

Date of Hearing: July 1, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 28 (Caballero) – As Amended June 24, 2021

SENATE VOTE: 36-0

SUBJECT: Rural Broadband and Digital Infrastructure Video Competition Reform Act of 2021

SUMMARY: Among other things, this bill would expand the authority of the California Public Utilities Commission (CPUC) to regulate cable video franchises, require the CPUC to consult with local governments regarding franchise violations, and require the CPUC to evaluate a franchisee’s service obligations. This bill would also require the California Department of Technology (CDT), in collaboration with the Department of General Services (DGS), among other agencies and departments, to compile an inventory of state-owned resources that may be available for use in the deployment of broadband, and to develop standardized agreements to enable state-owned resources to be leased or licensed for these purposes, as specified. Specifically, **this bill would:**

- 1) Require CDT, in collaboration with DGS, the State Department of Education, the Department of Transportation, and other relevant state agencies to:
 - Compile an inventory of state-owned resources that may be available for use in the deployment of broadband networks in rural, unserved, and underserved communities. The term “state-owned resources,” as used in this section, includes, but is not limited to, state-owned real properties, rights-of-way, spectrums, facilities and structures, infrastructure, programs, and other resources suitable for that purpose.
 - Develop a standardized agreement to enable state-owned resources to be leased or licensed for the purpose described above. The agreement shall include, but not be limited to, provisions that ensure the broadband network developer uses the state-owned resource to provide broadband access to rural, unserved, or underserved communities and deploys broadband infrastructure that has the capacity to provide service at a minimum speed of 100 megabits per second (mbps) downstream.
- 2) Require CDT to post on its internet website the inventory of state-owned resources and the standardized agreement described above, and to update them as necessary.
- 3) Require CDT to provide technical assistance to state departments and agencies for the purposes of fulfilling obligations under the bill.
- 4) Make various changes to the Public Utilities Code, including:
 - Clarifying that the CPUC may “exercise all authority, jurisdiction, and powers authorized to be exercised by a franchise authority pursuant to the federal cable laws”.
 - Expanding existing anti-discrimination provisions to apply to any holder of a state franchise, instead of only to cable operators or video service providers, as provided.

- Repealing certain build-out requirements and appeal processes for failure to meet those requirements.
 - Requiring the CPUC to consult with local governments within the holder’s service territory regarding remedies for the service impacts resulting from violations.
 - Striking existing reporting requirements and replacing them with more granular reporting requirements including: (1) information relative to the locations that the holder made broadband service available, as specified, including information that may be based on street addresses, parcel numbers, latitude or longitude, or any other method of designating locations; (2) the upload and download speeds, as specified, being offered and provided at those locations; (3) the technologies to provide service at those locations; and (4) the price, as specified, for those services. The bill would prohibit the CPUC from publicly disclosing any personally identifiable information collected pursuant to these requirements.
- 5) Require the CPUC to adopt customer service requirements, as specified, and adjudicate any customer complaints.
 - 6) Require the CPUC to assess the build out obligations of a holder of a state franchise to further competition and expansion of video service, including whether the holder offers service to all locations within their franchise territory, whether the holder may reasonably build out service to unserved locations, and the reasonableness of the build out costs and timelines.
 - 7) Make various legislative findings and declarations related to the digital divide.

EXISTING LAW:

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (Cal. Const., art., Sec. 1.)
- 2) Establishes the information security law, which requires a business that owns, licenses, or maintains PI, as defined, about a California resident to implement and maintain “reasonable security procedures and practices appropriate to the nature of the information,” to protect the personal information from unauthorized access, destruction, use, modification, or disclosure. (Civ. Code Sec. 1798.81.5(b).)
- 3) Defines personal information, for purposes of Section 1798.80 and the state’s data breach laws, generally, to mean: any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver’s license or state identification number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. “Personal information” for these purposes, does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records. (Civ. Code Sec. 1798.80(e).)

- 4) Establishes, within the Government Operations Agency, the Department of Technology (CDT), and generally tasks the department with the approval and oversight of information technology (IT) projects, and with improving the governance and implementation of IT by standardizing reporting relationships, roles, and responsibilities for setting IT priorities. (Gov. Code Sec. 11545, et seq.)
- 5) Finds that the unique aspects of IT goods and services and their importance to state programs warrant a separate body of governing statutes that should enable the timely acquisition of IT goods and services to meet the state's needs in the most value effective manner. (Pub. Con. Code Sec. 12100(a).)
- 6) Provides that all contracts for the acquisition of IT goods and services related to IT projects, as defined, shall be made by or under the supervision of CDT as provided, and endows CDT with the final authority for all of the following: the acquisition of IT goods and services related to IT projects; the determination of IT procurement policy; the determination of IT procurement procedures applicable to IT acquisitions and telecommunications procurements; and the determination of procurement policy in telecommunications procurements. (Pub. Con. Code Sec. 12100(b)-(e).)

FISCAL EFFECT: According to the Senate Appropriations Committee, the CPUC estimates ongoing costs of at least \$1.44 million to undertake the new work required by this bill such as the adjudication of customer service complaints; performing ongoing assessment of build out obligations; consulting with local governments; and collecting, mapping, and analyzing granular data. CDT reports unknown costs to undertake the new work required by the bill.

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to address the digital divide by requiring state departments and agencies to inventory state resources that may be used in the deployment of broadband networks in rural, unserved, and underserved communities, and would additionally expand the authority of the CPUC to regulate cable video franchises, as specified. This bill is author-sponsored.
- 2) **Author's statement:** According to the author:

The COVID 19 pandemic put a spotlight on inequality caused by California's persistent digital divide. Without adequate broadband, students struggle with distance learning, rural residents must travel hours to medical appointments, and businesses that can no longer depend on local foot traffic, shut down because they are not competing in the digital marketplace.

On the Wrong Side of the Digital Divide, released by the Greenlining Institute in June 2020 [] highlights the challenges residents in Oakland and Fresno, California face when they lack Internet access, including some residents taking on additional debt to pay for Internet service, while others cannot afford it at all. Inconsistent access to Internet service, as well as poor or selective marketing, disrupts day to day activities, forcing many to go to great lengths to get connected. Lack of access is a barrier to academic success. [...]

Evidence from Los Angeles County 2014-17, released in October 2019 by USC Annenberg Research Network for International Communication (ARNIC) and the USC Price Spatial Analysis Lab (SLAB) [...] finds that ISPs are “cherry-picking” areas for upgrades to fast broadband services in Los Angeles County and that broadband infrastructure upgrades are skewed against less affluent areas and communities of color, especially in low-income and predominantly Black communities. The report compares broadband Internet service competition and fiber availability in South Los Angeles versus Glendale, and alleges that broadband investments in Los Angeles County during 2014-2017 did not adhere to non-discriminatory federal and state laws, including the Digital Infrastructure and Video Competition Act.

- 3) **Bill requires state departments and agencies to create an inventory of resources that could be used for broadband expansion:** The Legislature has charged DGS and CDT with overseeing the State’s procurement of goods and services on a statewide level. Specifically, DGS is responsible for overseeing the majority of the State’s procurements, while CDT is responsible for overseeing acquisitions of IT and telecommunications goods and services. CDT also houses the Broadband and Digital Literacy Office (BDLO), whose mission is to establish digital literacy throughout the State of California. BDLO aims to establish 98 percent high-speed internet access and 90 percent statewide adoption by 2023, and partners with federal, state, and nonprofit organizations. BDLO claims that “[t]ogether, we have made significant advancements in closing the digital divide, and we continue to remain focused on our ultimate goal of digital literacy for all[.]” According to CDT’s website, “BDLO manages the California Broadband Council and provides support to the Council by managing the statewide ecosystem of individuals and organizations dedicated to closing the digital divide.”

This bill would require CDT, in collaboration with DGS, the Department of Education, the Department of Transportation, and other relevant state agencies, to compile an inventory of state-owned resources that may be available for use in the deployment of broadband networks in rural, unserved, and underserved communities.

In support, the Association of California School Administrators writes:

The digital divide has created significant hardships for students, particularly in light of the ongoing COVID-19 pandemic. When it was first declared in spring 2020, school districts quickly shifted to distance learning. “Despite efforts to increase availability, 26% of K-12 students and nearly 40% of low-income students still did not have reliable internet access in fall 2020,” according to the Public Policy Institute of California.¹ Even after the pandemic subsides, quality broadband connectivity for all students will continue to be essential for addressing educational inequality.

SB 28 will ensure that communities have negotiating power with service providers over broadband services, thus creating a critical step towards closing the digital divide and supporting our students.

These particular mandates, along with the obligations this bill would impose on the CPUC, seem to align with Executive Order N-73-20, signed by the Governor on August 14, 2020. That Executive Order required, among other things, that the CPUC lead data aggregation and mapping efforts in collaboration with the California State Transportation Agency and other relevant state agencies, local and tribal governments, and regional consortia to address: (1)

locations without broadband access; (2) information on public and private broadband network infrastructure; (3) state-owned infrastructure and rights of way; and (4) information to support the development of local broadband infrastructure deployment and digital equity plans.

The order also imposed various obligations on CDT specifically, including identifying relevant agencies under the PUC's jurisdiction that could be used to accelerate broadband deployment and to leverage utility infrastructure to increase access to existing fiber and cost-effectively deploy new fiber, and identifying opportunities to leverage the State's contract authorities as resources to further statewide broadband access and adoption.

Similarly, this bill would require these agencies to inventory existing resources that could be used in the expansion of broadband in this state. The bill would also require CDT to provide technical assistance to state departments and agencies in fulfilling their obligations under the bill. While CDT is arguably the best suited department to lend technical expertise to other departments and agencies implicated by the relevant sections of this bill, staff notes that it may lack the resources to satisfy the bill's requirements given its other statutory obligations, and may need additional funding to meet the obligations of this bill.

The California Association of Nonprofits writes in support:

The pandemic has exacerbated the pre-existing Digital Divide in California and highlighted the need for state government to take active steps to address inequities in broadband access, particularly in rural and low-income communities.

SB 28 will help close the Digital Divide in two ways. First, it requires state Departments of Education, General Services, Technology, and Transportation to identify real properties, rights of way, and other resources suitable for a public/private partnership for broadband network development. Second, it will help ensure that licensees are meeting their [Digital Infrastructure and Competition Act] DVCA obligations, by mandating audits of broadband network development and deployment by DVCA licensees.

SB 28 provides practical approaches for state agencies to engage directly with private partners in closing the Digital Divide so that the more than 2 million Californians who have been denied broadband access can have it.

The bill would also require the aforementioned agencies to develop a standardized agreement to enable state-owned resources to be leased or licensed for the purpose described above. The bill would require that the agreement include provisions that ensure the broadband network developer uses the state-owned resource to provide broadband access to rural, unserved, or underserved communities and deploys broadband infrastructure that has the capacity to provide service at a minimum speed of 100 megabits per second (Mbps) downstream.

Staff notes that requiring a standardized *agreement* would arguably limit the ability of CDT, DGS, and potentially other agencies/departments to create vendor agreements that are specifically tailored to a particular project. Additionally, the contracts approved by CDT and DGS are heavily regulated according to the State Administrative Manual (SAM) and the State Information Management Manual (SIMM). Accordingly, the author may wish to consider amending this bill to instead require standardized *provisions* that should be added to

any agreement to enable state-owned resources to be leased or licensed for use in the deployment of broadband networks in rural, unserved, and underserved communities and to allow CDT and DGS to meet their obligations prescribed in the SAM and SIMM.

In support, the California Medical Association writes “[a]dequate knowledge of, and standardized lease agreements to utilize, infrastructure resources the state has available to assist underserved communities in acquiring broadband access are key steps towards bridging the digital divide.”

- 4) **Confidentiality protections for personal and proprietary information could be improved:** Existing law requires franchise holders to report aggregate information to the CPUC, such as: the number of household’s in the holder’s service area; low income household information; and the number of low income households in the holder’s service area. (Pub. Util. Code Sec. 5930(b).) Existing law also prohibits any of this information from being open to public inspection or being made public, except by order of the commission in the course of a hearing or proceeding. (Pub. Util. Code Sec. 583.) This bill would instead require franchise holders to submit information relative to the locations that the holder made broadband service available and that received broadband service during the previous year, and allows the CPUC to require the information to be based on street addresses, assessors’ parcel numbers, latitude and longitude, or any other method for designating locations that provides reasonably similar granularity. For each location, the information would be required to show the upload and download speeds, or combination of upload and download speeds, as specified, the technology used to provide broadband service, and the price (with and without promotional or bundled service offerings) at which broadband service was offered.

The bill then provides that the CPUC shall not “publicly disclose any personally identifiable information collected pursuant to this section.”

Frontier Communications opposes “the requirement that a video franchise holder be required to report to the CPUC detailed, proprietary information on its broadband service, including locations served, speeds offered and at what prices, and technologies used, without any assurances that this proprietary, sensitive information would be kept confidential.”

Indeed, under existing law, any information submitted to the CPUC pursuant to Section 5960 is shielded from public disclosure. This protection is so strong that it arguably errs on the side of compromising the public’s interest in transparency in government. In fact, the presumption of confidentiality in the law specific to the CPUC stands in direct contrast to the Public Records Act, which provides in its “catch all” exemption that in order to justify withholding a record, the agency must show that “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Gov. Code Sec. 6255(a).)

That said, this bill would take a dramatically different approach from the existing standard exercised by the CPUC and only protect *personally* identifiable information, such as a customer’s name and address, thereby leaving proprietary and other sensitive information subject to public disclosure.

Staff notes that the protection offered by this bill, that personally identifiable information cannot be publicly disclosed, raises two issues. First, the prohibition does not prevent the

sharing of personal information with third parties so long as that disclosure is not public. Second, the prohibition does not allow for the sharing of personal information if the public interest in its disclosure outweighs the individual's interest in privacy.

Reverting to the confidentiality protections under existing law would arguably better protect proprietary information of franchise holders, and would allow that information to be publicly released upon the order of the CPUC if the commission determined that public disclosure was necessary. It would also allow the CPUC to share personal information if the public interest so warranted.

- 5) **Other opposition concerns:** This bill was double referred to the Assembly Committee on Communications and Conveyance, where it was heard on June 23, 2021 and passed out 9-0. That committee also drafted significant amendments to address a number of concerns raised by the opposition. Those amendments, in particular, addressed concerns that the prior version of this bill was preempted by federal law. That committee's analysis provided:

Although the opponents of the bill are correct that federal law and recent FCC decisions are quite clear about the jurisdiction states have over broadband – very little - the strict limitations are made complicated by the fact that broadband service is often delivered to households over the very same cable systems and wires that deliver video service. The seemingly paradoxical regulatory structure over different services that travel over the same wires has been the subject of much litigation and was the impetus behind a 2019 FCC order which aimed to clarify the regulatory jurisdictions of local franchising authorities over services other than cable or video service. In its order, the FCC sharply limited state and local authority over products offered by video service providers other than video programming, such as broadband, but affirmed that build-out requirements and customer service requirements for cable service can be lawful. The distinction between the two services is noteworthy, as it does not preclude states from obligating franchise holders to expand cable service.

Accordingly, the bill was amended to, among other things, remove explicit references to “broadband” in section two of the bill. For a detailed analysis on the issues of preemption, digital redlining, antidiscrimination statutes, and federal versus state data collection policies, please see that committee's analysis.

Despite these amendments, the opposition continues to raise a variety of concerns. CCTA argues that the bill is fundamentally flawed because it only requires data from one type of provider, “thereby leaving out the many other types of providers of internet service.” CCTA also notes concern that:

SB 28 would also require the CPUC to assess “the build out obligations” of a DIVCA franchise holder but does not clearly define “build out obligations.” SB 28 also removes the current law requirement that the CPUC “shall consider factors that are beyond the control” of the franchisee when reviewing whether build out obligations are met. These factors include the impact of natural disasters and the ability to obtain permits for construction from local governments and other agencies, which are well documented barriers to broadband deployment. It also fails to recognize that there may be legitimate business reasons as to why a franchisee has not completely built out an area that they do

not intend to serve. At a minimum, SB 28 should be amended to require consideration of these factors.

The California Latino Leadership Institute (CLLI) writes in opposition, “If the goal is to expand broadband to unserved and rural communities, this bill should focus on those areas by investing funds and resources into the California Advanced Services Fund (CASF), which is available to all Internet providers. The CASF grant program is an effective way to encourage all Internet providers to expand in those hard to reach and costly areas of California. SB 28 as currently drafted could have the adverse effect by allowing the State to revoke current DIVCA agreements causing less access to broadband service.”

Finally, staff notes that one recent amendment has caused some confusion about what the bill actually proposes to strike from existing law. Specifically, the introduced version of this bill amended Public Utilities Code Section 5870, which deals with public programming. Deciding that Section 5870 would be better left untouched, recent amendments struck Section 9 from the bill. Accordingly, the bill in print leaves all of the protections offered by Public Utilities Code Section 5870 intact.

- 6) **Related legislation:** AB 35 (Muratsuchi) would enact the Broadband for All Act of 2022, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$10,000,000,000 pursuant to the State General Obligation Bond Law to support the 2022 Broadband for All Program. This bill was held under submission in the Assembly Appropriations Committee.
- 7) **Prior legislation:** SB 1058 (Hueso, 2020) would have required the PUC to direct every ISP in the state to file an emergency operations plan detailing the provider’s plan for retaining or restoring service in response to an emergency, including the provision of an affordable internet plan for certain individuals affected by the emergency. The bill would have allowed the CPUC to revoke the license of a cable franchise if an affiliate ISP violates the emergency operations plan requirements. This bill was held in the Senate Appropriations Committee.

SB 1422 (Glazer, Ch. 156, Stats. 2016) specified that cable franchises are considered “other service suppliers” for the purpose of local user utility taxes, which provides public utilities with liability protections for collection of local utility taxes assessed on utility customers.

- 8) **Double referral:** This bill was double-referred to the Communications & Conveyance Committee where it was heard on June 23, 2020 and passed out 9-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Humboldt
Association of California School Administrators
California Association of Nonprofits
California Association of School Business Officials (CASBO)
California Edge Coalition
California Emerging Technology Fund
California Forward Action Fund
California Medical Association

California School Boards Association
California State Association of Counties
California State PTA
Central Valley Education Coalition
City Council Member, City of Gilroy
City of Gonzales
City of Huron
City of Kerman, CA
City of King
City of Los Banos
City of Madera
City of Merced
City of Salinas
City of San Juan Bautista
Communities in Schools of Los Angeles (CISLA)
Community Bridges
Community Television of Santa Cruz County
Consumers for Auto Reliability and Safety
County of Marin
County of Santa Clara
Dolores Huerta Foundation
Educators for Excellence - Los Angeles
Electronic Frontier Foundation
Families in Schools
Green DOT Public Schools California
Innovate Public Schools
L.A. Coalition for Excellent Public Schools
League of California Cities
League of United Latin American Citizens (LULAC) of Salinas Council 2055
Local Government Commission
Media Alliance
Monterey County
New Livable California DbA Livable California
Nextgen California
Our Turn
Our Voice: Communities for Quality Education
Parent Revolution
Partnership for Los Angeles Schools
Rural Caucus, California Democratic Party
San Benito County
San Benito County Lulac Council #2890
Stanislaus County
The Education Trust - West
The Fresno Business Council
The Greenlining Institute
The Utility Reform Network (TURN)
United Parents and Students
Valley Vision
Youth Alliance

Opposition

Bizfed Central Valley
Black Chamber of Orange County
Calcom Association
California Cable & Telecommunications Association
California Latino Leadership Institute
Consolidated Communications Services Co. (DBA Surewest)
Frontier Communications Corporation
Inland Empire Economic Partnership (IEEP)
Long Beach Area Chamber of Commerce
Los Angeles County Business Federation (BIZFED)
Monterey County Business Council
Orange County Business Council
San Gabriel Valley Economic Partnership
Valley Industry & Commerce Association

Analysis Prepared by: Nichole Rocha / P. & C.P. / (916) 319-2200