to advance broadband adoption in unserved and underserved areas by:

- Increasing sustainability of broadband infrastructure and projects;
- Promoting broadband deployment (availability) for residences in California;

- Promoting broadband access and adoption (knowledge of service options and ability to utilize services as well as subscription of services) for residences in California;
- Increasing the rate of broadband adoption by facilitating the impact of consumer education, outreach, and training;
- Supporting those community-based parties, especially anchor institutions, who are working to increase deployment, access, and adoption.

In February of 2012, the CPUC subsequently implemented the infrastructure grant and loan accounts created by SB 1040 through Decision 12-12-015. The CPUC also revised the application and scoring process adopted in Resolution T-17143 and addressed a number of policy issues related to the grant and loan programs. Among those issues was whether the CPUC should seek the legislative authority necessary to extend CASF grants and loans to entities other than those holding a CPCN or WIR given that ARRA funding for broadband projects had been exhausted. At that time, the decision rejected pursuing such authority for the following reasons. First, it cited reports by the staff that non-certificated or registered entities that had applied for ARRA grants had required significant assistance from the staff to negotiate the application/grant processes. Moreover, the decision noted that few grants had been issued to these entities because many of these applicants failed to obtain ARRA grants. Finally, the CPUC recognized that it might not have the regulatory tools to enforce the conditions attached to grants awards made to non-certificated entities.

In October of 2012, the CPUC issued Rulemaking 12-10-012 to revisit the eligibility issue it had considered in Decision 12-05-015. The rulemaking sought comment on the CPUC's proposal to change the CASF eligibility rules to permit any facilities based broadband service provider, including commercial and nonprofit entities, to apply for CASF grants and loans contingent upon obtaining the required legislative authority.

The rulemaking is premised on several considerations. First, the rulemaking found that Decision 12-02-015 had declined to pursue extending eligibility to non-certificated providers based primarily on oversight concerns without taking into account the performance of the fund. The rulemaking pointed out that there was a substantial surplus of CASF funds; that there were still a significant number of areas in the state that remained unserved or underserved; that the CASF had, for the most part, funded middle mile projects which by themselves do not assure that individual households would have access to the Internet; and finally, that there were a number of facilities-based entities not eligible for a CPCN that could potentially provide cost effective last mile infrastructure in unserved and underserved areas of the state. Opening and reply comments on the OIR were submitted in December of 2012. The rulemaking is pending.

## **OTHER STATES' INFORMATION**

### United States Department of Housing and Urban Development

There are currently a number of public housing programs within the Office of Public and Indian Housing of the U.S. Department of Housing and Urban Development (HUD) that

Public Housing Authorities (PHAs), and in some cases non-profit organizations, can potentially apply to for funding for broadband deployment and/or adoption activities within their respective housing communities:<sup>6</sup>

- Capital Fund - provides funds annually to PHAs for the development, financing, and modernization of public housing developments and for management improvements. The Capital Fund Education and Training Community Facilities program specifically provides capital funding to PHAs for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents based on an identified need. The Capital Fund can also be used to rehabilitate existing community facilities that will offer comprehensive, integrated services to help residents achieve better educational and economic outcomes.
- Operating Fund - provides operating subsidies to PHAs to assist in funding the operating and maintenance expenses of their own dwellings, in accordance with Section 9 of the U.S. Housing Act of 1937, as amended. The subsidies are required to help maintain services and provide minimum operating reserves.
- Resident Opportunities and Self Sufficiency (ROSS) - provides grants to PHAs, tribes or tribally designated housing entities, resident associations (such as resident management corporations, resident councils, and intermediary resident organizations), and non-profit organizations supported by residents and/or PHAs, for supportive services, resident empowerment activities, and activities to assist residents in becoming economically self-sufficient.
- Neighborhood Networks (NN) - created in 1995, this program aims at promoting self-sufficiency and providing technology access to residents living in U.S. HUD Federal Housing Administration (FHA)-insured and -assisted communities. Neighborhood Networks encourages property owners and managers to open onsite, multiservice technology centers which:
  - offer adults job-training classes such as computer skills, resume writing, interviewing techniques, job placement services, General Education Development (GED) preparation, and English as a Second Language (ESL) classes;
  - provide youth with educational after school activities and mentoring programs; and
  - operate programs that allow seniors to become familiar with computers and use them to better their lives, whether through staying in touch with family and friends via e-mail or searching for health care benefits online.

There are currently 152 Neighborhood Networks operational in California.

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<sup>6</sup> See [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/programs](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/programs).

- Public Housing Neighborhood Networks - created in 2011, this program provided grants to PHAs to establish, expand, and/or update computer learning centers on or near PHA developments. After 2006, Congress did not renew funding for this program and HUD issued last grants in 2007. However, Congress changed the HUD statute to allow PHAs to use Capital Funds to establish a Neighborhood Networks center and Operating Funds (including Operating Reserves) for ongoing operation of a center. Ongoing Neighborhood Networks' staff salaries are an eligible Operating Fund cost. In addition to providing computer classes and access to the Internet, grant funding may be used for services such as after-school programs, career counseling for adults, and health-related information for senior residents. There are only 5 Public Housing Neighborhood Networks operating in California.

#### National Telecommunications Information Administration – Broadband Technology Opportunities Program

- In 2010, The U.S. Department of Commerce's National Telecommunications and Information Administration's (NTIA) Broadband Technology Opportunities Program (BTOP) provided funding to support the deployment of broadband infrastructure, enhance and expand public computer centers, encourage sustainable adoption of broadband service, and develop and maintain a nationwide public map of broadband service capability and availability, as part of the federal American Recovery and Reinvestment Act. NTIA/BTOP awarded a total of over \$542 million for various projects in California broken down as follows:<sup>7</sup>

Broadband Data & Development - CPUC	\$7.98 million
Infrastructure	\$412.60 million
Public Computer Centers	\$23.04 million
Sustainable Adoption	\$98.87 million

- Grants for public computer centers and sustainable adoption are primarily intended to increase broadband Internet usage and adoption among vulnerable populations, such as low-income individuals, the unemployed, seniors, children, minorities, and people with disabilities. A couple of the grants are specifically targeting publicly-supported housing communities—i.e., Housing Authority of the County of San Bernardino (public computer center) and One Economy Corporation (sustainable adoption).

#### California Tax Credit Allocation Committee

The California Tax Credit Allocation Committee (TCAC) administers two low-income housing tax credit programs (a federal program and a state program) to encourage private investment in affordable rental housing. The TCAC calculates the tax credit based on a point system by which to rank applications. In 2008, the TCAC began offering scoring points to developers that provided broadband as an amenity at no

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<sup>7</sup> See list of California funded projects at: <http://www2.ntia.doc.gov/california>.  
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charge to tenants. Based on information that TCAC provided to CETF, only 13% of the total number of units receiving a low-income tax credit (9% awards) have provided broadband as an amenity.<sup>8</sup>

### **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

- The bill would extend the current CASF program to increase broadband access and adoption among residents in publicly supported housing communities in California. CETF estimates that there are between 200,000 and 250,000 residential units in publicly supported housing communities which will directly benefit from this expanded scope of CASF.
- The bill would provide the CPUC the flexibility needed to develop, implement, and administer the CASF to address broadband deployment and adoption in the targeted communities, given that it only provides high-level guidance and not prescriptive details.
- The bill allows the CPUC flexibility to use any monies not awarded by December 31, 2016, out of the \$20 million for broadband deployment in the target housing communities, for any other CASF program purpose.

### **SUMMARY OF SUGGESTED AMENDMENTS**

AB 1299 should be amended to clarify the:

1) Use of the terms “unit” and “units”.

Clarify whether the term “unit” and “units” in proposed section 281(f)(1) “publicly subsidized housing multitenant attached dwelling unit” and proposed section 281(f)(2)(B) providing that a housing community may be eligible “if the units in the facility of the residents to be served have existing broadband services or will have broadband services at the time the grant for adoption is implemented” refer to the whole building-facility or an individual apartment.

2) Reference to the federal poverty guidelines.

Consider amending the reference to “federal poverty guidelines” in proposed section 281(f)(1)(B). The Federal Poverty Guidelines do not define “low-” or “very low” income while these terms are defined in the U.S. HUD regulations. However, the U.S. HUD regulations may not comport with California’s state or city and county publicly-owned low-income housing guidelines.

3) Level of broadband service permitting the use of adoption funds.

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<sup>8</sup> Testimony of Sunne McPeak at March 11, 2013, hearing of Assembly Utilities and Commerce Committee.

Proposed section 281(f)(2)(B) of the bill states that “A publicly supported housing community may be eligible for a grant to fund a broadband adoption program if the units in the facility of the residents to be served have existing **broadband services** or will have **broadband services** at the time the grant for adoption is implemented.” (Emphasis added.) The reference to “broadband services” as opposed to “access to broadband services” implies that the residents of the units already subscribe to broadband service, so it is unclear why there would be a need for an adoption program in those facilities.

Consider amending proposed section 281(f)(2)(B) as indicated below:

*(B) A publicly supported housing community may be eligible for a grant to fund a broadband adoption program if the units in the facility of the residents to be served have access to existing broadband services or will have access to broadband services at the time the grant for adoption is implemented.*

- 4) Verification that the housing community has not denied a right of access.

Section (f)(2)(C) of the bill states that “A publicly supported housing community may be an eligible applicant if the publicly supported housing community can **verify** to the commission that the publicly supported housing community has not **denied a right of access to any broadband provider that is willing to deploy broadband services in the facility for which the grant is sought.**” (Emphasis added.)

## STATUS

AB 1299 is pending hearing in the Assembly Committee on Appropriations.

## SUPPORT/OPPOSITION

Support (April 29, 2013 Assembly Utilities and Commerce Committee)

AT&T (if amended)  
Boys & Girls Clubs of Santa Monica  
California Cable & Telecommunications Association (CCTA)  
California Center for Rural Policy (CCRP)  
City and County of San Francisco  
Division of Ratepayer Advocates (DRA)  
Housing Authority of the City of Los Angeles  
Humboldt State University  
International Institute of Los Angeles  
Kids Progress, Inc.  
Laura Baca, Pupil Services and Attendance Counselor, UCLA  
YouthSource Center  
LINC Housing  
Los Angeles Regional Broadband Consortia  
Mutual Housing California

Non-Profit Housing Association of Northern California (NPH)  
Shields for Families  
UCLA Community Based Learning Program  
Verizon

Opposition

None

**VOTES**      (*Yes-No, Abstain*)

April 29, 2013. Assembly Utilities & Commerce (13-1,0)

**STAFF CONTACTS**

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BILL NUMBER: AB 1299 AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY APRIL 25, 2013

INTRODUCED BY Assembly Member Bradford

FEBRUARY 22, 2013

An act to amend Section 281 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1299, as amended, Bradford. Telecommunications: universal service programs: 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 (CASF) in the State Treasury and requires that moneys in those funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service and may be expended only to accomplish specified telecommunications universal service programs, upon appropriation in the annual Budget Act or upon supplemental appropriation. 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 requires that \$100,000,000 [*≈ Large city office building*], collected by a surcharge authorized by the commission, after January 1, 2011, is to be

deposited into the Broadband Infrastructure Account. Existing law authorizes the commission to collect an additional sum not to exceed \$125,000,000 [*≈ Finance industry 2011 political donations*], after January 1, 2011, for a sum total of moneys collected through the surcharge not to exceed \$225,000,000 [*≈ Typical endowment (research university)*]. Existing law authorizes the commission to collect the additional sum through the 2015 calendar year. Existing law requires that of the moneys collected after January 1, 2011, \$100,000,000 [*≈ Large city office building*] is to be deposited into the Broadband Infrastructure Grant Account, \$10,000,000 [*≈ Small hospital*] is to be deposited into the Rural and Urban Regional Broadband Consortia Grant Account and used for specified purposes, and \$15,000,000 [*≈ Average wealth of US senators (2011)*] is to be deposited into the Broadband Infrastructure Revolving Loan Account and used for specified purposes.

~~This bill would require the commission to develop, implement, and administer the CASF to encourage deployment and adoption of high quality advanced communication services to Californians who reside in publicly supported housing communities in urban regions without assessing a new surcharge or increasing an existing surcharge that \$5,000,000 of the additional moneys collected on and after January 1, 2011, that are deposited into the Broadband Infrastructure Grant Account, be used to support programs designed to increase adoption rates for broadband service for residents of publicly supported housing communities, as defined, and not more than \$20,000,000 [*≈ Annual hurricane research funding in 2011*] of the additional moneys collected on and after January 1, 2011, that are deposited into the Broadband Infrastructure Grant Account, be used to connect broadband networks to publicly supported housing communities .~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in Decision 07-12-054 and Decision 09-07-020 and this section. ~~Without assessing a new surcharge or increasing an existing surcharge, the commission shall also develop, implement, and administer the California Advanced Services Fund to encourage deployment and adoption of high quality advanced communications services to Californians who reside in publicly supported housing communities in urban regions.~~ The commission shall establish the following accounts within the fund:

(1) The Broadband Infrastructure Grant Account.

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

(3) The Broadband Infrastructure Revolving Loan Account.

(b) (1) All moneys collected by the surcharge authorized by the commission pursuant to Decision 07-12-054, whether collected before or after January 1, 2009, shall be transmitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California Advanced Services Fund. Moneys collected *on and after* January 1, 2011, shall be deposited in the following amounts in the following accounts:

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

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

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

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

(3) The commission shall not collect moneys, by imposing the surcharge described in paragraph (1) for deposit in the fund, in an amount that exceeds *one hundred million dollars [≈ Large city office building] (\$100,000,000)* before January 1, 2011. ~~After~~ *On and after* January 1, 2011, the commission may collect an additional sum not to exceed *one hundred twenty-five million dollars (\$125,000,000)*, for a sum total of moneys collected by imposing the surcharge described in paragraph (1) not to exceed *two hundred twenty-five million dollars (\$225,000,000)*. *Five million dollars (\$5,000,000) of the additional moneys collected on and after January 1, 2011, and deposited in the Broadband Infrastructure Grant Account, shall be used to support programs designed to increase adoption rates for broadband service for residents of publicly supported housing communities, and twenty million dollars [≈ Annual hurricane research funding in 2011] (\$20,000,000) shall be used for the purpose described in subdivision (f).* The commission may collect the additional sum beginning with the calendar year starting on January 1, 2011, and continuing through the *2015 calendar year*, in an amount not to exceed *twenty-five million dollars (\$25,000,000)* per year, unless the commission determines that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year.

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

(2) Notwithstanding any other law and for the sole purpose of providing matching funds pursuant to the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), any entity eligible for funding pursuant to that act shall be eligible to apply to participate in the program administered by the commission pursuant to this section, if that entity otherwise satisfies the eligibility requirements under that program. Nothing in this section shall impede

the ability of an incumbent local exchange carrier, as defined by subsection (h) of Section 251 of Title 47 of the United States Code, that is regulated under a rate of return regulatory structure, to recover, in rate base, California infrastructure investment not provided through federal or state grant funds for facilities that provide broadband service and California intrastate voice service.

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

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

(f) (1) For purposes of this subdivision, "publicly supported housing community" means a publicly subsidized housing multitenant attached dwelling unit that is wholly owned by either of the following:

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

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

(2) (A) Not more than twenty million dollars [ $\approx$  Annual hurricane research funding in 2011] (\$20,000,000) of the moneys collected on and after January 1, 2011, and deposited in the Broadband Infrastructure Grant Account, shall be used to connect broadband networks to publicly supported housing communities. If less than twenty million dollars [ $\approx$  Annual hurricane research funding in 2011] (\$20,000,000) has been awarded by December 31, 2016, the remaining moneys not awarded may be used for any other purpose permitted under this section.

(B) A publicly supported housing community may be eligible for a grant to fund a broadband adoption program if the units in the facility of the residents to be served have existing broadband services or will have broadband services at the time the grant for adoption is implemented. Eligible applicants receiving broadband adoption grants may contract with other nonprofit or public agencies to assist in implementation of the broadband adoption program.

(C) A publicly supported housing community may be an eligible applicant if the publicly supported housing community can verify to the commission that the publicly supported housing community has not denied a right of access to any broadband provider that is willing to deploy broadband services in the facility for which the grant is sought.

(D) To the extent feasible, the commission shall allocate funds from the Broadband Infrastructure Grant Account in a manner that reflects the statewide distribution of those publicly supported housing communities.

~~(F)~~

(g) (1) The commission shall conduct an interim and final financial audit and an interim and final performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements and this section. The commission shall report its interim findings to the Legislature by April 1, 2011. The commission shall report its final findings to the Legislature by April 1, 2017. The reports shall also include an update to the maps in the final report of the California Broadband Task Force and data on the types and numbers of jobs created as a result of the program administered by the commission pursuant to this section.

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

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

~~(g)~~

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

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

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

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

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

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

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

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

(2) (A) The requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2016, pursuant to Section 10231.5 of the Government Code.

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

