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SB-4 Communications: California Advanced Services Fund. (2021-2022)

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ENROLLED SEPTEMBER 13, 2021

PASSED IN SENATE SEPTEMBER 09, 2021

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AMENDED IN ASSEMBLY AUGUST 30, 2021

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL

NO. 4

Introduced by Senator Gonzalez

(Principal coauthors: Assembly Members Aguiar-Curry, Eduardo Garcia, and Lorena Gonzalez)

(Coauthors: Senators Caballero, Durazo, Eggman, Hertzberg, McGuire, Rubio, Skinner, Stern, Wiener, Archuleta, Becker, and Limón)

(Coauthors: Assembly Members Carrillo, Luz Rivas, and Wicks)

December 07, 2020

An act to add Section 12096.3.5 to the Government Code, and to amend Section 281 of the Public Utilities Code, relating to communications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, Gonzalez. Communications: California Advanced Services Fund.

(1) Existing law establishes the Governor's Office of Business and Economic Development, known as "GO-Biz," within the Governor's office to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

This bill would require the office to coordinate with other relevant state and local agencies and national organizations to explore ways to facilitate streamlining of local land use approvals and construction permit processes for projects related to broadband infrastructure deployment and connectivity.

(2) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop, implement, and administer the California Advanced Services Fund (CASF) 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. Existing law establishes 5 accounts, the Broadband Infrastructure Grant Account, the Rural and Urban Regional Broadband Consortia Grant Account, the Broadband Public Housing Account, the Broadband Adoption Account, and the Federal Funding Account, within the CASF. Existing law provides that the goal of the Broadband Infrastructure Grant Account is, by no later than December 31, 2026, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households. Upon the accomplishment of that goal, existing law makes up to \$30,000,000 remaining in the Broadband Infrastructure Grant Account available for infrastructure projects that provide last-mile broadband access to households to which no facility-based broadband provider offers broadband service at speeds of at least 10 megabits per second (mbps) downstream and one mbps upstream. Existing law authorizes the commission to impose a surcharge to collect \$330,000,000 for deposit into the CASF beginning January 1, 2018, and continuing through the 2022 calendar year. Existing law specifies the amount of surcharge revenues to be deposited into each account within the CASF, subject to appropriation by the Legislature. Existing law authorizes the commission, in administering Broadband Infrastructure Grant Account, to require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from the Connect America Fund program or similar federal public programs that fund broadband infrastructure.

This bill would provide that the goal of the Broadband Infrastructure Grant Account is to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households by no later than December 31, 2032, rather than December 31, 2026. The bill would delete the provision making up to \$30,000,000 available for infrastructure projects upon the accomplishment of that goal, as specified. The bill would authorize moneys appropriated from the CASF to be used to fund projects that deploy broadband infrastructure to unserved nonresidential facilities used for local and state emergency response activities, including fairgrounds. The bill would delete the commission's authorization to collect \$330,000,000 for deposit into the CASF beginning January 1, 2018, and continuing through the 2022 calendar year. The bill would authorize the commission, through imposition of a surcharge, to collect up to \$150,000,000 per year. The bill would delete the commission's authorization to require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from federal public programs, as specified.

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the above provisions would be part of the act and a violation of a commission action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) This bill would become effective only if AB 14 of the 2021–22 Regular Session is enacted and takes effect on or before January 1, 2022.

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

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 12096.3.5 is added to the Government Code, to read:

12096.3.5. The office shall coordinate with other relevant state and local agencies and national organizations to explore ways to facilitate streamlining of local land use approvals and construction permit processes for projects related to broadband infrastructure deployment and connectivity.

SEC. 2. 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, consistent with this section and with the statements of intent in Section 2 of the Internet for All Now Act (Chapter 851 of the Statutes of 2017).

(b) (1) (A) The goal of the Broadband Infrastructure Grant Account is, no later than December 31, 2032, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the commission. The commission shall be responsible for achieving the goals of the program.

(B) For purposes of the Broadband Infrastructure Grant Account, both of the following definitions apply:

(i) "Mbps" means megabits per second.

(ii) (I) Except as provided in subclause (II), "unserved area" means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 mbps downstream, 3 mbps upstream, and a latency that is sufficiently low to allow realtime interactive applications, considering updated federal and state broadband mapping data.

(II) For projects funded, in whole or in part, from moneys received from the federal Rural Digital Opportunity Fund, "unserved area" means an area in which no facility-based broadband provider offers broadband service at speeds consistent with the standards established by the Federal Communications Commission pursuant to In the Matter of Rural Digital Opportunity Fund, WC Docket No. 19-126, Report and Order, FCC 20-5 (adopted January 30, 2020, and released February 7, 2020), or as it may be later modified by the Federal Communications Commission.

(2) In approving infrastructure projects funded through the Broadband Infrastructure Grant Account, the commission shall do both of the following:

(A) Approve projects that provide last-mile broadband access to households that are unserved by an existing facility-based broadband provider.

(B) (i) Prioritize projects in unserved areas where internet connectivity is available only at speeds at or below 10 mbps downstream and 1 mbps upstream or areas with no internet connectivity.

(ii) This subparagraph does not prohibit the commission from approving funding for projects outside of the areas specified in clause (i).

(3) Moneys appropriated for purposes of this section may be used to match or leverage federal moneys for communications infrastructure, digital equity, and adoption, including, but not limited to, moneys from the United States Department of Commerce Economic Development Administration, the United States Department of Agriculture ReConnect Loan and Grant Program, and the Federal Communications Commission for communications infrastructure, digital equity, and adoption.

(4) The commission shall transition California Advanced Services Fund program methodologies to provide service to serviceable locations and evaluate other program changes to align with other funding sources, including, but not limited to, funding locations.

(5) The commission shall maximize investments in new, robust, and scalable infrastructure and use California Advanced Services Fund moneys to leverage federal and non-California Advanced Services Fund moneys by undertaking activities, including, but not limited to, all of the following:

(A) Providing technical assistance to local governments and providers.

(B) Assisting in developing grant applications.

(C) Assisting in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties.

(6) Moneys appropriated for the purposes of this section may be used to fund projects that deploy broadband infrastructure to unserved nonresidential facilities used for local and state emergency response activities, including, but not limited to, fairgrounds.

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

(1) The Broadband Infrastructure Grant Account.

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

(3) The Broadband Public Housing Account.

(4) The Broadband Adoption Account.

(5) The Federal Funding Account.

(d) (1) The commission shall transfer the moneys received by the commission from the surcharge the commission may impose pursuant to paragraph (4) to fund the accounts to the Controller for deposit into the California Advanced Services Fund.

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

(3) The commission may make recommendations to the Legislature regarding appropriations from the California Advanced Services Fund and the accounts established pursuant to subdivision (c).

(4) For the period described in Section 281.1, the commission may collect a sum not to exceed one hundred fifty million dollars (\$150,000,000) per year.

(e) All moneys in the California Advanced Services Fund, including moneys in the accounts within the fund, shall be available, upon appropriation by the Legislature, to the commission for the California Advanced Services Fund 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.

(f) In administering the Broadband Infrastructure Grant Account, the commission shall do all of the following:

(1) The commission shall award grants from the Broadband Infrastructure Grant Account on a technology-neutral basis, taking into account the useful economic life of capital investments, and including both wireline and wireless technology.

(2) The commission shall consult with regional consortia, stakeholders, local governments, existing facility-based broadband providers, and consumers regarding unserved areas and cost-effective strategies to achieve the broadband access goal through public workshops conducted at least annually no later than April 30 of each year.

(3) The commission shall identify unserved rural and urban areas and delineate the areas in the annual report prepared pursuant to Section 914.7.

(4) An existing facility-based broadband provider may, but is not required to, apply for funding from the Broadband Infrastructure Grant Account to make an upgrade pursuant to this subdivision.

(5) Projects eligible for grant awards shall deploy infrastructure capable of providing broadband access at speeds of a minimum of 100 mbps downstream and 20 mbps upstream, or the most current broadband definition speed standard set by the Federal Communications Commission from time to time, as determined appropriate by the commission, whichever broadband access speed is greater, to unserved areas or unserved households.

(6) (A) An individual household or property owner shall be eligible to apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider. Any infrastructure built to connect a household or property with funds provided under this paragraph shall become the property of, and part of, the network of the facility-based broadband provider to which it is connected.

(B) (i) In approving a project pursuant to this paragraph, the commission shall consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property, limiting the amount of grants on a per-household basis, and requiring a percentage of the project to be paid by the household or the owner of the property.

(ii) The aggregate amount of grants awarded pursuant to this paragraph shall not exceed five million dollars (\$5,000,000).

(7) An entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved area if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission.

(8) The commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the commission shall consider in

reviewing the application.

(9) The commission shall establish a service list of interested parties to be notified of any California Advanced Services Fund applications. Any application and any amendment to an application for project funding shall be served to those on the service list and posted on the commission's internet website at least 30 days before publishing the corresponding draft resolution.

(10) A grant awarded pursuant to this subdivision may include funding for the following costs consistent with paragraph (5):

(A) Costs directly related to the deployment of infrastructure.

(B) Costs to lease access to property or for internet backhaul services for a period not to exceed five years.

(C) Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

(11) The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal.

(g) (1) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process. An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks and recreation, agricultural, business, workforce organizations, and air pollution control or air quality management districts, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

(2) Each consortium shall conduct an annual audit of its expenditures for programs funded pursuant to this subdivision and shall submit to the commission an annual report that includes both of the following:

(A) A description of activities completed during the prior year, how each activity promotes the deployment of broadband services, and the cost associated with each activity.

(B) The number of project applications assisted.

(h) (1) All remaining moneys in the Broadband Infrastructure Revolving Loan Account that are unencumbered as of January 1, 2018, shall be transferred into the Broadband Infrastructure Grant Account.

(2) All repayments of loans funded by the former Broadband Infrastructure Revolving Loan Account shall be deposited into the Broadband Infrastructure Grant Account.

(i) (1) For purposes of this subdivision, "low-income community" includes, but is not limited to, publicly supported housing developments, and other housing developments or mobilehome parks with low-income residents, as determined by the commission.

(2) Moneys in the Broadband Public Housing Account shall be available for the commission to award grants and loans pursuant to this subdivision to a low-income community that otherwise meets eligibility requirements and complies with program requirements established by the commission.

(3) Moneys deposited into the Broadband Public Housing Account shall be available for grants and loans to low-income communities to finance projects to connect broadband networks that offer free broadband service that meets or exceeds state standards, as determined by the commission, for residents of the low-income communities. A low-income community may be an eligible applicant if the low-income community does not have access to any broadband service provider that offers free broadband service that meets or exceeds state standards, as determined by the commission, for the residents of the low-income community.

(4) To the extent feasible, the commission shall approve projects for funding from the Broadband Public Housing Account in a manner that reflects the statewide distribution of low-income communities.

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

(j) (1) Moneys in the Broadband Adoption Account shall be available to the commission to award grants to increase publicly available or after school broadband access and digital inclusion, such as grants for digital literacy training programs and public education to communities with limited broadband adoption, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption.

(2) Eligible applicants are local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations with programs to increase publicly available or after school broadband access and digital inclusion, such as digital literacy training programs.

(3) Payment pursuant to a grant for digital inclusion shall be based on digital inclusion metrics established by the commission that may include the number of residents trained, the number of residents served, or the actual verification of broadband subscriptions resulting from the program funded by the grant.

(4) The commission shall give preference to programs in communities with demonstrated low broadband access, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption. The commission shall determine how best to prioritize projects for funding pursuant to this paragraph.

(5) Moneys awarded pursuant to this subdivision shall not be used to subsidize the costs of providing broadband service to households.

(k) The commission shall post on the home page of the California Advanced Services Fund on its internet website a list of all pending applications, application challenge deadlines, and notices of amendments to pending applications.

(l) (1) The commission shall require each entity that receives funding or financing for a project pursuant to this section to report monthly to the commission, at minimum, all of the following information:

(A) The name and contractor's license number of each licensed contractor and subcontractor undertaking a contract or subcontract in excess of twenty-five thousand dollars (\$25,000) to perform work on a project funded or financed pursuant to this section.

(B) The location where a contractor or subcontractor described in subparagraph (A) will be performing that work.

(C) The anticipated dates when that work will be performed.

(2) The commission shall, on a monthly basis, post the information reported pursuant to this subdivision on the commission's California Advanced Services Fund internet website.

(m) The commission shall notify the appropriate policy committees of the Legislature on the date on which the goal specified in subparagraph (A) of paragraph (1) of subdivision (b) is achieved.

(n) (1) Upon the deposit of state or federal infrastructure moneys into the Federal Funding Account, the commission shall implement a program using those moneys to expeditiously connect unserved and underserved communities by applicable federal deadlines.

(2) Projects funded pursuant to this subdivision shall be implemented consistent with Part 35 of Title 31 of the Code of Federal Regulations and any conditions or guidelines applicable to these one-time federal infrastructure moneys.

(3) Of the two billion dollars (\$2,000,000,000) appropriated to the commission to fund last-mile broadband infrastructure in the Budget Act of 2021, the commission shall allocate those moneys to applicants for the construction of last-mile broadband infrastructure as follows:

(A) The commission shall initially allocate one billion dollars (\$1,000,000,000) for last-mile broadband projects in urban counties as follows:

(i) The commission shall first allocate five million dollars (\$5,000,000) for last-mile broadband projects in each urban county.

(ii) The commission shall allocate the remaining moneys based on each urban county's proportionate share of the California households without access to broadband internet access service with at least 100 megabits per second download speeds, as identified and validated by the commission pursuant to the most recent broadband data collection, as of July 1, 2021, as ordered in commission Decision 16-12-025 (December 1, 2016), Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market.

(B) The commission shall allocate at least one billion dollars (\$1,000,000,000) for last-mile broadband projects in rural counties as follows:

(i) The commission shall first allocate five million dollars (\$5,000,000) for last-mile broadband projects in each rural county.

(ii) The commission shall allocate the remaining moneys based on each rural county's proportionate share of the California households without broadband internet access service with at least 100 megabits per second download speeds, as identified and validated by the commission pursuant to the most recent broadband data collection, as of July 1, 2021, as ordered in commission Decision 16-12-025 (December 1, 2016), Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market.

(4) Until June 30, 2023, applicants may apply for and encumber moneys allocated pursuant to this subdivision for last-mile broadband projects. Any moneys allocated pursuant to this subdivision that are not encumbered on or before June 30, 2023, shall be made available to the commission to allocate for the construction of last-mile broadband infrastructure anywhere in the state.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act shall become effective only if Assembly Bill 14 of the 2021–22 Regular Session is enacted and takes effect on or before January 1, 2022.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To expedite the deployment of broadband infrastructure and internet service to unserved rural and urban communities, which will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, including telehealth and distance learning.