

NBNCBC PROPOSED AMENDMENTS
ADOPTED by the NBNCBC Oversight Committee--FEBRUARY 16, 2017
Internet For All Now Act
Working Proposal
California Emerging Technology Fund in Collaboration with Partners
January 2017

The California Advanced Service Fund, established under Section 281, shall sunset as of December 31, 2020. A new Public Utilities Code Section shall be added which authorizes the California Advanced Services Fund II and sets forth new policies and directives for achieving the broadband (high-speed Internet) goals of 98% deployment and 90% adoption by 2023.

This act shall be known, and may be cited, as the Internet For All Now Act.

Findings and Declarations

The Legislature finds and declares all of the following:

- (1) The availability of high-speed Internet access, referred to generically as “broadband advanced communications services” including both wired and fixed wireless technologies, as defined by the Federal Communications Commission (FCC), is essential 21st century infrastructure for economic competitiveness and quality of life. Economic studies confirm that the use of broadband advanced communications services technologies increases economic productivity as a foundation for increased efficiency in organizational operations and enhanced profitability in business.
- (2) Broadband infrastructure also is vital to the operation and management of other critical infrastructure, such as energy generation systems and the power grid, water supply systems, and public safety and emergency response networks. There is a need for world-class broadband infrastructure throughout California to support these major infrastructure investments to protect lives, property and the environment.
- (3) Also, access to broadband infrastructure is essential throughout the state for all forms of business and industry, the education system K-G, and health and medical facilities.
- (4) The State of California shall strive to ensure that California is a national leader and globally competitive in the deployment and adoption of broadband technology and to accomplish quality universal access for all residents. The goals shall be to achieve by December 31, 2027 deployment of broadband infrastructure to 98 percent of all households statewide and in each county and adoption of the use of broadband technology for high-speed Internet access by 90 percent of all households statewide with no significant population segment less than 80 percent.

California Advanced Services Fund II Program

The California Advanced Services Fund II is hereby established to provide funding for broadband deployment and adoption to meet the goals of the State of California.

- (1) The commission shall develop, implement and administer the California Advanced Services Fund II program to encourage deployment of high-quality broadband

advanced communications service to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies infrastructure for projects that provide last-mile broadband access to households that are unserved **and/or undeserved** by an existing facilities-based broadband provider and to promote adoption of broadband technology for high-speed Internet quality universal access by all households. The goals of the program shall be to approve funding from the California Advanced Services Fund II to achieve both of the following by December 31, 2027:

(a) Broadband advanced communications services infrastructure access, **via wireline or fixed wireless** at advertised speeds of no less than 25 megabits per second (Mbps) downstream and **3 megabits per second (Mbps) upstream (the current federal standards set by the Federal Communications Commission (FCC))** to no less than 98 percent of all households **statewide and** in each **county** in California.

(b) Adoption of the use of broadband technology for quality high-speed Internet access by no less than 90 percent of all households statewide with no significant population segment less than 80 percent.

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

- (a) Broadband Infrastructure Account
- (b) Broadband Adoption Account
- (c) Public Housing Account
- (d) Broadband Regional Consortia Account

(3) The commission shall collect monies pursuant to Decision 07-12-054 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 II. The Commission shall not collect moneys for deposit in the fund that exceed five hundred million dollars (\$500,000,000) beginning with the calendar year starting on January 1, 2018 and continuing through the 2027 calendar year, in an amount not to exceed fifty million dollars (\$50,000,000) per year.

(4) All monies in the California Advanced Services Fund II 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.

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

(6) Monies collected for the fund shall be deposited in the following amounts in the following accounts:

- (a) Three hundred thirty-five million dollars (\$335,000,000) into the Broadband Infrastructure Account.
- (b) One hundred million dollars (\$100,000,000) into the Broadband Adoption Account.
- (c) Fifty million dollars (\$50,000,000) into the Public Housing Account.
- (d) Fifteen million dollars (\$15,000,000) into the Broadband Regional Consortia Account.

~~(7) Ten million dollars (\$10,000,000) from the Broadband Infrastructure Account shall be allocated to the California Telehealth Network, a 501(c)(3) nonprofit organization established to provide access to health and medical services to medically-underserved rural and urban communities through the facilitation of telehealth and~~

telemedicine technologies, which shall include but not be limited to the delivery of health information, medical services, specialty care, and medical expert consultations to improve patient outcomes and overall population health. The California Telehealth Network shall utilize this funding for operations to optimize utilization of the Federal Communications Commission Healthcare Connect Fund for the benefit of California and to become self-sufficient by increasing participating sites and generation of revenue from customers.

~~(8) Up to one hundred fifty million (\$150,000,000) from the Broadband Infrastructure Account shall be available to the Office of Emergency Services to plan, construct, attract matching capital construction funds, and manage broadband deployment to and among selected county fair sites, state fair complex, and appropriate command centers for strategic emergency response capabilities. Use of these funds shall result in the permanent installation of broadband infrastructure throughout California that supports the overall deployment goal and may not be used to subsidize services purchased from companies providing services. The Office of Emergency Services shall notify the commission no later than January 1, 2019 that it intends to accept the funding and shall reach agreement with the commission no later than January 1, 2020 on a deployment plan and schedule for transfer of funds up to one hundred fifty million (\$150,000,000). Should the Office of Emergency Services decline to use any portion of this amount, those funds shall remain in the Broadband Infrastructure Account and be available for the commission to award for other eligible projects after January 1, 2021.~~

Responsibility for Achieving the Goals

(1) The commission shall be responsible for achieving the broadband infrastructure access goal. The commission shall recognize that broadband advanced communications services includes both wireline and **fixed** wireless technologies which shall be eligible for grants from the Broadband Infrastructure Account based on the objective functionality needs for the spectrum customers to be served in any specific project application. The commission may use all of its existing authorities and resources, including the regulation of public conduits, to ensure and enforce quality universal access for all residents.

(2) The commission shall identify priority unserved and underserved areas as defined **by the Federal Communications Commission (FCC)** for specified thresholds in (1)(a) and shall delineate the priority areas **in each county** in the bi-annual reports.

(3) The commission shall consult **with County Board of Supervisors**, Regional Consortia **representing one or multiple counties**, and stakeholder and consumer **groups** regarding priority areas and cost-effective strategies to achieve the broadband access goal **throughout California**.

(4) **Based on consultation with and studies and strategic plans developed by these entities (ref 3 above) the commission shall delineate strategies and requirements to achieve the broadband infrastructure access goal, including but not limited to coordination with other high-speed Internet access networks, leveraging of other resources to assist with broadband infrastructure deployment, and fostering of public-private partnerships**

(5) The commission shall complete the following activities in identifying priority areas:

- (a) Develop a census block map identifying areas in each county that are unserved and underserved based on the advertised speeds submitted by providers and verified ground truth testing results that have been submitted by consumer groups.
- (b) Assess the need for broadband infrastructure in the unserved and underserved areas in each county.
- (c) Secure input from County Boards of Supervisors, Regional Consortia, stakeholders and the public regarding the potential for economic, educational, public safety and community benefit.
- (d) Recognize that, in addition to residential households, there are other types of consumers, including anchor institutions, such as schools, libraries, community centers, and health and medical facilities, small businesses and large employers, and research organizations, all with a range of needs for broadband access threshold speeds in excess of those specified by the FCC.
- (e) Analyze the availability of threshold speeds up to and excess of the FCC standards of 25 Mbps downstream and 3 Mbps upstream.
- (f) Compile information regarding the availability and potential for broadband infrastructure to assist: 1) public safety and emergency services; 2) agriculture industry in increasing resource use, crop production, and access to markets; 3) businesses and industry; 4) education system K-G; and 5) health and medical delivery facilities.
- (g) Consult the California Broadband Council and relevant state agencies regarding broadband infrastructure access needs and effective strategies to foster public-private partnerships in an open and transparent manner.
- (h) Make a finding that the potential economic, educational, public safety, community benefit, and the projected adoption rates support expenditures from the fund.
- (i) Set forth performance objectives for timely review and approval or disapproval of applications for funding from the fund.

Broadband Infrastructure Account

- (1) The commission shall give priority consideration for funding from the Broadband Infrastructure Account to last-mile projects in the priority unserved and/or underserved areas in each county identified in the bi-annual report.
- (2) An application for a last-mile infrastructure project to an unserved and/or underserved area may include infrastructure deployment in multiple contiguous counties that demonstrate a regional need.
- (3) Eligible applicants shall include any incorporated entity with sufficient expertise and capacity to manage construction and completion of a broadband infrastructure project as delineated by the commission, including any local government or collection of local governments.
- (4) Project applicants shall delineate separately the costs for last-mile infrastructure and middle-mile backhaul to ensure transparency in competition.
- ~~(5) The commission shall give priority to projects that provide last-mile infrastructure to households at an average cost below a generally applicable threshold cost determined by the commission.~~

(5) Recognizing that cost-effective, last-mile infrastructure projects to reach unserved and/or underserved areas are dependent upon affordable middle-mile backhaul infrastructure that may be deployed through underserved or served areas either by incumbents providing access to existing middle-mile backhaul or by the project applicant constructing essential middle-mile infrastructure as part of the project, the commission shall consider applications for projects that construct last-mile infrastructure serving unserved and adjacent underserved households that include the deployment or lease of middle-mile backhaul infrastructure to which the last-mile infrastructure connects.

~~(7) The commission shall give additional priority to applicants that are incumbents with existing middle-mile backhaul infrastructure proposing to deploy last-mile infrastructure to provide services to unserved and underserved households, if the incumbent submits an application no later than April 30, 2018 and the proposal is deemed cost-effective by the commission.~~

(6) Applicants for last-mile infrastructure projects may include the cost to lease middle-mile backhaul facilities from an incumbent provided that it is a cost no greater than construction of an equally functional facility.

~~(9) The commission shall approve funding for construction of middle-mile backhaul only if it is needed to provide last-mile connectivity to unserved areas and (i) the project applicant is unable to lease middle-mile facilities from an existing provider at a cost no greater than the cost of constructing the middle-mile backhaul and (ii) the project applicant is prohibited from using the middle-mile infrastructure to connect end-users in served areas.~~

(7) The commission shall recognize that, in addition to residential households, there are other types of consumers, including anchor institutions, such as schools, libraries, community centers, and health and medical facilities, small businesses and large employers, and research organizations, all with a range of needs for broadband access threshold speeds in excess of 25 Mbps downstream and 3 Mbps upstream, and shall consider approving funding for last-mile infrastructure projects to reach unserved households that also provide improvements to those other types of consumers at higher speeds if the commission deems such action to be in the public interest and a cost-effective use of the fund.

(8) The commission shall not approve an application if the project area has at least 25 Mbps downstream and 3 Mbps upstream service available to households via wireline or fixed wireless technologies. ~~or if the incumbent in the project area has accepted Connect America Fund support to upgrade the proposed project area to at least 10 Mbps downstream and 1 Mbps upstream and plans to make that service available on or before December 31, 2021. An incumbent that has accepted Connect America Fund support may submit an application consistent with other provisions herein.~~

~~(12) — An applicant shall not be disqualified for a project that would provide middle-mile backhaul infrastructure for an unserved area if the incumbent is not providing middle-mile backhaul infrastructure to the applicant.~~

(9) The commission may consider infrastructure applications to enable broadband access in unserved and underserved areas to support cultivated agriculture consistent with information set forth in the bi-annual reports pursuant to appropriate matching investments by benefitted land owners as determined by the commission.

- (10) 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. A challenge shall not be valid on the basis that service in the project area was improved following the submission of an application.
- (11) Construction on projects shall begin within six (6) months of completion of the environmental assessment and permitting processes and shall be completed within three (3) years.
- (12) The commission may provide a grant for up to 80% of the project cost.
- (13) To ensure the most cost effective and timely achievement of the broadband deployment goal, the commission may award contracts through an open and competitive process for any of the following services:
 - (a) Assistance in identification and mapping of priority unserved and underserved areas.
 - (b) Project oversight and management of grants awarded from the Broadband Infrastructure Account to accelerate the completion of projects without cost increases or overruns.
 - (c) Engineering review of proposals for grants from the Broadband Infrastructure Account.
 - (d) Overall monitoring of progress to verify performance by grantees.
- (14) The commission may conduct a focused open request for proposals for specified unserved areas to ensure the goal for broadband infrastructure access is achieved.
- (15) The commission may convene peer review panels comprised of persons with recognized expertise from institutions of higher education or non-profit public-purpose entities, provided such persons are determined by the commission to have no conflict of interest with any specific application, to review and analyze applications to ensure timely action by the commission.
- (16) To avoid delays in cash flow, contracts entered into pursuant to above paragraph shall include terms for reasonable and prudent advance payment schedules reconciled to actual expenditures by contractors, as verified by independent audits.

Broadband Adoption Account

- (1) The commission shall be responsible for achieving the broadband adoption goal. The commission may use all of its existing authorities and resources, including administration of the Energy Savings Assistance program, to ensure and enforce quality universal access for all residents.
- (2) The commission shall award monies in the Broadband Adoption Account for performance-based grants to eligible nonprofit, community-based 501(c)(3) organizations with programs designed to increase broadband adoption by low-income households by providing public education and outreach programs that are culturally appropriate and in relevant languages to provide digital literacy training, information about available affordable broadband subscription programs, and assistance in signing up for service.

(3) The commission shall develop criteria for awarding grants and determine the process and methodology for verifying broadband adoption by low-income households based on new subscriptions no later than June 30, 2018. Payment of grants shall be based on actual verification of broadband adoption by low-income households.

(4) The commission may award one or more contracts for the overall management of grants to eligible not-for-profit community-based organizations with programs designed to increase broadband Internet adoption at a cost not to exceed 10 percent of the amount of grants awarded.

(5) Recipients of such grants are prohibited from developing and implementing any preferential marketing, referral or other arrangements of broadband providers.

(6) To avoid delays in cash flow, contracts and grants funded from the Broadband Adoption Account shall include terms for reasonable and prudent advance payment schedules reconciled to actual expenditures by contractors and verified subscriptions by grantees, as verified by independent audits.

Public Housing Account

(1) The commission shall award monies in the Public Housing Account for grants to an eligible publicly supported community if that entity otherwise meets eligibility requirements and complies with program requirements established by the commission. The commission shall recognize that the goal of the Public Housing Account is to ensure that all residents of publicly supported housing have high-speed Internet quality access in their homes that is affordable for either the residents or the building owners taking into account all the financial and budget constraints associated with the source of the public subsidy.

(2) The commission shall develop criteria for grants to eligible applicants for broadband infrastructure connectivity and broadband adoption in publicly supported communities.

(3) For the purposes of the Public Housing Account, the following terms have the following meanings:

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

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

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

(ii) 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 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.

(4) A publicly supported community may be an eligible applicant only if the publicly supported community has not denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant is sought.

(5) A publicly supported community that has granted access to a broadband provider which has installed a network capable of providing service immediately to each residential unit shall be an eligible applicant only if the provider has not submitted in writing to the commission and implemented in good faith an information and digital literacy program to offer an affordable Internet subscription to all residents in that publicly supported community that achieves at least 80% adoption by December 31, 2018.

(6) A publicly supported community that has granted access to a broadband provider that has submitted in writing to the commission a plan for an information and digital literacy program to offer an affordable Internet subscription to all residents to achieve 80% adoption may apply for a grant from the Public Housing Account to promote adoption to assist in implementation of the plan submitted by the provider.

(7) The commission shall establish requirements of eligible applicants to ensure open competition and transparency to determine the most cost-effective broadband network to achieve the goal of the Public Housing Account.

(8) A publicly supported community may contract with another nonprofit or public agency to assist in implementation of a broadband adoption program.

(9) In reviewing a project application, 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.

(10) To the extent possible, the commission shall approve grants for funding from the Public Housing Account in a manner that reflects the statewide distribution of publicly supported communities.

Broadband Regional Consortia Account

(1) The commission shall award monies in the Broadband Regional Consortia Account for grants to eligible consortia to fund the cost of assisting the commission in achieving the program goals other than the capital cost of broadband infrastructure.

(2) 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.

Reporting Responsibilities and Accountability

(1) Beginning on April 1, 2019, and bi-annually thereafter, until April 1, 2029, the commission shall provide a report to the Legislature in compliance with Section 9795 of the Government Code that includes all of the following information:

- (a) The amounts of funds awarded and expended from the California Advanced Services Fund II by account in the prior 2 years and cumulatively to date through December 31 of the previous year.
- (b) The recipients of funds awarded and expended from the California Advanced Services Fund II by account in the prior year and cumulatively to date.
- (c) The geographic regions of the state affected by the funds awarded and expended from the California Advanced Services Fund II in the prior year and cumulatively to date.
- (d) The progress to date in achieving the program goal for deployment of broadband infrastructure and an accounting of remaining unserved and underserved households in each region of the state to achieve the goal.
- (e) The progress to date in achieving the program goal for adoption of the use of broadband technology for high-speed Internet access by significant population segments and an accounting of remaining households in the state to achieve the goal.

Definitions

For the purposes of this section, the following terms mean the following:

- (1) "Last-mile infrastructure" means the segment of the broadband infrastructure to access the Internet that provides broadband connectivity to end users,
- (2) "Middle-mile backhaul infrastructure" or "middle-mile" means the segment of the broadband infrastructure to access the Internet that connects the last-mile infrastructure to the backbone infrastructure of the broadband network.
- (3) "Unserved households" and "underserved households" have the same meanings as defined by the Federal Communications Commission.